

Kevin J, Stoops, Esq. (SBN 332200)
kstoops@sommerspc.com
SOMMERS SCHWARTZ, P.C.
One Towne Square, Suite 1700
Southfield, MI 48076
Telephone: (248) 355-0300
Facsimile: (248) 746-4001

*Attorney for Plaintiffs
and Proposed Class and Collective Members*

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**ADRIANNA JARRETT and MARY
NGETHE** individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

[24]7.AI, INC.,

Defendant

Case No.: 23-cv-00677-EMC

**NOTICE OF UNOPPOSED MOTION AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS’ MOTION FOR ATTORNEYS’
FEES, LITIGATION EXPENSES, AND
CLASS REPRESENTATIVE INCENTIVE
AWARDS**

Honorable Edward M. Chen

Complaint Filed: February 15, 2023

Final Approval Hearing: November 14, 2024 at
1:30 p.m.

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

2 **PLEASE TAKE NOTICE** that the matter may be heard before the Honorable Edward M. Chen
3 in Courtroom 5 of this Court, located on the 17th Floor of the San Francisco Courthouse, 450 Golden Gate
4 Avenue, San Francisco, California 95113 on November 14, 2024 at 1:30 p.m. In this motion, Plaintiffs
5 respectfully requests entry of an order: (1) awarding Class Counsel attorneys' fees in the amount of
6 \$366,630 (33.33% of the \$1,100,000 Settlement); (2) granting reimbursement of necessary litigation
7 expenses to Class Counsel in an amount not to exceed \$40,000; (3) awarding Class Representative
8 incentive awards in the amount of \$5,000 each to Named Plaintiffs Adrianna Jarrett and Mary Ngethe.

9 Plaintiffs respectfully submit good cause exists for granting the Motion for the reasons set forth in
10 the concurrently filed documents. Defendant's counsel has reviewed the documents being filed in support
11 of this Motion and does not oppose it, though Defendant has reserved the right to submit a Notice of Non-
12 Opposition, together with any additional points and authorities for the Court's consideration.

13 This Motion is based upon this Notice of Motion, the Memorandum of Points and Authorities and
14 other documents filed herewith, including the Settlement Agreement, the Declaration of Class Counsel,
15 the Declarations of the Named Plaintiffs, the [Proposed] Order, and the other pleadings and records on
16 file in this action, and the presentations of counsel and such oral or documentary evidence as may be
17 presented at the hearing on this unopposed Motion.

18 **SOMMERS SCHWARTZ, P.C.**

19
20 DATED: September 4, 2024

21 By: /s/ Kevin J. Stoops
22 Kevin J. Stoops (SBN 332200)
23 SOMMERS SCHWARTZ, P.C.
24 One Towne Square, Suite 1700
25 Southfield, Michigan 48076
26 Telephone: (248) 355-0300
27 kstoops@sommerspc.com

28 *Attorneys for Plaintiff and Proposed Collective and
Class Members*

CERTIFICATE OF SERVICE

I certify that on September 4, 2024, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to all counsel of record.

/s/Kevin J Stoops
Kevin J. Stoops

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Kevin J, Stoops, Esq. (SBN 332200)
kstoops@sommerspc.com
SOMMERS SCHWARTZ, P.C.
One Towne Square, Suite 1700
Southfield, MI 48076
Telephone: (248) 355-0300
Facsimile: (248) 746-4001

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a FLSA and common law wage-and-hour hybrid collective/class action. Plaintiffs Adrianna Jarrett and Mary Ngeth (hereinafter “Plaintiffs”) have settled this litigation on behalf of approximately 3,981 hourly, non-exempt customer service representatives engaged by Defendant [24]7.ai, Inc. (hereinafter “Defendant”).

On July 22, 2024, the Court granted Plaintiffs’ Unopposed Motion for Preliminary Approval of Class/Collective Action Settlement. [ECF No. 94]. Pursuant to that Order, the Court directed Plaintiffs to file their Motion for Approval of Attorneys’ Fees, Litigation Expenses, and Class Representative Incentive Awards on or before September 4, 2024 (14 days prior to expiration of objection/exclusion period). *Id.* Consistent with that order, Plaintiffs file the present motion and memorandum.

In this unopposed Motion, Plaintiffs request approval the attorney fees and litigation expenses of Sommers Schwartz, P.C. (hereinafter “Class Counsel”). Plaintiffs seek approval for Class Counsel’s attorney fees in an amount of \$366,630 (33.33% of the gross settlement fund). Additionally, Plaintiffs seek approval of litigation expenses in the amount not to exceed \$40,000, and Class Representative incentive awards totaling \$10,000.

II. BACKGROUND

Plaintiffs’ Preliminary Approval Motion [ECF No. 86] provided a comprehensive overview of the work performed in connection with obtaining the Settlement Agreement on behalf of Plaintiffs and the putative settlement class. The Settlement Agreement was reached after extensive informal discovery, assistance in modeling damages from an expert economist, and a full day of mediation with one of the most respected wage and hour mediators in the country, Michael Dickstein.¹ Following a tentative agreement on the key terms of the Settlement Agreement, Class Counsel spent the next few

¹ See, <https://www.dicksteindisputeresolution.com/> (last visited 8/30/24).

1 weeks negotiating the long-form Settlement Agreement that is presently before the Court for approval.
2 At all times throughout this process, the Defendant contested Plaintiffs' claims, and to this date,
3 continues to contest Plaintiffs' claims.

4 Under the terms of the parties' proposed settlement, Defendant will make a non-reversionary
5 payment of \$1,100,000. If approved, the settlement fund of \$1,100,000, will be distributed as follows:
6 (i) no less than \$643,370 will be paid to the putative class/collective members; (ii) \$10,000 will be
7 paid to Class Representatives (\$5,000 each) Adriana Jarrett and Mary Ngethe; (iii) 366,630 will be
8 paid to Class Counsel for attorneys' fees; (iv) Class Counsel will be reimbursed for litigation expenses
9 in an amount not to exceed \$40,000; and (v) settlement administration fees in the amount of \$40,000.

10 On August 5, 2024, the Settlement Administrator mailed the Court approved Notice. Since the
11 Notice was mailed to 3,981 Class Members, zero (0) Class Members have objected, and zero (0) Class
12 Members have opted-out. (Exh. A, September 3, 2024 Settlement Administrator Report). With only
13 two weeks left in the Notice Period, these numbers support an overwhelmingly positive reaction to the
14 Settlement, including the Class Counsel attorneys' fees request.
15

16 **III. ARGUMENT**

17 **A. Class Counsel is Entitled to Recover Attorneys' Fees from the Common Fund.**

18 Federal Rule of Civil Procedure 23 provides that, "[i]n a certified class action, the court may
19 award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties'
20 agreement." Fed. R. Civ. Proc. 23(h). Rule 23(h) applies to requests for attorney's fees for settled class
21 actions. *See Staton v. Boeing Co.*, 327 F.3d 938, 964 (9th Cir. 2003) (explaining that "[a]ttorneys' fees
22 provisions included in proposed class action agreements are, like every other aspect of such
23 agreements, subject to the determination whether the settlement is 'fundamentally fair, adequate and
24 reasonable'"). According to the Ninth Circuit, in order to protect the due-process rights of unnamed
25 class members, any such request must be filed prior to the deadline to object to the settlement. *In re*
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27

1 *Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 994-95 (9th Cir. 2010) (“*In re Mercury*”). See
2 also *Weeks v. Kellogg Co.*, 2011 U.S. Dist. LEXIS 155472, at *80 (C.D. Cal. Nov. 23, 2011) (applying
3 *In re Mercury* and holding that the filing of a fee petition one week before the objection deadline
4 comported with due process). The present motion, filed on September 4, 2024, complies with *In re*
5 *Mercury*.

6 With regard to the merits of the Motion, in analyzing Rule 23(h) fee requests, courts ““have an
7 independent obligation to ensure that the award, like the settlement itself, is reasonable, even if the
8 parties have already agreed to an amount.”” *Vandervort v. Balboa Capital Corp.*, 2014 U.S. Dist.
9 LEXIS 46174 (C.D. Cal. Mar. 27, 2014) (quoting *In re Bluetooth Headset Prods. Litig.*, 654 F.3d 936,
10 941 (9th Cir. 2011)).

11 The U.S. Supreme Court “has recognized consistently that a litigant or a lawyer who recovers
12 a common fund . . . is entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v.*
13 *Van Gemert*, 444 U.S. 472, 478 (1980); *Staton*, 327 F.3d at 967 (same). For purposes of determining
14 a reasonable fee, ““courts have discretion to employ either the lodestar method or the percentage-of-
15 recovery method.”” *Greko v. Diesel U.S.A., Inc.*, 2013 U.S. Dist. LEXIS 60114, at *23 (N.D. Cal. Apr.
16 26, 2013). Generally speaking, though, “[t]he lodestar method is . . . preferable when calculating
17 statutory attorney fees, whereas the percentage-of-recovery approach is appropriate when the fees will
18 be drawn from a common fund.” *Clark v. Payless Shoesource, Inc.*, 2012 U.S. Dist. LEXIS 105187,
19 at *3-4 (W.D. Wash. July 27, 2012) (citing *In re Bluetooth Headset Prods. Litig.*, 654 F.3d at 941).

20 The Ninth Circuit has explained that, “[b]ecause the benefit to the class is easily quantified in
21 common-fund settlements, we have allowed courts to award attorneys a percentage of the common fund
22 in lieu of the often more time-consuming task of calculating the lodestar.” *In re Bluetooth*, 654 F.3d at
23 942. See also *Elliott v. Rolling Frito-Lay Sales, LP*, 2014 WL 2761316, at *9, 2014 U.S. Dist. LEXIS
24 83796, at *25 (C.D. Cal. June 12, 2014) (“There are significant benefits to the percentage approach,
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1 including consistency with contingency fee calculations in the private market, aligning the lawyers'
2 interests with achieving the highest award for the class members, and reducing the burden on the courts
3 that a complex lodestar calculation requires.”).

4 As explained by the Ninth Circuit, a “common fund” exists “when (1) the class of beneficiaries
5 is sufficiently identifiable, (2) the benefits can be accurately traced, and (3) the fee can be shifted with
6 some exactitude to those benefiting.” *In re Petition of Hill*, 775 F.2d 1037, 1041 (9th Cir. 1985).
7 According to the Supreme Court, “the[se] criteria are satisfied when each member of a certified class
8 has an undisputed and mathematically ascertainable claim to part of a lump-sum [amount].” *Boeing*
9 *Co.*, 444 U.S. at 479. Here, the Settlement Agreement creates a common fund, as the class of
10 beneficiaries is sufficiently identifiable, the benefits can be accurately traced, and the fee can be shifted
11 with some exactitude to those benefiting. As explained in more detail below, Class Counsel’s
12 requested fee award amount is reasonable, and will result in less than a 1.8 multiplier based on Class
13 Counsel’s lodestar.
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16 **B. The Requested Attorneys’ Fees are Within the Range of Approval.**

17 The Ninth Circuit has stated that “25 percent of the fund [i]s the ‘benchmark’ award that should
18 be given in common fund cases.” *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301,
19 1311 (9th Cir. 1990). That said, “the exact percentage varies depending on the facts of the case, and in
20 ‘most common fund cases, the award exceeds that benchmark.’” *Johnson v. General Mills, Inc.*, 2013
21 U.S. Dist. LEXIS 90338, at *20 (C.D. Cal. June 17, 2013) (quoting *Vasquez v. Coast Valley Roofing,*
22 *Inc.*, 266 F.R.D. 482, 491 (E.D. Cal. 2010).

23 This Court and other courts have approved payments of attorneys’ fees amounting to one-third
24 of the common fund, including in comparable wage-and-hour class actions where, like here, the results
25 obtained were excellent and the risks were great. *See, e.g., Nucci v. Rite Aid Corp.*, 2022 WL 1693711,
26 *8 (N.D. Cal. May 26, 2022) (granting final approval of a wage-and-hour class action settlement and
27 awarding attorneys’ fees of 33.33% of the total settlement amount and finding that this percentage is
28

1 “in line with similar wage-and-hour cases where the results obtained were excellent and the risks were
 2 great”); *Zamora v. Lyft, Inc.*, 2018 WL 4657308, at *3 (N.D. Cal. Sept. 26, 2018) (one-third award is
 3 “consistent with the Ninth Circuit authority and the practice in this District.”); *see also Wren v. RGIS*
 4 *Inventory Specialists*, 2011 WL 1230826, at *31 (N.D. Cal. Apr. 1, 2011) (awarding fees of over 40%
 5 of the settlement fund where class counsel created a gross settlement fund of \$27 million on behalf of
 6 more than 62,000 class members in a wage-and-hour case); *Bennett v. SimplexGrinnell LP*, 2015 WL
 7 12932332, *7 (N.D. Cal. Sep. 3, 2015) (approving attorneys’ fees of approximately 38.8% of the
 8 settlement fund in wage-and-hour class action settlement); *Jones v. CertifiedSafety*, 3:17-cv-02229-
 9 EMC, ECF No. 232 (N.D. Cal. June 1, 2020) (awarding fees based on one-third of the common fund
 10 in wage-and-hour class action); *Foster v. Adams & Assocs.*, 2022 WL 425559, *10 (N.D. Cal. Feb.
 11 11, 2022) (granting final approval of an ERISA class action settlement and awarding attorneys’ fees
 12 of 33.3% of the total settlement amount); *Bautista- Perez v. Juul Labs, Inc.*, 2022 WL 2239838, *9
 13 (N.D. Cal. June 22, 2022) (granting final approval of an employment class action settlement and
 14 awarding attorneys’ fees of 30% of the total settlement amount).

15 District courts within this circuit, including this Court, routinely award attorneys’ fees
 16 that are one-third of the total settlement fund. *See, e.g., Stuart v. Radioshack Corp.*, No.
 17 C 07-4499-EMC, 2010 WL 3155645, *—, 2010 U.S. Dist. LEXIS 92067, *18 (N.D.
 18 Cal. Aug. 9, 2010); *Barbosa v. Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 449 (E.D.
 19 Cal. 2013); *Rigo v. Kason Indus.*, No. 11-CV-64-MMA(DHB), 2013 WL 3761400 at
 20 *—, 2013 U.S. Dist. LEXIS 99357 at *20 (S.D. Cal. July 16, 2013) Such awards are
 21 routinely upheld by the Ninth Circuit. *See, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213
 22 F.3d 454, 463 (9th Cir. 2000) (affirming one-third of the common fund).

23 *Hernandez v. Dutton Ranch Corporation*, 2021 WL 5053476, *6 (N.D. Cal. Sept. 10, 2021) (J.
 24 Chen).

25 These similar cases further support Plaintiffs’ attorney’s fees request.

26 In this case, the Settlement provides a Gross Settlement Amount of \$1,100,000. The requested
 27 fee award of \$366,630, is 33.33% of that amount.

28 Among the circumstances the Ninth Circuit has considered relevant in assessing
 reasonableness are: (1) the results achieved; (2) the riskiness of prosecuting the litigation; (3) whether
 counsel obtained benefits for the Class above and beyond the cash settlement fund itself; and (4) the

1 financial burden carried by Plaintiffs' counsel in prosecuting the case on a contingency basis. *Vizcaino*,
2 290 F.3d 1043 at 1048-50. In this case, all of those factors favor a finding that a fee award of up to
3 33.33% is reasonable.

4 *First*, Class Counsel has obtained an extraordinary settlement on behalf of the Class Members.
5 The gross value of the settlement equals an average recovery of \$161.61 per Class Member. Based on
6 the damage analysis conducted by Class Counsel and their damages expert, and in light of the factual
7 and legal defenses identified above, the \$1,100,000 settlement equates to 58.17% to 78.05% of
8 Defendant's \$1,409,303 to \$1,891,147 maximum damage exposure (including overtime wages, gap
9 time damages for straight time wages, and liquidated damages on all unpaid overtime wages). (Exh.
10 B, Stoops Declaration at ¶¶ 50-51). It is no exaggeration to predict that without using the class action
11 process, the relief that members of the class were likely to achieve ranged from negligible to zero.

12 *Second*, prosecuting the litigation has been risky. This case is not one in which a substantial
13 settlement and a recovery of a large attorneys' fee was a foregone conclusion. *See Deposit Guar. Nat'l*
14 *Bank v. Roper*, 445 U.S. 326, 338-39 (1980) (recognizing importance of incentivizing qualified
15 attorneys to devote their time to complex, time-consuming cases in which they risk nonpayment);
16 *Vizcaino*, 290 F.3d at 1048 ("Risk is a relevant circumstance."). The claims asserted are, to a large
17 extent, complex, as reflected in the operative complaint. There is the risk that Plaintiffs could lose on
18 the merits, either on summary judgment or at trial. In this case, Defendant asserted numerous legal
19 and factual defenses including, significantly: 1) that at least one-third of the Class Members are
20 subject to individual arbitration agreements and class waivers; and 2) that Defendant did not employ
21 the Class Members and any liability for alleged wage and hour claims must be borne by 14 separate
22 staffing companies. (Exh. B, Stoops Declaration at ¶ 43). Moreover, there is the risk that no FLSA
23 collective or Rule 23 class would be certified, the risk that an order certifying an FLSA collective or a
24 Rule 23 class would be overturned on appeal, and the risk that a certified class would later be
25 decertified, each of which is a significant risk in a case such as this. *See, e.g., David v. Bankers Life &*
26 *Cas. Co.*, 2015 WL 3994975, at *8 (W.D. Wash. June 30, 2015) (granting defendant's motion to
27 decertify class in case alleging misclassification of insurance agents as independent contractors,

1 reasoning that “individualized fact questions” as to each agent’s work experience would “predominate
2 over common ones.”); *Collins v. Barney’s Barn, Inc.*, 2013 WL 1668984, at *1 (E.D. Ark. Apr. 17,
3 2013) (denying motion for conditional certification of an FLSA collective in a case alleging that exotic
4 dancers were misclassified as independent contractors); *Edwards v. Publishers Circulation*
5 *Fulfillment, Inc.*, 268 F.R.D. 181, 189 (S.D.N.Y. 2010) (declining to certify class of workers claiming
6 to be employees where case required “an individualized assessment of [defendant’s] relationship” with
7 each worker).

8 *Third*, the litigation and ultimate settlement serves as a mechanism to inform Defendant of the
9 problems with its wage policies and practices and encourage modification of those policies and
10 practices going forward.

11 *Fourth*, the financial burden carried by Class Counsel in prosecuting the case on a contingency
12 basis has been significant. To date, Class Counsel has not received any attorneys’ fees during the
13 pendency of this action, which, by the time of final approval, will have been pending or nearly two
14 years. Further, Class Counsel has incurred \$36,157.75 in litigation expenses to date and \$200,212.50
15 in attorneys’ fees, all of which could have been lost if the case had not been resolved. (Exh. B, Stoops
16 Declaration at ¶¶ 62, 72).

17 The circumstances described above support an upward adjustment from the Ninth Circuit’s
18 benchmark of 25 percent. *See, e.g., Hopkins v. Stryker Sales Corp.*, 2013 U.S. Dist. LEXIS 16939, at
19 *8-9 (N.D. Cal. Feb. 6, 2013) (discussing other wage-and-hour cases in which courts awarded
20 attorneys’ fees of 33 1/3% or more, explaining that conducting the case “on an entirely contingent fee
21 basis against a well-represented [d]efendant” supported an upward fee adjustment, and awarding Class
22 Counsel attorneys’ fee award of 30 percent of the common fund); *Thieriot v. Celtic Ins. Co.*, 2011 U.S.
23 Dist. LEXIS 44852 (N.D. Cal. Apr. 21, 2011) (“It is common practice to award attorneys’ fees at a
24 higher percentage than the 25% benchmark in cases that involve a relatively small — i.e., under \$10
25 million — settlement fund.”); *In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, at*69 (C.D.
26 Cal. June 10, 2005) (“Here, the Court notes that Plaintiffs’ counsel proceeded entirely on contingency
27 basis, while paying for all expenses incurred. There was no guarantee of any recovery, and thus,

1 counsel was subjected to considerable risk of no compensation for time or no reimbursement for
2 expenses.”); *Boyd v. Bank of Am. Corp.*, 2014 U.S. Dist. LEXIS 162880, at *28-29 (C.D. Cal. Nov.
3 18, 2014) (“Both of the firms representing the Class are small firms with fewer than fifteen attorneys.
4 Firms of this size face even greater risks in litigating large class actions with no guarantee of
5 payment. The Court finds that the considerable risk in this case due to the uncertain legal terrain,
6 coupled with Counsel’s contingency fee arrangement, weigh in favor of an increase from the
7 benchmark rate. . . . Decisions in analogous wage and hour suits have found awards of one third of
8 the common fund appropriate.”) (citing cases and ordering attorneys’ fee award of one-third of the
9 common fund).

10 Another factor favoring the requested attorneys’ fee award is that it equates to a modest 1.627
11 to 1.703 multiplier, as discussed in more detail below. (Exh. B, Stoops Declaration at ¶ 72).

12 **C. The Lodestar “Cross-Check” Confirms that the Requested Attorneys’ Fees are**
13 **Reasonable.**

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

1 Here, based on detailed, contemporaneously-kept time records, Class Counsel’s unadjusted
 2 lodestar (*i.e.*, with no multiplier) is \$200,212.50, computed as a function of the hours and rates
 3 described in the declaration of Kevin J. Stoops, Esq. (Exh. B, Stoops Declaration at ¶ 62). That amount
 4 is the sum of the firm’s lodestar as of September 4, 2024. Class Counsel anticipates that at the
 5 conclusion of this case (including additional work to be performed at the Final Approval stage, and
 6 extensive work related to settlement administration and Class/Collective Member payment
 7 processing), that Class Counsel will have incur additional lodestar in a range of \$15,000 to \$25,000
 8 (or more). (*Id.* at ¶ 71). Based on the current lodestar of \$200,212.50 the requested \$366,630 fee will
 9 result in a multiplier of 1.831. (*Id.* at ¶ 72). Taking into account the \$15,000 to \$25,000 in additional
 10 lodestar that will be incurred, the multiplier at the conclusion of this case will fall in the range of 1.627
 11 to 1.703. (*Id.*).

12 Class Counsel’s hourly rates and the associated hours are reasonable. As to the rates, “[t]he
 13 proper reference point in determining an appropriate fee award is the rates charged by private attorneys
 14 in the same legal market as prevailing counsel.” *Rutti v. Lojack Corp.*, 2012 U.S. Dist. LEXIS 107677,
 15 at *30 (C.D. Cal. July 31, 2012) (quoting *Trevino v. Gates*, 99 F.3d 911, 925 (9th Cir. 1996)). The rates
 16 charged by private attorneys in the same legal market, in turn, are the “prevailing market rate[s] in the
 17 relevant community” for lodestar purposes. *Davis v. City of San Francisco*, 976 F.2d 1536, 1547 (9th
 18 Cir. Cal. 1992) (quoting *Bouman v. Block*, 940 F.2d 1211, 1235 (9th Cir. 1991), cert. denied, 112 S.Ct.
 19 640 (1991), and citing *Blum v. Stenson*, 465 U.S. 886, 895 (1984), vacated in part on other grounds by
 20 984 F.2d 345 (9th Cir. 1993)). The relevant community is “the forum district.” *Anderson v. Nextel*
 21 *Retail Stores, LLC*, 2010 U.S. Dist. LEXIS 71598 at *6 (C.D. Cal. June 30, 2010) (quoting *Gates v.*
 22 *Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1992)). *See also CuvIELLO v. Feld Ent., Inc.*, No. 13-cv-
 23 04951-BLF, 2015 U.S. Dist. LEXIS 4155, 2015 WL 154197, at *2 (N.D. Cal. Jan. 12, 2015) (“The
 24 Court has broad discretion in setting the reasonable hourly rates used in the lodestar calculation.”);
 25 *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132, 104 Cal. Rptr. 2d 377, 17 P.3d 735 (2001) (court can rely
 26 on its own experience); *accord Open Source Sec. v. Perens*, 803 F. App’x 73, 77 (9th Cir. 2020).

27 Class Counsel’s hourly rates are significantly lower than rates charged by other law firms in

1 California prosecuting claims on behalf of workers and consumers. For example, in *Nitsch v.*
 2 *DreamWorks Animation SKG Inc.*, 2017 WL 2423161, at *9 (N.D. Cal. June 5, 2017), an
 3 employment class action, the court found that hourly rates of up to \$1,200 per hour—significantly
 4 above Class Counsel’s hourly rates here—for plaintiffs’ class action lawyers based in California
 5 were “fair, reasonable, and market-based, particularly for the ‘relevant community’ in which counsel
 6 work.” Similarly, in *Nucci v. Rite Aid Corp.*, Case No. 3:19-cv-01434-LB, 2022 U.S. Dist. LEXIS
 7 94936, at *16 (N.D. Cal. May 26, 2022), the court approved attorney hourly rates of up to \$1,005
 8 and a paralegal rate of \$275, and found that “the billing rates are normal and customary for
 9 timekeepers with similar qualifications and experience in the relevant market.” *See id.* at ECF No.
 10 132 (declaration of Hallie Von Rock, Esq.) at 26 (¶ 82). *See also Fleming v. Impax Lab’ys Inc.*, 2022
 11 U.S. Dist. LEXIS 125595, at *28 (N.D. Cal. July 15, 2022) (approving attorney hourly rates of up to
 12 \$1,325 and paralegal hourly rates of up to \$425 in a securities class action, and citing cases in this
 13 District approving attorney hourly rates of up to \$1,600 and \$1,250 and paralegal rates of up to \$490);
 14 *Cottle v. Plaid Inc.*, 2022 WL 2829882, at *11 (N.D. Cal. July 20, 2022) (approving attorney hourly
 15 rates of up to \$1,025 and paralegal hourly rates of up to \$425 in a consumer class action); *Foster v.*
 16 *Adams & Assocs.*, 2022 U.S. Dist. LEXIS 25071, at *24-25 (N.D. Cal. Feb. 11, 2022) (approving
 17 hourly rates of up to \$975 in an ERISA class action); *Brown v. Google LLC*, 4:20-cv-03664-YGR
 18 (N.D. Cal.) at ECF No. 5971, ECF page 5 of 6 (request for reimbursement of attorneys’ fees incurred
 19 by Boies Schiller Flexner LLP, Susman Godfrey L.L.P, and Morgan & Morgan filed on June 3, 2022
 20 in the Northern District of California showing partner hourly rates of \$1,020, \$800, \$725, \$775,
 21 \$1,030, \$1,000, \$1,000, \$1,350, \$1,110, \$1,070, \$875, \$1,300, and \$1,950) (plaintiffs’ counsel in
 22 consumer class action).

23 Numerous courts have approved as reasonable the hours and hourly rates of Class Counsel.
 24 (*See e.g., cases cited in Exh. B, Stoops Declaration at ¶ 6*).

25 In cases where compensation is contingent on success, attorneys generally expect to receive
 26 significantly higher effective hourly rates, particularly where, as in this case, the result is uncertain.
 27 As the case law recognizes, this does not result in any undue “bonus” or “windfall.” In the legal
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1 marketplace, a lawyer who assumes a significant financial risk on behalf of a client reasonably
2 expects that his or her compensation will be significantly greater than if no risk was involved (for
3 example, if the client paid the bill on a monthly basis), and that the greater the risk, the greater the
4 “enhancement.” Adjusting court-awarded fees upward in contingent fees cases to reflect the risk of
5 recovering no compensation whatsoever for hundreds of hours of labor makes those fee awards
6 consistent with the legal marketplace, and thus helps to ensure that meritorious cases will be
7 prosecuted, important public policies will be enforced, and individuals with meritorious legal claims
8 will be better able to obtain qualified attorneys.

9 For all these reasons, Class Counsel’s attorneys’ fee request of \$366,630 is reasonable and
10 should be granted.

11 **D. Class Counsel’s Requested Litigation Expenses are Proper.**

12 “The prevailing view is that expenses are awarded in addition to the fee percentage.” *Jefferson*
13 *v. H&M Hennes & Mauritz, L.P.*, 2013 U.S. Dist. LEXIS 2875, at *9 (C.D. Cal. Jan. 7, 2013) (quoting
14 1 ALBA CONTE, ATTORNEY FEE AWARDS § 2:08 at 50–51). Class Counsel has advanced litigation
15 expenses necessarily incurred in this case. As reflected in the declaration of Kevin J. Stoops, Esq., the
16 total incurred litigation expenses to date are \$36,157.75 (Exh. B, Stoops Declaration at ¶ 78). The
17 records identifying the litigation expenses are available for submission to the Court upon request, and
18 a final amount will be submitted to the Court in connection with Class Counsel’s Final Approval
19 briefing if requested. All the expenses were reviewed by Class Counsel and are reasonable, necessary,
20 and customary for FLSA and state wage statute cases. They were all incurred in the normal course of
21 litigation, directly benefited the Class/Collective Members, and added to the overall success of this
22 case. (*Id.* at ¶ 80; *See generally Odrick v. UnionBanCal Corp.*, 2012 WL 6019495, at *6, 2012 U.S.
23 Dist. LEXIS 171413, at *17 (N.D. Cal. Dec. 3, 2012) (in a common-fund settlement, noting that class
24 counsel were seeking reimbursement of “costs for a retained expert, mediation, travel, copying,
25 mailing, legal research, and other litigation-related costs,” and concluding that “reimbursement of
26 these costs and expenses in their entirety is justified”); *Knight v. Red Door Salons, Inc.*, 2009 U.S.
27 Dist. LEXIS 11149, at *20 (N.D. Cal. Feb. 2, 2009) (in a common-fund settlement, stating that class
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1 counsel's expenses "relate to online legal research, travel, postage and messenger services, phone and
2 fax charges, court costs, and the costs of travel"; that "[a]ttorneys routinely bill clients for all of these
3 expenses"; and that "it is therefore appropriate for counsel here to recover these costs from the
4 [s]ettlement [f]und").

5 Therefore, Class Counsel's request for reimbursement of litigation expenses in an amount not
6 to exceed \$40,000 should be approved in full.

7 **E. The Requested Class Representative Incentive Awards are Reasonable.**

8 The court has discretion to award "enhancement," "incentive," or "service" awards to
9 compensate plaintiffs for work done on behalf of the class and in consideration of the risk undertaken
10 in prosecuting the action. *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009). Courts
11 often assess the reasonableness of the award by taking into consideration: "(1) the risk to the class
12 representative in commencing a suit, both financial and otherwise; (2) the notoriety and personal
13 difficulties encountered by the class representative; (3) the amount of time and effort spent by the class
14 representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed
15 by the class representative as a result of the litigation." *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp.
16 294, 299-300 (N.D. Cal. 1995) (approving incentive award of fifty thousand dollars (\$50,000)). In this
17 district, an incentive award of five thousand dollars (\$5,000) is presumptively reasonable. *See Pierce*,
18 2013 U.S. Dist. LEXIS 138921, at *20, 2013 WL 5402120, at *6 (citations omitted).

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

1 Incentive awards are appropriate in this case in the amount of \$5,000 each to Named Plaintiffs
2 Adrianna Jarrett and Mary Ngethe. In particular, the Class Representatives took part in multiple
3 interviews, provided records and documentation to Class Counsel, and were invaluable in assisting
4 Class Counsel understand the legal violations at issue. They were all counseled on the rights and
5 responsibilities of serving as a Rule 23 class representatives, and agreed to serve in that capacity. (Exh.
6 B, Stoops Declaration at ¶ 73). The requested amounts of \$5,000 to be allocated to each of them for
7 an incentive award is commensurate with other incentive awards Class Counsel has been involved in
8 nationally and, as documented by research of other similar awards, is reasonable under the
9 circumstances. (*Id.* at ¶ 74).

10 The declarations of the Class Representatives describe the numerous activities they performed
11 to support the litigation. (ECF No. 86-3 at pp. 31-49). Each of them spent significant amounts of
12 personal time assisting in the prosecution of the lawsuit. (*Id.*).

13 The incentive awards requested are also justified because, in addition to spending time on the
14 case, the Class Representatives also incurred personal risk, including risks undertaken for payment of
15 attorneys' fees and costs and stigma in connection with future employment opportunities. *See, e.g.,*
16 *Graham v. Overland Solutions, Inc.*, 2012 U.S. Dist. LEXIS 130113, at *22-23 (S.D. Cal. Sept. 12,
17 2012) (preliminarily approving settlement that requested service awards of \$25,000 each for class
18 representatives in part because "risks undertaken for the payment of costs in the event this action had
19 been unsuccessful" and "stigma upon future employment opportunities for having initiated an action
20 against a former employer"); *Koehl v. Verio*, 142 Cal. App. 4th 1313, 1328 (2006) (in wage and hour
21 action where defendant prevailed at trial, named plaintiffs were held liable, jointly and severally, for
22 defendant's attorneys' fees); *E.E.O.C. v. Peoplemark, Inc.*, 732 F.3d 584 (6th Cir. 2013) (affirming
23 district court's award of attorneys' fees to prevailing defendant, a temporary employment agency, in a
24 case brought by the Equal Employment Opportunity Commission alleging that the defendant violated
25 Title VII by denying employment opportunities to persons with felony records); *Murphy v. Bd. of Educ.*
26 *of Rochester City Sch. Dist.*, 420 F. Supp. 2d 131 (W.D.N.Y. 2006) (awarding attorneys' fees to
27 prevailing defendants in employment discrimination case brought by a teacher); *Harper v. City of*

1 *Cleveland*, 2020 WL 127683, at *1 (N.D. Ohio Jan. 10, 2020) (awarding attorneys’ fees to prevailing
2 defendant in action brought by a former police officer alleging employment discrimination).

3 Finally, the cumulative amount of the Class Representative Incentive Awards, \$10,000, is
4 reasonable as it equals only 0.91% of the \$1,100,000 Gross Settlement Amount. (Exh. B, Stoops
5 Declaration at ¶ 75).

6 In light of the foregoing, the requested Class Representative Incentive Awards are reasonable.

7 **IV. CONCLUSION**

8 For the reasons set forth herein, Plaintiffs respectfully requests that the Court approve Class
9 Counsel’s attorneys’ fees and litigation expenses, as well as the Class Representative Incentive
10 Awards, as provided under the Parties’ Settlement Agreement. A proposed order granting the present
11 motion is attached hereto as Exhibit C.

12
13 SOMMERS SCHWARTZ, P.C.

14 DATED: September 4, 2024

By: /s/ Kevin J. Stoops
Kevin J. Stoops (SBN 332200)
SOMMERS SCHWARTZ, P.C.
One Towne Square, Suite 1700
Southfield, Michigan 48076
Telephone: (248) 355-0300
kstoops@sommerspc.com

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18 *Attorneys for Plaintiff and Proposed Collective and*
19 *Class Members*

20
21 **CERTIFICATE OF SERVICE**

22
23 I certify that on September 4, 2024, I electronically filed the foregoing document with the
24 Clerk of the Court using the ECF system, which will send notification of such filing to all counsel
of record.

25
26 /s/ Kevin J Stoops
Kevin J. Stoops

Index of Exhibits

Exhibit A: September 3, 2024, Settlement Administrator Report

Exhibit B: Declaration of Kevin Stoops

Exhibit C: Proposed Order Granting Motion

Exhibit A



Project Status Report

Jarrett v [24]7.AI

23CV00677EMC

UPCOMING KEY DATES		
Item	Date	Projected Date
Exclusion Deadline	9/18/2024	<input type="checkbox"/>
Objection Deadline	9/18/2024	<input type="checkbox"/>
Atticus Notice Declaration	10/23/2024	<input type="checkbox"/>
Final Approval Hearing	11/14/2024	<input type="checkbox"/>
Final Approval Order	11/14/2024	<input checked="" type="checkbox"/>

OUTGOING MAIL	
Mailed Notice 8/5/2024 3,725	Emailed Notice 8/5/2024 258

RETURN MAIL		
Total Returned Mail 531	Forwarding Mail Returned by USPS with Forwarding Address 8	Undeliverable Mail returned by USPS and Skip Trace is Required 523

UNDELIVERABLE MAIL SUMMARY				
Total Undeliverable Notice Records 523	Records Sent to Trace and Address Update Received 261	Record Sent to Trace and No New Address Obtained 260	Records Not Sent to Trace	
			Not Traced 2	2nd Remail 2

NOTICE REMAILS		
Total Remail Notices 269	Forwarding Notices Remaild to USPS Forwarding Addresses 8	Undeliverable Notices Remaild to Address Obtained from Skip Trace 261

OPT INS/OUTS & OBJECTIONS			
Opt Outs	Valid	Invalid	Objections
9/18/2024			9/18/2024
0	0	0	0

COMMUNICATION SUMMARY	
Communication Type	# Received
Email	21
Inbound Call	2

Exhibit B

Kevin J, Stoops, Esq. (SBN 332200)
kstoops@sommerspc.com
SOMMERS SCHWARTZ, P.C.
One Towne Square, 17th Floor
Southfield, MI 48076
Telephone: (248) 355-0300
Facsimile: (248) 746-4001

*Attorney for Plaintiffs
and Proposed Class and Collective Members*

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**ADRIANNA JARRETT and MARY
NGETHE** individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

[24]7.AI, INC.,

Defendant

Case No.: 23-cv-00677-EMC

**DECLARATION OF KEVIN J. STOOPS IN
SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, LITIGATION
EXPENSES, AND CLASS
REPRESENTATIVE INCENTIVE AWARDS**

Honorable Edward M. Chen

Complaint Filed: February 15, 2023

Final Approval Hearing: November 14, 2024 at
1:30 p.m.

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DECLARATION OF KEVIN J. STOOPS

In accordance with 28 U.S.C. § 1746, I, Kevin J. Stoops, first being duly sworn, deposes and states as follows:

1. I make this declaration in support of Plaintiffs’ Motion for Attorneys’ Fees, Litigation Expenses, and Class Representative Incentive Awards (the “Motion for Attorneys’ Fees”).

2. I am a Senior Shareholder at the law firm of Sommers Schwartz P.C., attorneys for Plaintiffs Adrianna Jarrett and Mary Ngethe in the above captioned case. I have been involved in this case from the beginning and I have personal knowledge of the matters set forth herein, based on my active participation in all material aspects of this litigation, including personal involvement in the negotiation of the Settlement.

Experience and Background

3. I received my JD degree, *magna cum laude*, from the Thomas M. Cooley Law School in May 2004. I am licensed to practice law in Michigan and California. Other admissions to practice include the following courts: United States Supreme Court; Sixth Circuit Court of Appeals; Tenth Circuit Court of Appeals; U.S. District Court for the Eastern District of Michigan; U.S. District Court for the Western District of Michigan; U.S. District Court for the District of Colorado; U.S. District Court for the Northern District of Alabama; U.S. District Court for the Northern District of California; U.S. District Court for the Central District of California; U.S. District Court for the Northern District of Illinois; and U.S. District Court for the Western District of Texas. I have appeared *pro hac vice* in numerous U.S. District Courts across the country including, but not limited to, the following: U.S. District Court, Middle District of Florida; U.S. District Court, Southern District of Florida; U.S. District Court, Middle District of Georgia; U.S. District Court, Western District of Kentucky; U.S. District Court, District of Nevada; U.S. District Court, Western District of New York; U.S. District Court, Eastern District of North Carolina; U.S. District Court, Western District of North Carolina; U.S. District Court, Northern District of Ohio; U.S. District Court, Eastern District of Pennsylvania; U.S. District Court, Western District of Virginia; and U.S. District Court, Western District of Washington.

1 4. I am a Senior Shareholder in the law firm of Sommers Schwartz, P.C. in Southfield,
2 Michigan, and have worked for the firm since 2003. I have served on the Firm's Board of Directors
3 since 2012. *See*, Tab 1 – Attorney Biographies.

4 5. Since obtaining my law license in 2004 I have litigated actions spanning the following
5 practice areas: employment law (including discrimination, breach of contract, whistleblower's law and
6 public policy claims); commercial litigation; and intellectual property (including complex trade secret,
7 patent and trademark matters). Representative cases from these practice areas include the following:

- 8 ▪ July 2018: \$800,000 arbitration judgment in connection with minority shareholder claims
9 (Detroit, Michigan).
- 10 ▪ December 2017: \$482,500 settlement in connection with breach of contract claims asserted by
11 class of truck drivers (Macomb County Circuit Court, Michigan)
- 12 ▪ November 2014: \$450,000 settlement in connection with ADA, FMLA, and breach of contract
13 claims asserted by terminated middle school principal (U.S. District Court for Western District
14 of Michigan).
- 15 ▪ May 2012: \$1,100,000 settlement. Served as lead counsel in a complex commercial litigation
16 case that involved claims (including breach of contract, fraud, and violation of the Michigan
17 Sales Representative Commission Act) by my clients against a former joint venture partner.
18 (U.S. District Court for Western District of Michigan).
- 19 ▪ February 2012: \$2.5 Million settlement. Along with my partner, Andrew Kochanowski, assisted
20 client in obtaining a \$2.5 Million settlement in a complex business litigation dispute involving
21 joint venture contract and trademark infringement claims. (U.S. District Court for the District
22 of Colorado).
- 23 ▪ June 2011: \$800,000 settlement. Served as lead counsel in a complex litigation arbitration
24 pending in Chicago, Illinois, that involved claims of oppression, breach of contract and breach
25 of fiduciary duty by a former shareholder against a multi-million dollar business involved in the
26 medical insurance industry.
- 27 ▪ January 2011: \$367,000 settlement. Successfully obtained a \$367,000 settlement for the
28 conservator of a minor child in a complex probate litigation matter involving claims of
conversion and breach of fiduciary duty against the personal representatives of decedent's
estate. (Kalamazoo County Circuit Court, Michigan).
- July 2010: *Holbrook et al v GenTek, Inc.* 2010 WL 2697126. Obtained summary judgment in
favor of four clients, former executives in the automotive industry, on claim that the former
employer breached their executive bonus agreement. (U.S. District Court for the Eastern District
of Michigan).
- March 2009: \$3.1 Million Breach of Contract Verdict. Along with partner Andrew

1 Kochanowski, obtained a breach of contract and patent infringement verdict for the Michigan
 2 inventor of an aluminum baseball bat safety testing machine.(U.S. District Court for the Western
 District of Michigan).

- 3 ▪ April 2006: \$2.4 million Employment Discrimination Verdict. Along with partner Joe Golden,
 4 obtained Title VII and Elliot-Larsen national origin discrimination verdict for a public school
 5 teacher in the U.S. District Court for the Eastern District of Michigan. (U.S. District Court for
 the Eastern District of Michigan).

6 6. Since 2014, I have served as a member of the firm's national wage & hour litigation
 7 practice, which currently consists of eight attorneys and five staff members. Most, if not all, of my
 8 time is devoted to challenging illegal wage and hour practices on behalf of current and former
 9 employees. Representative cases from my wage and hour practice include the following:

- 10 ▪ *Hernandez v. DFA* – Lead Counsel in connection with \$267,000 settlement of over 650
 11 production employees who claimed their employer unlawfully withheld compensation in
 violation of Massachusetts state wages laws (District Court for the District of Massachusetts).
- 12 ▪ *Lucyk v. Materion, Inc.* – Lead Counsel in connection with \$1,500,000 settlement of over 850
 13 production who claimed their employer unlawfully withheld compensation in violation of the
 Fair Labor Standards Act's wage and hour provisions and various state laws (District Court for
 the Northern District of Ohio).
- 14 ▪ *Kulik v. NMCI Medical Clinic* – Lead Counsel in connection with \$875,000 settlement of
 15 approximately 100 medical assistants, physician assistants, and nurse practitioners, who claimed
 16 their employer unlawfully withheld compensation in violation of the Fair Labor Standards
 Act's wage and hour provisions and California state law. (District Court for the Northern District
 17 of California).
- 18 ▪ *Dickerson v. Carenet Infomedia Group, Inc.* – Lead Counsel in connection with a \$684,375
 19 settlement of over 5,000 customer service representatives who alleged off-the-clock work
 related to booting up and shutting down their computer systems in violation of the Fair Labor
 Standards Act and several state wage and hour laws. (District Court for the Western District of
 20 Texas).
- 21 ▪ *In re: Lowe's Companies, Inc., Fair Labor Standards Act and Wage and Hour Litigation* – Lead
 22 Counsel in connection with \$9,950,000 settlement of over 2,500 opt-in and arbitration claimant
 hourly manager employees who alleged off-the-clock work related to opening and closing
 23 defendant's stores and performing exterior perimeter sweeps in violation of the Fair Labor
 Standards Act and several state wage and hour laws. (District Court for the Western District of
 North Carolina).
- 24 ▪ *Davis v. TTEC Healthcare Solutions, Inc.* – Lead Counsel in connection with \$5,125,000
 25 settlement of over 2,200 opt-in and arbitration claimant call center customer service
 representatives who alleged off-the-clock work related to booting up and shutting down their
 26 computer systems in violation of the Fair Labor Standards Act and several state wage and hour
 laws. (District Court for the District of Colorado).
- 27 ▪ *Ealy-Simon v. Change Healthcare Operations, LLC* – Lead Counsel in connection with
 28 \$2,500,000 settlement of over 3,500 call center customer service representatives who alleged
 off-the-clock work related to booting up and shutting down their computer systems in violation

1 of the Fair Labor Standards Act and several state wage and hour laws. (District Court for the
2 Middle District of Tennessee).

- 3 ▪ *McCroskey v. Tate & Lyle Ingredients Americas, LLC* – Lead Counsel in connection with
4 \$3,900,000 settlement of approximately 1,600 Process Operators and Process Technicians who
5 claimed their employer unlawfully withheld compensation in violation of the Fair Labor
6 Standards Act's wage and hour provisions and various state laws (District Court for the Northern
7 District of Illinois).
- 8 ▪ *Gabel v. Carenet Infomedia Group, Inc.* – Lead Counsel in connection with a \$618,750
9 settlement of 764 Tele-Nurses who alleged off-the-clock work related to booting up and shutting
10 down their computer systems in violation of the Fair Labor Standards Act and several state wage
11 and hour laws. (District Court for the Western District of Texas).
- 12 ▪ *Chetwood v. T-Mobile USA, Inc.* – Lead Counsel in connection with \$2,000,000 settlement of
13 over 7,000 call center customer service representatives who claimed their employer unlawfully
14 withheld compensation in violation of the Fair Labor Standards Act's wage and hour provisions
15 and Colorado, Missouri, New Mexico, Oregon and Washington state laws. (District Court for
16 the Western District of Washington).
- 17 ▪ *Smith v. Kaiser Foundation Hospitals* – Lead Counsel in connection with \$1,475,000 settlement
18 of approximately 474 call center Telehealth Nurses and Wellness Specialists who claimed their
19 employer unlawfully withheld compensation in violation of the Fair Labor Standards
20 Act's wage and hour provisions and California state law. (District Court for the Southern District
21 of California).
- 22 ▪ *Marston v. Ashland Specialty Ingredients* – Lead Counsel in connection with \$3,900,000
23 settlement of over 800 chemical operators who claimed their employer unlawfully withheld
24 compensation in violation of the Fair Labor Standards Act's wage and hour provisions and
25 various state laws (District Court for the Northern District of Ohio).
- 26 ▪ *Clark v. Bank of America N.A.* – Lead Counsel in connection with \$1,755,000 settlement of over
27 1,400 call center customer service representatives who claimed their employer unlawfully
28 withheld compensation in violation of the Fair Labor Standards Act's wage and hour provisions
of Nevada state law (District Court for the District of Nevada).
- *Bell v. CoWorx Staffing Services, LLC, et al.* – Lead Counsel in connection with \$850,00
settlement of over 3,600 call center customer service representatives who claimed their
employer unlawfully withheld compensation in violation of the Fair Labor Standards
Act's wage and hour provisions and Pennsylvania and Arizona state law (District Court for the
Eastern District of Pennsylvania).
- *Banks v. Kaiser Foundation Health Plan, Inc.* – Lead Counsel in connection with \$1,650,000
settlement of approximately 1,200 call center customer service representatives who claimed
their employer unlawfully withheld compensation in violation of the Fair Labor Standards
Act's wage and hour provisions and California state law. (District Court for the Central District
of California).
- *Lopez v. Stamps.com, Inc.* – Lead Counsel in connection with \$687,594 settlement of over 250
call center customer service representatives who claimed their employer unlawfully withheld
compensation in violation of the Fair Labor Standards Act's wage and hour provisions and
California state law (District Court for the Central District of California).

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- *Purnell v. Clearview Centers, LLC* – Lead Counsel in connection with \$447,000 settlement of 125 counselors who claimed their employer unlawfully withheld compensation in violation of the Fair Labor Standards Act's wage and hour provisions and California state law. (District Court for the Central District of California).
 - *Adams v. Sitel* – Lead Counsel in connection with \$1,200,000 settlement of over 10,000 at home customer service representatives who claimed their employer unlawfully withheld compensation in violation of the Fair Labor Standards Act's wage and hour provisions and various state laws. (District Court for the Middle District of North Carolina).
 - *Shaulis v. Falcon Subsidiary, LLC d/b/a AxisPoint Health* – Lead Counsel in connection with \$595,000 settlement of over 450 Telehealth Nurses Telephone (handling patient telephone calls) who claimed their employer unlawfully withheld compensation in violation of the Fair Labor Standards Act's wage and hour provisions and state law. (District Court for the District of Colorado).
 - *Wolf v. The Permanente Medical Group* – Lead Counsel in connection with \$2,950,000 settlement of over 1,700 Telephone Service Representatives (handling patient telephone calls) who claimed their employer unlawfully withheld compensation in violation of the Fair Labor Standards Act's wage and hour provisions and California state law. (District Court for the Northern District of California).
 - *Brown v. The Permanente Medical Group* – Lead Counsel in connection with \$6,250,000 settlement of over 1,300 Advice Nurses (handling patient telephone calls) who claimed their employer unlawfully withheld compensation in violation of the Fair Labor Standards Act's wage and hour provisions and California state law. (District Court for the Northern District of California).
 - *Atkinson v. Teletech* – Co-Lead/Class Counsel in connection with \$3,500,000 settlement on behalf of over 20,000 home-based customer service agents (call center workers) who claimed their employer unlawfully withheld compensation in violation of the Fair Labor Standards Act's wage and hour provisions. (District Court for the Southern District of Ohio).
 - *Matthews v. Convergys* – Co-Lead/Class Counsel in connection with \$4,500,000 settlement in nationwide wage and hour class action involving more than 20,000 at-home call center employees who alleged they were not paid for their pre-shift computer login and boot-up time and for time spent working “off-the-clock” while experiencing system downtime. (U.S. District Court for the Western District of North Carolina).
 - *Matthews v. Cloud 10* – Lead/Class Counsel in connection with \$1,100,000 settlement in nationwide wage and hour class action involving more than 1,000 at-home call center employees who alleged they were not paid for their pre-shift computer login and boot-up time and for time spent working “off-the-clock” while experiencing system downtime. (U.S. District Court for the Western District of North Carolina).
 - *Tarrant v. Sutherland* – Lead/Class Counsel in connection with \$1,075,000 settlement in nationwide wage and hour class action involving more than 7,000 at-home call center

1 employees who alleged they were not paid for their pre-shift computer login and boot-up time
2 and for time spent working “off-the-clock” while experiencing system downtime. (U.S. District
3 Court for the Western District of New York).

- 4 ▪ *Hall v. Higher One, Inc. et al* – Lead/Class Counsel in connection with \$964,637 settlement in
5 nationwide wage and hour class action involving approximately 2,000 at-home call center
6 employees who alleged they were not paid for rest breaks and their pre-shift computer login and
7 boot-up time and for time spent working “off-the-clock” while experiencing system downtime.
8 (U.S. District Court for the Eastern District of North Carolina).
- 9 ▪ *Padan v. West* – Co-Lead/Class Counsel in nationwide wage and hour class action involving
10 more than 5,000 opt-in brick-and-mortar call center employees alleging unpaid off-the-clock
11 time. (U.S. District Court for the District of Nevada).
- 12 ▪ *Gaffers v. Kelly Services* -- Lead/Class Counsel in nationwide wage and hour class
13 action involving more than 8,000 at-home call center employees alleging unpaid off-the-clock
14 time. (U.S. District Court for the Eastern District of Michigan).
- 15 ▪ *Ross v. Jack Rabbit, Services* – Co-Lead/Class Counsel in nationwide wage and hour class
16 action involving more than 1,000 roadside assistance drivers alleging that the employer failed
17 to pay them minimum wage and overtime after improperly classifying them as independent
18 contractors. (U.S. District Court for the Western District of Kentucky).
- 19 ▪ *Jones v. Coliseum* – Co-Lead/Class Counsel in wage and hour action involving 20 individual
20 plaintiffs alleging that the employer failed to pay them minimum wage and overtime after
21 improperly classifying them as independent contractors. (U.S. District Court for the Eastern
22 District of Michigan).

23 7. I have been a member of numerous legal organizations throughout my career and have
24 served in leadership roles in multiple legal organizations including serving as a Board Member for the
25 Detroit Metropolitan Bar Association (2011-2013), and serving as a Board Member for the Litigation
26 Section of the Michigan State Bar (2011-2015). I currently serve as a Hearing Panel Member the State
27 Bar of Michigan’s Attorney Discipline Board and as a Case Evaluator for the Oakland County Circuit
28 Court.

8. Sommers Schwartz, P.C. is Class Counsel in this case, filed on behalf of current and
former hourly-paid individuals engaged by [24]7.ai, Inc. (“Defendant”) during the Class Period as
Customer Service Representatives (hereinafter “CSRs” or “Class Members”).

Work Performed in Connection with this Lawsuit

9. I have been involved in this litigation from the outset and have been responsible for
coordinating and directing the efforts of all attorneys who performed services on behalf of Plaintiff

1 and the putative class since this case was commenced.

2 10. The instant action was filed on February 15, 2023, asserting the following claims:

- 3 ➤ Count I: Failure to Pay Overtime – Collective Action under the Fair Labor Standards Act
4 (“FLSA”)
5 ➤ Count II: Failure to Pay Wages – Rule 23 Nationwide Class Action for Breach of Contract
6 ➤ Count III: Failure to Pay Wages – Rule 23 Nationwide Class Action for Unjust Enrichment
7 (pled in the alternative to Count II) (ECF No. 1).

8 11. In early March 2023 counsel for the Parties exchanged multiple communications and
9 held meet and confer conferences concerning Defendant’s claim that Plaintiffs should amend their
10 Complaint to remove alleged proprietary business information contained in the Complaint.

11 12. To address Defendant’s concerns, Plaintiffs’ filed their First Amended Complaint
12 (“FAC”) on April 18, 2023. (ECF No. 22). The FCA contains the same claims stated in Plaintiffs’
13 original Complaint.

14 13. On April 18, 2022 Plaintiffs’ filed their pre-discovery Motion for Conditional
15 Certification and Issuance of Court Authorized Notice to FLSA Collective. (ECF No. 21).

16 14. Thereafter, the Parties held multiple meet and confer conferences to discuss whether
17 Defendant would stipulation to conditional certification and issuance of notice to the FLSA Collective.

18 15. On May 2, 2023, the Defendant filed an answer, which listed 24 affirmative defenses.
19 (ECF No. 28).

20 16. On June 28, 2023 the Parties submitted a Joint Stipulation to Conditional Certification
21 of FLSA Collective Action Notice. (ECF No. 40).

22 17. The Court rejected certain aspects of the Parties proposed Notice (ECF No. 41),
23 requiring the Parties to file an Amended Joint Stipulation to Conditional Certification of FLSA
24 Collective Action Notice, along with a modified proposed Notice, on July 5, 2023. (ECF No. 42).

25 18. The Court approved the modified Notice on July 7, 2023. (ECF No. 44).

26 19. On August 4, 2023 the FLSA Notice was issued to 3,981 putative FLSA collective
27 members by professional services provider Atticus Administration, LLC.

28 20. During the Notice period, counsel for the Parties held multiple meet and confer

1 conferences to discuss how to proceed with the litigation following the end of the notice period. These
2 conferences included conversations about the scope of representative discovery, the necessity of
3 issuing subpoenas to multiple staffing companies to obtain time and pay records for members of the
4 opt-in Collective, and the potential of exploring resolution for the FLSA opt-in Collective and/or the
5 entire putative Class.

6 21. Ultimately, the Parties decided to submit the case to mediation following the conclusion
7 of the FLSA Notice period.

8 22. On August 22, 2023 counsel for Defendant notified Plaintiffs' Counsel that 83
9 individuals had been inadvertently omitted from the collective list provided to Atticus Administration,
10 LLC.

11 23. August 29, 2023 the Parties submitted a Joint Stipulation seeking approval to issue
12 notice to the 83 omitted individuals. (ECF No. 65).

13 24. The Court granted that request on August 31, 2023. (ECF No. 66).

14 25. Atticus Administration, LLC, issued notice to the 83 omitted individuals on September
15 11, 2023.

16 26. At the conclusion of the original and supplemental opt-in deadlines a total of 848
17 collective members had affirmatively opted into the case as FLSA party plaintiffs (out of the 3,981
18 who were issued notice).

19 27. In an effort to obtain the fact discovery concerning the 848 opt-ins, including
20 information necessary to analyze their potential damages, Defendant issued subpoenas to 14 different
21 staffing companies on September 6, 2023.

22 28. The majority of the staffing companies responded to the subpoenas by way of
23 producing time and pay records for the opt-ins that worked for Defendant through their agency. One
24 of the staffing companies refused to comply with the subpoena and, instead, lodged objections.

25 29. The Parties agreed to utilize the pay and time records received by way of the subpoenas
26 in an effort to determine the amount of potential damages owed to the opt-in collective members and
27 putative Class.

28 30. On April 16, 2024, the Parties attended a private mediation with nationally respected

1 wage and hour mediator Michael Dickstein of San Francisco.

2 31. After a full day, contentious mediation, the Parties were able to reach an agreement. A
3 Memorandum of Understanding was executed the same day, and, over the next few weeks, the Parties
4 negotiated and finalized the long-form settlement agreement, which is now before the Court for
5 preliminary approval.

6 32. The Parties filed a Notice of Settlement on April 17, 2024. (ECF No. 83).

7 33. At all times, the Parties' settlement negotiations have been non-collusive, adversarial,
8 at arm's length, and with the assistance of a well-respected third-party mediator.

9 34. In addition to myself, the following individuals have performed services in connection
10 with this lawsuit: Kate Milz (Sommers Schwartz - Associate); Kazmira Herberger (Sommers Schwartz
11 – Paralegal); and Danelle Vanderbeke (Sommers Schwartz - Paralegal).

12 35. I was responsible for, performed, and oversaw, all of the following work in connection
13 with this litigation: initial client interview, intake and document review; drafting initial pleadings
14 including the Complaint; conferences with client, interviews of potential class members; drafting
15 Plaintiffs' Motion for Conditional Certification; hiring the notice administrator; communicating with
16 opposing counsel; obtaining and reviewing all discovery production; hiring a damage expert;
17 preparing damage models; legal research concerning state wage and hour laws; selecting the mediator;
18 preparing Plaintiffs' mediation summary; attending mediation; negotiating settlement; drafting
19 settlement documents; selecting and hiring the settlement administrator; and preparing settlement
20 approval motions and related documents.

21 36. With respect to discovery, I was responsible for reviewing and analyzing the following
22 materials, that consisted of hundreds of pages of documents in addition to substantial electronic data:

23 a. Information pertaining to the number of Class Members engaged by Defendant during
24 the statute of limitations period applicable to the case, along with metrics related to:
25 rate of pay; dates of engagement; hours worked per week; total weeks worked; total
26 shifts worked; average hours worked per week; and percentage of weeks worked that
27 equaled or exceeded 40 hours.

28 b. Data modeling and related statistics identifying off-the-clock work by the Class
Members;

c. Voluminous time and pay records;

- 1 d. Time-keeping policies;
- 2 e. Training policies and materials;
- 3 f. Employee handbook;
- 4 g. Developing a survey that was disseminated to the opt-in collective members and
- 5 analyzing the survey results/data; and
- 6 h. Documents provided to counsel by the Plaintiffs.

7 37. Additionally, the Parties' counsel conducted numerous conferences and exchanged
8 correspondence on Plaintiff's claims, Defendant's defenses, and the scope of discovery for mediation
9 and beyond.

10 38. I served as the primary contact with Defense Counsel in all matters relative to the case,
11 including scheduling, discovery, negotiations, damage analysis, and all disputes. I was responsible all
12 client contact, Court communications, settlement discussions, and all other matters related to this
13 litigation.

14 39. I serve as Class Counsel's primary contact with Atticus Administration, LLC
15 (settlement administrator), and will be primarily responsible for overseeing the handling of the claims
16 and fielding of questions from Class Members concerning the settlement, as well as the day-to-day
17 matters relative to the settlement and payment processing.

18 40. All the above efforts, coupled with Class Counsel's ability to prosecute the class action
19 strategy described below, contributed to reaching the settlement with Defendant that is currently
20 before the Court for approval.

21 **Reasonableness of Settlement**

22 41. The details of the settlement are set forth in the Motion for Preliminary Approval.
23 While the final structure of the settlement is clearly set forth in the motion, the complexities that the
24 parties encountered in reaching this settlement were significant, to say the least.

25 42. As lead counsel, I can attest to the numerous complications that arose each step of the
26 way in determining how to structure a settlement in this case. Identification of the compensable off-
27 the-clock time involved extensive review of substantial document and data production and substantial
28

1 legal research. I can further attest to the level of effort, expertise, dedication and creativeness of both
2 Class Counsel and Defense Counsel in making sure that the current settlement was fair, reasonable
3 and adequate to both sides. Had all those efforts not occurred, and the hurdles and obstacles overcome,
4 this case, and the class wide settlement, would never have been reached.

5 43. Furthermore, Defendant asserted numerous legal and factual defenses to Plaintiffs'
6 claims and class certification efforts including, among others, that:

- 7 a. The time Plaintiffs and the Class Members sought compensation for was not
8 compensable under the Portal-to-Portal Act.
- 9 b. The time Plaintiffs and the Class Members sought compensation for was not
10 compensable because it was *de minimis*.
- 11 c. Defendant will seek to compel arbitration with respect to at least one-third of the Class
12 Members are subject to individual arbitration agreements and class waivers.
- 13 d. Defendant did not employ the Class Members and any liability for alleged wage and
14 hour claims must be borne by the 14 staffing companies.
- 15 e. Defendant maintains written employment policies, which prohibit all off-the-
16 clock work.
- 17 f. Defendant instructs and requires employees to report any suspected violation of
18 Defendant's policies prohibiting off-the-clock work.
- 19 g. Defendant will tender Class Members to testify that they did not work off-the-
20 clock and/or that the alleged off-the-clock work is exaggerated.
- 21 h. The putative Class Members engaged in personal activities at the beginning of their
22 shifts.
- 23 i. Plaintiffs' allegations regarding the amount of off-the-clock time worked grossly
24 overstates how long it takes to perform the tasks he describes.
- 25 j. The putative Class Members will not be able to prove their off-the-clock time because
26 no records exist identifying the exact amount of time they spent each shift performing
27 the off-the-clock duties.
- 28 k. Plaintiffs and the Class Members were paid for all worked performed.
- l. The pre- and post-shift log-in and log-out activities are not compensable because the
said activities were not integral and indispensable to the Class Members' principal
work activities.
- m. The putative Class Members will not satisfy the commonality and predominance
elements to obtain Rule 23 class certification.
- n. Plaintiffs and the Class Members will not be able to establish that Defendant's alleged
violations were willful.

1 o. Plaintiff and the Class Members will not be able to recover liquidated damages.

2 44. The existence of Defendant's factual and legal arguments weighed on the parties'
3 decision to resolve the case. While Class Counsel understandably takes issue with the viability of
4 some of these defenses, the risks associated with the continued litigation of Plaintiffs' wage claims
5 simply cannot be disregarded in measuring the reasonableness of the settlement. Specifically, settling
6 this case now saves the parties from years of litigation and tremendous uncertainty as to the ultimate
7 outcome of the litigation. Should the parties have continued to litigate the case, they would have been
8 faced with no less than 6 to 12 months of additional formal discovery (individual class member
9 depositions; interrogatories and requests for production of documents; electronic data production;
10 30(b)(6) depositions). Discovery, once completed, would likely be followed by Rule 23 certification
11 motion practice on Plaintiffs' common law claims, numerous dispositive motions, and eventually one
12 or more trials. It is very likely that this litigation would extend for another two to three years and cost
13 the parties \$500,000 to \$1,000,000 (or more) each in attorneys' fees and expenses.

14 45. To evaluate and negotiate settlement and take part in mediation, Class Counsel retained
15 expert economist Eric Lietzow of Desmond, Marcello & Amster, LLP. (See Damage Expert Bio at
16 Tab 2). Mr. Lietzow, with Class Counsel's assistance, prepared a time consuming and complicated
17 damage analysis of all claims at issue in this case.

18 46. The first objective of the analysis was to identify the class metrics. In connection with
19 that task, the following metrics were ascertained based on timekeeping and pay records for the period
20 of February 2020 through April 16, 2024:

- 21
- 22 • 3,978 Class Members;
 - 23 • Average hourly rate of \$13.60; and
 - 24 • 114,706 workweeks (40.8% of which were overtime weeks, 59.2% of which were non-
25 overtime weeks).

26 47. Next the analysis identified the damages that could be recovered for each of the claims
27 in the litigation.

28 48. In their complaint, Plaintiffs estimated a maximum of fourteen (14) to fifteen (27)
minutes of off-the-clock work per day associated with the pre-, mid- and post-shift log-in and log-out

1 activities. However, Defendant insisted that these estimations are grossly inflated, that most of the
2 Class Members do not perform substantial, if any, off-the-clock work, and that the alleged time is not
3 compensable under the Portal-to-Portal Act and the *de minimis* doctrine.

4 49. Affording due consideration to the facts of the case and Defendant's evidence, Class
5 Counsel determined that reasonable estimation of the actual maximum damages equals six (6) to eight
6 (8) minutes per day.

7 50. Utilizing the six (6) to eight (8) minute per day estimation – and extrapolating the
8 timekeeping and pay record mediation data to extend from February 2020 (three years prior to
9 Complaint filing) through April 16, 2024 (date of mediation) – Class Counsel and the expert economist
10 developed a time consuming and complicated damage analysis of all claims and calculated the
11 Defendant's maximum exposure for all claims (including overtime wages, gap time damages for
12 straight time wages, and liquidated damages on all unpaid overtime wages) fell in the range of
13 \$1,409,303 to \$1,891,147.

14 51. Based on the damage analysis conducted by Class Counsel and their damages expert,
15 and in light of the factual and legal defenses identified above, the \$1,100,000 settlement equates to
16 58.17% to 78.05% of Defendant's \$1,409,303 to \$1,891,147 maximum damage exposure.

17 52. Consequently, there can be no question that the settlement amount is substantial,
18 completely reasonable, and marks a fair compromise.

19 53. The proposed release by the Class was extensively scrutinized and negotiated by the
20 attorneys involved in this litigation and is *not* a general release of all claims. It represents a fair
21 compromise and constitutes a fair negotiated bargain for release of claims that arise from the facts as
22 alleged in the Complaint. Plaintiffs have reviewed and consented to the terms in the settlement
23 agreement, have afforded full access to Class Counsel, and have signed the settlement and release.

24 54. This settlement was the result of arm's-length negotiations, with assistance by
25 esteemed and very experienced wage and hour mediator Michael Dickstein, conducted by experienced
26 counsel for all parties, and reached after extensive discovery. Prior to settlement, each side
27 independently and thoroughly investigated the claims and defenses at issue. The work performed
28 allowed each party to intelligently, and in good faith, weigh both the risks and benefits of settlement

1 as compared to continued litigation. These efforts culminated in a substantial settlement, which
2 provides the Class Members with an opportunity to resolve their claims against Defendant in a
3 meaningful way.

4 55. Based on my past experience in litigating wage and hour cases, I fully endorse this
5 settlement and believe that it is truly in the best interests of all parties. For all the reasons set forth
6 herein, I believe this Court should honor the terms of the settlement and give it preliminary and final
7 approval.

8 **Reasonableness of Requested Attorneys' Fees**

9 56. In preparing this declaration, I reviewed the time records of all participating attorneys
10 and paralegals from Sommers Schwartz, P.C., confirming that the accuracy, utility, efficiencies and
11 reasonableness of the time spent by Class Counsel working on this litigation.

12 57. After reviewing all of the time records, I can attest they are reasonable as to both the
13 hourly rate, time spent, work allocation and totals, as well as being absolutely necessary to reach the
14 settlement in this case. Class Counsel diligently worked to avoid duplication of efforts and expenses,
15 while at the same time not sacrificing work quality on behalf of the class. The settlement obtained in
16 this litigation was directly affected by the efforts advanced by Class Counsel in this lawsuit.

17 58. Based on my personal experience, the fees requested for the legal services rendered in
18 this action (\$366,630, equaling 33.33% of the gross settlement amount) reflects the reasonable value
19 of those services in light of the nature of the case, the result obtained, the quality of representation, the
20 risks of the litigation, the customary fee, and other applicable considerations as set forth by the law.

21 59. I typically charge \$725 per hour for my legal services in FLSA and state wage law class
22 action cases. I am familiar with rates customarily charged in the legal market for FLSA and state wage
23 law class action litigation. The rates charged by my firm for my services and those of Senior
24 Shareholders, Shareholders, Associates and Paralegals are, on the whole, lower than prevailing rates
25 charged for equivalent services by attorneys of similar skill, experience, and reputation. Therefore, I
26 believe that we are reasonable in seeking lodestar rates of \$725 per hour for myself, \$350 per hour for
27 Ms. Milz, and \$175 for the Paralegals who worked on this matter.

60. The hourly rates requested in this Motion are significantly lower than those charged by other plaintiff's law firms in California employment class actions, such as Matern Law Group, PC (\$995 partner rate and \$825-\$950 for senior associates); Capstone Law APC (\$950 for partners); Schneider Wallace Cottrell Konecky (\$775 for a seventh-year associate; \$830 for a twelfth-year associate and \$1,105 for partners); James Hawkins APLC (\$900 for partner and \$575 to \$850 per hour for associates); Goldstein, Borgen, Dardarian & Ho (rates ranging from \$800-\$1015 for partners). For example, in *Lim v. Transforce, Inc.*, No.19-cv-04390, (ECF 209) (C.D. Cal. Nov. 15, 2022) the Court found rates for employment class action attorneys ranging from \$680 at the low end for associates to \$1,105 per hour for a partner admitted in 1996—far above Plaintiff's counsel's requested hourly rates here. Similarly, in *Nitsch v. DreamWorks Animation SKG Inc.*, 2017 WL 2423161, *9 (N.D. Cal. June 5, 2017) (Koh, J.), the court found that hourly rates of up to \$1,200 per hour for plaintiffs' class action lawyers based in California were "fair, reasonable, and market-based, particularly for the 'relevant community' in which counsel work."

61. In cases where compensation is contingent on success, attorneys reasonably expect to receive significantly higher effective hourly rates, particularly where, as in this case, the result is uncertain. As the case law recognizes, this does not result in any undue "bonus" or "windfall." In the legal marketplace, a lawyer who assumes a significant financial risk on behalf of a client reasonably expects that his or her compensation will be significantly greater than if no risk was involved (for example, if the client paid the bill on a monthly basis), and that the greater the risk, the greater the "enhancement." As Judge Virginia Phillips in the Central District of California has stated, "Adjusting court-awarded fees upward in contingent fee cases to reflect the risk of recovering no compensation for hundreds of hours of work makes those fee awards consistent with the legal marketplace, and in so doing, helps to ensure that meritorious cases will be brought to enforce important public interest policies and that clients who have meritorious claims, but lack financial resources, will be better able to obtain qualified counsel." *Jeter-Polk v. Casual Male Store, LLC*, (C.D. Cal. Mar. 4, 2016) 2016 WL 9450452, at *8.

62. Sommers Schwartz, P.C.'s hours by working attorney and paralegal are as follows:

Attorney/Paralegal	Position	Rate	Hours	Total
Kevin J. Stoops	Senior Shareholder	\$725	169.2	\$122,640

1	Kate E. Milz	Associate	\$350	217.05	\$75,967.50
2	Danelle Vanderbeke	Paralegal	\$175	9	\$1,575
3		Grand Total:		395.25	\$200,212.50
4	Category		Hours	Timekeeper	Lodestar
5	Pre-litigation investigation/research, and litigation pleadings		44.05	Stoops (3.9) Milz (40.15)	\$2,827.50 \$14,052.50
6					
7	Litigation management ¹		60.4	Stoops (20) Milz (40.4)	\$14,500 \$14,140
8					
9	Motion for Conditional Certification and Collective Notice Period		98.2	Stoops (18.2) Milz (71.8) Vanderbeke (8.2)	\$13,195 \$25,130 \$1,435
10					
11	Damage Analysis, Mediation and Settlement Documents		98.8	Stoops (48.3) Milz (49.7) Vanderbeke (.8)	\$35,017.50 \$17,395 \$140
12					
13	Preliminary Approval		77.3	Stoops (62.3) Milz (15)	\$45,167.50 \$5,250
14					
15	Settlement Administration		3.6	Stoops (3.6)	\$2,610
16	Final Settlement/Fee Approval		12.9	Stoops (12.9)	\$9,352.50

63. As of September 4, 2024, Sommers Schwartz, P.C., has expended 395.25 hours on this matter. Class Counsel's total lodestar for these hours amounts to \$200,212.50. The "blended rate" for Counsel's combined hours over the course of this litigation is \$506.54.

64. In my opinion, and based on my experience in, and research of, other FLSA and state wage law class action settlements in this District and nationwide, the requested fee will be reasonable and appropriate, especially in light of the amount of work performed by Class Counsel in this case and the substantial recovery obtained on behalf of the Class.

65. Sommers Schwartz, P.C., typically enters into 40% contingent fee retainer agreements with clients in connection with employment litigation matters including wage and hour actions.

¹ Including, but not limited to, motions, protective order, scheduling orders, conferences with clients, conferences with opposing counsel, preparing amended complaint.

1 66. The Named Plaintiffs in this action retained Sommers Schwartz, P.C., pursuant to a
2 40% contingent fee agreement. However, the Firm only seeks 33.33% under the Parties' Settlement
3 Agreement.

4 67. Class Counsel undertook to prosecute this action without any assurance of payment for
5 their services, litigating the case on a wholly contingent basis in the face of significant risk. Class and
6 collective wage and hour cases of this type are, by their very nature, complicated and time-consuming.
7 Any lawyer undertaking representation of large numbers of affected employees in wage and hour actions
8 inevitably must be prepared to make a tremendous investment of time, energy and resources. Due also
9 to the contingent nature of the customary fee arrangement, lawyers are asked to be prepared to make this
10 investment with the very real possibility of an unsuccessful outcome and no fee of any kind. Class
11 Counsel stood to gain nothing in the event the case was unsuccessful.

12 68. Class Counsel takes on difficult cases like this one because we believe that they are
13 important. We take seriously our responsibility to push the law in a direction favorable for employees.
14 We continue to do so despite, unfortunately, having suffered several major (and very expensive)
15 losses in wage and hour cases over the years. Like this case, we believed that each of these cases was
16 meritorious and socially useful but understood the risks. For example, over a period of 4 years
17 Sommers Schwartz, P.C., litigated the companionship exemption issue in several home healthcare
18 aid cases, and lost approximately \$1,000,000 in lodestar.

19
20
21 69. To date, Class Counsel has worked without compensation of any kind on this case, and
22 the fee has been wholly contingent upon the result achieved.

23 70. In my experience, administering class/collective settlements of this nature and size
24 requires a substantial and ongoing commitment. Class Counsel will continue to invest time and incur
25 litigation expenses for the next several months as Class Counsel communicates with Class/Collective
26 Members and the settlement administrator concerning the settlement, prepares for an attends the Final
27 Approval hearing, and monitors the implementation of the settlement. Thus, the final lodestar and
28 litigation expenses will be higher – potentially significantly higher – than the current amounts reported

1 in this declaration. Class Counsel will provided updated lodestar and litigation costs at the time of the
2 Final Approval hearing.

3 71. Based on my experience, it is anticipated that at the conclusion of this case (including
4 additional work to be performed at the Final Approval stage, and extensive work related to settlement
5 administration and Class/Collective Member payment processing), that Class Counsel will have incur
6 additional lodestar in a range of \$15,000 to \$25,000 (or more).

7 72. Based on the current lodestar of \$200,212.50 the requested \$366,630 fee will result in
8 a multiplier of less than 1.831. Taking into account the \$15,000 to \$25,000 in additional lodestar that
9 will be incurred, the multiplier at the conclusion of this case will fall in the range of 1.627 to 1.703.

10 **Reasonableness of Requested Named Plaintiffs Incentive Awards**

11 73. As set forth in their Declarations submitted in support of Plaintiffs' Motion for
12 Preliminary (ECF No. 86-3 at pp. 31-49), Named Plaintiffs Adriana Jarrett and Mary Ngethe
13 (collectively "Class Representatives") worked diligently to assist Class Counsel in their activities
14 during the pendency of this litigation. In particular, the Class Representatives took part in multiple
15 interviews, and provided records and documentation to Class Counsel. They were each counseled on
16 the rights and responsibilities of serving as a Rule 23 class representatives, and agreed to serve in that
17 capacity.

18 74. The requested amounts of \$5,000 to be allocated to each of them for their respective
19 incentive awards is commensurate with other incentive awards I have been involved in nationally and,
20 as documented by research of other similar awards, is reasonable under the circumstances.

21 75. The cumulative amount of the requested Class Representative Incentive Awards
22 (\$10,000) is reasonable as it equals only 0.91% of the \$1,100,000 Gross Settlement Amount.

23 76. Class Counsel is not aware of any conflicts between the Class Representatives and the
24 members of the Class.

25 **Reasonableness of Requested Litigation Expenses.**

26 77. Class Counsel is seeking reimbursement of reasonable and necessary litigation
27 expenses not to exceed \$40,000.

28

1 78. I have personally reviewed the records of litigation expenses incurred in this matter
2 by Sommers Schwartz, P.C. According to those records, to date, Class Counsel has incurred litigation
3 expenses in the amount of \$36,157.75.

4	Outside courier:	\$68.99
5	Video Conference fees:	\$133.80
6	On-line research:	\$89.40
7	Postage:	\$20.53
8	Filing fees:	\$558
9	Travel:	\$2,901.53
10	Notice administration:	\$9,423
11	Mediation fees:	\$16,200
12	Expert fees:	\$6,762.50

13 79. In the event, Class Counsel incurs additional litigation expenses, Class Counsel will
14 inform the Court of said amounts at the November 14, 2024 final approval hearing.

15 80. Class Counsel has not yet received any reimbursement for any of the monies
16 expended to cover the litigation expenses listed above.

17 81. The litigation expenses incurred are reflected on the books and records of Class
18 Counsel, are available for submission to the Court upon request, and a final amount will be submitted
19 to the Court in connection with Class Counsel’s Final Approval briefing. All the expenses were
20 reviewed by me and are reasonable, necessary, and customary for FLSA and state wage and hour
21 cases. They were all incurred in the normal course of litigation, directly benefited the Class Members,
22 and added to the overall success of this case.

23 I declare (or certify, verify, or state) under penalty of perjury under the laws of the United
24 States of America that the foregoing is true and correct.

25 Executed on September 4, 2024 in Southfield, Michigan.

26 

27 _____
28 Kevin J. Stoops

Exhibit C

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**ADRIANNA JARRETT and MARY
NGETHE** individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

[24]7.AI, INC.,

Defendant

Case No.: 23-cv-00677-EMC

**[PROPOSED] ORDER GRANTING
PLAINTIFFS’ UNOPPOSED MOTION AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS’ MOTION FOR ATTORNEYS’
FEES, LITIGATION EXPENSES, AND
CLASS REPRESENTATIVE INCENIVE
AWARDS**

Honorable Edward M. Chen

Complaint Filed: February 15, 2023

Final Approval Hearing: November 14, 2024 at
1:30 p.m.

[PROPOSED] ORDER

Plaintiffs’ Unopposed Motion for Attorneys’ Fees, Litigation Expenses, and Class Representative Incentive Awards (the “Motion”), came for hearing on November 14, 2024, at 1:30 p.m., in the United States District Court for the Northern District of California, The Edward M. Chen presiding. All parties were represented by counsel.

Having considered the memoranda and declarations, oral arguments of counsel, the relevant statutory and case law, and the other records, pleadings, and papers filed in this action, the Court GRANTS the Motion and finds as follows:

INTRODUCTION

1. On July 22, 2024, the Court granted preliminary approval of the Parties’ Collective and Class Action Settlement Agreement and Release (hereinafter the “Settlement Agreement”).

1 [ECF No. 94]. Capitalized terms throughout this order have the definitions given them in the
2 Settlement Agreement.

3 **Attorneys' Fees and Litigation Expenses**

4 2. Under Federal Rules of Civil Procedure 23(h)(1) and Rule 54(d)(2), Plaintiffs in
5 this class action have moved for an award of attorneys' fees, litigation expenses, and class
6 representative incentive awards. Pursuant to Rule 23(h)(3), the Court must make findings of fact
7 and state its conclusions of law.

8 3. This class action settlement resolves a wage-and-hour dispute on a
9 class/collective-wide basis.

10 4. The Court's July 22, 2024 order [ECF No. 92] granted preliminary approval of
11 the class/collective-wide Settlement Agreement, an agreement which gives the Court discretion
12 to award Class Counsel attorneys' fees and litigation expenses. The Settlement Agreement states
13 Class Counsel may apply to the Court for an award of attorneys' fees in an amount of \$366,630
14 and litigation expenses in an amount that does not exceed \$40,000. [ECF No. 86-2 at ¶¶ 2(c) and
15 (d)].

16 5. The Gross Settlement Amount is \$1,100,000. [ECF No. 86-2 at ¶ 2(r)]. The
17 requested \$366,630 attorneys' fee equals 33.33% of the Gross Fund Value.

18 6. Rule 23(h) of the Federal Rules of Civil Procedure provides: "In a certified class
19 action, the court may award reasonable attorney's fees and nontaxable costs that are authorized
20 by . . . the parties' agreement." The Rule further provides that "[a] claim for an award must be
21 made by motion under Rule 54(d)(2)," notice of which must be "directed to class members in a
22 reasonable manner" and that the Court "must find the facts and state its legal conclusions under
23 Rule 52(a)." Fed. R. Civ. P. 23(h)(1) & (3). In turn, Rule 54(d)(2) requires a claim for fees to be
24 made by motion, and specifies its timing and content, including, in relevant part, "the grounds
25 entitling the movant to the award" and "the amount sought." Fed. R. Civ. P. 54(d)(2)(B).

1 7. Plaintiffs filed their Motion for Attorneys' Fees, Litigation Expenses, and Class
2 Representative Incentive Awards, on September 4, 2024 in compliance with the schedule that the
3 Court ordered (*i.e.*, 14 days before the end of the objection period). [ECF No. 94].

4 8. When counsel recovers a common fund that confers a "substantial benefit" on a
5 class of beneficiaries, counsel is "entitled to recover their attorney's fees from the fund." *Fischel*
6 *v. Equitable Life Assurance Soc'y of the U.S.*, 307 F.3d 997, 1006 (9th Cir. 2002); *Taylor*
7 *v. Meadowbrook Meat Co., Inc.*, 2016 WL 4916955, at *5 (N.D. Cal. Sept. 15, 2016).

8 9. When "the settlement produces a common fund for the benefit of the entire class,
9 courts have discretion to employ either the lodestar method or the percentage-of-recovery
10 method" of calculating attorneys' fees awards. *In re Bluetooth Headset Prods. Liab. Litig.*, 654
11 F.3d 935, 942 (9th Cir. 2011).

12 10. Under the percentage-of-the-fund method, it is appropriate to base the percentage
13 calculation on the gross settlement amount. *See generally Boeing v. Gemert*, 444 U.S. 472,
14 479, 100 S. Ct. 745, 62 L. Ed. 2d 676 (1980); *Williams v. MGM-Pathe Commc'ns Co.*, 129 F.3d
15 1026, 1027 (9th Cir. 1997). Indeed, "[w]here the settlement involves a common fund, courts
16 typically award attorney's fees based on a percentage of the total settlement." *Taylor v.*
17 *Meadowbrook Meat Co., Inc.*, 2016 WL 4916955, at *5 (N.D. Cal. Sept. 15, 2016)

18 11. The Court adopts the percentage-of-the-fund approach here and finds that the
19 attorneys' fees amount is reasonable. The Ninth Circuit has stated that "25 percent of the fund
20 [i]s the 'benchmark' award that should be given in common fund cases." *Six (6) Mexican Workers*
21 *v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). That said, "the exact percentage
22 varies depending on the facts of the case, and in 'most common fund cases, the award exceeds
23 that benchmark.'" *Johnson v. General Mills, Inc.*, 2013 U.S. Dist. LEXIS 90338, at *20 (C.D.
24 Cal. June 17, 2013) (quoting *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491 (E.D.
25 Cal. 2010).

26 District courts within this circuit, including this Court, routinely award
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attorneys' fees that are one-third of the total settlement fund. *See, e.g., Stuart v. Radioshack Corp.*, No. C 07-4499-EMC, 2010 WL 3155645, *—, 2010 U.S. Dist. LEXIS 92067, *18 (N.D. Cal. Aug. 9, 2010); *Barbosa v. Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 449 (E.D. Cal. 2013); *Rigo v. Kason Indus.*, No. 11-CV-64-MMA(DHB), 2013 WL 3761400 at *—, 2013 U.S. Dist. LEXIS 99357 at *20 (S.D. Cal. July 16, 2013) Such awards are routinely upheld by the Ninth Circuit. *See, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000) (affirming one-third of the common fund).

Hernandez v. Dutton Ranch Corporation, 2021 WL 5053476, *6 (N.D. Cal. Sept. 10, 2021) (J. Chen).

12. This Court and other courts have approved payments of attorneys' fees amounting to one-third of the common fund, including in comparable wage-and-hour class actions where, like here, the results obtained were excellent and the risks were great. *See, e.g., Nucci v. Rite Aid Corp.*, 2022 WL 1693711, *8 (N.D. Cal. May 26, 2022) (granting final approval of a wage-and-hour class action settlement and awarding attorneys' fees of 33.33% of the total settlement amount and finding that this percentage is "in line with similar wage-and-hour cases where the results obtained were excellent and the risks were great"); *Zamora v. Lyft, Inc.*, 2018 WL 4657308, at *3 (N.D. Cal. Sept. 26, 2018) (one-third award is "consistent with the Ninth Circuit authority and the practice in this District."); *see also Wren v. RGIS Inventory Specialists*, 2011 WL 1230826, at *31 (N.D. Cal. Apr. 1, 2011) (awarding fees of over 40% of the settlement fund where class counsel created a gross settlement fund of \$27 million on behalf of more than 62,000 class members in a wage-and-hour case); *Bennett v. SimplexGrinnell LP*, 2015 WL 12932332, *7 (N.D. Cal. Sep. 3, 2015) (approving attorneys' fees of approximately 38.8% of the settlement fund in wage-and-hour class action settlement); *Jones v. CertifiedSafety*, 3:17-cv-02229-EMC, ECF No. 232 (N.D. Cal. June 1, 2020) (awarding fees based on one-third of the common fund in wage-and-hour class action); *Foster v. Adams & Assocs.*, 2022 WL 425559, *10 (N.D. Cal. Feb. 11, 2022) (granting final approval of an ERISA class action settlement and awarding attorneys'

1 fees of 33.3% of the total settlement amount); *Bautista- Perez v. Juul Labs, Inc.*, 2022 WL
 2 2239838, *9 (N.D. Cal. June 22, 2022) (granting final approval of an employment class action
 3 settlement and awarding attorneys’ fees of 30% of the total settlement amount). These similar
 4 cases further support Plaintiffs’ attorney’s fees request.

5 13. Customary privately negotiated contingent percentages may be taken into account in
 6 determining a reasonable fee, and such percentages typically range from 33% to 40% of any
 7 recovery. *See, e.g., Fernandez v. Victoria Secret Stores, LLC*, 2008 WL 8150856, *16 (C.D. Cal.
 8 July 21, 2008) (“Awarding a percentage fee of 34% is supported by the fact that typical
 9 contingency fee agreements provide that class counsel will recover 33% if the case is resolved
 10 before trial and 40% if the case is tried.”); *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th
 11 19, 49-50 (2000) (“a trial court has discretion to adjust the basic lodestar through the application
 12 of a positive or negative multiplier where necessary to ensure that the fee awarded is within the
 13 range of fees freely negotiated in the legal marketplace in comparable litigation.”). Privately
 14 negotiated contingency agreements in employment matters in California typically range from
 15 33% to 40% of any recovery. *See, e.g., Fernandez*, 2008 WL 8150856, *12, *16 (“Cara Eisenberg
 16 is an experienced employment law litigator, whose efforts have resulted in verdicts and
 17 settlements in excess of \$10,000,000. . . . Eisenberg states that the retainer agreement between
 18 counsel and plaintiffs provided for a 35% fee ‘pre-litigation’ and a 40% fee ‘post-litigation.’”).
 19 *Cf. Cotchett, Pitre & McCarthy v. Universal Paragon Corp.*, 187 Cal. App. 4th 1405, 1415
 20 (2010), *as modified on denial of reh’g* (Sept. 21, 2010) (“Contingency fees, in Judge Westerfeld’s
 21 experience, typically range from 33 percent to 40 percent of a settlement amount, and a
 22 contingency of 50 percent is not unconscionable.”); Lester Brickman, *Effective Hourly Rates of*
 23 *Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees*, 81 WASH. U.L.Q. 653,
 24 659 n. 11 (“In some jurisdictions, standard contingency fee rates are 33% if the case settles before
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1 trial, 40% if a trial commences, and 50% if the trial is completed”). *See also Vizcaino v. Microsoft*
 2 *Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (citing district court’s finding that 20-30% is the
 3 “usual range” and concluding that “the district court considered the relevant circumstances and
 4 did not abuse its discretion in finding a 28% fee award to be reasonable under the percentage
 5 method); *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1377-78 (N.D. Cal. 1989) (stating that
 6 “nearly all common fund awards range around 30%”); *Morris v. Lifescan, Inc.*, 54 Fed. Appx.
 7 663, 664 (9th Cir. 2003) (affirming 33% fee award); *Pacific Enterprises*, 47 F.3d 373, 379 (9th
 8 Cir. 1995) (same).

10 14. When the Court awards fees above or below the 25% benchmark, the “record must
 11 indicate the Court’s reasons for doing so.” *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *14 (N.D.
 12 Cal. Jan. 26, 2007) (citing *Powers v. Eichen*, 229 F.3d 1249, 1256-57 (9th Cir. 2000)).

13 15. Courts diverge from the 25% benchmark based on a variety of factors, including “the
 14 results obtained, risk undertaken by counsel, complexity of the issues, length of the professional
 15 relationship, the market rate, and awards in similar cases.” *Morales v. Stevco, Inc.*, 2013 WL
 16 1222058, 2 (E.D. Cal. Mar. 25, 2013); *see also Morris v. Lifescan, Inc.*, 54 Fed.Appx. 663, 664
 17 (9th Cir. 2003) (affirming 33% fee award); *Pacific Enterprises*, 47 F.3d at 379 (same); *State of*
 18 *Fla. v. Dunne*, 915 F.2d 542, 545 (9th Cir. 1990); *Six Mexican Workers v. Arizona Citrus*
 19 *Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Taylor v. Meadowbrook Meat Co., Inc.*, 2016 WL
 20 4916955, at *5 (N.D. Cal. Sept. 15, 2016). Indeed, among the circumstances that the Ninth Circuit
 21 has considered relevant in assessing reasonableness of a percentage fee award are: (1) the results
 22 achieved; (2) the riskiness of prosecuting the litigation; (3) whether counsel obtained benefits for
 23 the Class above and beyond the cash settlement fund itself; and (4) the financial burden carried
 24 by Class Counsel in prosecuting the case on a contingency basis. *Vizcaino*, 290 F.3d 1043 at
 25 1048-50. In this case, the factors favor a finding that an attorneys’ fee award of 33.33% of the
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1 value of the Settlement would be reasonable. Counsel obtained excellent results for the class and
2 there were significant risks involved in the litigation.

3 16. Ninth Circuit precedent requires courts to award class counsel fees based on the total
4 benefits being made available to class members rather than the actual amount that is ultimately
5 claimed. *Young v. Polo Retail, LLC*, 2007 WL 951821, *8 (N.D. Cal. Mar. 28, 2007) (citing
6 *Williams v. MGM-Pathe Commc'ns Co.*, 129 F.3d 1026 (9th Cir. 1997) (“district court abused its
7 discretion in basing attorney fee award on actual distribution to class” instead of amount being
8 made available) (quoted language from *Young*)); *Taylor v. Meadowbrook Meat Co., Inc.*, 2016
9 WL 4916955, *5 (N.D. Cal. Sept. 15, 2016).

10 17. The \$1,100,000 Settlement confers a substantial monetary benefit to the Class
11 Members.
12

13 **Class Counsel’s Attorneys’ Fees and Litigation Expenses**

14 18. Plaintiffs’ Motion for Attorneys’ Fees, Litigation Expenses, and Class Representative
15 Incentive Awards, requests an award of attorneys’ fees to Class Counsel, Sommers Schwartz,
16 P.C. (“Class Counsel”), in the amount of \$366,630 equaling 33.33% of the \$1,100,000 Gross
17 Settlement Amount.
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19 19. Class Counsel’s declaration established that Class Counsel’s lodestar equaled
20 \$200,212.50 as of September 4, 2024. The declaration further established that Class Counsel
21 anticipated additional lodestar in the range of \$15,000 to \$25,000 through conclusion of the case
22 (including final approval and settlement administration). Accordingly, the multiplier to Class
23 Counsel in relation to the requested \$366,630 fee will fall in the range of 1.627 to 1.703.

24 20. The Court finds that the attorneys’ fees requested by Class Counsel is supported by a
25 lodestar cross-check. The Court further finds that Class Counsel’s hours and hourly rates are
26 reasonable. Class Counsel’s billing rates are within normal and customary ranges for timekeepers
27

1 with similar qualifications and experience in the San Francisco market. *See Cuiello v. Feld Ent.,*
 2 *Inc.*, 2015 WL 154197, *2 (N.D. Cal. Jan. 12, 2015) (“The Court has broad discretion in setting
 3 the reasonable hourly rates used in the lodestar calculation.”); *Ketchum v. Moses*, 24 Cal. 4th
 4 1122, 1132, 104 Cal. Rptr. 2d 377, 17 P.3d 735 (2001) (court can rely on its own experience);
 5 *accord Open Source Sec. v. Perens*, 803 F. App’x 73, 77 (9th Cir. 2020). The rates Class Counsel
 6 used are appropriate given the deferred and contingent nature of Class Counsel’s compensation.
 7 *See LeBlanc- Sternberg v. Fletcher*, 143 F.3d 748, 764 (2nd Cir. 1998) (“[C]urrent rates, rather
 8 than historical rates, should be applied in order to compensate for the delay in payment”)
 9 (citing *Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989)); *In re Wash. Pub. Power Supply Sys.*
 10 *Secs. Litig.*, 19 F.3d 1291, 1305 (9th Cir. 1994) (“The district court has discretion to compensate
 11 delay in payment in one of two ways: (1) by applying the attorneys’ current rates to all hours
 12 billed during the course of litigation; or (2) by using the attorneys’ historical rates and adding a
 13 prime rate enhancement.”).

14
 15
 16 21. The Court concludes that a fee award to Class Counsel at the requested amount,
 17 \$366,630, is justified. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (1998). It is appropriate
 18 based on Class Counsel’s efforts and the substantial benefits to the class. It is similar to awards
 19 in other cases, where, like here, the results obtained were excellent and the risks were great. It is
 20 supported by the lodestar cross-check, the efficiency of the litigation, the quality of the
 21 representation, and the contingent risk.

22
 23 22. Also, Class Counsel is entitled to reimbursement of reasonable out-of-pocket
 24 litigation expenses. Fed. R. Civ. P. 23(h); *see Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994)
 25 (attorneys may recover reasonable expenses that would typically be billed to paying clients in
 26 non-contingency matters.); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D.
 27 Cal. 1995) (approving reasonable costs in class action settlement). Costs compensable under Rule
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1 23(h) include “nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R.
2 Civ. P. 23(h). “The prevailing view is that expenses are awarded in addition to the fee
3 percentage.” *Jefferson v. H&M Hennes & Mauritz, L.P.*, 2013 U.S. Dist. LEXIS 2875 at *9 (C.D.
4 Cal. Jan. 7, 2013) (quoting 1 ALBA CONTE, ATTORNEY FEE AWARDS § 2:08 at 50-51).

5 23. Class Counsel has advanced all litigation expenses incurred in this case. Class
6 Counsel’s total incurred litigation expenses as of this date equal \$36,157.75. This figure is less
7 than the \$40,000 in litigation expenses awardable under the Settlement Agreement. The Court
8 finds that Class Counsel’s litigation expenses are reasonable, were necessarily incurred in the
9 litigation, and shall be reimbursed to Class Counsel, in an amount to not exceed \$40,000, from
10 the Gross Settlement Amount.

12 **Class Representative Incentive Awards**

13 24. Plaintiffs’ request an award of Class Representative Incentive Awards in the
14 cumulative amount of \$10,000 to be paid as follows: \$5,000 each to Named Plaintiffs Adrianna
15 Jarrett and Mary Ngethe.

16 25. The Court finds the requested Class Representative Incentive Awards reasonable
17 based on the service each of the Class Representatives provided to the litigation and the risks they
18 took taking part in the litigation. The Court further finds the cumulative amount of \$10,000
19 reasonable as it equals only 0.91% of the \$1,100,000 Gross Settlement Amount.
20

21 **Conclusion**

22 26. In accordance with the findings above, from the \$1,100,000 Gross Settlement
23 Amount, the Court orders an award to Class Counsel, Sommers Schwartz, P.C., of \$366,630 in
24 attorneys’ fees and litigation expenses in an amount not to exceed \$40,000. The Court awards
25 Class Representative Incentive Awards in the amount of \$5,000 each to Named Plaintiffs
26 Adrianna Jarrett and Mary Ngethe.
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1 **IT IS SO ORDERED.**

2 Dated: _____, 2024

3 _____
4 HON. EDWARD M. CHEN
5 United States District Judge

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