

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

TONY JIMENEZ, individually and on)	
behalf of others similarly situated,)	
)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
KOHL'S DEPARTMENT STORES, INC.)	
and KOHL'S CORPORATION,)	
)	
Defendants.)	

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332(a), 1441, and 1446, Defendants Kohl's, Inc.¹ ("Kohl's") and Kohl's Corporation ("Kohl's Corp.") (collectively, "Defendants") hereby remove this action from the Superior Court of Middlesex County, Massachusetts, to the United States District Court for the District of Massachusetts, Eastern Division. In support of this Notice of Removal, Defendants state as follows:

1. On June 10, 2020, Plaintiff Tony Jimenez ("Plaintiff") filed a putative class action complaint against Defendants in the Superior Court of Middlesex County, Massachusetts, captioned *Tony Jimenez v. Kohl's Department Stores, Inc. and Kohl's Corporation*, No. 2081CV01337 (the "State Court Action").
2. Defendants accepted service of the complaint in the State Court Action on June 16, 2020.
3. This Notice of Removal is timely filed under 28 U.S.C. § 1446(b)(1) because it is filed within 30 days of the date that Defendants were served with the initial pleading.

¹ Kohl's, Inc. was erroneously named in the Complaint as Kohl's Department Stores, Inc.

4. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81.1, copies of all process, pleadings, and orders that have been filed and served in the State Court Action are attached hereto as Exhibit 1.

5. Plaintiff alleges that Defendants violated the Massachusetts Fair Wages Act, Mass. Gen. Laws c. 151 §§ 1A, 1B, by misclassifying him as exempt from overtime pay and failing to pay him overtime premiums for hours beyond 40 in a workweek. (Compl. ¶¶ 4-5.) He seeks to bring claims on behalf of himself and on behalf of a putative class of assistant store managers at Kohl's stores in Massachusetts. (Compl. ¶ 3.)

I. Diversity Jurisdiction Pursuant to 28 U.S.C. § 1332(a)

6. Pursuant to 28 U.S.C. §§ 1332 and 1441(b), removal is proper because there is complete diversity of citizenship between Plaintiff and Defendants, and the amount in controversy exceeds \$75,000.

7. According to the allegations in the Complaint, Plaintiff is a citizen and resident of Massachusetts. (Compl. ¶ 12.)

8. Kohl's is a Delaware corporation with its headquarters and principal place of business in Wisconsin, and consequently is a citizen of Delaware and Wisconsin. (Compl. ¶ 13.)

9. Kohl's Corp. is a Wisconsin corporation with its headquarters and principal place of business in Wisconsin, and consequently is a citizen of Wisconsin.

10. Because Plaintiff is a citizen of Massachusetts, while Defendants are citizens of Delaware and Wisconsin, there is complete diversity of citizenship.

11. For purposes of assessing the amount in controversy, Plaintiff's allegations are accepted as true. *See, e.g., St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938) (noting it does not matter, for purposes of the amount in controversy, that "the complaint discloses the existence of a valid defense to the claim").

12. Plaintiff alleges he is seeking “unpaid overtime wages, and penalty wages” (treble damages), attorneys’ fees, interest, costs, and “[i]njunctive relief in the form of an order directing Defendants to comply with state law.” (Compl. Demand for Relief.) Because the Massachusetts wage law under which Plaintiff brings his claims provides for recovery of attorneys’ fees to a successful plaintiff, attorneys’ fees are considered when assessing the amount in controversy, in addition to the allegedly unpaid wages, penalty damages, costs, and injunctive relief that Plaintiff is seeking.

13. Plaintiff alleges he was “schedule[d]...to work 45 hours or more each week (over 50 during holiday seasons), but...regularly work[ed] 50-60 hours per week” and was not paid any overtime. (Compl. ¶ 2.) He alleges he should have been paid overtime but was misclassified as exempt. (Compl. ¶ 4.)

14. As an assistant store manager (“ASM”), Plaintiff’s weekly salary in 2016 was \$1,017.86, his weekly salary was \$1,055.08 in 2017, and his weekly salary was \$1,078.00 in 2018. If Plaintiff assumes that the salary was meant to compensate him for 45 hours of work during each workweek, calculates his regular rate of pay by dividing the weekly salary by the 45 hours, seeks overtime wages at 0.5 times the regular rate of pay for the first 5 hours of alleged overtime worked each week (i.e. between 40-45 hours) and 1.5 times the regular rate of pay for every additional overtime hour he allegedly worked each week (i.e. every hour over 45 hours), and then multiplies such alleged respective overtime rate by the number of hours of alleged overtime worked each week (ranging from 10-20 alleged hours), then multiplies that number by the total workweeks that he was employed as an ASM during each respective year (June 24,

2016 to July 8, 2018), and applies treble damages, then the alleged range of damages sought by Plaintiff would be as follows:²

	50 Hours Worked Per Workweek (10 OT Hour Per Week)	55 Hours Worked Per Workweek (15 OT Hour Per Week)	60 Hours Worked Per Workweek (20 OT Hour Per Week)
2016	\$18,321.48	\$32,062.59	\$45,803.75
2017	\$36,576.11	\$64,008.19	\$91,440.27
2018	\$19,404	\$33,957	\$48,510
Total	\$74,301.59	\$130,027.78	\$185,754.02

15. According to publicly filed documents, attorney Shannon Liss-Riordan charges \$850 per hour. Exhibit 2, Motion for Attorneys' Fees, Costs, Expenses, and Incentive Awards in *O'Connor v. Uber Technologies, Inc.* at 16.

16. According to publicly filed documents, attorney Richard Hayber charges more than \$285 per hour. Exhibit 3, Decl. of Richard E. Hayber in *Olender v. The Clark Companies, N.A.* at ¶ 12 (identifying blended rate including attorney and paralegal time of more than \$285).

17. Accordingly, both the diversity and amount-in-controversy prongs are satisfied, and removal is therefore proper under 28 U.S.C. §§ 1332(a) and 1441(b).

II. Venue

18. Venue is proper in the District of Massachusetts, Eastern Division, because the State Court Action is pending within the jurisdictional confines of this Court. 28 U.S.C. § 1446(a).

² Defendants does not waive any arguments or defenses against Plaintiff's claim for or calculation of damages.

19. Defendants will provide written notice of the filing of this Notice of Removal to Plaintiff and the Superior Court of Middlesex County.

WHEREFORE, Defendants hereby remove this civil action to this Court on the bases identified above.

Dated: July 16, 2020

Respectfully submitted,

The Defendants,

**KOHL'S, INC. and
KOHL'S CORPORATION,**
By their counsel,

/s/ William T. Harrington

William T. Harrington
Harrington Law, P.C..
738 Main Street
Hingham, Massachusetts 02043
Telephone: (781) 385-7230
wharringtonlaw@gmail.com

Joel Griswold (jcgriswold@bakerlaw.com)
(*pro hac vice* forthcoming)
BAKER & HOSTETLER LLP
200 South Orange Avenue, Suite 2300
Orlando, Florida 32801-3432
Telephone: (407) 649-4088

Bonnie Keane DelGobbo (bdelgobbo@bakerlaw.com)
(*pro hac vice* forthcoming)
BAKER & HOSTETLER LLP
1 North Wacker Drive, Suite 4500
Chicago, Illinois 60606-1901
Telephone: (312) 416-8185

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on July 16, 2020, he caused a true copy of the foregoing Notice of Removal to be filed via the Court's CM/ECF system, which will send notice of the filing to all counsel of record. Parties may access the filing through the Court's CM/ECF system.

/s/ William T. Harrington

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Tony Jimenez

(b) County of Residence of First Listed Plaintiff Worcester
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Shannon Liss-Riordan, Esq., Lichten & Liss-Riordan, P.C.
729 Boylston St., Suite 2000, Boston, MA 02116800

DEFENDANTS

Kohl's Department Stores, Inc. and Kohl's Corporation

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
William T. Harrington, Harrington & Rice, P.C.
738 Main Street, Hingham, MA 02043
(781) 385-7230, wharringtonlaw@gmail.com

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES		
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act		
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutional of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. s. 1332

Brief description of cause:
Putative Class Action seeking overtime pay under Massachusetts law.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

07/16/2020 /s/ William T. Harrington

FOR OFFICE USE ONLY

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) _____
Tony Jimenez v. Kohl's Department Stores, Inc. and Kohl's Corporation

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

I. 160, 400, 410, 441, 535, 830*, 835*, 850, 891, 893, R.23, REGARDLESS OF NATURE OF SUIT.

II. 110, 130, 190, 196, 370, 375, 376, 440, 442, 443, 445, 446, 448, 470, 751, 820*, 840*, 895, 896, 899.

III. 120, 140, 150, 151, 152, 153, 195, 210, 220, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 367, 368, 371, 380, 385, 422, 423, 430, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 560, 625, 690, 710, 720, 740, 790, 791, 861-865, 870, 871, 890, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

n/a

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES

NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES

NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES

NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES

NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES

NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division

Central Division

Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division

Central Division

Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES

NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME William T. Harrington

ADDRESS 738 Main Street, Hingham, MA 02043

TELEPHONE NO. 781-385-7230

(CategoryForm1-2019.wpd)

[Skip to main content](#)**2081CV01337 Jimenez, Tony vs. Kohl's Department Stores, Inc. et al**

- Case Type
- Contract / Business Cases
- Case Status
- Open
- File Date
- 06/10/2020
- DCM Track:
- F - Fast Track
- Initiating Action:
- Employment Contract
- Status Date:
- 06/10/2020
- Case Judge:
-
- Next Event:
-

[All Information](#) [Party](#) [Tickler](#) [Docket](#) [Disposition](#) |

Party Information

Jimenez, Tony
- Plaintiff

Alias**Party Attorney**

- Attorney
- Cassorla, Esq., Michelle
- Bar Code
- 688429
- Address
- Lichten & Liss-Riordan
729 Boylston St
Suite 2000
Boston, MA 02116
- Phone Number
- (617)994-5800
- Attorney
- Liss-Riordan, Esq., Shannon
- Bar Code
- 640716
- Address
- Lichten & Liss-Riordan, P.C.
729 Boylston St
Suite 2000
Boston, MA 02116
- Phone Number
- (617)994-5800

[More Party Information](#)

Kohl's Department Stores, Inc.
- Defendant

Alias**Party Attorney**

- Attorney
- Harrington, Esq., William T
- Bar Code
- 564445
- Address
- Harrington Law, P.C.
738 Main St
Hingham, MA 02043
- Phone Number
- (781)385-7230

[More Party Information](#)

Kohl's Corporation
- Defendant

Alias**Party Attorney**

Case 2:20-cv-01247-SCD Filed 07/16/20 Page 1 of 22 Document 1-3

- Attorney
- Harrington, Esq., William T
- Bar Code
- 564445
- Address
- Harrington Law, P.C.
- 738 Main St
- Hingham, MA 02043
- Phone Number
- (781)385-7230

[More Party Information](#)

Ticklers

<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Service	06/10/2020	09/08/2020	90	
Answer	07/01/2020	10/29/2020	120	
Rule 12/19/20 Served By	07/01/2020	10/29/2020	120	
Rule 12/19/20 Filed By	07/01/2020	11/30/2020	152	
Rule 12/19/20 Heard By	07/01/2020	12/28/2020	180	
Rule 15 Served By	07/01/2020	10/29/2020	120	
Rule 15 Filed By	07/01/2020	11/30/2020	152	
Rule 15 Heard By	06/10/2020	12/07/2020	180	
Discovery	07/01/2020	04/27/2021	300	
Rule 56 Served By	07/01/2020	05/27/2021	330	
Rule 56 Filed By	07/01/2020	06/28/2021	362	
Final Pre-Trial Conference	07/01/2020	10/25/2021	481	
Judgment	07/01/2020	07/01/2022	730	
Status Review	07/09/2020	07/24/2020	15	

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
06/10/2020	Case assigned to: DCM Track F - Fast Track was added on 06/10/2020		Image
06/10/2020	Complaint electronically filed.	1	Image
06/10/2020	Civil action cover sheet filed.	2	Image
07/01/2020	Attorney appearance On this date William T Harrington, Esq. added as Private Counsel for Defendant Kohl's Department Stores, Inc.		Image
07/01/2020	Attorney appearance On this date William T Harrington, Esq. added as Private Counsel for Defendant Kohl's Corporation		
07/02/2020	Party(s) file Stipulation of Acceptance of Service Applies To: Harrington, Esq., William T (Attorney) on behalf of Kohl's Corporation (Defendant); Liss-Riordan, Esq., Shannon (Attorney) on behalf of Jimenez, Tony (Plaintiff)	3	Image
07/02/2020	Plaintiff, Defendant Tony Jimenez, Kohl's Corporation's Assented to Motion to file a response of pleading	4	Image
07/09/2020	Endorsement on Motion to extend time for filing a response to complaint up to 7/21/2020 (#4.0): ALLOWED Dated 7/6/2020		Image

Case Disposition

Disposition

Date

Case Judge

Pending

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

Superior Court
Civil Action No. _____

 TONY JIMENEZ, individually and)
 on behalf of others similarly situated,)
)
 Plaintiff,)
)
 v.)
)
 KOHL'S DEPARTMENT STORES, INC. and)
 KOHL'S CORPORATION,)
)
 Defendant.)

JURY DEMANDED

JP

RECEIVED

6/10/2020

CLASS ACTION COMPLAINT

1. Retail employers must pay overtime to their assistant managers unless their primary duty is management. See M.G.L. ch. 151 sec. 1A.
2. Defendants Kohl's Department Stores, Inc. and Kohl's Corporation ("Kohl's"), assigns non-management work to its Assistant Store Managers (ASMs) which generally takes up more than 50% of their time, closely supervises their work, and pays them only a little more than its non-exempt employees. It schedules them to work 45 hours or more each week (over 50 during holiday seasons), but schedules so few hourly staff that in fact they regularly work 50-60 hours per week. Kohl's classifies all of its ASMs as exempt "executives" and does not pay them overtime.
3. This action is brought by Plaintiff for himself and on behalf of other similarly situated employees who have been classified as Assistant Store Managers ("ASMs") at Kohl's stores in Massachusetts.

4. Kohl's has misclassified Plaintiff, and other ASMs in these positions, as exempt under Massachusetts law and has failed to pay them overtime pay for hours worked beyond forty (40) in a workweek.

5. Plaintiff alleges, pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure, on behalf of himself and a class of other similarly situated current and former ASMs of Defendants employed within the Commonwealth of Massachusetts, that he is entitled to back wages from the Defendants for all overtime work for which he did not receive overtime premium pay and an award of penalty damages, attorneys' fees and costs, pursuant to the Massachusetts Minimum Fair Wages Act, Mass. Gen. Laws c. 151 §§ 1A, 1B.

THE PARTIES

12. Plaintiff Tony Jimenez is a resident of Shrewsbury, Massachusetts. He worked as an Assistant Store Manager of Apparel & Accessories for Defendants from approximately February 2016 to July 2018 at Kohl's Framingham store.

13. Defendant Kohl's Department Stores, Inc. is a corporation organized and existing under the laws of the state of Delaware. Its principal place of business is located at N56 W17000 Ridgewood Drive, Menomonee Falls, Wisconsin.

14. Defendant Kohl's Corporation is a corporation organized and existing under the laws of the state of Delaware. Its principal place of business is located at N56 W1700 Ridgewood Drive, Memomonee Falls, Wisconsin.

15. Defendants own and operate retail department stores throughout Massachusetts.

16. Defendants are employers within the meaning of the Massachusetts Minimum

Fair Wages Act.

STATEMENT OF FACTS

17. Defendants have approximately 25 stores in Massachusetts.
18. Defendants employ Assistant Store Managers (“ASMs”) in all of their stores.
19. Although there are categories of ASMs that focus on different areas, the basic duties of an ASM are the same. Defendants provide that each of the ASMs’ primary duty is to perform mostly the non-exempt labor of the stores in which they work, including unloading trucks, unpacking merchandise, filling on-line orders, stocking shelves, customer service and operating cash registers.
20. Among the categories of Kohl’s ASM are ASM of Apparel / Accessories (“ASM AA”), ASM of Children / Footwear / Home (“ASM CFH”), ASM of Operations / Children / Footwear / Home (“ASM OCFH”), and ASM of Human Resources and Operations (“ASM – HR Ops”). The duties for these four categories of ASMs are contained on two Position Descriptions dated March 2012 and are similar with only minor differences.
21. Kohl’s has classified all ASMs as exempt from overtime, no matter what state, what size store, or what type of ASM. It pays them a flat weekly salary and does not pay them overtime compensation for the hours they work over 40 in a week.
22. Kohl’s set payroll budgets for each store each week. Kohl’s tracks each store’s payroll each week and each month to determine if that store was keeping its payroll under the budget it set. Each store has to use its ASMs to do hourly work in order to meet its payroll budget obligations.
23. Under store managers at all Kohl’s stores, in addition to ASMs, there are also employees in the stores who are paid on an hourly basis, including Area Supervisors,

Department Supervisors, Specialists and Associates.

24. Kohl's has had a practice in its stores to keep its hourly payroll expenses down. It has done this in part by sending hourly associates home before the end of their shift and not replacing them when they called out. Kohl's then requires the ASMs to finish the hourly tasks of the hourly associates who had been scheduled but were sent home early or not replaced.

25. Defendants require that all ASMs report directly to a Store Manager, who is the real management authority of the store.

26. Defendants usually schedule ASMs for 45 hours per week and they inform ASMs of this fact when they are hired. During the holiday time of year (the week before Thanksgiving through the end of December) Defendants schedule ASMs for six days and 54 hours per week.

27. Defendants also schedule ASMs to do inventory once per year. During the week before and the week of inventory, Defendants assign ASMs approximately 60 hours of work.

28. Defendants set payroll budgets for their stores that are so low that there is not enough hourly staff available to allow the ASMs to spend most of their time managing. Further, Defendants have a practice of not replacing hourly associates when they call out during the week and of sending them home early to keep the hourly payroll expense down. For these reasons, Defendants usually require their ASMs to work longer work weeks than the 45 hours that they were scheduled for.

29. Defendants closely monitor the work performed by ASMs to ensure compliance with corporate directives. Their Store Managers monitor the work they do each day to

see that it complies with the strict requirements set by Kohl's. They measure the performance of ASMs each year in evaluations which reflect how close the ASMs work performance adheres to Kohl's expectations.

30. Kohl's uniformly trained its ASMs through training materials.

31. Defendants use common performance measurement standards to measure the performance of the work of ASMs.

32. Defendants classify all ASMs as exempt from the overtime requirements of applicable state law, regardless of store location, sales volume, store size, climate, experience, number of ASMs in a store, prior experience, the number of employees in the store, the shift they worked, or other factors.

33. Defendants' corporate officers decided to classify ASMs as exempt based on the uniform job descriptions of ASM positions.

34. While Defendants assign some management duties to them, those duties are routine, and are closely and directly supervised by their superiors. ASMs are not given significant discretion to manage and their management work is not more important than their non-management work.

35. ASMs do not spend most of their time on exempt tasks. Instead, most of their time is spent performing non-exempt duties, such as unloading freight, stocking shelves, filling on-line orders, ensuring that the merchandise was arranged according to company standards, performing recovery, counting inventory, and organizing the store.

36. The non-exempt duties that ASMs perform are more important to the Defendants' business model than the exempt duties that they are required to perform.

37. Defendants closely and directly supervise ASMs through periodic inspections,

audits and annual reviews. Store Managers also inspect ASM work on a daily basis.

38. Defendants pay the ASMs only a little more than the hourly workers in the stores, if those workers worked the same number of hours that the ASMs did, overtime included.

39. Defendants classify their ASMs as exempt executives in conscious disregard for the facts and the law. Defendants have at all times been fully aware that the primary duty of the ASMs is not management and that the law does not permit employers to classify employees as exempt executives unless their primary duty is management. Defendants also have been aware that ASMs work more than 40 hours per week without overtime pay.

40. Plaintiff usually worked more than 40 hours per week during the period of this claim, but did not receive overtime pay.

41. Notwithstanding this knowledge, Defendants has classified Plaintiff and all ASMs as exempt executives in conscious disregard of their right to be paid overtime pay.

42. As a result of Defendants' willful violations of law, Plaintiff and all other similarly situated ASMs have suffered damages in that they have not received proper compensation.

COUNT I
Failure to Pay Overtime in Violation of the Massachusetts
Minimum Fair Wages Act,
M.G.L. c. 151 §§ 1A, 1B

43. Plaintiff brings this cause of action under the Massachusetts Minimum Fair Wages Act, M.G.L. c. 151 §§ 1A, 1B, and Rule 23 of the Massachusetts Rules of Civil Procedure, for himself and on behalf of ASMs who have worked in Massachusetts.

CLASS ACTION CLAIM

44. Class certification for these claims is appropriate under Mass. R. Civ. P. 23 because all the requirements of the Rule are met.

45. The class is so numerous that joinder of all members is impracticable. Upon information and belief, Defendants employ at least 100 ASMs in Massachusetts in the past three years.

46. There are questions of law and fact common to the class, including whether the putative class members' primary duty was management and whether the putative class members worked overtime but were not paid overtime in violation of Massachusetts law.

47. The named Plaintiff's claims are typical of those of the class members.

Plaintiff's claims encompass the challenged practices and course of conduct of Defendants. Furthermore, Plaintiff's legal claims are based on the same legal theories as the claims of the putative class members. The legal issues as to which laws are violated by such conduct apply equally to Plaintiff and to the class.

48. The named Plaintiff will fairly and adequately protect the interests of the class. The Plaintiff's claims are not antagonistic to those of the class and he has hired counsel skilled in the prosecution of class actions.

49. Common questions of law and fact predominate over questions affecting only individuals, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy. This proposed class action presents few management difficulties, conserves the resources of the parties and the court system, protects the rights of each class member and maximizes recovery to them.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

50. Pursuant to the state law requirements as set forth in Mass. Gen. L. c. 149 § 150, the above-named plaintiff filed his statutory claims with the Office of the Attorney General.

DEMAND FOR RELIEF

Plaintiff claims:

- a. Certification of a Massachusetts class and the appointment of Plaintiff and his counsel to represent that class;
- b. An award of unpaid overtime wages, and penalty wages, under the Massachusetts Minimum Fair Wages Act, M.G.L. c. 151 §§ 1A, 1B;
- c. Attorneys' fees under the Massachusetts Minimum Fair Wages Act, M.G.L. c. 151 §§ 1A, 1B;
- d. Interest and costs;
- e. Injunctive relief in the form of an order directing Defendants to comply with state law as set forth herein;
- f. Such other relief as in law or equity may pertain.

JURY DEMAND

Plaintiff demands a trial by jury by all issues so triable.

Dated: June 10, 2020

Respectfully submitted,

TONY JIMENEZ, individually and on behalf of other similarly situated individuals

By his attorneys,

Shannon Liss-Riordan

Shannon Liss-Riordan, BBO# 640716
Michelle Cassorla, BBO# 688429
LICHTEN & LISS-RIORDAN P.C.
729 Boylston St., Suite 2000
Boston, Massachusetts 02116
Telephone: (617) 994-5800
Facsimile: (617) 994-5801
sliss@llrlaw.com
mcassorla@llrlaw.com

Richard E. Hayber
(*pro hac vice* forthcoming)
Hayber McKenna & Dinsmore
221 Main Street, Suite 502
Hartford, CT
(860) 522-8888 telephone
(860) 218-9555 facsimile
rhayber@hayberlawfirm.com

CIVIL ACTION COVER SHEET INSTRUCTIONS

SELECT CATEGORY THAT BEST DESCRIBES YOUR CASE

AC Actions Involving the State/Municipality *

- AA1 Contract Action involving Commonwealth, Municipality, MBTA, etc. (A)
- AB1 Tortious Action involving Commonwealth, Municipality, MBTA, etc. (A)
- AC1 Real Property Action involving Commonwealth, Municipality, MBTA etc. (A)
- AD1 Equity Action involving Commonwealth, Municipality, MBTA, etc. (A)
- AE1 Administrative Action involving Commonwealth, Municipality, MBTA, etc. (A)

CN Contract/Business Cases

- A01 Services, Labor, and Materials (F)
- A02 Goods Sold and Delivered (F)
- A03 Commercial Paper (F)
- A04 Employment Contract (F)
- A06 Insurance Contract (F)
- A08 Sale or Lease of Real Estate (F)
- A12 Construction Dispute (A)
- A14 Interpleader (F)
- BA1 Governance, Conduct, Internal Affairs of Entities (A)
- BA3 Liability of Shareholders, Directors, Officers, Partners, etc. (A)
- BB1 Shareholder Derivative (A)
- BB2 Securities Transactions (A)
- BC1 Mergers, Consolidations, Sales of Assets, Issuance of Debt, Equity, etc. (A)
- BD1 Intellectual Property (A)
- BD2 Proprietary Information or Trade Secrets (A)
- BG1 Financial Institutions/Funds (A)
- BH1 Violation of Antitrust or Trade Regulation Laws (A)
- A99 Other Contract/Business Action - Specify (F)

* Choose this case type if ANY party is the Commonwealth, a municipality, the MBTA, or any other governmental entity UNLESS your case is a case type listed under Administrative Civil Actions (AA).

† Choose this case type if ANY party is an incarcerated party, UNLESS your case is a case type listed under Administrative Civil Actions (AA) or is a Prisoner Habeas Corpus case (E97).

ER Equitable Remedies

- D01 Specific Performance of a Contract (A)
- D02 Reach and Apply (F)
- D03 Injunction (F)
- D04 Reform/ Cancel Instrument (F)
- D05 Equitable Replevin (F)
- D06 Contribution or Indemnification (F)
- D07 Imposition of a Trust (A)
- D08 Minority Shareholder's Suit (A)
- D09 Interference in Contractual Relationship (F)
- D10 Accounting (A)
- D11 Enforcement of Restrictive Covenant (F)
- D12 Dissolution of a Partnership (F)
- D13 Declaratory Judgment, G.L. c.231A (A)
- D14 Dissolution of a Corporation (F)
- D99 Other Equity Action (F)

PA Civil Actions Involving Incarcerated Party †

- PA1 Contract Action involving an Incarcerated Party (A)
- PB1 Tortious Action involving an Incarcerated Party (A)
- PC1 Real Property Action involving an Incarcerated Party (F)
- PD1 Equity Action involving an Incarcerated Party (F)
- PE1 Administrative Action involving an Incarcerated Party (F)

TR Torts

- B03 Motor Vehicle Negligence - Personal Injury/Property Damage (F)
- B04 Other Negligence - Personal Injury/Property Damage (F)
- B05 Products Liability (A)
- B06 Malpractice - Medical / Wrongful Death (A)
- B07 Malpractice - Other (A)
- B08 Wrongful Death, G.L. c.229 §2A (A)
- B15 Defamation (A)
- B19 Asbestos (A)
- B20 Personal Injury - Slip & Fall (F)
- B21 Environmental (F)
- B22 Employment Discrimination (F)
- BE1 Fraud, Business Torts, etc. (A)
- B99 Other Tortious Action (F)

RP Real Property

- C01 Land Taking (F)
- C02 Zoning Appeal, G.L. c. 40A (F)
- C03 Dispute Concerning Title (F)
- C04 Foreclosure of a Mortgage (X)
- C05 Condominium Lien & Charges (X)
- C99 Other Real Property Action (F)

MC Miscellaneous Civil Actions

- E18 Foreign Discovery Proceeding (X)
- E97 Prisoner Habeas Corpus (X)
- E22 Lottery Assignment, G.L. c. 10 §28 (X)

AB Abuse/Harassment Prevention

- E15 Abuse Prevention Petition, G.L. c. 209A (X)
- E21 Protection from Harassment, G.L. c. 258E(X)

AA Administrative Civil Actions

- E02 Appeal from Administrative Agency, G.L. c. 30A (X)
- E03 Certiorari Action, G.L. c.249 §4 (X)
- E05 Confirmation of Arbitration Awards (X)
- E06 Mass Antitrust Act, G. L. c. 93 §9 (A)
- E07 Mass Antitrust Act, G. L. c. 93 §8 (X)
- E08 Appointment of a Receiver (X)
- E09 Construction Surety Bond, G.L. c. 149 §§29, 29A (A)
- E10 Summary Process Appeal (X)
- E11 Worker's Compensation (X)
- E16 Auto Surcharge Appeal (X)
- E17 Civil Rights Act, G.L. c.12 §11H (A)
- E24 Appeal from District Court Commitment, G.L. c.123 §9(b) (X)
- E25 Pleural Registry (Asbestos cases) (X)
- E94 Forfeiture, G.L. c.265 §56 (X)
- E95 Forfeiture, G.L. c.94C §47 (F)
- E99 Other Administrative Action (X)
- Z01 Medical Malpractice - Tribunal only, G.L. c. 231 §60B (F)
- Z02 Appeal Bond Denial (X)

SO Sex Offender Review

- E12 SDP Commitment, G.L. c. 123A §12 (X)
- E14 SDP Petition, G.L. c. 123A §9(b) (X)

RC Restricted Civil Actions

- E19 Sex Offender Registry, G.L. c.6 §178M (X)
- E27 Minor Seeking Consent, G.L. c.112 §12S (X)

TRANSFER YOUR SELECTION TO THE FACE SHEET

EXAMPLE:


CODE NO.	TYPE OF ACTION (specify)	TRACK	HAS A JURY CLAIM BEEN MADE?
B03	Motor Vehicle Negligence-Personal Injury	<u> F </u>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

DUTY OF THE PLAINTIFF - The plaintiff shall set forth, on the face of the civil action cover sheet (or attach additional sheets as necessary), a statement specifying the facts on which the plaintiff relies to determine money damages. A copy of such civil action cover sheet, including the statement as to the damages, shall be served with the complaint. **A clerk-magistrate shall not accept for filing a complaint, except as otherwise provided by law, unless it is accompanied by such a statement signed by the attorney or pro se party.**

DUTY OF THE DEFENDANT - If the defendant believes that the statement of damages filed by the plaintiff is inadequate, the defendant may file with his/her answer a statement specifying the potential damages which may result if the plaintiff prevails.

**A CIVIL COVER SHEET MUST BE FILED WITH EACH COMPLAINT.
FAILURE TO COMPLETE THIS COVER SHEET THOROUGHLY AND ACCURATELY
MAY RESULT IN DISMISSAL OF THIS ACTION.**

CIVIL TRACKING ORDER (STANDING ORDER 1- 88)	DOCKET NUMBER 2081CV01337	Trial Court of Massachusetts The Superior Court 
CASE NAME: Jimenez, Tony vs. Kohl's Department Stores, Inc. et al		Michael A. Sullivan, Clerk of Court Middlesex County
TO: File Copy		COURT NAME & ADDRESS Middlesex County Superior Court - Woburn 200 Trade Center Woburn, MA 01801

TRACKING ORDER - F - Fast Track

You are hereby notified that this case is on the track referenced above as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

STAGES OF LITIGATION

DEADLINE

	SERVED BY	FILED BY	HEARD BY
Service of process made and return filed with the Court		09/08/2020	
Response to the complaint filed (also see MRCP 12)		10/29/2020	
All motions under MRCP 12, 19, and 20	10/29/2020	11/30/2020	12/28/2020
All motions under MRCP 15	10/29/2020	11/30/2020	12/07/2020
All discovery requests and depositions served and non-expert depositions completed	04/27/2021		
All motions under MRCP 56	05/27/2021	06/28/2021	
Final pre-trial conference held and/or firm trial date set			10/25/2021
Case shall be resolved and judgment shall issue by			07/01/2022

The final pre-trial deadline is not the scheduled date of the conference. You will be notified of that date at a later time.
Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.
 This case is assigned to

DATE ISSUED 07/01/2020	ASSISTANT CLERK Martha Fulham	PHONE (781)939-2760
----------------------------------	---	-------------------------------

CERTIFICATE OF SERVICE

I hereby certify that, on July 1, 2020, I served a copy of this document by email, per the March 30, 2020 Supreme Judicial Court Order concerning email service in cases under Rule 5(b) of the Mass. Rules of Civil Procedure, upon the following:

Shannon Liss-Riordan, Esq.
Lichten & Liss-Riordan, P.C.
729 Boylston St., Suite 2000
Boston, MA 02116
sliss@llrlaw.com

Michelle Cassorla, Esq.
Lichten & Liss-Riordan, P.C.
729 Boylston St., Suite 2000
Boston, MA 02116
mcassorla@llrlaw.com

Richard E. Hayber, Esq.
Hayber McKenna & Dinsmore
221 Main Street, Suite 502
Hartford, CT
rhayber@hayberlawfirm.com

Joel Griswold, Esq.
BakerHostetler
200 South Orange Ave., Suite 2300
Orlando, FL 32801
jcgriswold@bakerlaw.com

/s/ William T. Harrington
William T. Harrington

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT DEPARTMENT

_____)

TONY JIMENEZ, individually and on behalf of)

others similarly situated,)

)

 Plaintiff)

)

v.)

)

KOHL’S DEPARTMENT STORES, INC. and)

KOHL’S CORPORORATION,)

)

 Defendants)

_____)

RECEIVED

7/2/2020

CIVIL ACTION NO. 2081CV01337

STIPULATION RE ACCEPTANCE OF SERVICE

The Parties hereby stipulate and agree that the Defendants accepted service of process on June 16, 2020 and that such acceptance does not waive any defenses or objections to the lawsuit, the court’s jurisdiction, or the venue of the action and that is simply operates as a waiver of any objections to absence or failure of a summons or service.

Respectfully submitted,

The Plaintiff,

The Defendants,

TONY JIMENEZ, individually and on behalf of others similarly situated
By his attorneys,

KOHL’S DEPARTMENT STORES, INC. and KOHL’S CORPORORATION,
By their attorneys,

/s/ Shannon Liss-Riordan
Shannon Liss-Riordan (BBO No. 640716)
Michelle Cassorla (BBO No. 688429)
Lichten & Liss-Riordan, P.C.
729 Boylston St., Suite 2000
Boston, MA 02116
(617) 994-5800
sliss@llrlaw.com
mcassorla@llrlaw.com

/s/ William T. Harrington
William T. Harrington (BBO No. 564445)
Harrington Law, P.C.
738 Main Street
Hingham, MA 02043
(781) 385-7230
wharringtonlaw@gmail.com

Richard E. Hayber (pro hac vice forthcoming)
Hayber McKenna & Dinsmore
221 Main Street, Suite 502
Hartford, CT
(860) 522-888
rhayber@hayberlawfirm.com

Joel Griswold (pro hac vice forthcoming)
BakerHostetler
200 South Orange Ave., Suite 2300
Orlando, FL 32801
(407) 649-4088
jcgriswold@bakerlaw.com

Dated: July 2, 2020

CERTIFICATE OF SERVICE

I hereby certify that, on July 2, 2020, I served a copy of this document by email, per the March 30, 2020 Supreme Judicial Court Order concerning email service in cases under Rule 5(b) of the Mass. Rules of Civil Procedure, upon the following:

Shannon Liss-Riordan, Esq.
Lichten & Liss-Riordan, P.C.
729 Boylston St., Suite 2000
Boston, MA 02116
sliss@llrlaw.com

Michelle Cassorla, Esq.
Lichten & Liss-Riordan, P.C.
729 Boylston St., Suite 2000
Boston, MA 02116
mcassorla@llrlaw.com

Richard E. Hayber, Esq.
Hayber McKenna & Dinsmore
221 Main Street, Suite 502
Hartford, CT
rhayber@hayberlawfirm.com

Joel Griswold, Esq.
BakerHostetler
200 South Orange Ave., Suite 2300
Orlando, FL 32801
jcgriswold@bakerlaw.com

/s/ William T. Harrington

William T. Harrington

MIDDLESEX, ss COMMONWEALTH OF MASSACHUSETTS SUPERIOR COURT DEPARTMENT

TONY JIMENEZ, individually and on behalf of others similarly situated, Plaintiff v. KOHL'S DEPARTMENT STORES, INC. and KOHL'S CORPORORATION, Defendants

RECEIVED 7/2/2020

CIVIL ACTION NO. 2081CV01337

JOINT MOTION TO EXTEND TIME TO RESPOND TO COMPLAINT

As the Defendants accepted service on June 16, 2020, the response to the Complaint is currently due July 6. Given the complexity of the Complaint, the Parties jointly move to extend the time for the Defendants to respond to the Complaint up through July 21, 2020.

The Plaintiff, TONY JIMENEZ, individually and on behalf of others similarly situated By his attorneys, /s/ Shannon Liss-Riordan Shannon Liss-Riordan (BBO No. 640716) Michelle Cassorla (BBO No. 688429) Lichten & Liss-Riordan, P.C. 729 Boylston St., Suite 2000 Boston, MA 02116 (617) 994-5800 sliss@llrlaw.com mcassorla@llrlaw.com

Respectfully submitted, The Defendants, KOHL'S DEPARTMENT STORES, INC. and KOHL'S CORPORORATION, By their attorneys, /s/ William T. Harrington William T. Harrington (BBO No. 564445) Harrington Law, P.C. 738 Main Street Hingham, MA 02043 (781) 385-7230 wharringtonlaw@gmail.com

Richard E. Hayber (pro hac vice forthcoming)
Hayber McKenna & Dinsmore
221 Main Street, Suite 502
Hartford, CT
(860) 522-888
rhayber@hayberlawfirm.com

Joel Griswold (pro hac vice forthcoming)
BakerHostetler
200 South Orange Ave., Suite 2300
Orlando, FL 32801
(407) 649-4088
jcgriswold@bakerlaw.com

Dated: July 2, 2020

CERTIFICATE OF SERVICE

I hereby certify that, on July 2, 2020, I served a copy of this document by email, per the March 30, 2020 Supreme Judicial Court Order concerning email service in cases under Rule 5(b) of the Mass. Rules of Civil Procedure, upon the following:

Shannon Liss-Riordan, Esq.
Lichten & Liss-Riordan, P.C.
729 Boylston St., Suite 2000
Boston, MA 02116
sliss@llrlaw.com

Michelle Cassorla, Esq.
Lichten & Liss-Riordan, P.C.
729 Boylston St., Suite 2000
Boston, MA 02116
mcassorla@llrlaw.com

Richard E. Hayber, Esq.
Hayber McKenna & Dinsmore
221 Main Street, Suite 502
Hartford, CT
rhayber@hayberlawfirm.com

Joel Griswold, Esq.
BakerHostetler
200 South Orange Ave., Suite 2300
Orlando, FL 32801
jcgriswold@bakerlaw.com

/s/ William T. Harrington
William T. Harrington

P

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT DEPARTMENT

RECEIVED

7/2/2020

CIVIL ACTION NO. 2081CV01337

TONY JIMENEZ, individually and on behalf of others similarly situated,

Plaintiff

v.

KOHL'S DEPARTMENT STORES, INC. and KOHL'S CORPORORATION,

Defendants

JOINT MOTION TO EXTEND TIME TO RESPOND TO COMPLAINT

As the Defendants accepted service on June 16, 2020, the response to the Complaint is

currently due July 6. Given the complexity of the Complaint, the Parties jointly move to extend

the time for the Defendants to respond to the Complaint up through July 21, 2020.

Respectfully submitted,

The Defendants,

KOHL'S DEPARTMENT STORES, INC. and KOHL'S CORPORORATION,
By their attorneys,

The Plaintiff,

TONY JIMENEZ, individually and on behalf of others similarly situated
By his attorneys,

/s/ Shannon Liss-Riordan
Shannon Liss-Riordan (BBO No. 640716)
Michelle Cassorla (BBO No. 688429)
Lichten & Liss-Riordan, P.C.
729 Boylston St., Suite 2000
Boston, MA 02116
(617) 994-5800
sliss@llrlaw.com
mcassorla@llrlaw.com

/s/ William T. Harrington
William T. Harrington (BBO No. 564445)
Harrington Law, P.C.
738 Main Street
Hingham, MA 02043
(781) 385-7230
wharringtonlaw@gmail.com

2020 July 6
Alvaro
M. Liss-Riordan
M. Cassorla
13 + CEK

(Com)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SHANNON LISS-RIORDAN, (SBN 310719)
ADELAIDE PAGANO, *pro hac vice*
LICHTEN & LISS-RIORDAN, P.C.
729 Boylston Street, Suite 2000
Boston, MA 02116
Telephone: (617) 994-5800
Facsimile: (617) 994-5801
sliss@llrlaw.com
apagano@llrlaw.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DOUGLAS O’CONNOR, THOMAS COLOPY,
MATTHEW MANAHAN, and ELIE
GURFINKEL, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

UBER TECHNOLOGIES, INC.,
Defendant.

Case No. 13-3826-EMC,
Case No. 15-00262-EMC

**NOTICE OF MOTION AND MOTION
AND MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
PLAINTIFFS’ MOTION FOR
ATTORNEYS’ FEES, COSTS, EXPENSES,
AND INCENTIVE AWARDS**

Hon. Edward M. Chen

Hearing: July 18, 2019
Time: 1:30 p.m.
Courtroom: 5

HAKAN YUCESOY, ABDI MAHAMMED,
MOKHTAR TALHA, BRIAN MORRIS, and
PEDRO SANCHEZ, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

UBER TECHNOLOGIES, INC. and TRAVIS
KALANICK,
Defendants.

1 **TO DEFENDANT AND ITS ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on Thursday, July 18, 2019, at 1:30 p.m., or as soon
3 thereafter as the matter can be heard before the Honorable Edward M. Chen, in Courtroom 5,
4 17th Floor, U.S. District Court, Northern District of California, located at 450 Golden Gate
5 Avenue, San Francisco, CA, 94102, Plaintiffs will and hereby do move the Court pursuant to
6 Federal Rule of Civil Procedure 23 for an Order granting Plaintiffs' request for attorneys' fees
7 and costs and class representative service awards.

8 This Motion is based on this Notice of Motion and Motion; the Memorandum of Points
9 and Authorities below; the Declaration of Shannon Liss-Riordan filed concurrently herewith;
10 the Declarations of Elie Gurfinkel, Matthew Manahan, Pedro Sanchez, Mokhtar Talha, Aaron
11 Dulles, and Antonio Oliveira filed concurrently herewith; all supporting exhibits filed herewith;
12 all other pleadings and papers filed in this action; and any argument or evidence that may be
13 presented at the hearing in this matter.

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION 1

II. LEGAL STANDARD 1

III. DISCUSSION 5

 A. Counsel’s Fee Request is Fair and Reasonable and In Line With the Ninth Circuit’s 25% Benchmark 5

 B. Other Factors Support Plaintiffs’ Request for Fees 5

 i. Counsel Has Achieved Exceptional Results. 5

 ii. The Degree of Risk in This Litigation Was High. 7

 iii. Counsel’s Efforts Have Generated Substantial Benefits Beyond the Cash Settlement Fund 8

 iv. The Requested Percentage of the Fund of 25% Is In Line With Or Below The Market Rate 9

 v. Counsel Has Spent Six Years Representing the Class On a Contingent Basis. 10

 vi. Class Counsel Is Highly Experienced and Skilled 10

 vii. The Issues In This Case Are Both Novel and Extremely Complex 14

 viii. The Reaction of the Class 14

 ix. The Lodestar Cross-Check Confirms That Plaintiffs’ Request Is Reasonable 15

 a. Counsel’s Hours Worked are Reasonable 16

 b. Counsel’s Hourly Rates are Reasonable 19

 C. Plaintiffs’ Request for Class Representative Service Enhancements is Reasonable 23

IV. CONCLUSION 24

TABLE OF AUTHORITIES

Cases

Abdul-Haqq. Arise Virtual Solutions, Inc.,
AAA No. 32-160-00496-13 (April 15, 2015) 13

Ackerman v. W. Elec. Co.,
643 F. Supp. 836 (N.D. Cal. 1986) 16

Aichele v. City of Los Angeles,
2015 WL 5286028 (C.D. Cal. Sept. 9, 2015)..... 2

Alvarado v. FedEx Corp.,
2011 WL 4708133 (N.D. Cal. 2011)..... 17

Armstrong v. Brown,
805 F.Supp.2d 918 (N.D.Cal.2011) 22

Awuah et al. v. Coverall North America, Inc.,
707 F. Supp. 2d 80 (D. Mass. 2010) 12

Awuah et al. v. Coverall North America, Inc.,
460 Mass. 484 (2011)..... 12, 13

Barbosa v. Cargill Meat Sols. Corp.,
297 F.R.D. 431 (E.D. Cal. 2013) 4, 9

Barnes v. The Equinox Grp., Inc.,
2013 WL 3988804 (N.D. Cal. Aug. 2, 2013)..... 10

Beckman v. KeyBank, N.A.,
293 F.R.D. 467 (S.D.N.Y. 2013) 15

Bellinghausen v. Tractor Supply Co.,
306 F.R.D. 245 (N.D. Cal. 2015)..... 7

Betancourt v. Advantage Human Resourcing, Inc.,
2016 WL 344532 (N.D. Cal. Jan. 28, 2016) 20, 21, 22

Blum v. Stenson,
465 U.S 886 n.16 (1984)..... 3

Boeing Co. v. Van Gemert,
444 U.S. 472 (1980)..... 3

Bowerman v. Field Asset Servs., Inc.,
2018 WL 5982436 (N.D. Cal. Nov. 14, 2018)..... 22

Brawner v. Bank of Am. Nat'l Ass'n,
2016 WL 161295 (N.D. Cal. Jan. 14, 2016) 5

Brinskele v. United States,
2014 WL 4832263 (N.D. Cal. May 22, 2014) 15, 16

1 Buccellato v. AT & T Operations, Inc.,
 No. 10 Civ. 463, 2011 WL 3348055 (N.D. Cal. Jun. 30, 2011) 15

2 Californians for Disability Rights v. California Dept. of Transp.,
 3 2010 WL 8746910 (N.D. Cal. Dec.13, 2010) 22

4 Californians for Disability Rights, Inc. v. California Dept. of Transp.,
 5 C 06–5125 SBA, 2011 WL 8180376 (N.D.Cal. Feb.2, 2011) 22

6 Camden I Condominium Association v. Dunkle,
 946 F.2d 768 (11th Cir.1991)..... 3

7 Chaudhry v. City of Los Angeles,
 8 751 F.3d 1096 (9th Cir.)..... 18

9 Chaves v. King Arthur’s Lounge, Inc.,
 Suffolk Civ. A. No. 07-2505 (Mass. Super. Jul. 30, 2009)..... 12

10 City National Bank v. American Com. Financial Corp.,
 11 657 F. Supp. 817 (W.D.N.C. 1987) 10

12 City of Los Angeles, Cal. v. Chaudhry,
 135 S. Ct. 295, (2014) 18

13 Civil Rights Educ. & Enf’t Ctr. v. Ashford Hosp. Tr., Inc.,
 2016 WL 1177950 (N.D. Cal. Mar. 22, 2016)..... 20

14 Cooney v. Compass Group Foodservice, et al.,
 15 69 Mass. App. Ct. 632 (2007) 13

16 Cotter v. Lyft Inc.,
 2017 WL 1033527 (N.D. Cal. Mar. 16, 2017)..... 20

17 Cotton v. City of Eureka, Cal.,
 18 889 F. Supp. 2d 1154 (N.D. Cal. 2012) 16

19 Covillo v. Specialtys Cafe,
 20 2014 WL 954516 (N.D. Cal. Mar. 6, 2014)..... 23

21 Cruz v. Dartmouth Clubs, Inc. d/b/a King’s Inn (“King’s Inn”),
 Bristol Civ. A. No. 10-1042 (Mass. Super. Aug. 16, 2012)..... 12

22 Cruz v. Manlo Enterprises, Inc. d/b/a/ Mario’s Showplace,
 23 Worcester Civ. A. 10-1931 (Mass. Super. June 9, 2011)..... 12

24 Cusick v. The 15 Lagrange Street Corp. d/b/a The Glass Slipper,
 Suffolk Civ. A. No. 10-4127 (Mass. Super. Aug. 8, 2013)..... 12

25 Cuviello v. Feld Entm’t, Inc.,
 26 2015 WL 154197 (N.D. Cal. Jan. 12, 2015) 21

27 D’Antuono v. C&G of Groton, Inc.,
 AAA No. 11-160-02069-11 (June 17, 2013)..... 12

28

1 Dahill v. Boston Police Department,
434 Mass. 233 (2001)..... 13

2

3 Davis v. J.P. Morgan Chase & Co.,
827 F.Supp.2d 172 (W.D.N.Y.2011) 15

4 De Giovanni et al. v. Jani-King International, Inc. et al.,
C.A. No. 07-10066-MLW (D. Mass. June 6, 2012)..... 12

5

6 Defenbaugh v. JBC & Associates, Inc.,
2004 WL 1874978 (N.D. Cal. Aug. 10, 2004)..... 17

7 Depianti et al v. Jan-Pro Franchising International, Inc.,
465 Mass. 607 (2013)..... 12, 13

8

9 DeSouza, et al. v. The Soloman Partnership, Inc. d/b/a All-Pro Cleaning Systems, et al.,
No. 14-P-1728 (Mass. App. Ct. Nov. 2, 2015) 12

10 DiFiore v. American Airlines, Inc.,
454 Mass. 486 (2009)..... 13

11

12 Dimry v. Bert Bell/Pete Rozelle NFL Player Ret. Plan,
No. 3:16-CV-01413-JD, 2018 WL 6726963 (N.D. Cal. Dec. 22, 2018) 20

13 Dixon v. City of Oakland,
2014 WL 6951260 (N.D. Cal. Dec. 8, 2014) 21, 22

14

15 Dmuchowsky v. Sky Chefs, Inc.,
2019 WL 1934480 (N.D. Cal. May 1, 2019) 21

16 EK Vathana v. Everbank,
2016 WL 3951334 (N.D. Cal. July 20, 2016) 23

17

18 Epic Sys. Corp. v. Lewis,
138 S. Ct. 1612, 200 L. Ed. 2d 889 (2018) 3

19 Fernandez v. Victoria Secret Stores, LLC,
2008 WL 8150856 (C.D. Cal. July 21, 2008) 9, 10

20

21 Fleury v. Rlichemont N. Am., Inc.,
2009 WL 1010514 (N.D. Cal. Apr. 14, 2009) 4

22 Garcia v. Resurgent Capital Services, L.P.,
2012 WL 3778852 (N.D. Cal. 2012)..... 17, 18, 21

23

24 Garner v. State Farm Mut. Auto. Ins. Co.,
2010 WL 1687829 (N.D. Cal. Apr. 22, 2010) 8, 10

25 Gasior v. Massachusetts General Hospital,
446 Mass. 645 (2006)..... 13

26

27 Gauchat-Hargis v. Forest River, Inc.,
2013 WL 4828594 (E.D. Cal. Sept. 9, 2013)..... 17

28

1 Gong- Chun v. Aetna Inc.,
2012 WL 2872788 (E.D. Cal. July 12, 2012) 19

2 Gonzalez v. City of Maywood,
3 729 F.3d 1196 (9th Cir. 2013)..... 21

4 Gutierrez v. Wells Fargo Bank, N.A.,
2015 WL 2438274 (N.D. Cal. May 21, 2015) 20

5 Haitayan v. 7-Eleven, Inc.,
6 No. 18-55462 (9th Cir. 2019)..... 13

7 Hendricks v. Starkist Co.,
2016 WL 5462423 (N.D. Cal., 2016)..... 1, 2, 5

8 Hensley v. Eckerhart,
9 461 U.S. 424 (1983)..... 8

10 Hernandez v. Erin Capital Mgmt., LLC,
2011 WL 4595802 (C.D. Cal. Oct. 3, 2011) 17

11 Hightower v. JPMorgan Chase Bank, N.A.,
12 2015 WL 9664959 (C.D. Cal. 2015)..... 7

13 Horsford v. Bd. of Trustees of Cal. State Univ.,
14 132 Cal.App.4th 359 (2005)..... 18

15 Hwang v. Smith Corona Corp.,
B.89-450 (D. Conn. Mar. 12, 1992)..... 10

16 In re Activision Sec. Litig.,
17 723 F. Supp. 1373 (N.D. Cal. 1989) 2, 9

18 In re Bluetooth Headset Products Liab. Litig.,
654 F.3d 935 (9th Cir. 2011)..... 2

19 In re Consumer Privacy Cases,
20 175 Cal. App. 4th 545 n.13 (2009) 5

21 In re Continental Ill. Sec. Litig.,
962 F.2d 566 (7th Cir. 1992)..... 4

22 In re Crazy Eddie Securities Litig.,
23 824 F. Supp. 320 (E.D.N.Y. 1993) 10

24 In re Franklin Nat'l Bank,
Fed. Sec. L. Rep. (CCH) & 97 (E.D.N.Y. 1980) 10

25 In re Magsafe Apple Power Adapter Litig.,
26 2015 WL 428105 (N.D. Cal. Jan. 30, 2015) 20

27 In re Mercury Interactive Corp. Securities Litigation,
618 F.3d 988 (9th Cir. 2010)..... 14

28

1 In re Nuvelo, Inc. Sec. Litig.,
2011 WL 2650592 (N.D. Cal. July 6, 2011)..... 5, 7

2

3 In re Rossco Holdings, Inc.,
2014 WL 2611385 (C.D. Cal. May 30, 2014) 16

4 In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig.,
56 F.3d 295 (1st Cir. 1995) 3, 4

5

6 In Re: Lithotripsy Antitrust Litigation,
No. 98 C 8394 U.S. Dist. LEXIS 8143 at *6-7 (N.D. Ill. June 12, 2000) 10

7 In re: Medical X-Ray Film Antitrust Litigation,
1998 U.S. Dist. LEXIS 14888 (E.D.N.Y. Aug. 7, 1998)..... 10

8

9 Johnson v. Brennan,
2011 WL 4357376 (S.D.N.Y. 2011) 15

10 Kanawi v. Bechtel Corp.,
2011 WL 782244 (N.D. Cal. Mar. 1, 2011)..... 7

11

12 Kearney v. Hyundai Motor Co.,
2013 WL 3287996 (C.D. Cal. 2013)..... 20

13 Khanal v. San Francisco Hilton, Inc.,
No. 15-15493 (9th Cir. 2017)..... 13

14

15 Kilopass Tech., Inc. v. Sidense Corp.,
82 F. Supp. 3d 1154 (N.D. Cal. 2015) 16

16 King v. City of Boston,
71 Mass. App. Ct. 460 (2008) 13

17

18 Knight v. Red Door Salons, Inc.,
2009 WL 248367 (N.D. Cal. 2009)..... 2

19 Laffitte v. Robert Half Intern. Inc.,
376 P.3d 672 (Cal. 2016) 2

20

21 Lema v. Comfort Inn Merced,
2014 WL 1577042 (E.D. Cal. Apr. 17, 2014)..... 17

22 Lota by Lota v. Home Depot U.S.A., Inc.,
2013 WL 6870006 (N.D. Cal. Dec. 31, 2013) 17

23

24 Luna v. Universal City Studios, LLC,
2016 WL 10646310 (C.D. Cal. Sept. 13, 2016)..... 21

25 Lusby v. GameStop Inc.,
2015 WL 1501095 (N.D. Cal. Mar. 31, 2015)..... 9, 23

26

27 Maley v. Del Global Techs. Corp.,
186 F.Supp.2d 358 (S.D.N.Y.2002)..... 15

28

1 Maplebear dba Instacart v. Busick,
 No. A151677 26 Cal.App.5th 394 (2018)..... 13

2

3 Marzuq v. Cadete Enterprises, Inc.,
 2015 U.S. App. LEXIS 21301 (1st Cir. 2015)..... 13

4 Matamoros v. Starbucks Corp.,
 699 F.3d 129 (1st Cir. 2012) 13

5

6 McKenzie v. Federal Exp. Corp.,
 2012 WL 2930201 (C.D. Cal. July 2, 2012) 15

7 Minichino v. First California Realty,
 2012 WL 6554401 (N.D. Cal. Dec. 14, 2012) 22

8

9 Monterrubio v. Best Buy Stores, L.P.,
 291 F.R.D. 443 (E.D. Cal. 2013) 24

10 Morales v. Conopco, Inc.,
 2016 WL 6094504 (E.D. Cal. 2016) 2

11

12 Morales v. Whole Foods Mkt., Inc.,
 2013 WL 3967639 (N.D. Cal. July 31, 2013)..... 18

13 Moreno v. City of Sacramento,
 534 F.3d 1106 (9th Cir. 2008)..... 18

14

15 Morgret v. Applus Technologies, Inc.,
 2015 WL 3466389 (E.D.Cal.,2015) 15

16 Nat'l Fed'n of the Blind of Cal. v. Uber Techs., Inc.,
 No. 14-cv-4086-NC (N.D. Cal. Dec. 6, 2016) 20, 21

17

18 Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.,
 221 F.R.D. 523 (C.D.Cal.2004) 14

19 Noll v. eBay, Inc.,
 309 F.R.D. 593 (N.D. Cal. 2015)..... 23

20

21 O'Connor v. Uber Techs., Inc.,
 904 F.3d 1087 (9th Cir. 2018)..... 3

22 Parkinson v. Hyundai Motor Am.,
 796 F. Supp. 2d 1160 (C.D. Cal. 2010)..... 8

23

24 Pendergraft v. Arise Virtual Solutions, Inc.,
 AAA No. 71-160-00563-13 (Feb. 4, 2015) 13

25 Ramirez v. Lovin' Oven Catering Suffolk, Inc.,
 No. 11 Civ. 520, 2012 WL 651640 (S.D.N.Y. Feb. 24, 2012) 15

26

27 Rausch v. Hartford Financial Servs. Group,
 No. 01-CV-1529-BR, 2007 WL 671334 (D. Or. Feb.26, 2007) 23

28

1 Razilov v. Nationwide Mut. Ins. Co.,
2006 WL 3312024 (D. Or. Nov.13, 2006)..... 23

2

3 Real v. Cont'l Grp., Inc.,
116 F.R.D. 211 (N.D. Cal. 1986)..... 19

4 Reiter v. Sonotone Corp.,
442 U.S. 330 (1979)..... 8

5

6 Ridgeway v. Wal-Mart Stores Inc.,
269 F. Supp. 3d 975 (N.D. Cal. 2017) 20

7 Riker v. Distillery,
2009 WL 2486196 (E.D. Cal. Aug. 12, 2009) 19

8

9 Rodgers v. Claim Jumper Rest., LLC,
2015 WL 1886708 (N.D. Cal. Apr. 24, 2015) 16

10 Rodriguez v. Barrita, Inc.,
2014 WL 2967925 (N.D. Cal. July 1, 2014)..... 18

11

12 Rodriguez v. Cty. of Los Angeles,
96 F. Supp. 3d 1012 (C.D. Cal. 2014)..... 18

13 Russell v. EF International Language Schools, Inc.,
2016 WL 6304628 (Cal. App. 2 Dist., Oct. 27, 2016)..... 2

14

15 San Francisco Baykeeper v. W. Bay Sanitary Dist.,
2011 WL 6012936 (N.D. Cal. Dec. 1, 2011)..... 21

16 Santiago v. Equable Ascent Fin.,
2013 WL 3498079 (N.D. Cal. July 12, 2013)..... 17

17

18 Schiller v. David's Bridal, Inc.,
2012 WL 2117001 (E.D. Cal. June 11, 2012)..... 5

19 Schwann v. FedEx Ground Package Sys., Inc.,
2013 WL 3353776 (D. Mass. July 3, 2013)..... 13

20

21 Serrano v. Priest,
20 Cal. 3d 25 (1977) 1

22 Sierra Club v. U.S. E.P.A.,
625 F. Supp. 2d 863 (N.D. Cal. 2007) 17, 18

23

24 Skirchak v. Dynamics Research Corporation,
508 F.3d 49 (1st Cir. 2007) 13

25 Slimfold Mfg. Co. v. Kinkead Indus., Inc.,
932 F.2d 1453 (Fed.Cir.1991)..... 16

26

27 Smith v. Winter Place LLC d/b/a Locke-Ober Co., Inc.,
447 Mass. 363 (2006)..... 13

28

1 Steele v. Arise Virtual Solutions, Inc.,
 Civ. A. No. 13-cv-62823 (S.D. Fl.)..... 13

2

3 Swedish Hospital Corp. v. Shalala,
 1 F.3d 1261 (D.C.Cir.1993) 3

4 Taylor v. Eastern Connection Operating, Inc.,
 465 Mass. 191 (2013)..... 13

5

6 Taylor v. Meadowbrook Meat Company, Inc.,
 2016 WL 4916955 (N.D. Cal., 2016)..... 6

7 Travers v. Flight Systems & Services,
 2015 U.S. App. LEXIS 21671 (1st Cir. 2015)..... 13

8

9 Vasquez v. Coast Valley Roofing, Inc.,
 266 F.R.D. 482 (E.D. Cal. 2010) 9

10 Vazquez v. Jan-Pro Franchising Int'l, Inc.,
 No. 17-16096, 2019 WL 1945001 (9th Cir. May 2, 2019) 12, 13

11

12 Villon v. Marriott,
 Hawaii Supreme Court No. 11-747 (July 15, 2013) 13

13 Vizcaino v. Microsoft Corp.,
 290 F.3d 1043 (9th Cir.2002)..... passim

14

15 Wershba v. Apple Comput., Inc.,
 91 Cal. App. 4th 224 (2001)..... 2

16 Wershba v. Apple Computer, Inc.,
 110 Cal.Rptr.2d 145 (Cal. App. 6 Dist. 2001) 15

17

18 Wilcox v. City of Reno,
 42 F.3d 550 (9th Cir. 1994)..... 15

19 Williams v. Jani-King,
 837 F.3d 314 (3d Cir. 2016)..... 13

20

21 Willner v. Manpower Inc.,
 2015 WL 3863625 (N.D. Cal. June 22, 2015) 6

22 Wixon v. Wyndham Resort Dev. Corp.,
 2011 WL 3443650 (N.D. Cal. Aug. 8, 2011)..... 23

23

24 Wren v. RGIS Inventory Specialists,
 2011 WL 1230826 (N.D. Cal. 2011)..... 17

25 Yeager v. Bowlin,
 2010 WL 2303273 (E.D. Cal. June 7, 2010)..... 17

26

27 Zeltser v. Merrill Lynch & Co., Inc.,
 2014 WL 4816134 (S.D.N.Y.,2014) 15

28

1 Zoom Elec., Inc.v. Int’l Bhd of Elec.Workers Local 595,
2 2013 WL 2297037 (N.D. Cal. May 24, 2013) 22

3 **Other Authorities**

4 Aebra Coe, What Do The Highest-Paid Lawyers Make An Hour?
5 Law360 (May 11, 2016), available at: <http://www.law360.com/articles/794929/what-do-the-highest-paid-lawyers-make-an-hour>. 19

6 Zoe Tillman, Inside Gibson Dunn’s Billing Rates in Gay Marriage Case, The National Law
7 Journal
8 (Feb. 12, 2016), available at:
9 <http://m.nationallawjournal.com/?AspxAutoDetectCookieSupport=1#/article/id=1202749590936/Inside-Gibson-Dunns-Billing-Rates-in-Gay-Marriage-Case?back=DC&kw=Inside%20Gibson%20Dunn%27s%20Billing%20Rates%20in%20Gay%20Marriage%20>..... 19

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **I. INTRODUCTION**

2 Plaintiffs hereby request Court approval of this application for attorneys' fees, costs, and class
3 representative service awards. As described in their preliminary approval motion, Plaintiffs are
4 seeking \$5 million in attorneys' fees and costs, which is consistent with the Ninth Circuit's
5 "benchmark" award of 25% of the common fund. As discussed herein and in the Declarations
6 submitted herewith, this fee request is more than justified by the cutting-edge nature of this case, the
7 skill and creativity used in litigating the issues, the case law made here that has assisted and will
8 assist other workers challenging their misclassification as independent contractors, the unusually high
9 risk taken on by filing the case, and the significant monetary and non-monetary relief obtained for
10 Settlement Class Members.

11 Plaintiffs further request \$7,500 service awards for Plaintiffs Gurfinkel, Manahan, Talha, and
12 Sanchez, and \$5,000 service awards for Plaintiffs Dulles and Oliveira for their work in representing
13 the class in this litigation. These awards are reasonable and well within the range of approved
14 incentive payments in class action litigation. Indeed, merely associating their names with such high-
15 profile lawsuits created a tremendous risk of being blackballed in the "gig economy" industry and
16 beyond. When searching for their names on the internet, potential employers will likely find
17 reference to the O'Connor and Yucesoy cases. The requested awards are also reasonable given
18 Plaintiffs' participation in discovery (including full day depositions and multiple rounds of written
19 discovery for Plaintiffs Gurfinkel and Manahan).

20 **II. LEGAL STANDARD**

21 In a class action settlement, the court may award reasonable attorney's fees and nontaxable
22 costs that are authorized by law or by the parties' agreement. Fed. R. Civ. P. 23(h). Courts have the
23 power to award reasonable attorneys' fees and costs where, as here, a litigant proceeding in a
24 representative capacity secures a "substantial benefit" for a class of persons. See e.g., Hendricks v.
25 Starkist Co., 2016 WL 5462423, at *10 (N.D. Cal., 2016) citing Serrano v. Priest, 20 Cal. 3d 25, 38
26 (1977). Where "a settlement produces a common fund for the benefit of the entire class, courts have
27 discretion to employ either the lodestar method or the percentage-of-the-fund method." In re

1 Bluetooth Headset Products Liab. Litig., 654 F.3d 935, 944 (9th Cir. 2011); see also Hendricks, 2016
 2 WL 546523, at *10, citing Wershba v. Apple Comput., Inc., 91 Cal. App. 4th 224, 254 (2001).
 3 The California Supreme Court has endorsed the use of the percentage method of awarding attorneys’
 4 fees, citing the method’s relative ease of calculation, alignment of incentives between counsel and the
 5 class, a better approximation of market conditions in a contingency case, and the encouragement it
 6 provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation.
 7 Laffitte v. Robert Half Intern. Inc., 376 P.3d 672, 686 (Cal. 2016) (approving attorneys’ fee award in
 8 the amount of one-third of gross settlement); see also Russell v. EF International Language Schools,
 9 Inc., 2016 WL 6304628, at *9 (Cal. App. 2 Dist., Oct. 27, 2016) (affirming one-third fee award over
 10 objection and noting that “[s]ome appellate courts have questioned whether the percentage-of-the-
 11 benefit method is a valid justification for an award of attorneys’ fees in a class action settlement. Our
 12 Supreme Court recently resolved the issue.”) (internal citation omitted).

13 The vast majority of Ninth Circuit and other federal courts are in accord. See Aichele v. City
 14 of Los Angeles, 2015 WL 5286028, *5 (C.D. Cal. Sept. 9, 2015) (“Many courts and commentators
 15 have recognized that the percentage of the available fund analysis is the preferred approach in class
 16 action fee requests because it more closely aligns the interests of the counsel and the class, *i.e.*, class
 17 counsel directly benefit from increasing the size of the class fund and working in the most efficient
 18 manner.”); see also Knight v. Red Door Salons, Inc., 2009 WL 248367, at *5 (N.D. Cal. 2009) (“use
 19 of the percentage method in common fund cases appears to be dominant”) citing Vizcaino v.
 20 Microsoft Corp., 290 F.3d 1043, 1047 (9th Cir.2002); In re Activision Sec. Litig., 723 F. Supp. 1373,
 21 1374–77 (N.D. Cal. 1989) (collecting authority and describing benefits of the percentage method
 22 over the lodestar method); Morales v. Conopco, Inc., 2016 WL 6094504, at *7 (E.D. Cal. 2016)
 23 (“Because of the ease of calculation and the pervasive use of the percentage-of- recovery method in
 24 common fund cases, the court thus adopts this method.”). As the Supreme Court has explained,
 25 courts favor the percentage-of-the-fund approach of awarding fees from a common fund because
 26 “[j]urisdiction over the fund involved in the litigation allows a Court to prevent . . . inequity by
 27 assessing attorney’s fees against the entire fund, thus spreading fees proportionately among those
 28

1 benefited by the suit.” See Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980) (citations omitted);
 2 Blum v. Stenson, 465 U.S. 886, 900 n.16 (1984).¹

3 Here, this case is not one that settled easily and early on, but rather, is a case in which
 4 Plaintiffs’ counsel “has invested significant time or resources” over the course of nearly six years. In
 5 re Thirteen Appeals, 56 F.3d at 307. Plaintiffs doggedly litigated this case and were able to achieve a
 6 settlement for the class notwithstanding significant setbacks along the way, including a reversal of the
 7 Court’s class certification Orders by the Ninth Circuit Court of Appeals and increasingly difficult
 8 case law from the Supreme Court regarding the use of arbitration agreements and class action
 9 waivers. See O’Connor v. Uber Techs., Inc., 904 F.3d 1087 (9th Cir. 2018); Epic Sys. Corp. v. Lewis,
 10 138 S. Ct. 1612, 200 L. Ed. 2d 889 (2018). Moreover, Plaintiffs’ counsel faced an extremely well-
 11 funded opponent, and an expertly staffed opposing counsel in Gibson Dunn (and previously Morgan
 12 Lewis), both top defense firms with large teams of litigators who devoted many hours to these cases.

13 One of the principle advantages of the percentage approach for awarding fees in class action
 14 litigation is the fact that it is result-oriented, thereby promoting the more efficient use of attorney time
 15 and resources, rather than encouraging attorneys to prolong litigation in order to inflate their
 16 recoverable hours. See Thirteen Appeals, 56 F.3d at 307 (“[U]sing the [percentage of fund] method . .
 17 . enhances efficiency, or, put in the reverse, using the lodestar method in such a case encourages
 18 inefficiency. Under the latter approach, attorneys not only have a monetary incentive to spend as
 19 many hours as possible (and bill for them) but also face a strong disincentive to early settlement”);
 20 see also Vizcaino, 290 F.3d at 1050, n. 5 (“The lodestar method is merely a cross-check on the
 21 reasonableness of a percentage figure, and it is widely recognized that the lodestar method creates
 22 incentives for counsel to expend more hours than may be necessary on litigating a case so as to
 23 recover a reasonable fee, since the lodestar method does not reward early settlement”). Similarly, the

24 _____
 25 ¹ See also In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig.,
 26 56 F.3d 295 (1st Cir. 1995); Swedish Hospital Corp. v. Shalala, 1 F.3d 1261, 1271 (D.C.Cir.1993) (“a
 27 percentage of the fund method is the appropriate mechanism for determining the attorney fees award
 28 in common fund cases”); Camden I Condominium Association v. Dunkle, 946 F.2d 768, 774 (11th
 Cir.1991) (“we believe that the percentage of the fund approach is the better reasoned in a common
 fund case”).

1 percentage method better approximates the workings of the marketplace by ensuring that attorneys
 2 receive compensation for the true value of their services and skills. Thirteen Appeals, 56 F.3d at 307
 3 (“Another point is worth making: because the [percentage of fund] technique is result-oriented rather
 4 than process-oriented, it better approximates the workings of the marketplace. . . . the market pays
 5 for the result achieved”) (quoting In re Continental Ill. Sec. Litig., 962 F.2d 566, 572 (7th Cir. 1992);
 6 see also Fleury v. Richemont N. Am., Inc., 2009 WL 1010514, *3 (N.D. Cal. Apr. 14, 2009) (Chen,
 7 J.) (“Contingent fees that may far exceed the market value of the services if rendered on a non-
 8 contingent basis are accepted in the legal profession as a legitimate way of assuring competent
 9 representation for plaintiffs who could not afford to pay on an hourly basis regardless whether they
 10 win or lose.... [i]f this ‘bonus’ methodology did not exist, very few lawyers could take on the
 11 representation of a class client given the investment of substantial time, effort, and money, especially
 12 in light of the risks of recovering nothing.”) (internal citation omitted).

13 Here, counsel have litigated this case for six years and have achieved significant benefits for
 14 Settlement Class Members. Notably, in comparison, counsel have spent just as long or longer
 15 litigating many other cases on behalf of workers at considerable expense and without any
 16 compensation for it. Liss-Riordan Decl. at ¶¶ 13-14. Unsuccessful cases demonstrate why the
 17 percentage approach is essential to plaintiff-side firms that engage in contingency practice on behalf
 18 of low-wage workers: for every successful case, there are always others that will be vigorously
 19 pursued for years only to result in no recovery for the class or counsel. Id. Plaintiff-side contingency
 20 practice on behalf of low wage workers, who cannot afford to pay out-of-pocket for counsel, is made
 21 possible by a system by which counsel can obtain contingency fee awards for those cases that are
 22 successful. Id.

23 For these reasons, and given the precedent in this Circuit of approving a 25% benchmark
 24 recovery for attorneys’ fees in class action cases like this one², should the settlement be approved, the
 25 Court should approve the requested fee recovery in this case as well.

26 ² See Barbosa v. Cargill Meat Sols. Corp., 297 F.R.D. 431, 448 (E.D. Cal. 2013) (“The typical
 27 range of acceptable attorneys’ fees in the Ninth Circuit is 20 percent to 33.3 percent of the total
 28 settlement value, with 25 percent considered a benchmark percentage”).

1 **III. DISCUSSION**

2 **A. Counsel's Fee Request is Fair and Reasonable and In Line With the Ninth Circuit's**
3 **25% Benchmark**

4 In the Ninth Circuit, a fee award of 25% of the total recovery is the benchmark percentage fee
5 award. Vizcaino, 290 F.3d at 1050. This percentage may be adjusted depending on analysis of
6 certain relevant factors (discussed infra). Federal courts applying California law on a motion for fees
7 have used this 25% benchmark as a starting point in evaluating a request for attorneys' fees. See
8 Hendricks, 2016 WL 546523, at *10 citing Schiller v. David's Bridal, Inc., 2012 WL 2117001, at *17
9 (E.D. Cal. June 11, 2012); see also In re Consumer Privacy Cases, 175 Cal. App. 4th 545, 558 n.13
10 (2009) (recognizing that most fee awards in California are based on percentage calculations ranging
11 from 25% to 33%). Here, Plaintiffs' request for a fee award of \$5 million of the \$20 million
12 settlement fund is precisely in line with the 25% benchmark, which supports approval of the fee
13 request.

14 **B. Other Factors Support Plaintiffs' Request for Fees**

15 Typically, courts will consider various factors to determine whether an upward (or, less often,
16 a downward) adjustment from the 25% benchmark is warranted. Specifically, the Ninth Circuit has
17 identified the following factors that affect the Court's assessment of an appropriate fee:

18 (1) whether counsel achieved exceptional results; (2) the degree of risk assumed by counsel; (3)
19 whether counsel's performance generated benefits beyond the cash settlement fund; (4) whether
20 the fee lies above or below the market rate; and (5) the length of time counsel represented the
21 class on a contingency basis. Additional factors may include (6) counsel's experience and skill,
22 (7) the complexity of the issues, (8) the reaction of the class, and (9) a comparison with counsel's
23 loadstar.

24 In re Nuvelo, Inc. Sec. Litig., 2011 WL 2650592, at *1 (N.D. Cal. July 6, 2011) (citing Vizcaino, 290
25 F.3d at 1048-1051).

26 As set forth below, these factors support the requested fee award in this case.

27 **i. Counsel Has Achieved Exceptional Results.**

28 "Ninth Circuit precedent requires courts to award class counsel fees based on the total
benefits being made available to class members," including the benefits of non-monetary relief.

Brawner v. Bank of Am. Nat'l Ass'n, 2016 WL 161295, at *5 (N.D. Cal. Jan. 14, 2016); Vizcaino,

1 290 F.3d at 1049 (“Incidental or non-monetary benefits conferred by the litigation are a relevant
 2 circumstance” in assessing the results achieved by a settlement); Taylor v. Meadowbrook Meat
 3 Company, Inc., 2016 WL 4916955, at *5 (N.D. Cal., 2016) (“When determining the value of a
 4 settlement, courts consider the monetary and non-monetary benefits that the settlement confers.”);
 5 Willner v. Manpower Inc., 2015 WL 3863625, at *7 (N.D. Cal. June 22, 2015) (a change in policy,
 6 even if it cannot be specifically valued, must factor into courts’ analysis of the degree of success
 7 achieved by a settlement).

8 Here, Plaintiffs’ counsel has achieved “exceptional results.” Although the class was
 9 decertified by the Ninth Circuit, so that Plaintiffs could only recover in this case for a small portion of
 10 the original class, Plaintiffs have now achieved a significant monetary settlement of the claims for the
 11 settlement class members, which they estimate constitutes approximately 37% of the potential
 12 damages for all the claims that have been litigated in this case. See Dkt. 915 (Plf’s Mot. for Prelim.
 13 Approval) at pp. 26-27.³ Plaintiffs estimate that the net payment to settlement class members who
 14 submit claims and who drove a significant amount (25,000 miles) would be more than double the
 15 amount they would have received from the proposed 2016 settlement, with average payments of
 16 \$2,206, which is many times higher than settlements of similar claims. Id. at 27-29. In sum, the
 17 settlement will provide thousands of dollars each to those drivers with the strongest claims and the
 18 most at stake in the litigation. Plaintiffs’ counsel has also obtained programmatic non-monetary
 19 relief that is valuable to the class and will improve working conditions for Uber drivers going
 20 forward. Specifically, Uber will no longer deactivate drivers for low acceptance rates, will provide
 21 greater clarity and advance warning regarding driver deactivations, and will allow a formal appeal
 22 process for certain deactivations as well as increased access to quality courses for drivers so that they
 23 can become eligible for reactivation. See Dkt. 916-1 at Ex. 1 (Settlement Agreement) at ¶ 127. Taken
 24 together, these changes will give drivers more job security and a greater ability to get reinstated if
 25 they are terminated. Accordingly, this factor weighs in favor of Plaintiffs’ request.

26 _____
 27 ³ As Plaintiffs noted in their Motion, the percentage recovery is greater, approximately 75% of
 28 the potential damages, if the IRS variable rate (rather than the IRS fixed rate) were used, as Uber has
 urged in this case. See Dkt. 916 (Liss-Riordan Decl. in support Preliminary Approval) at ¶ 43.

1 **ii. The Degree of Risk in This Litigation Was High.**

2 Second, the risk undertaken by Plaintiffs' counsel in taking on this case was significant.
3 There are many litigation risks inherent in pursuing a class action case like this one. Class
4 certification, arbitration provisions, a decision on the merits, and potential appeals are all issues that
5 can result in no recovery whatsoever to class members or class counsel. In this case, Plaintiffs faced
6 complicated issues regarding arbitration provisions that were ultimately resolved against the class at
7 the Ninth Circuit, resulting in decertification of the class and a dramatic winnowing of those drivers
8 who would be eligible to participate in any future certified class. This appeal also caused significant
9 delays in the litigation, and Plaintiffs were facing the prospect of re-briefing class certification on
10 behalf of a diminished class, after which they would still need to face the risk of proceeding on the
11 merits of their claims.

12 Moreover, as with virtually all work handled by Plaintiffs' counsel's firm, counsel accepted
13 this case on a fully contingent arrangement, with no payment up front, and have borne the expenses,
14 costs, and risks associated with litigating this case. Plaintiffs' attorneys who accept cases on
15 contingency often spend years litigating cases (typically while incurring significant out-of-pocket
16 expenses for experts, transcripts, document production, and so forth), without receiving any ongoing
17 payment for their work. Sometimes fees and expenses are recovered; other times, nothing is
18 recovered. Hightower v. JPMorgan Chase Bank, N.A., 2015 WL 9664959, at *11 (C.D. Cal. 2015)
19 (approving 30% fee request in part because "the risk of no recovery for Plaintiffs, as well as for Class
20 Counsel, if they continued to litigate, were very real"); Bellinghausen v. Tractor Supply Co., 306
21 F.R.D. 245, 261 (N.D. Cal. 2015) (noting that "when counsel takes cases on a contingency fee basis,
22 and litigation is protracted, the risk of non-payment after years of litigation justifies a significant fee
23 award"); In re Nuvelo, Inc. Sec. Litig., 2011 WL 2650592, at *2 (N.D. Cal. July 6, 2011) ("It is an
24 established practice to reward attorneys who assume representation on a contingent basis with an
25 enhanced fee to compensate them for the risk that they might be paid nothing at all"); Kanawi v.
26 Bechtel Corp., 2011 WL 782244, *2 (N.D. Cal. Mar. 1, 2011) (noting that "[s]uch a practice
27 encourages the legal profession to assume such a risk and promotes competent representation for
28

1 plaintiffs who could not otherwise hire an attorney”); Parkinson v. Hyundai Motor Am., 796 F. Supp.
 2 2d 1160, 1166 (C.D. Cal. 2010) (“The most important factor is the risk of nonpayment, which was
 3 significant in this contingency class action”); Garner v. State Farm Mut. Auto. Ins. Co., 2010 WL
 4 1687829, *2 (N.D. Cal. Apr. 22, 2010) (“Class Counsel prosecuted this case on a purely contingent
 5 basis, agreeing to advance all necessary expenses, knowing that they would only receive a fee if there
 6 were a recovery”); Hensley v. Eckerhart, 461 U.S. 424, 448 (1983) (noting that “[a]ttorneys who take
 7 cases on contingency, thus deferring payment of their fees until the case has ended and taking upon
 8 themselves the risk that they will receive no payment at all, generally receive far more in winning
 9 cases than they would if they charged an hourly rate”).

10 By permitting clients to obtain attorneys without having to pay hourly fees, this system
 11 provides critical access to the courts for people who otherwise would be unable to find competent
 12 counsel to represent them. That access is particularly important for the effective enforcement of
 13 public protection statutes, such as the wage laws at issue here. Thus, “private suits provide a
 14 significant supplement to the limited resources available to [government enforcement agencies] for
 15 enforcing [public protection] laws and deterring violations.” Reiter v. Sonotone Corp., 442 U.S. 330,
 16 344 (1979) (addressing anti-trust laws). This factor, therefore, supports Plaintiffs’ request.

17 **iii. Counsel’s Efforts Have Generated Substantial Benefits Beyond the Cash
 18 Settlement Fund**

19 As to the third factor, Plaintiffs’ counsel’s efforts here have “generated benefits beyond the
 20 cash settlement fund” in the form of substantial non-monetary relief. Vizcaino, 290 F.3d at 1049
 21 (“Incidental or non-monetary benefits conferred by the litigation are a relevant circumstance”).

22 Specifically, Uber has now agreed to make the following changes:

- 23 1) Low acceptance rates will no longer be grounds for account deactivation.
- 24 2) Uber will maintain a comprehensive policy online in an easily accessible and easily-
 25 understood format and will provide advance warning before a driver’s user account is
 26 deactivated for reasons other than safety issues, physical altercations, discrimination, fraud,
 sexual misconduct, harassment, or illegal conduct (excluded matters).
- 27 3) Uber will institute a formal appeal process (that will be voluntary for drivers) for deactivation
 28 decisions for drivers, except in certain circumstances (*e.g.*, among others, where deactivation

1 relates to or arises from low star ratings, safety issues, criminal activity, physical altercation,
2 sexual misconduct, fraud, discrimination, harassment and background checks).

- 3 4) Uber will maintain quality courses for drivers whose user accounts are deactivated, except in
4 certain excluded matters set forth above, and will work with third-party providers to help
5 lower the cost of these courses for drivers. Completion of one of these courses will make the
6 driver eligible for consideration for reactivation.

7 See Dkt. 916-1 at Ex. 1 (Settlement Agreement) at ¶ 127.

8 Moreover, Plaintiffs' counsel's zealous advocacy in this case has raised significant public
9 attention to the issue of the use of independent contractors in the entire on-demand "gig economy",
10 not just with Uber, which has led to a flurry of litigation against other such companies and action on
11 the part of government actors as well. While Plaintiffs' counsel cannot take credit for all of these
12 developments, she is widely noted for having been the one to have brought this issue to the fore and
13 highlighting the issue in public discourse throughout California and the nation. See Exs. A through G
14 to Liss-Riordan Decl. Further, Plaintiffs' counsel's early success in defeating Uber's Motion for
15 Summary Judgment has helped to pave the way for further litigation and reform in the gig economy
16 that may well benefit many hundreds of thousands of workers (even beyond Uber drivers).

17 **iv. The Requested Percentage of the Fund of 25% Is In Line With Or Below The**
18 **Market Rate**

19 The requested percentage of 25% lies at or below the market rate. Barbosa, 297 F.R.D. at 448
20 ("The typical range of acceptable attorneys' fees in the Ninth Circuit is 20 percent to 33.3 percent of
21 the total settlement value, with 25 percent considered a benchmark percentage"). Indeed, "in most
22 common fund cases, the award exceeds that benchmark percentage." Id.; In re Activision Sec. Litig.,
23 723 F. Supp. 1373, 1377 (N.D. Cal.1989) ("nearly all common fund awards range around 30%"); see
24 also Vasquez v. Coast Valley Roofing, Inc., 266 F.R.D. 482, 492 (E.D. Cal. 2010) (collecting recent
25 wage and hour cases in which counsel received fee awards in the range of 33.3% to 30% of the
26 common fund); Fernandez v. Victoria Secret Stores, LLC, 2008 WL 8150856, *2 (C.D. Cal. July 21,
27 2008) (awarding 34% of common fund in attorneys' fees in wage and hour class action settlement of
28 \$10 million); Lusby v. GameStop Inc., 2015 WL 1501095, *9 (N.D. Cal. Mar. 31, 2015) (finding a
one-third fee award appropriate); Barnes v. The Equinox Grp., Inc., 2013 WL 3988804, *4 (N.D. Cal.

1 Aug. 2, 2013) (awarding one-third of gross settlement).⁴ Thus, because here Plaintiffs are only
 2 requesting 25% of the fund, this factor also weighs in favor of preliminarily approving Plaintiffs'
 3 requested fee award.

4 **v. Counsel Has Spent Six Years Representing the Class On a Contingent Basis.**

5 Fifth, Plaintiffs' counsel have represented the class on a contingency basis for almost six
 6 years. During the past six years, "Class Counsel had to turn down opportunities to work on other
 7 cases in order to devote the appropriate amount of time, resources, and energy necessary to handle
 8 this complex and demanding matter, further supporting the requested fee award here." Garner, 2010
 9 WL 1687829, at *2. Indeed, as the judge overseeing these cases, the Court has the best possible
 10 insight into the rigor and aggressive motion practice that has taken place, including briefing multiple
 11 motions to dismiss, motions for summary judgment, motions for class certification, motions to stay,
 12 motions for protective order, and numerous appeals at the Ninth Circuit. The Court is well aware of
 13 the tremendous amount of time and focus that Plaintiffs' counsel has devoted to this litigation. Thus,
 14 the amount of time spent on this contingent matter also cuts in favor of the Court's preliminary
 15 approval of the requested fee.

16 **vi. Class Counsel Is Highly Experienced and Skilled**

17 Prosecuting class actions requires an "extraordinary commitment of time, resources, and
 18 energy from Class Counsel," and, many times, settlements "simply [are not] possible but for the
 19 commitment and skill of Class Counsel." Garner v. State Farm Mut. Auto. Ins. Co., 2010 WL
 20 1687829, at *2 (N.D. Cal. 2010). This is particularly so where a "case was wholly without precedent,
 21

22 ⁴ See also In Re: Lithotripsy Antitrust Litigation, No. 98 C 8394, 2000 U.S. Dist. LEXIS 8143
 23 *6-7 (N.D. Ill. June 12, 2000) (noting that 33.3% of the fund plus expenses is well within the
 24 generally accepted range of the attorneys fee awards in class-action lawsuits); Fernandez v. Victoria
 25 Secret Stores, LLC, 2008 WL 8150856 (C.D.Cal.2008) (awarding 34% in attorneys' fees from \$10
 26 million settlement fund in wage and hour class action settlement); In re: Medical X-Ray Film
 27 Antitrust Litigation, 1998 U.S. Dist. LEXIS 14888, *21 (E.D.N.Y. Aug. 7, 1998) (awarding a fee of
 28 \$13 million out of approximately \$40 million common fund, which represented one-third of the
 settlement); In re Crazy Eddie Securities Litig., 824 F. Supp. 320, 325-26 (E.D.N.Y. 1993) (awarding
 34% of a \$42 million settlement fund); City National Bank v. American Com. Financial Corp., 657 F.
 Supp. 817 (W.D.N.C. 1987); In re Franklin Nat'l Bank, [1980 Transfer Binder] Fed. Sec. L. Rep.
 (CCH) &97,571 (E.D.N.Y. 1980) (34% of settlement fund); Hwang v. Smith Corona Corp., B.89-450
 (D. Conn. Mar. 12, 1992) (awarding one-third of \$24 million fund).

1 raised numerous novel and complex issues of both law and fact, and required a considerable effort
2 from Class Counsel simply to be in a position to file suit, let alone to litigate this case successfully.”

3 Id.

4 Here, as set forth in more detail in the Declaration of Shannon Liss-Riordan filed herewith at
5 ¶¶ 2-11, the proposed settlement class is represented by highly experienced counsel who focus on
6 wage-hour class actions, with a particular specialty in cases involving independent contractor
7 misclassification, tips, and arbitration clauses. Plaintiffs’ counsel, Attorney Liss-Riordan, has been
8 widely recognized as one of the leading plaintiffs’ lawyers nationally for her work on behalf of
9 employees (particularly low-wage workers) in wage and hour litigation, and her firm is well known
10 as one of the preeminent employee-side firms engaged nationwide in this area of practice. Attorney
11 Liss-Riordan has prosecuted many dozens of such cases, including successful jury verdicts, appeals,
12 and class certification proceedings.

13 As described in her Declaration, Attorney Liss-Riordan has been featured by many major
14 publications for her accomplishments representing low wage workers in a variety of industries.⁵
15 Each year since 2008, she has been selected for inclusion in Best Lawyers in America (Chambers),
16 and her firm has been consistently been ranked in recent years in the top tier for its practice area. The
17 2013 edition referred to her as “*the reigning plaintiffs’ champion*”, and the 2015 edition said she is
18 “*probably the best known wage class action lawyer on the plaintiff side in this area, if not the entire*
19 *country*”. Liss-Riordan Decl. at ¶ 6, Ex. O to Liss-Riordan Decl.⁶ See also Ex. A to Liss-Riordan

20 _____
21 ⁵ These publications include San Francisco Magazine (Exhibit A to Liss-Riordan Declaration),
22 the Los Angeles Times (Exhibit B), the Wall Street Journal (Exhibit C), the ABA Journal (Exhibit
23 D), the Recorder (Exhibit E), Mother Jones (Exhibit F), Politico (Exhibit G) the Boston Globe
(Exhibits H, I, and J), Commonwealth Magazine (Exhibit K), and Massachusetts Lawyers Weekly
(Exhibits L and M). See Liss-Riordan Decl. at ¶ 5.

24 ⁶ Each year since 2008, she has been listed by the Boston Globe Magazine as one of “Boston’s
25 Best Lawyers.” She has been named a “Super Lawyer” by Boston Magazine each year since 2005.
26 She was named one of ten “Lawyers of the Year” by Massachusetts Lawyers Weekly in 2002 (in her
27 fourth year of practice). In 2009, she was included on “The Power List”, Massachusetts Lawyers
28 Weekly’s “roster of the state’s most influential attorneys” (which described her as a “[t]enacious
class-action plaintiffs’ lawyer [who] strikes fear in big-firm employment attorneys throughout Boston
with her multi-million- dollar victories on behalf of strippers, waiters, skycaps and other non-exempt
employees.”). Liss-Riordan Decl. at ¶ 7.

1 Decl. (“Liss-Riordan has achieved a kind of celebrity unseen in the legal world since Ralph Nader
 2 sued General Motors”); Ex. G to Liss-Riordan Decl. (named as one of Politico’s “Top 50 thinkers,
 3 doers and visionaries transforming American politics in 2016” for her work challenging the use of
 4 contractors in the so-called “gig economy”). She is a frequent invited speaker at local and national
 5 seminars on various topics regarding employment law, class actions, and wage and hour litigation,
 6 with a particular focus on issues concerning arbitration and class actions. See Liss-Riordan Decl. at ¶
 7 4.

8 Significantly, Attorney Liss-Riordan has been a leader and pioneer in the field of independent
 9 contractor misclassification over the last decade. She has obtained significant first-of-their-kind
 10 victories in cases challenging independent contractor misclassification in a variety of industries,
 11 including the cleaning industry⁷, the adult entertainment industry⁸, the at-home call center industry⁹, and
 12

13
 14 ⁷ See, e.g., Vazquez v. Jan-Pro Franchising Int'l, Inc., No. 17-16096, 2019 WL 1945001 (9th
 15 Cir. May 2, 2019); Awuah et al. v. Coverall North America, Inc., 707 F. Supp. 2d 80 (D. Mass. 2010)
 16 (holding cleaning worker “franchisees” to have been misclassified as independent contractors), and
 17 Awuah et al. v. Coverall North America, Inc., 460 Mass. 484, 497-99 (2011) (Mass. Supreme Judicial
 18 Court established the damages awardable for the misclassification, including refunds of “franchise
 19 fees”); De Giovanni et al. v. Jani-King International, Inc. et al., C.A. No. 07-10066-MLW (D. Mass.
 20 June 6, 2012) (also holding cleaning worker “franchisees” to have been misclassified as independent
 21 contractors); Depianti et al v. Jan-Pro Franchising International, Inc., 465 Mass. 607 (2013) (holding
 22 that national company could not evade liability for independent contractor misclassification by virtue
 23 of it not having direct contracts with the workers); DeSouza, et al. v. The Soloman Partnership, Inc.
 24 d/b/a All-Pro Cleaning Systems, et al., No. 14-P-1728 (Mass. App. Ct. Nov. 2, 2015) (affirming
 25 confirmation of arbitration award that held that cleaning worker “franchisees” were likely
 26 misclassified and could pursue arbitration on a class basis).

27 ⁸ See, e.g., Chaves v. King Arthur’s Lounge, Inc., Suffolk Civ. A. No. 07-2505 (Mass. Super.
 28 Jul. 30, 2009) (granting plaintiffs’ motion for summary judgment, finding exotic dancers to have been
 misclassified as independent contractors); Cruz v. Manlo Enterprises, Inc. d/b/a Mario’s Showplace,
 Worcester Civ. A. 10-1931 (Mass. Super. June 9, 2011) (same); Monteiro v. PJD Entertainment of
 Worcester, Inc., d/b/a/ Centerfolds (“Centerfolds”), 29 Mass.L.Rptr. 203 (Worcester Super. Ct. Nov.
 23, 2011) (same); Cruz v. Dartmouth Clubs, Inc. d/b/a King’s Inn (“King’s Inn”), Bristol Civ. A. No.
 10-1042 (Mass. Super. Aug. 16, 2012) (same); Cusick v. The 15 Lagrange Street Corp. d/b/a The
 Glass Slipper, Suffolk Civ. A. No. 10-4127 (Mass. Super. Aug. 8, 2013) (same); D’Antuono v. C&G
 of Groton, Inc., AAA No. 11-160-02069-11 (June 17, 2013) (arbitration award finding exotic dancers to
 have been misclassified and awarding damages under the FLSA). Indeed, it was Attorney Liss-
 Riordan’s groundbreaking success in Chaves v. King Arthur’s Lounge, Inc. that appears to have ignited
 the recent firestorm of cases across the country challenging the misclassification of exotic dancers as
 independent contractors, and may have led to a significant shift in the industry to having exotic dancers
 paid as employees. See “Stripped by the Boss”, Boston Globe (Editorial, Aug. 12, 2009) (Exhibit J to
 Liss-Riordan Decl.).

1 has been involved in litigation challenging the misclassification of delivery drivers.¹⁰ In addition to her
 2 work challenging independent contractor misclassification, Attorney Liss-Riordan has also obtained
 3 ground-breaking victories in other areas of wage and hour and employment law, including
 4 vindicating the rights of tipped employees (which was a major part of this case as well)¹¹, and has
 5 been successful in numerous trial and appeals¹² regarding significant issues of law, all on behalf of
 6 low-wage workers. Liss-Riordan Decl. at ¶¶ 9-11.

7 Thus, Plaintiffs' counsel's skill and extensive experience in this particular area of law also
 8 well justify the fee award in this case.

9
 10
 11
 12 *(Cont'd from previous page)*

13
 14 ⁹ See Pendergraft v. Arise Virtual Solutions, Inc., AAA No. 71-160-00563-13 (Feb. 4, 2015);
Abdul-Haqq. Arise Virtual Solutions, Inc., AAA No. 32-160-00496-13 (April 15, 2015), available at:
Steele v. Arise Virtual Solutions, Inc., Civ. A. No. 13-cv-62823 (S.D. Fl.), Dkts. 58-4 and 58-5.

15 ¹⁰ See, e.g., Schwann v. FedEx Ground Package Sys., Inc., 2013 WL 3353776 (D. Mass. July 3,
 16 2013) (granting plaintiffs' motion for summary judgment, holding FedEx drivers to have been
 17 misclassified as independent contractors), rev'd in part on preemption grounds and remanded, 813
 F.3d 429 (1st Cir. 2016).

18 ¹¹ For profiles of Attorney Liss-Riordan's work on behalf of tipped employees, see Exhibit H to
 19 Liss-Riordan Decl. (Boston Globe, front page, Apr. 29, 2008, "Skycaps and waiters find a legal
 champion"), and Exhibit N to Liss-Riordan Decl. (Lawyers and Settlements, Apr. 9, 2008, "Attorney
 Shannon Liss-Riordan: Challenging Corporate Power and Tips Abuse").

20 ¹² See Liss-Riordan Decl. at ¶ 10, filed herewith, describing victories in Vazquez v. Jan-Pro
 21 Franchising Int'l, Inc., No. 17-16096, 2019 WL 1945001 (9th Cir. May 2, 2019); Haitayan v. 7-
 22 Eleven, Inc., No. 18-55462 (9th Cir. 2019); Maplebear dba Instacart v. Busick, No. A151677 26
 23 Cal.App.5th 394 (2018); Khanal v. San Francisco Hilton, Inc., No. 15-15493 (9th Cir. 2017);
 24 Williams v. Jani-King, 837 F.3d 314 (3d Cir. 2016); Marzuq v. Cadete Enterprises, Inc., 2015 U.S.
 25 App. LEXIS 21301 (1st Cir. 2015); Travers v. Flight Systems & Services, 2015 U.S. App. LEXIS
 26 21671 (1st Cir. 2015); Villon v. Marriott., Hawaii Supreme Court No. 11-747 (July 15, 2013);
 27 Depianti v. Jan-Pro Franchising International, Inc., 465 Mass. 607 (2013); Taylor v. Eastern
 28 Connection Operating, Inc., 465 Mass. 191 (2013); Matamoros v. Starbucks Corp., 699 F.3d 129 (1st
 Cir. 2012); Awuah v. Coverall North America, Inc., 460 Mass. 484 (2011); DiFiore v. American
Airlines, Inc., 454 Mass. 486 (2009), rev'd on federal preemption grounds, 646 F.3d 81 (1st Cir.
 2011), cert. denied, 132 S. Ct. 761 (2011); Skirchak v. Dynamics Research Corporation, 508 F.3d 49
 (1st Cir. 2007); Gasior v. Massachusetts General Hospital, 446 Mass. 645 (2006); Smith v. Winter
Place LLC d/b/a Locke-Ober Co., Inc., 447 Mass. 363 (2006); Dahill v. Boston Police Department,
 434 Mass. 233 (2001); Cooney v. Compass Group Foodservice, et al., 69 Mass. App. Ct. 632 (2007);
King v. City of Boston, 71 Mass. App. Ct. 460 (2008).

1

2 **vii. The Issues In This Case Are Both Novel and Extremely Complex**

3 Seventh, the complexity of the issues presented by this case also well justifies approval of the
 4 requested fee in this case. Here, counsel filed a case on the cutting edge of the law – one that raised
 5 numerous novel and complex issues of both law and fact. At the time it was filed, it was the first case
 6 to present the question of whether workers in the so-called “gig economy” are misclassified as
 7 independent contractors. Plaintiffs succeeded in defeating two motions for summary judgment by
 8 Uber -- both on the misclassification issue and on their gratuities claim under Cal. Lab. Code § 351,
 9 see Dkt. 251, 499 -- each of which presented novel legal questions. In addition to litigating the merits
 10 of drivers’ misclassification claims in a novel and emerging industry, Plaintiffs’ counsel has had to
 11 contend with complicated and cutting-edge issues regarding arbitration law and class certification.
 12 Indeed, counsel has litigated numerous substantive motions filed in this case and argued at 24
 13 hearings in this case (totaling more than 30 hours of court time), not counting the time spent related
 14 to the proposed 2016 settlement. See Dkt. 918 at ¶ 5. Given the novelty and complexity of the issues
 15 in this case, the fee requested in this case is well warranted.

16 **viii. The Reaction of the Class**

17 “It is established that the absence of a large number of objections to a proposed class action
 18 settlement raises a strong presumption that the terms of a proposed class settlement action are
 19 favorable to the class members.” Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523,
 20 528–29 (C.D.Cal.2004). Plaintiffs’ counsel submits that the reaction of the class to the settlement
 21 (and to the efforts of counsel on their behalf) has been positive so far, which is supported by the fact
 22 that no objections have been filed to date.¹³

23

24

25 ¹³ The class notice informed Class Members that counsel intended to request 25% of the gross
 26 Settlement Fund in fees and \$40,000 in incentive payments for the named plaintiffs. See Dkt. No.
 27 928-2 at ¶ 15. In addition, this motion for fees is being filed thirty-five days before the final approval
 28 hearing and posted on the settlement website so that Class Members will have an opportunity to
 comment or object to it. See In re Mercury Interactive Corp. Securities Litigation, 618 F.3d 988 (9th
 Cir. 2010).

ix. **The Lodestar Cross-Check Confirms That Plaintiffs' Request Is Reasonable**

The lodestar cross-check in this case supports Plaintiffs' requested fees. As set forth further below, the lodestar cross-check in this case shows that Plaintiffs' fees were approximately \$6 million, and their expenses came to approximately \$311,000. These fees and costs are only likely to climb as Plaintiffs continue to work on finalizing this settlement and overseeing its execution should it be approved by the Court. Courts frequently approve settlements with large multipliers¹⁴, and here, the multiplier would effectively be negative. As such, the lodestar multiplier strongly supports the reasonableness of the requested fees of \$5 million. Moreover, this Court has supervised this litigation and is in the best position to understand the amount and quality of work that has been put into this case by Plaintiffs' counsel. See Wilcox v. City of Reno, 42 F.3d 550, 555 (9th Cir. 1994) ("The district court is in the best position to ascribe a reasonable value to the lawyering it has witnessed and the results that lawyering has achieved"); Brinskele v. United States, 2014 WL 4832263, *2 (N.D. Cal. May 22, 2014) report and recommendation adopted, 2014 WL 4826153 (N.D. Cal. Sept. 29, 2014) ("Based upon the court's familiarity with this litigation and counsel's work, the court is able to

¹⁴ See Vizcaino, 290 F.3d at 1051, n. 6 (affirming district court's percentage-based fee award that represented multiplier of 3.65 and noting that "most" multipliers in common fund cases range from 1.0 to 4.0); McKenzie v. Federal Exp. Corp., 2012 WL 2930201 at *10 (C.D. Cal. July 2, 2012) (in wage and hour action, approving percentage-based fee award that represented multiplier of 3.2); Morgret v. Applus Technologies, Inc., 2015 WL 3466389, at *17 (E.D. Cal., 2015) (in wage and hour action, approving percentage-based fee award that represented multiplier of 3.9); Buccellato v. AT & T Operations, Inc., No. 10 Civ. 463, 2011 WL 3348055, at *2 (N.D. Cal. Jun. 30, 2011) (in wage and hour action, approving percentage-based fee award that represented multiplier of 4.3); Wershba v. Apple Computer, Inc., 110 Cal.Rptr.2d 145, 170 (Cal. App. 6 Dist. 2001) ("Multipliers can range from 2 to 4 or even higher."); See Johnson v. Brennan, 2011 WL 4357376, at *20 (S.D.N.Y. 2011) (in wage and hour action, noting that "[c]ourts regularly award lodestar multipliers from two to six times lodestar"); Beckman v. KeyBank, N.A., 293 F.R.D. 467, 481-82 (S.D.N.Y. 2013) (in wage and hour action, approving of 6.3 multiplier in lodestar cross-check analysis); citing Ramirez v. Lovin' Oven Catering Suffolk, Inc., No. 11 Civ. 520, 2012 WL 651640, at *4 (S.D.N.Y. Feb. 24, 2012) (in wage and hour action, approving of 6.8 multiplier in lodestar cross-check analysis); Davis v. J.P. Morgan Chase & Co., 827 F.Supp.2d 172, 184-86 (W.D.N.Y. 2011) (in wage and hour action, approving of 5.3 multiplier in lodestar cross-check analysis); see also Zeltser v. Merrill Lynch & Co., Inc., 2014 WL 4816134, at *10 (S.D.N.Y., 2014) (in wage and hour action, approving of 5.1 multiplier in lodestar cross-check analysis and noting "[w]hile this multiplier is near the higher end of the range of multipliers that courts have allowed, this should not result in penalizing Plaintiffs' counsel for achieving an early settlement, particular where, as here, the settlement amount is substantial."); Maley v. Del Global Techs. Corp., 186 F.Supp.2d 358, 371 (S.D.N.Y. 2002) ("modest multiplier" of 4.65 in wage and hour class action was "fair and reasonable").

1 assess the reasonableness of the hours claimed by counsel...”).

2 **a. Counsel’s Hours Worked are Reasonable**

3 Plaintiffs have submitted contemporaneous time records for the associate attorneys and local
4 counsel who have worked on this case, as well as declarations attesting to the estimated number of
5 hours that the firm’s paralegal staff and lead counsel Shannon Liss-Riordan have spent on this
6 litigation,¹⁵ as well as a list of out-of-pocket costs incurred by Plaintiffs’ counsel’s firm in the
7 prosecution of this case. See Declaration of Shannon Liss-Riordan (filed in support of this
8 Memorandum) and attachments thereto. The following shows a summary of the hours worked by
9 attorneys and staff on this case and the costs:

Attorney	Hours	Rate	Fees
Shannon Liss-Riordan	4,500	\$850	\$3,825,000
Adelaide Pagano	1,683	\$350	\$ 589,000
Anne Kramer	380	\$300	\$ 114,000
Ben Weber	223	\$450	\$ 100,350
Sara Smolik	36	\$450	\$ 16,200
Olena Savytka	55	\$300	\$ 16,500

15 ¹⁵ Plaintiffs note that Attorney Liss-Riordan (as well as the firm’s paralegal staff) have not kept
16 contemporaneous billing records. See Declaration of Shannon Liss-Riordan at ¶¶ 16-17, n. 3
17 (explaining that she has focused her energies on litigating and has not kept records of her time, but
18 that she has spent a substantial proportion of the last three years to this litigation, as this Court is well
19 aware). Courts in this Circuit have awarded fees based upon reasonable estimates of time spent, even
20 without contemporaneous records. See Brinskele, 2014 WL 4832263, *2 (“Based upon the court’s
21 familiarity with this litigation and counsel’s work, the court is able to assess the reasonableness of the
22 hours claimed by counsel without the need to inspect contemporaneous time records.”); see also
23 Kilopass Tech., Inc. v. Sidense Corp., 82 F. Supp. 3d 1154, 1169 (N.D. Cal. 2015) (“[T]he party
24 seeking fees need not provide comprehensive documentation to prevail”); Rodgers v. Claim Jumper
25 Rest., LLC, 2015 WL 1886708, *10 (N.D. Cal. Apr. 24, 2015) (“Plaintiff’s counsel is not required to
26 record in great detail how each minute of his time was expended” and can instead “meet his burden
27 of justifying his fees by simply listing his hours and “identifying the general subject matter of his
28 time expenditures”); In re Rossco Holdings, Inc., 2014 WL 2611385, *8 (C.D. Cal. May 30, 2014)
29 (“In California, an attorney need not submit contemporaneous time records in order to recover
30 attorney fees”); Cotton v. City of Eureka, Cal., 889 F. Supp. 2d 1154, 1177 (N.D. Cal. 2012) (“The
31 lack of contemporaneous records does not justify an automatic reduction in the hours claimed, but
32 such hours should be credited only if reasonable under the circumstances and supported by other
33 evidence such as testimony or secondary documentation”); Ackerman v. W. Elec. Co., 643 F. Supp.
34 836, 863-64 (N.D. Cal. 1986), aff’d, 860 F.2d 1514 (9th Cir. 1988) (noting that “the Ninth Circuit
35 requires only that the affidavits be sufficient to enable the court to consider all the factors necessary
36 to determine a reasonable attorney’s fee award ... California law is in accord with the Ninth Circuit
37 view.”); Slimfold Mfg. Co. v. Kinkead Indus., Inc., 932 F.2d 1453, 1459 (Fed.Cir.1991) (“[A] district
38 court itself has experience in determining what are reasonable hours and reasonable fees, and should
39 rely on that experience and knowledge if the documentation is considered inadequate”).

1	Matthew Carlson	215	\$450	\$ 96,750
2	Michael Freedman	57	\$450	\$ 25,650
3	Monique Olivier	29	\$700	\$ 20,300
4	Law Clerks	43	\$275	\$ 11,825
5	Paralegal Staff	5,000	\$225	\$1,125,000
6	TOTAL:			\$ 5,940,625

7 Counsel's time spent on this case can be generally divided into several categories of
8 activity, all of which is recoverable under well-established case law:

- 9 • Pre-litigation investigation: see, e.g., Sierra Club v. U.S. E.P.A., 625 F. Supp. 2d 863, 870
10 (N.D. Cal. 2007); see also Lema v. Comfort Inn Merced, 2014 WL 1577042 (E.D. Cal. Apr.
11 17, 2014) (approving of pre-litigation work "reasonably necessary to secure information,
12 evaluate Plaintiff's case, and prepare the complaint for filing");
- 13 • Legal research and drafting: See Santiago v. Equable Ascent Fin., 2013 WL 3498079, at *6
(N.D. Cal. July 12, 2013);
- 14 • Propounding and responding to discovery: See, e.g., Yeager v. Bowlin, 2010 WL 2303273, at
15 *7 (E.D. Cal. June 7, 2010) aff'd, 495F. App'x 780 (9th Cir. 2012) (drafting discovery);
16 Gauchat-Hargis v. Forest River, Inc., 2013 WL 4828594, at *4 (E.D. Cal. Sept. 9, 2013)
(responding to discovery);
- 17 • Depositions: E.g., Garcia v. Resurgent Capital Services, L.P., 2012 WL 3778852, at *6 (N.D.
18 Cal. 2012);
- 19 • Communication between co-counsel: E.g., Defenbaugh v. JBC & Associates, Inc., 2004 WL
20 1874978 (N.D. Cal. Aug. 10, 2004);
- 21 • Communication with opposing counsel: E.g., Hernandez v. Erin Capital Mgmt., LLC, 2011
22 WL 4595802, at *3 (C.D. Cal. Oct. 3, 2011);
- 23 • Settlement conferences: E.g., Lota by Lota v. Home Depot U.S.A., Inc., 2013 WL 6870006, at
24 *10 (N.D. Cal. Dec. 31, 2013);
- 25 • Court appearances: E.g., Alvarado v. FedEx Corp., 2011 WL 4708133, at *28 (N.D. Cal.
26 2011);
- 27 • Settlement administration: E.g., Wren v. RGIS Inventory Specialists, 2011 WL 1230826, at
28 *30 (N.D. Cal. 2011).

1 “By and large, the [district] court should defer to the winning lawyer’s professional judgment
 2 as to how much time he was required to spend on the case.” Chaudhry v. City of Los Angeles, 751
 3 F.3d 1096, 1111 (9th Cir.), cert. denied sub nom. City of Los Angeles, Cal. v. Chaudhry, 135 S. Ct.
 4 295, (2014); see also Rodriguez v. Cty. of Los Angeles, 96 F. Supp. 3d 1012, 1023-24 (C.D. Cal.
 5 2014) (“Courts generally accept the reasonableness of hours supported by declarations of counsel.”);
 6 Horsford v. Bd. of Trustees of Cal. State Univ., 132 Cal.App.4th 359, 396 (2005) (“[T]he verified
 7 time statements of the attorneys, as officers of the court, are entitled to credence in the absence of a
 8 clear indication the records are erroneous.”). Likewise, courts should not second-guess staffing
 9 decisions or attempt to micro-manage a law firm’s practices in assessing the reasonableness of a fee
 10 request. See Moreno v. City of Sacramento, 534 F.3d 1106, 1115 (9th Cir. 2008) (“The court may
 11 permissibly look to the hourly rates charged by comparable attorneys for similar work, but may not
 12 attempt to impose its own judgment regarding the best way to operate a law firm, nor to determine if
 13 different staffing decisions might have led to different fee requests”); Morales v. Whole Foods Mkt.,
 14 Inc., 2013 WL 3967639, *4 (N.D. Cal. July 31, 2013) (“The Court is reluctant to second-guess the
 15 staffing decisions of Plaintiff’s counsel”).

16 Because this case has been efficiently litigated, there is no need for the Court to comb through
 17 records of numerous attorneys and staff to eliminate duplicative billing, nor could there be a
 18 reasonable argument that this case was overstaffed. Notably, collaboration and coordination of
 19 efforts is *not* the same as impermissible double billing. Sierra Club, 625 F. Supp. 2d at 868. This is
 20 specifically so with respect to work on, for example, legal research or a motion where attorneys may
 21 be given discrete tasks, Garcia v. Resurgent Capital Servs., L.P., 2012 WL 3778852, at *7 (N.D. Cal.
 22 Aug. 30, 2012), or where there is reason for multiple persons to attend depositions or court hearings.
 23 Rodriguez v. Barrita, Inc., 2014 WL 2967925, at *6 (N.D. Cal. July 1, 2014). Indeed, it would be
 24 uncommon for a single attorney to litigate a complex class action. Additionally, as noted above,
 25 Plaintiffs’ estimates do not take into account work finalizing these papers and time that will be spent
 26 finishing the administration of the settlement.

1 Because the requested hours are eminently reasonable given the duration and intensity of this
 2 litigation, and the excellent result obtained, Plaintiffs' counsel submits that they support the requested
 3 attorneys' fees.

4 **b. Counsel's Hourly Rates are Reasonable**

5 In addition, the requested hourly rates set forth below are reasonable and should be approved.
 6 To determine a reasonable hourly rate, courts look to the rates for comparable legal services in the
 7 local community, in this case the Northern District of California. E.g., Gong- Chun v. Aetna Inc.,
 8 2012 WL 2872788, at *21 (E.D. Cal. July 12, 2012). Also relevant is a comparison of plaintiffs'
 9 counsel's asserted rates to defense counsel's rates charged to their clients. Real v. Cont'l Grp., Inc.,
 10 116 F.R.D. 211, 213 (N.D. Cal. 1986) (noting that "Defendant's counsel's hours and rates are
 11 relevant" to the determining the reasonableness of the hourly rate and hours requested by plaintiff's
 12 counsel in their fee petition). Attorneys' fees for highly specialized and sought after attorneys
 13 continue to rise, with hourly rates now reaching \$2000 per hour at the highest levels.¹⁶ Indeed,
 14 Uber's lead counsel, Theodore Boutrous has billed as much as \$1,040 per hour to his clients in other
 15 recent cases.¹⁷ See Real v. Cont'l Grp., Inc., 116 F.R.D. 211, 213 (N.D. Cal. 1986) (noting that
 16 "Defendant's counsel's hours and rates are relevant" to the determining the reasonableness of the
 17 hourly rate and hours requested by plaintiff's counsel in their fee petition); Riker v. Distillery, 2009
 18 WL 2486196, *1 (E.D. Cal. Aug. 12, 2009) ("This court finds that defendants' billing records may be
 19 relevant to assist the court in determining the reasonableness of plaintiff's request for attorney's
 20 fees").

21
 22
 23 ¹⁶ See Aebra Coe, What Do The Highest-Paid Lawyers Make An Hour? Law360 (May 11,
 24 2016), available at: <http://www.law360.com/articles/794929/what-do-the-highest-paid-lawyers-make-an-hour>.

25 ¹⁷ See Zoe Tillman, Inside Gibson Dunn's Billing Rates in Gay Marriage Case, The National
 26 Law Journal (Feb. 12, 2016), available at:
 27 <http://m.nationallawjournal.com/?AspxAutoDetectCookieSupport=1#/article/id=1202749590936/Inside-Gibson-Dunns-Billing-Rates-in-Gay-Marriage-Case?back=DC&kw=Inside%20Gibson%20Dunn%27s%20Billing%20Rates%20in%20Gay%20Marriage%20>

1 In light of the rate charged by Uber’s lead counsel, the rate used for the lodestar analysis here
 2 for Attorney Liss-Riordan, \$850 per hour, is eminently reasonable and should be approved. This rate
 3 is also well in line with, if not lower, than the rates that have been approved in this district for other
 4 top lawyers. See, e.g., Gutierrez v. Wells Fargo Bank, N.A., 2015 WL 2438274, *5 (N.D. Cal. May
 5 21, 2015) (in consumer class action, finding reasonable rates for Bay Area attorneys of between
 6 \$475-\$975 for partners); Dimry v. Bert Bell/Pete Rozelle NFL Player Ret. Plan, No. 3:16-CV-01413-
 7 JD, 2018 WL 6726963, at *1 (N.D. Cal. Dec. 22, 2018) (approving the requested hourly rate of \$900
 8 for partner in ERISA case); Civil Rights Educ. & Enf’t Ctr. v. Ashford Hosp. Tr., Inc., 2016 WL
 9 1177950, at *5 (N.D. Cal. Mar. 22, 2016) (approving an hourly rate of \$900 for highly experienced
 10 partner); Cotter v. Lyft Inc., 2017 WL 1033527 (N.D. Cal. Mar. 16, 2017) Order Granting Final
 11 Approval of Settlement Agreement (Dkt. No. 310) (approving hourly rate of \$800 for Ms. Liss-
 12 Riordan several years ago); Nat’l Fed’n of the Blind of Cal. v. Uber Techs., Inc., No. 14-cv-4086-NC
 13 (N.D. Cal. Dec. 6, 2016) Order Granting Final Approval and Attorneys’ Fees (Dkt. No. 139)
 14 (approving hourly rates of \$900 and \$895 for senior partners).¹⁸

15 Moreover, Ms. Liss-Riordan’s work warrants this rate (if not higher) because of her
 16 exceptional qualifications. As noted above, and described further in her Declaration, Attorney Liss-
 17 Riordan has received substantial recognition over the years as a national expert on wage and hour
 18 litigation. She is especially well known for successfully representing low wage workers in scores of
 19 cases that include precedent-setting trials and appeal. Liss-Riordan Decl. at ¶¶ 8-12. In this case,
 20 Attorney Liss-Riordan, along with the other attorneys working with her and under her direction, were
 21 able to draw from the wealth of experience that she and her firm have developed over the last decades
 22 in the area of wage law, and her particular specialties: (1) independent contractor misclassification,

23
 24 ¹⁸ See also Ridgeway v. Wal-Mart Stores Inc., 269 F. Supp. 3d 975, 984 (N.D. Cal. 2017)
 25 (approving rates above \$800 per hour for five senior partners); Betancourt v. Advantage Human
 26 Resourcing, Inc., 2016 WL 344532, *8 (N.D. Cal. Jan. 28, 2016) (in employment law class action,
 27 court recently found “reasonable rates for partners range from \$560 to \$800”); In re Magsafe Apple
 28 Power Adapter Litig., 2015 WL 428105, *12 (N.D. Cal. Jan. 30, 2015) (in consumer class action,
 finding that “[i]n the Bay Area, reasonable hourly rates for partners range from \$560 to \$800”);
Kearney v. Hyundai Motor Co., 2013 WL 3287996, at *6 (C.D. Cal. 2013) (approving hourly rates of
 \$800 and \$650 per hour for attorneys with more than twenty years of experience).

1 and (2) tipped employees. In analyzing the lodestar cross-check, Attorney Liss-Riordan's national
 2 prominence in this field, breadth of experience, and success in litigating employment
 3 misclassification cases in new and emerging industries well justifies an hourly rate of \$850, if not
 4 higher.

5 With respect to the associates and staff who have worked on these cases, "[t]he reasonable
 6 hourly rate for computing the lodestar amount is based on the 'prevailing market rates in the relevant
 7 community.'" Betancourt, 2016 WL 344532, *8 (quoting Gonzalez v. City of Maywood, 729 F.3d
 8 1196, 1205 (9th Cir. 2013)). In Betancourt, the court noted (six years ago) that in the Northern
 9 District of California, "reasonable rates for partners range from \$560 to \$800, associates range from
 10 \$285 to \$510, and paralegals and litigation support staff range from \$150 to \$240." Id.
 11 Thus, Plaintiffs have included in their lodestar calculation a rate of \$350 for Adelaide Pagano, who
 12 was the primary associate who has worked on this litigation. She performed extensive research,
 13 briefing, and discovery over the course of five years working on this case, and as noted in Attorney
 14 Liss-Riordan's Declaration, her skills and ability are well beyond her years. See Liss-Riordan Decl. at
 15 ¶ 18. Thus, this rate is well warranted for the lodestar cross-check. See, e.g., Luna v. Universal City
 16 Studios, LLC, 2016 WL 10646310, at *9 (C.D. Cal. Sept. 13, 2016) (adopting hourly rate of \$410 for
 17 associates with three to seven years' experience in wage-and-hour class action); Dmuchowsky v. Sky
 18 Chefs, Inc., 2019 WL 1934480, at *12 (N.D. Cal. May 1, 2019) (approving hourly rate of \$400 for
 19 graduate of law school class of 2014); Nat'l Fed'n of the Blind of Cal. v. Uber Techs., Inc., No. 14-
 20 cv-4086-NC (N.D. Cal. Dec. 6, 2016) Order Granting Final Approval and Attorneys' Fees (Dkt. No.
 21 139) (approving hourly rate of \$355 for law school class of 2014); Dixon v. City of Oakland, 2014
 22 WL 6951260, *7 (N.D. Cal. Dec. 8, 2014) (approving hourly rates in an individual civil rights case of
 23 \$725 and \$695 for partners and \$325, \$350, and \$400 for associates with 2, 3, and 5 years of
 24 experience); Cuviello v. Feld Entm't, Inc., 2015 WL 154197, *2 (N.D. Cal. Jan. 12, 2015) (awarding
 25 fees of \$325 per hour to an associate with 2 years' experience); San Francisco Baykeeper v. W. Bay
 26 Sanitary Dist., 2011 WL 6012936, *7 (N.D. Cal. Dec. 1, 2011) (Chen, J.) (awarding rate of \$300 for
 27 attorney with 2 years' experience); Garcia v. Resurgent Capital Servs., L.P., 2012 WL 3778852, *4
 28 (N.D. Cal. Aug. 30, 2012) (Chen, J.) (awarding \$300 per hour to attorney with three years'

1 experience). Plaintiffs have also requested a rate of \$300 for associates Olena Savytska, Anne
 2 Kramer, and Michael Turi, who each have several years of experience. See Liss-Riordan Decl. at ¶
 3 18.

4 For the more senior associates who have worked on this case, including Benjamin Weber,
 5 Sara Smolik, Matthew Carlson, and Michael Freedman, Plaintiffs have included a rate of \$450¹⁹ and
 6 \$700 per hour for Monique Olivier, who originally worked as local counsel. See Bowerman v. Field
 7 Asset Servs., Inc., 2018 WL 5982436, at *2 (N.D. Cal. Nov. 14, 2018) (recently approving hourly
 8 rate of \$700 for Monique Olivier). These rates are well justified based upon the ranges of rates that
 9 have been approved in this district. A brief discussion of these attorneys' experience is included in
 10 the Liss-Riordan Declaration at ¶ 18. Finally, Plaintiffs have included an hourly rate of \$275 for
 11 work performed by student law clerks and \$225 for their paralegal staff (comprised of paralegals
 12 Elizabeth Lopez-Beltrán, Sarah Mason, Erin O'Reilly, Phillip Acevedo, Mary Franco, and Rebecca
 13 Shuford see Liss-Riordan Decl. at ¶ 20, see also Dkt. 660-15, Dkt. 660-16, Dkt. 660-17). Similar
 14 hourly rates have been approved by other recent court decisions in this district for paralegal staff. See
 15 Betancourt, 2016 WL 344532, *8 (reasonable rates and paralegals and litigation support staff range
 16 from \$150 to \$240); see also In re Butler, 2015 WL 3658409, at *2 (noting that defense counsel's
 17 firm charged \$260 per hour for paralegal work); Dixon v. City of Oakland, 2014 WL 6951260, *10
 18 (N.D. Cal. Dec. 8, 2014) ("The court finds that a reasonable hourly rate for paralegals ... is \$200 per
 19 hour"); Zoom Elec., Inc. v. Int'l Bhd of Elec. Workers Local 595, 2013 WL 2297037, *4 (N.D. Cal.
 20 May 24, 2013) (quoting market rates of "between \$180 and \$225 per hour for law clerks and
 21 paralegals" and awarding those rates as of 2013); see also Villalpando, 3:12-cv-04137-JCS, Dkt. No.
 22 344-1 at ¶ 74 (asserting up to \$250 hourly rate for plaintiffs-side wage and hour paralegals).

23
 24 ¹⁹ Similar rates have been approved in California federal courts for senior associates with similar
 25 experience levels. Minichino v. First California Realty, 2012 WL 6554401, *7 (N.D. Cal. Dec. 14,
 26 2012) (Chen, J.) (approving hourly rates of \$450–480 for attorney with nine years' experience);
 27 Californians for Disability Rights v. California Dept. of Transp., 2010 WL 8746910 (N.D. Cal.
 28 Dec. 13, 2010) report and recommendation adopted sub nom. Californians for Disability Rights, Inc.
v. California Dept. of Transp., 2011 WL 8180376 (N.D. Cal. Feb. 2, 2011) (awarding \$560 per hour
 in attorney fees to an attorney with nine years of experience); Armstrong v. Brown, 805 F.Supp.2d
 918 (N.D. Cal. 2011) (awarding \$415 per hour in attorney fees to an attorney with nine years of
 experience).

1 **C. Plaintiffs' Request for Class Representative Service Enhancements is Reasonable**

2 Under both federal and California law, named plaintiffs are generally entitled to a service
 3 award for initiating the litigation on behalf of absent class members, taking time to prosecute the
 4 case, and incurring financial and personal risk. Wixon v. Wyndham Resort Dev. Corp., 2011 WL
 5 3443650, *6 (N.D. Cal. Aug. 8, 2011) (An incentive award is designed to “compensate class
 6 representatives for work done on behalf of the class, to make up for financial or reputational risk
 7 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private
 8 attorney general.”). Numerous federal courts in California have noted that \$5,000 incentive
 9 payments are “presumptively reasonable.” See Noll v. eBay, Inc., 309 F.R.D. 593, 611 (N.D. Cal.
 10 2015) (“In this district, \$5,000 for each class representative is presumptively reasonable.”) (citing
 11 cases). Others have awarded the same or higher payments, even where the payments represent a
 12 proportionally larger share of the overall settlement than is the case here. E.g., EK Vathana v.
 13 Everbank, 2016 WL 3951334, at *4 (N.D. Cal. July 20, 2016) (approving incentive award of \$12,500
 14 where lead plaintiff “has been an active participant in this litigation for the past seven years”); Lusby,
 15 2015 WL 1501095, at *5 (awarding \$7,500 to each of the four class representatives from \$750,000
 16 fund); Covillo v. Specialtys Cafe, 2014 WL 954516, *8 (N.D. Cal. Mar. 6, 2014) (awarding \$8,000 to
 17 class representatives from \$2,000,000 fund); Rausch v. Hartford Financial Servs. Group, No. 01–
 18 CV–1529–BR, 2007 WL 671334, at *3 (D. Or. Feb.26, 2007) (approving \$10,000 as a reasonable
 19 incentive award); Razilov v. Nationwide Mut. Ins. Co., 2006 WL 3312024, at *1 (D. Or. Nov.13,
 20 2006) (“The Court also awards ... incentive awards in the amounts of \$10,000 to class representative
 21 Ruslan Razilov...”).

22 Here, Plaintiffs request awards of \$7,500 for named plaintiffs Gurfinkel, Manahan, Talha, and
 23 Sanchez who have been a part of the O'Connor and Yucesoy cases for many years and have spent
 24 these long years assisting counsel in advancing the class’s claims. Plaintiffs also seek \$5,000
 25 incentive awards for Plaintiffs Dulles and Oliveira who joined the case a year ago and have provided
 26 crucial support and strengthened the class claims on behalf of Massachusetts drivers who opted out of
 27 arbitration. These enhancement payments, totaling \$40,000 out of a \$20 million settlement fund, are
 28 warranted by their work on this case and the risk undertaken by them on behalf of the class. All six

1 named plaintiffs have had their names on the publicly-filed pleadings in this case. See, e.g., Dulles
 2 Decl. at ¶ 6. Given the inordinate attention this case has received, potential employers have seen, and
 3 undoubtedly will see, Plaintiffs’ names associated with this litigation – a fact not helpful to Plaintiffs’
 4 potential employment prospects, particularly with “gig economy” companies. See Gurfinkel Decl. at
 5 ¶ 6; Manahan Decl. at ¶ 7; Talha Decl. at ¶ 6; Sanchez Decl. at ¶ 7; Dulles Decl. at ¶ 6, Oliveira Decl.
 6 at ¶ 6.

7 Furthermore, all of the plaintiffs have been active in helping to assist the attorneys in this
 8 case, provide documents and information, and spread the word about the case and Uber’s arbitration
 9 clause among their fellow drivers. See Gurfinkel Decl. at ¶¶ 3-5; Manahan Decl. at ¶¶ 3-6; Talha
 10 Decl. at ¶¶ 4-5; Sanchez Decl. at ¶¶ 3-6; Dulles Decl. at ¶¶ 3-5, Oliveira Decl. at ¶¶ 3-5. Plaintiffs
 11 Gurfinkel and Manahan sat for full-day (extremely adversarial) depositions, which required them to
 12 travel from their homes, and they each responded to multiple rounds of document requests,
 13 interrogatories, and requests for admission. See Gurfinkel Decl. at ¶¶ 3-5; Manahan Decl. at ¶¶ 3, 5.
 14 Moreover, Gurfinkel, Manahan, Sanchez, and Talha have been involved with the litigation for many
 15 years, and their steadfast, unflagging support for the case and the class they represent has been
 16 laudable. Under these circumstances, the requested enhancements are reasonable, if not low.

17 Notably, the requested service enhancements, totaling \$40,000, comprise less than half a
 18 percent of the overall settlement amount – just 0.2%. See, e.g., Monterrubio v. Best Buy Stores, L.P.,
 19 291 F.R.D. 443, 462 (E.D. Cal. 2013) (finding total incentive payment of .62% of settlement
 20 reasonable). Likewise, there is no “drastic disparity” in the size of each payment relative to the
 21 settlement shares of class members, some of whom will be receiving many thousands of dollars in
 22 their settlement payment. For these reasons, the requested service enhancements should be approved.

23 **IV. CONCLUSION**

24 As set forth above, Plaintiffs’ counsel has achieved an excellent result for the plaintiff class.
 25 After six years of dogged litigation, this case could have been delayed for many more years following
 26 the reversal of the Class Certification Orders, but instead, the class now stands to receive a substantial
 27 benefit in a matter of months. Plaintiffs have shown that they have worked diligently and efficiently
 28 on this case, and their requested fee of \$5 million, which is line with the 25% benchmark in the Ninth

1 Circuit, results in a negative lodestar multiplier. Moreover, because of the significant task ahead of
2 administering and enforcing this settlement, Plaintiffs' counsel will likely be devoting many
3 additional hours to this litigation in the months and years to come. For all of these reasons, the Court
4 should approve the requested fees.

5 Date: May 14, 2019

6 Respectfully submitted,

7 MATTHEW MANAHAN, ELIE GURFINKEL,
8 MOHK TAR TALHA, PEDRO SANCHEZ, AARON
9 DULLES, and ANTONIO OLIVEIRA, individually and
10 on behalf of all others similarly situated,

11 By their attorneys,

12 /s/ Shannon Liss-Riordan

13 Shannon Liss-Riordan, SBN 310719
14 Adelaide Pagano, *pro hac vice*
15 LICHTEN & LISS-RIORDAN, P.C.
16 729 Boylston Street, Suite 2000
17 Boston, MA 02116
18 (617) 994-5800
19 Email: sliss@llrlaw.com; apagano@llrlaw.com

20 **CERTIFICATE OF SERVICE**

21 I hereby certify that a copy of the foregoing document was served by electronic filing on May
22 14, 2019, on all counsel of record.

23 /s/ Shannon Liss-Riordan

24 Shannon Liss-Riordan, Esq.

4. I received a Juris Doctor degree from the University Of Connecticut School Of Law in 1992 with honors. Since then, I have represented plaintiffs in employment litigation and other employee rights matters. Since 1999, I have represented plaintiffs in wage and hour class and collective actions.

5. I have represented collectives of plaintiffs in FLSA collective and class actions including plaintiffs in *Scott v. Aetna Services, Inc.*, (3:99-CV-46 (CFD)), *Gregory v. Home Depot, U.S.A. Inc.* (3:01-CV-372 (AWT)), *Neary v. Metropolitan Property and Casualty Company* (3:06-CV-0536 (JBA)), *Lumia v. Hanover Insurance Company* (3:07-CV-1094 (AHN)), *Sancomb v. Motherhood Maternity* (3:05-CV-71 (AWT)), *Holbrook v. Smith & Hawken, LTD.* (3:06-CV-1232 (VLB)), *Aros v. United Rentals, Inc.* (3:10-CV-73 (JCH)), *Alli v. Boston Market* 3:10-CV-4 (JCH)), *Zaniewski v. PriceRite, Inc.*, 848 F.Supp.2d 213 (D. Conn. 2012); *Bozak v. FedEx Ground*, 3:11-cv-00738-RNC, and *Cook v. Family Dollar Stores of Connecticut, Inc.*, UWY-CV-11-6011946S (X10).

6. I am counsel of record for plaintiffs in several pending wage / hour class actions in Connecticut's state and federal courts including, *Morrison v. Ocean State Jobbers, Inc.*, 3:09CV1285 (AWT); and others.

7. I have presented seminars on the topic of wage and hour litigation, including class and collective action litigation, including two in the fall of 2013.

8. I attend seminars and keep up with the developments of the law in this area by reading articles and cases as they are published.

9. I am skilled and experienced in representing employees in wage and hour class and collective actions.

10. I am a member of the Connecticut Employment Lawyers Association (“CELA”) and the National Employment Lawyers Association (“NELA”).

11. Our fee applications in individual and class or collective action cases are routinely approved by state and federal judges.

12. As of November 30, 2015, HLF has spent over 365 hours of attorneys’ and paralegals’ time in this case. At the pertinent hourly rates, the value of Plaintiffs’ legal fees to date is over \$104,048. Further, to date, the HLF has incurred costs in the amount of \$5,743.75, including court filing costs, overnight mailing costs, and costs of deposition transcripts.

13. The litigation tasks performed by HLF staff include, among other things:

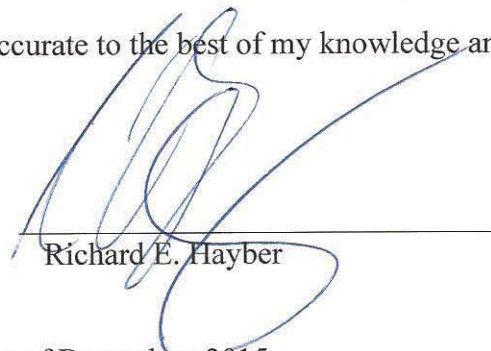
- i. Conducted thorough intake interview with initial lead plaintiffs Angelina Olender and Ana Jimenez;
- ii. Conducted a thorough investigation of the claims and defenses by engaging in substantial informal discovery including: conducting in-depth interviews with plaintiffs;
- iii. Opposed Defendant’s two motions to dismiss;
- iv. Drafted discovery requests, including Plaintiffs’ interrogatories and documents requests;
- v. Reviewed over 2,500 pages of documents that Defendant produced;
- vi. Responded to discovery requests for about 9 opt in plaintiffs;
- vii. Conducted a Rule 30(b)(6) depositions of Clarks’ Vice President of Field Administration, and deposed the Director of Payroll and Human Resources Systems;
- viii. Amended the complaint;
- ix. Prepared for and attended an all-day mediation with experienced mediator Charles Stohler on April 28, 2015;

x. After the April 28, 2015 mediation, Attorney Erick I. Díaz Vázquez of the HLF continued to engage in telephonic and written settlement discussions with Defense Counsel on a regular basis until May 5, 2015, when the Parties agreed to a settlement in principle. For the next several months, he negotiated with Defense Counsel the terms of the settlement agreement to reduce it to writing; and

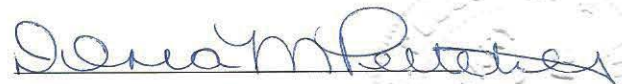
xi. Drafted documents regarding the motions for preliminary and final approval of the settlement agreement.

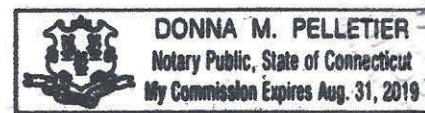
xii. The foregoing is a summary of activities that the Hayber Law Firm engaged in during this litigation. It is not exhaustive.

I hereby certify that this statement is true and accurate to the best of my knowledge and belief.


Richard E. Hayber

Subscribed and sworn to before me, this 3rd day of December, 2015.





ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Kohl's Misclassifies Assistant Store Managers as Exempt from Overtime Pay, Lawsuit Alleges](#)
