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

12 LYNNE WANG, YU FANG INES
 13 KAI, and HUI JUNG PAO, on behalf
 14 of themselves and all others similarly
 situated,

15 Plaintiffs,

16 v.

17 CHINESE DAILY NEWS, INC.,

18 Defendant.

Case No.: CV-04-1498-CBM-(JWJx)

**PLAINTIFFS' NOTICE OF
 MOTION AND MOTION FOR
 ATTORNEYS' FEES AND
 REIMBURSEMENT OF COSTS**

Date: September 15, 2015
 Time: 10:00 a.m.
 Location: Courtroom 2

Honorable Consuelo Marshall

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TO DEFENDANT AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 15, 2015, at 10:00 a.m., in Courtroom 880 of the above-entitled court, located at 312 N. Spring Street, Los Angeles, California, 90012, Plaintiffs Lynne Wang, Yu Fang Ines Kai, and Hui Jung Pao will move and hereby do move for an award of attorneys' fees in the amount of \$3,600,000 and costs in the amount of \$85,445.86.

The motion will be based on the Federal Rules of Civil Procedure, the foregoing notice, points and authorities, and declarations and exhibits filed concurrently herewith, and the pleadings, records and files in this action.

DATED: July 8, 2015

HADSELL STORMER & RENICK, LLP

By: /s/ Randy Renick
Randy Renick
Attorney for Plaintiffs

1
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. INTRODUCTION**

4 Plaintiffs Lynne Wang, Yu Fang Ines Kai, and Hui Jung Pao, on behalf of
5 themselves and the class which has been certified herein, submit this unopposed motion
6 in support of an award of attorneys’ fees in the amount of \$3,600,000 and costs in the
7 amount of \$85,445.86 from the Settlement reached in this action.

8 The fees and costs are sought in connection with a proposed \$7.8 million class
9 action settlement (“Settlement”) of wage and hour claims brought on behalf of non-
10 exempt newspaper employees who worked for Defendant Chinese Daily News at its
11 Monterey Park, California facility, at any time during the period of March 5, 2000
12 through July 1, 2005. The Settlement provides that Plaintiffs may seek \$3.6 million in
13 fees and up to \$150,000 in costs. The Settlement was preliminarily approved by this
14 Court on June 25, 2015. Dkt. #966.

15 The Settlement brings to a close more than a decade of hard-fought litigation
16 between the parties. Over ten years ago, Plaintiffs filed this lawsuit and successfully
17 obtained class certification. The class action eventually went to trial before a jury and
18 this Court, which resulted in entry of judgment on February 28, 2008 in favor of the
19 Plaintiff Class on all claims in the amount of \$5,244,198. Dkt. 737. On October 3, 2008,
20 the Court also granted Plaintiffs’ Motion for Attorney’s Fees and Costs in the amount of
21 \$3,515,985.60. Dkt. #875. While the Ninth Circuit rendered a decision in 2010
22 rejecting each of Defendant’s challenges and affirming in full, Defendant’s writ petition
23 for certiorari was granted by the Supreme Court. The Supreme Court vacated the
24 judgment and remanded the case to the Ninth Circuit for further consideration of the
25 class certification ruling in light of the Supreme Court’s decision in *Wal-Mart Stores,*
26 *Inc. v. Dukes*, 131 S. Ct. 2541 (2011). After briefing and argument by the parties, the
27 Ninth Circuit remanded to this Court for review its prior class certification ruling. After
28 full consideration of the briefs submitted and arguments presented by the parties, this

1 Court granted Plaintiffs' Motion for Class Certification Following Remand on April 15,
2 2014. Defendant then filed a petition for permission to appeal under Fed. R. Civ. P.
3 23(f), which the Ninth Circuit granted on August 22, 2014. Dkt. #947. In December
4 2014, the parties participated in a mediation before experienced wage and hour
5 mediator, David Rotman, Esq. In January 2015, the parties were able to reach an
6 agreement on all material terms, including a gross settlement in the amount of \$7.8
7 million.

8 The \$3.6 million requested in fees represents a substantial reduction of the actual
9 fees incurred to date by Class Counsel in its prosecution of this case and is supported by
10 the excellent result achieved for the Class Members. Since the filing of this case, Class
11 Counsel has prevailed at all stages of litigation, at class certification, at trial, on appeal,
12 and at re-certification following remand. It has vigorously advanced and defended
13 Class Members' claims, while foregoing payment for its work in the intervening years.
14 The diligent effort and hours expended by Class Counsel have resulted in a settlement
15 that confers a substantial benefit to the class. Indeed, the average payment to each of the
16 263 Class Members is \$13,954.99, and the payment to each is at least 76% of the
17 amount awarded at trial. Thus, the financial benefit conferred upon the class is
18 significant, especially in light of the present uncertainty as to whether the Ninth Circuit
19 will affirm the re-certification of the class or award as much in damages, penalties or
20 interest after remand. In contrast, the fee amount sought by Plaintiffs is 70% of Class
21 Counsel's lodestar.

22 ///

23 ///

24 ///

1 The Settlement is an excellent result in light of all of the relevant circumstances,
2 and the fees requested are reasonable under both the Lodestar and Percentage of The
3 Fund Methods. Accordingly, Plaintiffs respectfully request that the Court grant the
4 requested award of attorneys' fees and the reimbursement of costs.

5 **II. BACKGROUND**

6 **A. Summary of Procedural History**

7 Plaintiffs Lynne Wang, Yu Fang Ines Kai, and Hui Jung Pao filed this lawsuit on
8 March 5, 2004, alleging claims against Defendant Chinese Daily News ("CDN") under
9 the Fair Labor Standards Act, 29 U.S.C. § 216 ("FLSA"), the California Labor Code,
10 and California Business & Professions Code § 17200 *et seq.* for unpaid overtime, failure
11 to provide rest and meal breaks, wage statement violations, and waiting time violations.

12 On June 23, 2005, Plaintiffs filed a motion for class certification under Rule 23.
13 The motion was granted on November 23, 2004. On January 20, 2005, the Court *sua*
14 *sponte* entered an Amended Order granting Plaintiffs' Motion for Class Certification of
15 the state law claims under Rule 23(b)(2) and (b)(3).

16 In January 2006, the parties both sought summary judgment on various issues.
17 Based on the evidence presented, the Court made numerous determinations on issues of
18 fact and law at summary judgment that were common to the class, including the
19 calculation of regular rate of pay, calculation of vacation pay, the accuracy of the wage
20 statements, the application of exemptions, and the applicable statute of limitations for
21 meal and rest breaks.

22 A two-phased jury trial commenced on November 28, 2006. On January 10,
23 2007, a Special Verdict was returned, finding in Plaintiffs' favor on most claims and
24 awarding damages (after reducing the salespersons' FLSA overtime damages to
25 \$84,682). The verdict totaled \$1,927,263.25. Based on the evidence, the jury made the
26 following findings on issues common to the Class:
27
28

1 (1) Plaintiff's Claims for Overtime under Federal and California Law: The jury
2 awarded \$1,428,926 in damages for overtime claims.

3 (2) Plaintiff's claims for meal and rest periods under California law: The jury
4 awarded \$985,842 in damages for the break claims.

5 ///

6 (3) Plaintiffs' Claims for Vacation Buy-Back Violations under California law: The
7 jury awarded damages of \$105,348.

8 In July and August 2007, the Court conducted a bench trial on the issues of
9 injunctive relief, penalties, prejudgment interest, and restitution under Cal. Bus. & Prof.
10 Code § 17200. The Court, *inter alia*, made the following findings for the class:

- 11 ○ The Plaintiff class is entitled to restitution under Cal. Bus. & Prof. Code §
12 17200;
- 13 ○ A cause of action under Section 17200 based on violation of the FLSA are
14 not preempted by the FLSA opt-in requirement such that CDN failed to pay
15 overtime to all CDN Salespersons in the amount of \$833,338;
- 16 ○ Plaintiffs are owed \$105,348 in damages for vacation buyback;
- 17 ○ Plaintiffs are owed \$354,830 as inaccurate wage statement penalties;
- 18 ○ Plaintiffs are owed \$61,013 for waiting time penalties; and
- 19 ○ Plaintiffs are entitled to interest.

20 On February 28, 2008, the Court entered Judgment in the amount of \$5,244,198,
21 comprised of \$3,464,998 in damages and penalties, and \$1,779,200 in interest through
22 the date of entry of Judgment.

23 On October 3, 2008, the Court awarded \$3,515,985.60 in attorneys' fees. Shortly
24 thereafter, the Court ordered that Class Members be provided notice of the proceedings
25 and an opportunity to file a claim or opt-out of the settlement. On September 22, 2008,
26 notice was sent to the Class Members. During the claims process additional potential
27 Class Members were identified, bringing the total number to 273. Of these 273, 116
28 (42.5%) filed a claim, 61 (22.3%) opted-out, and 96 (35.2%) did not respond. In its
June 25, 2008, Order the Court ruled that any share allocated to Class Members who

1 either opted-out or who did not file a claim would not revert to the Defendant, but
2 would go either to those who had filed a claim or by way of a *cy pres* distribution.

3 In lieu of posting a bond, Defendant deposited \$9,000,000 with the Court and
4 appealed several of the Court's rulings. The Ninth Circuit rejected each of CDN's
5 claims. It concluded "that the district court did an admirable job in this multifaceted
6 case" and "affirmed [the Court's findings] in all respects." *Wang v. Chinese Daily*
7 *News, Inc.*, 623 F.3d 743, 762 (9th Cir. 2010).

8 In 2011, the United States Supreme Court clarified the relevant legal standards
9 applicable to Rule 23 class actions. *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541
10 (2011). CDN filed a petition for certiorari, which the Supreme Court held and then
11 granted, vacated the judgment in this action, and remanded in light of *Dukes*.

12 On remand, the Ninth Circuit reversed the Court's prior certification of the class
13 under Rule 23(b)(2) and ordered the Court to reconsider its analysis of class certification
14 under Rules 23(a)(2) and (b)(3). *Wang v. Chinese Daily News*, 737 F.3d 538, 546 (9th
15 Cir. 2013). The Circuit Court instructed that this Court's reconsideration was limited to
16 "its findings of commonality under Rule 23(a) and predominance under Rule 23(b)(3)"
17 and should be based on "the entire record of this case." *Id.*

18 On October 21, 2013, Plaintiffs filed a motion seeking recertification of the same
19 previously certified class consisting of "all non-exempt hourly employees who worked
20 for Chinese Daily News, at its Monterey Park facility in California, at any time from
21 March 5, 2000 through July 1, 2005." On April 15, 2014, the Court granted Plaintiffs'
22 motion. On April 29, 2014, CDN filed a petition for permission to appeal under Rule
23 23(f). The Ninth Circuit granted the 23(f) petition, and Defendant was ordered to
24 perfect its appeal.

25 **B. Mediation, Settlement, and Preliminary Approval**

26 On December 17, 2014, the parties attended a one-day mediation before David
27 Rotman, a highly-regarded mediator who is very familiar with wage-and-hour class
28

1 action lawsuits such as the instant action. The settlement negotiations were thorough
2 and each side advocated vigorously for their respective positions. At the conclusion of
3 the mediation session, Mr. Rotman made a mediator’s proposal. While the parties did
4 not accept the proposal, negotiations continued. On January 27, 2015, an agreement for
5 settlement was reached on all material terms and issues. Renick Decl., ¶¶ 31-32.

6 On May 12, 2015, Plaintiffs’ motion for Preliminary Approval of Settlement was
7 granted on June 26, 2015. Dkt. #966. The Settlement provides that Chinese Daily News
8 will pay \$7,800,00 for the benefit of the Class as defined as: “Salespersons, Reporters,
9 non-exempt hourly employees with the following titles: Drivers, Editors, Translators,
10 Graphic Designers, Packers, Printers, Typists, and non-exempt hourly employees in the
11 following departments: Book, Circulation, Classified Advertising, Communications,
12 Darkroom, Stripping, Typesetting, Display, Printing, Graphics, Office Administrative
13 Staff, Packing, Printing, Sales, and Communications at any time during the period of
14 March 5, 2000 through July 1, 2005 who worked for Defendant at its Monterey Park,
15 California facility.” Ex. 1, ¶23; §IV, §27.

16 The settlement provides for cash payment to Class Members according to a
17 formula that allows for payment of the percentage of the net recovery to each Class
18 Member who files a valid claims based upon the number of months worked during the
19 class period (Exh. 1, ¶65); one-half of any unclaimed settlement fund amount will be
20 distributed *pro rata* to Class Members who file timely claims consistent with the
21 formula set forth in Section XII of the Settlement Agreement (*Id.* at ¶53(f)(A);
22 additional incentive awards not to exceed \$105,000 for the three named Plaintiffs (*Id.* at
23 ¶¶48-49); one-half of any unclaimed amounts of the gross settlement value will be
24 distributed, per the Court’s approval, *cy pres* to various law school clinics programs in
25 equal amounts (*Id.* at ¶53(f)(b); an estimated \$50,000 to CAC Services Group, LLC to
26 act as impartial Claims Administrator (*Id.* at ¶30); and attorneys’ fees in an amount not
27 to exceed \$3,600,000 and litigation costs up to \$150,000 (*Id.* at ¶47, 53).

1 **III. ARGUMENT**

2 **A. Applicable Legal Standards**

3 Federal Rule 23(h) provides that “[i]n a certified class action, the court may
4 award attorney's fees and nontaxable costs that are authorized by law or by the parties'
5 agreement.” Fed. R. Civ. P. 23(h). Plaintiffs’ unopposed fee motion is the result of
6 negotiation and agreement between the parties: the “ideal” resolution of such a matter.
7 See *In re M.D.C. Holdings Sec. Litigation*, 1990 U.S. Dist. LEXIS 15488, at *12 (S.D.
8 Cal. Aug. 30, 1990) (“The Supreme Court has stated that consensual resolution of
9 attorneys’ fee issues is the ideal toward which litigants should strive.”). Importantly,
10 “[w]here a plaintiff has obtained excellent results, his attorney should recover a fully
11 compensatory fee.” *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983).

12 “Where a settlement produces a common fund for the benefit of the entire class,
13 courts have discretion to employ either the lodestar method or the percentage-of-
14 recovery method” to award attorney’s fees. *In re Bluetooth Headset Prods. Liab. Litig.*,
15 654 F.3d 935, 942 (9th Cir. 2011) (citing *In re Mercury Interactive Corp.*, 618 F.3d 988,
16 992 (9th Cir. 2010)); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002).
17 “[E]ither method may, depending upon the circumstances, have its place in determining
18 what would be reasonable compensation for creating a common fund.” *Paul, Johnson,*
19 *Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989). “Irrespective of which
20 methodology the Court elects to employ, the court may not apply it mechanically or
21 formulaically, but must undertake an analysis that ensures that the fee award is
22 reasonable.” *Wren v. RGIS Inventory Specialists*, 2011 U.S. Dist. LEXIS 38667, at *47
23 (N.D. Cal. Apr. 1, 2011)(citing *In re Mercury Interactive Sec. Litig.*, 618 F.3d 988, 992
24 (9th Cir. 2010)). The court’s “ultimate goal ... is the award of a reasonable fee to
25 compensate counsel for their efforts, irrespective of the method of calculation.”
26 *Consumer Privacy Cases*, 175 Cal. App. 4th 545, 557-58 (2009) (internal quotation
27 marks omitted).

1 Based on the protracted and hard-fought litigation of this case before this Court
2 and the Ninth Circuit as described herein, *see supra* Section II and *infra* Section III.B.,
3 the lodestar method provides a more accurate assessment of the reasonableness of the
4 attorneys' fees sought by Plaintiffs.

5
6 **B. Based on Fees Calculated under the Lodestar Method, Class Counsel's
7 Fee Request is Reasonable.**

8 The Court has already determined that, based on existing Ninth Circuit precedent,
9 California law applies in this case as to both "the right to fees" as well as "the method of
10 calculating fees." Dkt. #875 at 3-4 (citing *Mangold v. Cal. Pub. Utils. Com'n*, 67 F.3d
11 1470, 1478 (9th Cir. 1995); *see also Vizcaino*, 290 F.3d at 1047 (California law governs
12 the question of attorneys' fees where the underlying causes of action are based on state
13 law). "Under California law, the primary method for determining the amount of
14 reasonable attorneys' fees is the lodestar method, which multiplies the number of hours
15 reasonably expended by a reasonable hourly rate with the court increasing or decreasing
16 that amount by applying a positive or negative multiplier based on, among other factors,
17 the quality of representation, the novelty and complexity of the issues, the results
18 obtained, and the contingent risk presented." *Johansson-Dohrmann v. CBR Sys.*, 2013
19 U.S. Dist. LEXIS 103863, at *23-*24 (S.D. Cal. July 24, 2013) (citing *Consumer
20 Privacy Cases*, 175 Cal. App. 4th 545, 556-57 (2009)); *see also Hanlon v. Chrysler
21 Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998).

22 Here, the Court already made a determination regarding the reasonableness of the
23 attorney rates and hours expended for the first four-and-half years of the litigation of
24 this case in its October 3, 2008 order granting Plaintiffs a fee award in the amount of
25 \$3,515,985.86. Dkt. 875. Adding to that amount the lodestar for the time period since
26 the fee award, \$1,616,736.50, produces a final lodestar for the entire litigation of this
27 case to the present of \$5,132,721.60. Renick Decl, ¶ 40.

1 The resulting lodestar “may be adjusted upward or downward to account for
2 several factors including the quality of the representation, the benefit obtained for the
3 class, the complexity and novelty of the issues presented, and the risk of nonpayment.”
4 *Hanlon*, 150 F.3d 1011, 1029. The \$3,600,000 that Class Counsel now seeks is
5 approximately \$1.5 million (\$1,532,721.60), or 29%, *less than* the fees reasonably
6 incurred by Class Counsel in this litigation to the present. As addressed in the context of
7 the percentage method analysis below, *see infra* Section III.C., Plaintiffs are seeking a
8 downward adjustment of the lodestar by \$1.4 million in order to achieve the goal of a
9 reasonable fee award based on the specific circumstances of this case. Renick Decl., ¶
10 40.

11 **1. Fees Approved by the Court as Reasonable for Work Performed**
12 **by Class Counsel through October 2008.**

13 On October 3, 2008, this Court awarded attorneys’ fees to Plaintiffs in the
14 amount of \$3,515,985.60 for work performed up to and including trial. Dkt. #875 at
15 16-17. In reaching this fee award amount, the Court ordered a 5% reduction (or
16 \$118,243.60) of the requested lodestar of \$2,267,514,¹ added an additional lodestar of
17 \$194,720 for hours incurred after entry of Judgment on February 28, 2008, and a 50%
18 multiplier enhancement of the lodestar.² Dkt. #875 at 15-16.³

19
20 _____
21 ¹ The Court ordered the following minor reductions: hourly rates requested for
22 three attorneys’ time (\$4,895), block billing (\$45,350.28 reduction), duplicate pre-trial
23 work (\$30,512), for the hourly rate for legal research conducted by a senior level
24 attorney (\$7,290), review of files (\$29,179.38), and secretarial and clerical work billed
25 at attorney rates (\$1,017.00). Dkt. #875 at 15-16.

26 ² The Court concluded a 1.5 multiplier was appropriate based on the following
27 findings: “counsel represented Plaintiffs on a contingency basis and prevailed after a
28 protracted trial and subsequent court trial on damages;” “the result obtained was
exceptional in light of Defendant’s approach to the litigation;” and “[c]ounsel was also
precluded from other employment due to the time and attention required by this case.”
Id.

³ The 2008 Award was based on counsel’s 2008 rates. Counsel’s lodestar is
calculated at its hourly rate as of the time of the award. See *In re Washington Public
Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1305 (9th Cir. 1994). The current
respective hourly rates for Hadsell Stormer & Renick attorneys who performed the work
from 2004-2008 are approximately 50% higher today than they were in 2008. Renick
Decl. ¶ 39. Accordingly, were fees for the 2004-2008 time period calculated using then-

1 In granting the fee award, the Court appropriately determined the reasonableness
2 of attorney rates and hours based on a California fee award analysis. Dkt. #875 at 3-4
3 (citing *Mangold v. Cal. Pub. Utils. Com'n*, 67 F.3d 1470, 1478 (9th Cir. 1995)). The
4 reasonableness of hours expended was supported by Plaintiffs' Motion for Attorneys'
5 Fees and declarations detailing the full-scale litigation required to respond to
6 Defendant's labor-intensive strategy. Dkt. 756 at 5-8 [3/13/08 Fee Motion]. This
7 strategy included requiring that many matters be ruled on by the Court multiple times
8 (e.g., class certification) and necessitating the filing of many motions to respond to
9 Defendant's conduct (e.g., motion to invalidate opt-outs, motion to strike Rule 68
10 Offers, and motion to strike improperly obtained declarations). *Id.* at 5-7. The case
11 also raised numerous complicated issues, which the parties addressed in cross summary
12 judgment motions, in preparation for trial, and at trial. *Id.* at 7-8. The reasonableness
13 of the attorneys' hourly rates was also well supported by Plaintiffs' fee motion and
14 declarations setting forth the usual hourly rates and billing practices, recent court orders
15 granting fees, and other fee awards to attorneys of similar experience. Dkt. 756 at 8-9.

16
17 **2. Lodestar Amount for Hours Expended Since the Court's
October 3, 2008 Fee Award Is Reasonable.**

18 Since the Court's award of fees on October 3, 2008, until the present, Class
19 Counsel has worked more than 2,593 hours, and has incurred a lodestar of \$1,616,736.

20 The hours can be divided into the following four time frames:

- 21 1) *Post-2008 Judgment and 2010 Appeal* (Oct. 2008 to June 7, 2010) –
22 544.3 hours;
23 2) *Writ Petition and Supreme Court Remand in 2011* (June 8, 2010 to Sept. 3,
24 2013) – 727 hours;
25 3) *Class Certification Following Remand and Fed. R. Civ. P. 23(f) Petition* (Sept.
26 4, 2013 to Oct. 7, 2014) – 612 hours; and

27
28 _____
current rates, the lodestar would be significantly higher. As the fee sought here is
already less than the award, plus the 2008 lodestar since the award, recalculation of the
pre-2008 lodestar is unnecessary.

1 4) *Settlement and Court-Approval Process* (Oct. 9, 2014 to present) –400+
2 hours.

3 a) **The Class Notice and Claims Process and 9th Circuit Appeal and**
4 **Mediation (October 2008 to June 7, 2010)**

5 From October 2008 until June 7, 2010, HSR expended 544.3 hours on the
6 following tasks: class notice and claims process; preparing and participating in a
7 mediation with a Ninth Circuit mediator; and briefing for the Ninth Circuit appeal.

8 After trial, Class Counsel participated in regular conferences with Special Master
9 Lester Levy, ensuring that he was provided accurate information regarding the Class
10 Members, dates of employment and damages awarded at trial. Class Counsel also
11 regularly communicated with members of the class to ensure that they were apprised of
12 the ongoing status of the case. On October 13, 2008, Defendant filed a notice of appeal
13 as to both the underlying judgment and the award of attorneys’ fees. The appeal
14 required review and analysis of the extensive briefing at summary judgment, class
15 certification and trial, as well as voluminous evidence submitted by the parties relating
16 to those motions and many days of trial testimony.

17 The appeal required extensive research of the issues presented under state and
18 federal law during the summer of 2009, including the standards for class certification
19 under FRCP 23(b)(2), federal preemption, invalidation of class action opt-outs, and the
20 “creative professional” exemption, many of which were novel and had not been ruled
21 upon previously by this circuit. Plaintiffs ultimately filed a lengthy opposition brief in
22 the appeal and a supplemental brief to incorporate recent opinions in the Ninth Circuit
23 which impacted the issues in the appeal.

24 In addition to the work committed to researching and preparing the appellate
25 briefing, Plaintiffs’ counsel spent considerable time negotiating, preparing briefing for,
26 and attending a lengthy mediation under the auspices of the Ninth Circuit in an attempt
27 to resolve this matter prior to the submission of briefing. Those efforts were
28 unsuccessful. In addition, they were required to devote time to issues surrounding the

1 large bond or deposit which CDN was required to post, as well as considerable time
2 responding to, and in some instances, opposing requests for extension of time filed by
3 CDN.

4 After years of preparing for the appeal, argument was heard by the Ninth Circuit
5 on June 7, 2010. Preparation for oral argument also consumed significant firm
6 resources, as there were multiple issues raised by defendant, many of which were
7 unrelated. For example, the standard for class certification, the question of meal and
8 rest break claims suitability to class treatment, the invalidation of the opt-outs, and the
9 treatment of the reporters' exempt status and claim for missed meal and rest breaks had
10 little overlap.

11
12 **b) Writ Petition to Supreme Court and Review by 9th Circuit**
13 **Following Remand (June 8, 2010 to September 3, 2013):**

14 During the three year and three month period from June 8, 2010 to September 3,
15 2013, HSR expended 727 hours on the following: opposing Defendant's petition for
16 writ of certiorari; preparing for the Ninth Circuit review and hearing following remand;
17 and preparing petition for rehearing.

18 On September 27, 2010, the Ninth Circuit issued its decision affirming the
19 judgment and the award of fees in its entirety. Defendant sought review by writ petition
20 of several of the Ninth Circuit's Rule 23 and due process findings, including the
21 appropriateness of class certification for both injunctive relief and damage claims under
22 Fed. R. Civ. P. 23(b)(2). Plaintiffs conducted research and prepared Respondents' Brief
23 in opposition to the writ petition, which included arguments challenging the
24 appropriateness of the writ petition and questions presented by defendant. Nonetheless
25 on October 3, 2011, the Supreme Court granted Defendant's petition for certiorari,
26 vacated the judgment, and remanded the case back to the Ninth Circuit for
27 consideration in light of *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011). *Wang*
28 *v. Chinese Daily News*, 132 S. Ct. 74 (2011).

1 The Ninth Circuit review following Supreme Court remand required review of
2 prior briefing, extensive research in face of new developments in the law as to both
3 class certification standards and wage and hour issues, preparation of a supplemental
4 brief regarding the class certification and damages arguments raised by Defendant in its
5 opening brief, and preparation for the hearing. Argument was heard by the Ninth Circuit
6 on July 31, 2012.

7 The Ninth Circuit issued its initial opinion on March 4, 2013. Plaintiffs filed a
8 petition for rehearing *en banc* on March 18, 2013, which required substantial time
9 conducting research and preparing the petition. The Ninth Circuit withdrew its order
10 and issued a new opinion on September 3, 2013, consistent with Plaintiff's Motion for
11 Rehearing, which omitted the language regarding class wide damages sought by
12 Plaintiffs to be removed. The Ninth Circuit's decision reversed this Court's prior
13 certification of the class under Rule 23(b)(2) and ordered the Court to reconsider its
14 analysis of class certification under Rules 23(a)(2) and (b)(3). *Wang v. Chinese Daily*
15 *News*, 737 F.3d 538, 546 (9th Cir. 2013). The Ninth Circuit instructed that this Court's
16 reconsideration was limited to "its findings of commonality under Rule 23(a) and
17 predominance under Rule 23(b)(3)" and should be based on "the entire record of this
18 case." *Id.*

19 In addition to the voluminous briefing in the United States Supreme Court and
20 Ninth Circuit during this time period, Class Counsel spent considerable time
21 researching and analyzing the impact of the *Dukes* and other class action decisions in
22 the wake of *Dukes*, as well as issues regarding CDN's waiver of arguments and
23 jurisdictional questions including those surrounding Bus. & Profs. Code § 17200. In
24 addition, Class Counsel reviewed records and prepared a bill of costs and a motion for
25 attorneys' fees on appeal, participated in continued conferences with the Special Master
26 regarding the status of the litigation, and met and spoke with Class Members regarding
27 the ongoing status of the litigation.
28

1 David Rotman, a highly-regarded mediator who is very familiar with wage-and-hour
2 class action lawsuits such as the instant action. Prior to the mediation, counsel spent
3 significant time evaluating damages and law in regards to the pending 23(f) appeal.
4 The settlement negotiations were thorough and each side advocated vigorously for their
5 respective positions. At the conclusion of the mediation session, Mr. Rotman made a
6 mediator's proposal. While the parties did not accept the proposal, negotiations
7 continued and on January 27, 2015, an agreement for settlement was reached on all
8 material terms and issues. Renick Decl., ¶ 31.

9 It took the parties another four additional months to agree upon the terms of the
10 written settlement agreement. During the negotiations, Class Counsel spent a
11 significant number of hours addressing the various deal points with defense counsel that
12 were not a part of the Mediator's Proposal, including the Notice, Claim Form,
13 translation of the Notice and Claim Form to Chinese, funding, and plan for distribution.
14 In addition, Class Counsel worked with the Claims Administrator to formalize the
15 administration process, including mailing of the Notice and Claim Form, follow-up
16 letters and calls, and to address other issues arising out of the claim process. Class
17 Counsel also made significant efforts to reach out to members of the class to advise
18 them of the settlement and their options, working closely with the named plaintiffs and
19 the Class Members as well as Chinese-language interpreters/translators to ensure that
20 Class Members understood the Settlement, Notice and Claim Form. Renick Decl., ¶ 32.

21 On May 12, 2015, Plaintiffs filed their Motion for Preliminary Approval of
22 Settlement. Dkt. #958. On June 26, 2015, this Court granted the motion. Dkt. #966.
23 The work during this time period included time spent preparing the Motion for
24 Preliminary Approval as well as this Motion for Attorneys' Fees. Class Counsel expects
25 to spend an additional 125 hours in connection with the Motion for Final Approval,
26 including the claims administration, the fee request, the hearing and other related
27 matters. Renick Decl., ¶ 34.
28

3. Class Counsel’s Rates are Reasonable

In order to calculate the lodestar, a court must determine the reasonable hourly rate for the services rendered by class counsel. *Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556 (2009). A reasonable rate is typically based upon the prevailing market rate in the community for similar work performed by attorneys of comparable skill, experience, and reputation. *Heritage Pac. Fin., LLC v. Monroy*, 215 Cal. App. 4th 972, 1009 (2013). “Affidavits of the plaintiffs’ attorney . . . regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a rate for the plaintiffs’ attorney, are satisfactory evidence of the prevailing market rate.” *Id.* The court may also “rely on its own knowledge and familiarity with the legal market in setting a reasonable hourly rate.” *Id.*

The requested rates are consistent with and comparable to rates approved by other district courts in class action cases. *See Pom Wonderful, LLC v. Purely Juice, Inc.*, 2008 U.S. Dist. LEXIS 110460, at *11-12 (C.D. Cal. Sept. 22, 2008) (finding partner hourly rates of \$750 to \$475 and associate hourly rates of \$425 to \$275 reasonable); *Craft v. County of San Bernardino*, 624 F.Supp.2d 1113, 1122 (C.D. Cal. 2008) (finding a \$225 hourly rate reasonable for paralegals). Below is a chart reflecting the hours worked since the October 2008 Interim Award at current hourly rates as well as the total from the 2008 Award (Renick Decl. at ¶ 41):

Timekeeper	Hours Since Interim Award	Hourly Rate	Lodestar
Randy Renick (P)	917	\$750.00	\$687,750.00
Cornelia Dai (P)	915.8	\$650.00	\$595,270.00
Brian Bilford (Associate)	217.2	\$350.00	\$76,020.00
Virginia Keeny (P)	178.45	\$650.00	\$115,992.50
Marisa Hernandez Stern (A)	138.52	\$425.00	\$58,871.00
Maria Stroud (Paralegal)	105.8	\$225.00	\$23,805.00
Anne Richardson (Partner)	72.1	\$700.00	\$50,470.00
Georgina Wakefield (Law Clerk)	48.9	\$175.00	\$8,557.50
Lodestar Since 2008 Interim Award	2,593.77		\$1,616,736.00
2008 Interim Award			\$3,515,985.60
Total Lodestar			\$5,132,721.60

1 **C. Using the Percentage of Fund Method, Class Counsel’s Fee Request is**
2 **Also Reasonable.**

3 Although an analysis of Plaintiffs’ fee request under the lodestar method is
4 sufficient to support a fee award by this Court, a percentage of fund analysis comes to
5 the same result with respect to the reasonableness of the fee request. Courts generally
6 use a benchmark figure of 25% to gauge the reasonableness of an award under the
7 percentage-of-recovery method.⁴ *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d
8 988, 992 (9th Cir. 2010). “However, this ‘benchmark percentage should be adjusted, or
9 replaced by a lodestar calculation, when special circumstances indicate that the
10 percentage recovery would be either too small or too large in light of the hours devoted
11 to the case or other relevant factors.’” *Wren v. RGIS Inventory Specialists*, 2011 U.S.
12 Dist. LEXIS 38667, *78-*79 (N.D. Cal. Apr. 1, 2011).

13 Here, taking the total settlement of \$7,800,000, the \$3,600,000 in attorneys’ fees
14 that Plaintiffs seek amount to 46% of the total settlement payment. Thus, Plaintiffs are
15 seeking an amount that exceeds the 25% benchmark recognized by the Ninth Circuit.
16 The Ninth Circuit has identified a number of factors that courts may consider when
17 determining whether an award is reasonable and whether a departure from the
18 benchmark is appropriate, including: (1) the results achieved; (2) the risk of litigation;
19 (3) the skill required; (4) the quality of work performed; (5) the contingent nature of the
20 fee and the financial burden; and (6) the awards made in similar cases. *See Barbosa v.*
21 *Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal. 2013) (citing *Vizcaino*,
22 290 F.3d at 1047). As addressed below, the *Vizcaino* factors support the fee award
23 requested by Class Counsel and the upward departure from the 25% benchmark.

24 Class Counsel was able to skillfully obtain an excellent result for the class,
25 despite facing considerable risk in litigating the case on a contingent basis for more than

26 _____
27 ⁴ Notably, while “California courts have mentioned the Ninth Circuit’s 25 percent
28 benchmark, they have not explicitly adopted it.” *Priyanka Khanna v. Intercon Sec. Sys.*,
2014 U.S. Dist. LEXIS 48647, at *33-*34 (E.D. Cal. Apr. 8, 2014).

1 decade and opposition from very competent defense counsel at every turn. See Dkt.
2 #875. While Class Counsel acknowledges that the requested percentage falls within the
3 higher range of fee awards in common fund cases, it makes its application based on the
4 complex and singular procedural and factual history of this case. Class Counsel in this
5 case prevailed at a jury and bench trial, opposed and prevailed against a barrage of
6 motions for over eleven years, and succeeded in certifying the class *twice*, all despite
7 repeated appellate review (including remand to this Court for reconsideration in light of
8 the Supreme Court’s decision in *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541
9 (2011)). This demonstrates the unique and extraordinary circumstances that support the
10 requested fee award under both the lodestar and percentage of the fund methods.
11 Indeed, this case is one of very few that has gone to jury trial, much less endured seven
12 years on appeal after winning both a bench and a jury trial.

13
14 **1. Class Counsel Achieved an Excellent Result**

15 Notwithstanding a tenacious defense for over a decade of litigation, Class
16 Counsel achieved an excellent result in this case (the first *Vizcaino* factor). “The overall
17 result and benefit to the class from the litigation is the most critical factor in granting a
18 fee award.” *Lusby v. Gamestop Inc.*, 2015 U.S. Dist. LEXIS 42637, at *9 (N.D. Cal.
19 Mar. 31, 2015). “Compromise is inherent and necessary in the settlement process
20 [E]ven if the relief afforded by the proposed settlement is substantially narrower than it
21 would be if the suits were to be successfully litigated, this is no bar to a class settlement
22 because the public interest may indeed be served by a voluntary settlement in which
23 each side gives ground in the interest of avoiding litigation.” *Wershba v. Apple*
24 *Computer, Inc.* 91 Cal. App. 4th 224, 250 (2001)(internal quotations marks omitted). A
25 settlement, therefore, need not obtain 100% of the damages and may, in fact, provide
26 only a fraction of the recovery sought to be found fair and reasonable. *Linney v.*
27 *Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998); *Wershba*, at 250.

28 Here, the Net Settlement to be distributed to the Class after the reduction of fees,

1 costs, enhancement and administration is \$3,959,497. (Renick Decl. at ¶ 36). The
2 average payment to each to the 263 Class Members is \$13,954.99. The minimum
3 payment to each Class Member is 76% of the amount awarded at trial.⁵ Renick Decl., ¶
4 35. As the Settlement is non-reversionary with half of all unclaimed amounts being
5 distributed to those who file a claim, Claimants are likely to recover more than the 76%.
6 The financial benefit conferred upon the class is significant, especially in light of the
7 fact that it was uncertain that the Ninth Circuit would affirm the trial court's re-
8 certification of the class or award as much in damages, penalties or interest after
9 remand. Finally the settlement circumvents many more years of litigation and appeal
10 that would certainly have delayed any payment to Class Members for years to come.

11
12 **2. Class Counsel Litigated the Case on a Contingency Basis and Faced Considerable Risk**

13 The risk of further litigation and contingent nature of the fee and the financial
14 burden, the second and fifth *Vizcaino* factors, favor approval of the requested fee award.

15 First, the risk of further litigation supports the fee award sought by Class Counsel.
16 Before the parties entered into the Settlement Agreement, the Ninth Circuit had granted
17 CDN's petition for permission to appeal under Rule 23(f). CDN contended that the
18 exempt classification of some Class Members rendered this Court's finding of
19 predominance under Rule 23(b)(3) erroneous. While Class Counsel believes that they
20 would prevail on further appeal, there remained some risk that the Ninth Circuit would
21 find for CDN, which might have resulted in potential for decertification and briefing, for
22 a third time, to re-certify the class. Even if the Ninth Circuit affirmed the District Court,
23 the matter would have been remanded to the District Court, where defendant argued
24 retrial was required. Assuming Plaintiffs prevailed at that point, CDN would have
25 another right to appeal. Accordingly, five more years of litigation and appeal was a very
26 real possibility. Courts have held that risk is a relevant circumstance in determining a

27
28 ⁵ By way of comparison, the Attorney Fee sought (\$3,600,000) is 70% of
Lodestar, a 30% reduction. Renick Decl. at ¶ 40.

1 fee award. See *In re Pac. Enter. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (finding
2 fees justified because of the complexity of the issues and the risks).

3 Second, the fact that Class Counsel litigated this case on a contingency fee basis
4 and has foregone payment since the outset of the litigation supports the instant motion.
5 "Courts are loathe to penalize experienced counsel for efficient representation under
6 contingency agreements." *Sproul v. Astrue*, 2013 U.S. Dist. LEXIS 12667, at *6 (S.D.
7 Cal. Jan. 30, 2013). Renick Decl., ¶ 60.

8 While this Court previously granted fees in the amount of \$3,515,985.60 on
9 October 3, 2008, see Dkt. # 875, Class Counsel has not received compensation for their
10 representation of the class. The circumstances in this case are similar to those in
11 *Vizcaino v. Microsoft Corp.*, 290 F.3d at 1043. In granting class counsel's requested
12 fee award, the court found that "counsel's representation of the class – on a contingency
13 basis- extended over eleven years, entailed hundreds of thousands dollars of expense,
14 and required counsel to forego significant other work[.]" *Vizcaino*, 290 F.3d at 1050.

15 Likewise, in addition to the 5,820.20 hours accounted for in the 2008 fee award,
16 Class Counsel has spent more than 2,500 hours litigating several appeals and certifying
17 the class twice since this Court's original fee award in October 2008. It has incurred
18 significant costs to date, a number which would have continued to grow without the
19 settlement of Class Members' claims.

20 "Courts consistently recognize that the risk of non-payment or reimbursement of
21 expenses is a factor in determining the appropriateness of counsel's fee award." *In re*
22 *Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, at *68 (C.D. Cal. June 10, 2005).
23 Class Counsel's vigorous litigation of this case on a contingency fee basis over many
24 years, with no certainty of recovery of its fees and costs, supports an award of 46% of
25 the common fund in attorneys' fees.
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27
28

1 **3. The Skill and Quality of the Work Performed by Class Counsel**
2 **Merits Approval of the Requested Fee Award**

3 The experience, ability, and quality of Class Counsel’s work, the third and fourth
4 *Vizcaino* factors, support the requested fee award. Class Counsel in this case has
5 extensive experience successfully litigating wage-and-hour class actions, as well as
6 other types of employment actions. Mr. Renick and Ms. Dai have been recognized for
7 their skill and expertise in the field class action litigation. The skill of both attorneys,
8 and their respective contributions to the public interest community in Los Angeles, has
9 been consistently recognized by the Los Angeles legal community.⁶Renick Decl. ¶¶ 4-6;
10 45-56.

11 This Court can note that defense counsel in this case is also highly skilled. *Cf. In*
12 *re Equity Funding Corp. Sec. Litigation*, 438 F. Supp.1303, 1336-37 (C.D. Cal. 1977)
13 (“[P]laintiffs’ attorneys in this class action have been up against established and skillful
14 defense lawyers, and should be compensated accordingly.”). The defendant in this case
15 is represented by attorneys from a well-regarded law firm representing a sophisticated
16 client with formidable resources. Defense counsel’s vigorous litigation of this case
17 required Class Counsel to aggressively defend and advance Class Members’ claims in
18 the face of adamant opposition.

19 Class Counsel’s high-quality and effective representation of the class is
20 evidenced by their success at trial and on appeal and their ability to obtain and maintain
21 class certification despite fierce opposition and the significant changes in the law
22 governing class action lawsuits. Moreover, this is a complex case that spanned many
23 years of hard-fought litigation. It required Class Counsel to research, brief, and litigate
24 many difficult legal and factual issues, including the propriety of class certification in
25 light of the Supreme Court’s decision in *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct.
26 2541 (2011). It was Class Counsel’s considerable effort, skill, and expertise that

27 _____
28 ⁶ Another basis for an upward departure is fees typically charged in a contingency
 fee agreement. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1049. A 48% contingency
 rate where a matter goes on appeal is typical. Renick Decl., ¶ 63.

1 allowed the class claims to continue to be viable and to defeat Defendant’s multiple
2 efforts to dismantle Plaintiffs’ claims. *See, e.g., Barbosa v. Cargill Meat Solutions*
3 *Corp.*, 297 F.R.D. 431, 449 (E.D. Cal 2013) (In awarding fees, the court recognized the
4 “specialized skill” of Class Counsel in wage-and-hour law was an “asset to Class
5 Members” and found the “quality of the work performed was good.”).

6
7 **4. The Amount Requested to Compensate Class Counsel is Reasonable in Comparison to Awards in Similar Cases**

8 The final Vizcaino factor – comparable awards in similar cases – supports Class
9 Counsel’s request for 46% of the common fund. Federal courts “have consistently
10 approved of attorney fee awards over the 25% benchmark[,]” specifically at a rate of
11 “30% or higher[.]” *In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, at *18
12 n.12 (C.D. Cal. June 10, 2005). Fifty percent has generally been accepted as the “upper
13 limit, with 30-50% commonly being awarded in cases in which the common fund is
14 relatively small.” *Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, at*22-
15 *23 (S.D. Cal. June 9, 2011).

16 In *Wren v. RGIS Inventory Specialists*, 2011 U.S. Dist. LEXIS 38667, at *47
17 (N.D. Cal. Apr. 1, 2011), a wage and hour class action litigated through class
18 certification and summary judgment, the court approved attorneys’ fees in the amount of
19 \$11,307,449.62 of a \$27 million class action settlement (42% of the settlement) with
20 \$12.43 million being distributed pro rata to class members (46% of the settlement). *Id* at
21 *25, *89. See also *Birch v. Office Depot, Inc.*, 2007 U.S. Dist. LEXIS 102747 (S.D. Cal.
22 Sept. 28, 2007) (awarding a 40% fee on a \$16 million class action); *Rippee v. Boston*
23 *Mkt. Corp.*, 2006 U.S. Dist. LEXIS 101136 (S.D. Cal. Oct. 10, 2006) (awarding a 40%
24 fee on a \$3.75 million class action).⁷ In *Rippee*, the court first applied a lodestar

25
26 ⁷ In *Birch v. Office Depot, Inc.*, 2007 U.S. Dist. LEXIS 102747 (S.D. Cal. Sept.
27 28, 2007), the court awarded class counsel 40% in fees. In doing so, the court
28 recognized many factors that are analogous to those in the instant fee application: class
counsel litigated the case on a contingency fee basis, the risk involved in prosecuting the
case, and the skill of class counsel in obtaining the result. *Id.* at *7-*8. Likewise in
Rippee v. Boston Mkt. Corp., 2006 U.S. Dist. LEXIS 101136, at *11-*12 (S.D. Cal. Oct.
10, 2006), the court awarded 40% in fees on a \$3.75 million wage-and-hour class

1 analysis and determined that the lodestar was reasonable based on a finding that the
2 attorneys' hourly rates were reasonable and that the hours expended were also
3 reasonable. *Id.* at *51-*77. In finding the 33,369.1 hours to be a reasonable calculation
4 of the time spent litigating the case, the court noted that "the parties vigorously litigated
5 th[e] case for four years" and the amount of time billed by Class Counsel was "in large
6 part based on [defendant's] aggressive defense strategy." *Id.* at *74-*75. The court
7 further held that it would reach the same result regarding the amount of reasonable
8 attorneys' fees if it utilized the percentage of fund method. *Id.* at *78. The court found
9 that there was "ample support for adjusting the 25% presumptive benchmark upward to
10 take into the account the complexity and duration of the litigation, counsel's skill and
11 experience, the results achieved that include both monetary and injunctive relief, and the
12 positive reaction and low opt-out rate of the class." *Id.* at *83-*84.

13
14 In the present case, many of these same factors as well as others support a similar
15 upward adjustment. The litigation of this action, which spanned more than a decade,
16 proceeded through class certification, summary judgment, trial, appeal, and re-
17 certification. It weathered significant developments in federal and state law affecting
18 wage and hour class actions, including the Supreme Court's decision in *Wal-Mart*
19 *Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011) regarding class certification standards, and
20 *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012) regarding meal and rest
21 break standards, as well as the Ninth Circuit and California Court of Appeal cases that
22 followed. As recognized by this Court in its October 3, 2008 order granting Plaintiffs'
23 fee motion, the result achieved by Plaintiffs following "a protracted trial and subsequent
24 court trial on damages" was "exceptional in light of Defendant's approach to the
25 litigation." Dkt. 875 at 14. Moreover, in the last seven years, Class Counsel has

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action. In justifying this award, the court noted the "very favorable result obtained by
counsel, counsel's skill, and the substantial financial risk undertaken by counsel." *Id.* at
*12.

1 succeeded in advancing the claims and interests of the Plaintiff Class through appellate
2 review and most recently with recertification of the class.

3 Moreover, there are very few wage and hour class actions that have gone to trial
4 and been reviewed on appeal. See *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1, 12
5 (Cal. 2014) (“We encounter here an exceedingly rare beast: a wage and hour class action
6 that proceeded through trial to verdict.”). In one such case, *Godfrey v. Oakland Port*
7 *Services Corp.*, 230 Cal. App. 4th 1267 (2014), the Court of Appeal upheld a
8 \$487,810.50 award of attorneys’ fees where the plaintiff’s class was awarded
9 \$964,557.80 following a bench trial – a fee award of more than 50 percent of the total
10 recovery. *Id.* at 1272, 1288. This fee award confirms that the fee request here is very
11 reasonable.⁸

12 **D. The Costs that Class Counsel Seek for Reimbursement are Reasonable**

13 Class Counsel also seeks reimbursement of \$85,445.86 (\$42,868.85 from October
14 2008 Award, plus \$42,577.01) in expenses and costs incurred in prosecuting this case.
15 These items are set forth in detail in counsel’s declaration. See Renick Decl., ¶¶ 69-76.
16 “There is no doubt that an attorney who has created a common fund for the benefit of
17 the class is entitled to reimbursement of reasonable litigation expenses from that
18 fund.” *Ontiveros v. Zamora*, 303 F.R.D. 356, 375 (E.D. Cal. 2014). As one commentator
19 noted, “the prevailing view is that expenses are awarded in addition to the fee
20 percentage.” (Conte, *Attorney Fee Awards*, § 2.08 at pp. 50-51 (2d Ed. 1977).) Indeed,
21 courts routinely reimburse class counsel for the costs incurred in prosecuting cases on a
22

23 ⁸ In *Pellegrino v. Robert Half Internat., Inc.*, 182 Cal. App. 4th 278 (2010), a
24 wage and hour case brought on behalf of six plaintiffs, the parties entered into a
25 stipulated judgment awarding plaintiffs a total of \$615,000.00 following a partial trial.
26 *Id.* at 282-83; see *Pellegrino v. Robert Half Internat., Inc.*, 182 Cal. App. 4th 87, 98
27 (2010)(setting forth \$615,000 figure as total stipulated judgment for damages, penalties,
28 and interest)(not citable). The Court of Appeal upheld the use of a 1.75 multiplier in a
wage and hour action which ultimately awarded \$978,121.98 in attorneys’ fees based on
a reduced lodestar of \$558,926.85 (a lodestar of more than 90% percent the total
recovery). *Pellegrino*, 182 Cal. App. 4th at 283, 287. The Court of Appeal remanded
for recalculation without a multiplier of only the fees incurred in bringing the attorney
fees motion. *Id.* at 296.

1 contingent fee basis. See; *In re Businessland Sec. Litig.*, (N.D. Cal. 1991) Case No. 90-
2 20476 RFP, slip. op. at p. 4 and cases cited therein. The recovery of costs is to include
3 all out of pocket costs not part of overhead which are typically billed to a client. *Bussey*
4 *v. Affleck*, 225 Cal.App.3d 1162 (1990). All of the categories of costs sought here are
5 typically billed to a client. Renick Dec. at ¶ 65. Here, the costs which Class Counsel
6 seeks are reasonable and were, in fact, incurred in order to advance the litigation. See
7 Renick Dec., ¶ 64-76.

8 **IV. CONCLUSION**

9 For the foregoing reasons, Plaintiffs respectfully request that the Court grant
10 Plaintiffs’ unopposed motion for attorneys’ fees in the amount of \$3,600,000 and costs
11 in the amount of \$85,118.17.

12 DATED: July 8, 2015

HADSELL STORMER & RENICK, LLP

13 By: /s/ Randy Renick
14 Randy Renick
15 *Attorney for Plaintiffs*