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Superior Court of California  
County of Los Angeles

FEB 14 2018

Sherri R. Carter, Executive Officer/Clerk  
By: Crystal Vargas, Deputy

12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13  
14 COUNTY OF LOS ANGELES

15 TINA PATEL, in her representative capacity,  
16  
17 Plaintiff,

18 vs.

19 ONEWEST RESOURCES, LLC, and Does 1-50,  
20 inclusive,  
21  
22 Defendants.

Case No. BC653645

Assigned to Hon. Maren E. Nelson

**CLASS ACTION**

**PLAINTIFF TINA PATEL'S NOTICE  
OF MOTION AND MOTION FOR  
ATTORNEYS FEES, COSTS, AND AN  
ENHANCEMENT AWARD**

Hearing Date: March 9, 2018  
Hearing Time: 9:00 a.m.  
Dept.: 307

23 TO DEFENDANT AND ITS ATTORNEYS OF RECORD:

24 PLEASE TAKE NOTICE THAT on March 9, 2018, at 9:00 a.m., or as soon after  
25 as the matter can be heard, in Department 307 of the above-entitled Court located at 600 South  
26 Commonwealth Avenue, Los Angeles, California, plaintiff Tina Patel will and hereby does move  
27 this Court, pursuant to California Rule of Court 3.769, for an order: (1) awarding class counsel  
28 fees in the amount of \$140,000 from the common fund; (2) awarding class counsel \$16,000 of its  
actual litigation costs from the common fund; and (3) awarding Plaintiff an enhancement award


1 in the amount of \$10,000.

2 This Motion is based on this Notice of Motion, the Memorandum of Points and  
3 Authorities in support of this motion, the Declarations and Exhibits in support of this motion, all  
4 pleadings and papers filed herein, the arguments of counsel and any other matters properly  
5 before the Court.

6  
7 Dated: February 14, 2018

BAKER CURTIS & SCHWARTZ, P.C.

8 By: \_\_\_\_\_

  
9 Chris Baker  
10 Attorneys for Plaintiff  
11 TINA PATEL  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendant OneWest Resources, LLC (“OneWest”) has agreed to pay \$420,000, plus the  
4 employer’s share of payroll taxes, to settle this action. A few months after Plaintiff filed this  
5 lawsuit, OneWest’s successor CIT Bank, N.A., which is the employer of any currently-employed  
6 Class Members, changed its timekeeping program so that employees can now personally edit  
7 their time punches to add the time it takes for computers to load up. (Curtis Decl., Ex. 6, ¶ 33.)  
8 In sum, OneWest has paid out a substantial sum of money to compensate class members for past  
9 harm and a substantial step has been taken towards avoiding future harm.

10 Under the Settlement Agreement, Class Counsel may request from the common fund  
11 \$140,000 in fees and its actual litigation costs capped at \$16,000. (*Id.* at Ex. 1, ¶ 32.) Plaintiff  
12 may request an enhancement award of \$10,000. (*Id.* at Ex. 1, ¶ 34.) Through this motion,  
13 Plaintiff and Class Counsel do so.

14 Class Counsel’s requested fee of \$140,000 represents one third of the \$420,000 common  
15 fund. The requested fees are even less than one third when you consider the additional \$8,000  
16 OneWest is separately paying for its share of the payroll taxes on the settlement sum. (*Id.* at Ex.  
17 3, ¶ 34.) From a lodestar perspective, Class Counsel has incurred actual fees of over \$228,000  
18 litigating this case through its unusual procedural posture. (*Id.* at ¶ 12.) That means that Class  
19 Counsel is only recovering 61% of the fees it has incurred in this matter. This negative  
20 multiplier further supports granting Class Counsel’s full fee request.

21 Class Counsel’s actual litigation costs are \$18,297.54, so this motion requests the  
22 \$16,000 cap. (*Id.* at Ex. 5). It is customary to deduct these amounts from the common fund.

23 Finally, Plaintiff has provided material support in this case. She is the only class  
24 representative. Her requested enhancement award of \$10,000 is especially warranted here  
25 because of the long and convoluted case history throughout which Plaintiff stayed committed to  
26 recovery for the class.

27 For these reasons, as well as those discussed below, Plaintiff asks that the Court award  
28 the requested fees, costs, and enhancement award.

1 **II. FACTS**

2 The history and circumstances of this case, and the results obtained, are set forth in detail  
3 in Plaintiff’s Motion for Preliminary Approval and Motion for Final Approval. Plaintiff does not  
4 repeat that information here. With respect to other information relevant to Plaintiff’s Motion for  
5 Fees, Costs, and an Enhancement Award, Plaintiff notes the following:

6 **A. Class Counsel**

7 Since forming Baker Curtis & Schwartz (including earlier iterations), Class Counsel has  
8 prosecuted wage and hour/PAGA class actions against Bank of America, Fidelity Investments,  
9 PennyMac, Mixpanel, CBRE, JPMorgan Chase, Google and other corporate defendants. (Curtis  
10 Decl., ¶ 4.) In total, Chris Baker has practiced employment law in California since 1995. Mike  
11 Curtis has practiced employment law in California since 2007. Deborah Schwartz has practiced  
12 employment law in California since 2000. (*Id.*) Through their years of practice with the defense  
13 bar, Class Counsel also represented corporate clients such as Kaiser Permanente, Hertz  
14 Corporation, MediaNews Corp., Solar City, the Golden State Warriors, Oracle, and other  
15 companies in the defense of wage and hour class actions. (Curtis Decl., Ex. 6 ¶ 7.)

16 In addition to their work done on contingency fees, Class Counsel does hourly work for  
17 individuals who have disputes with their employers. These individuals tend to be either senior  
18 executives or high-wage earners. Class Counsel’s rates when working for individuals on an  
19 hourly basis are currently \$800 (for Baker), \$655 (for Schwartz), and \$585 (for Curtis). (Curtis  
20 Decl. ¶ 6.)<sup>1</sup> These rates are comparable to (or less than) the hourly rates charged by labor and  
21 employment attorneys with Class Counsel’s experience at large defense firms. (*Id.* at ¶ 5.) These  
22 rates are also comparable to (or less than) the hourly rates charged by other plaintiff-side class  
23 action attorneys with Class Counsel’s experience. (*Id.* at ¶ 6.)

24 **B. Class Counsel’s Work on this Case**

25 Class Counsel first began work on this case in May 2015. The initial complaint was filed  
26 in September 2015. Through February 7, 2018, Class Counsel has spent approximately 409  
27 hours prosecuting this matter. (Curtis Decl. ¶ 12.) Consistent with their experience as members

28 <sup>1</sup> The work on this case prior to February 1, 2018, was billed at the lower rates of: \$750 (for Baker), \$615 (for Schwartz), and \$550 (for Curtis). (Curtis Decl. ¶ 6.)

1 of the defense bar, Class Counsel has maintained a contemporaneous record of time spent.  
2 (Curtis Decl. ¶ 11.) This time can be broadly characterized as follows:

3 **Investigation and Discovery - @ 30 Hours.**

4 This work includes investigating the factual basis for Plaintiff's claims, reviewing and  
5 analyzing documents, drafting and negotiating a *Bel-Aire* notice to get the Class Members'  
6 contact information and interviewing witnesses, analyzing electronic data, drafting multiple sets  
7 of discovery requests, and negotiating a PMK deposition of OneWest.

8 **Communications with Client, Opposing Counsel and Internally - @ 16 hours.**

9 This work includes discovery meet and confer and other communications that do not  
10 cleanly fall into one of the below categories.

11 **Pleadings - @ 25 Hours.**

12 This work includes preparing: (1) the initial complaint in precursor Case No. BC595033  
13 and other case initiating documents; (2) the PAGA letter; (3) submitting a complex questionnaire  
14 response in connection with the *Rickerd* case's transfer to CCW;<sup>2</sup> (4) preparing and filing a  
15 notice of appeal and the initial documents with the Court of Appeal in *Rickerd*; and (5) the  
16 complaint filed in this action and other case initiating documents.

17 **Motion Practice - @ 240 Hours.**

18 This work includes: (1) multiple motions to compel discovery in Case No. BC595033; (2)  
19 motion to continue trial in BC595033 that was pending at the time settlement was reached; (3)  
20 the preliminary approval papers in Case No. BC595033 (including the motion and multiple  
21 declarations); (4) motion to intervene and related briefing in *Rickerd*; (5) ex parte application to  
22 set Plaintiff's motion to intervene for hearing in Department 308 after *Rickerd* was transferred to  
23 CCW; (6) the preliminary approval papers for this action; and (7) the final approval papers in  
24 this action. This category also includes time spent preparing for, traveling to and from, and  
25 appearing at the hearings.

26  
27  
28 <sup>2</sup> Paragraph 10 of the Curtis declaration recaps the evolution of this case from BC595033 to the  
current lawsuit and the relationship between *Rickerd* and this case.





1 members, provided and explained documentation, participated in the mediation, and reviewed  
2 and executed three different versions of the final settlement. (Curtis Decl. ¶ 14, Ex. 4.)

3 While a less committed Plaintiff may have lost interest in the case after its first year, or  
4 after negotiating the first settlement agreement, Plaintiff has been an active participant in the  
5 case from May 2015 when she first met Class Counsel through today. She has remained  
6 committed even when the first case she filed had to be dismissed and this new case filed. She  
7 did not waiver when the first settlement agreement she reviewed and signed had to be replaced  
8 by two subsequent agreements or when she was not able to get a preliminary approval hearing  
9 until October 25, 2017, nearly a year after the settlement agreement was first reached in  
10 principle. Her commitment is especially commendable because she was aware of the possibility  
11 that she could resolve the case on an individual basis, thus maximizing her personal recovery.  
12 Instead, she chose to seek only a class resolution that would benefit her former coworkers instead  
13 of maximizing her potential personal recovery. (Curtis Decl. ¶ 14, Ex. 4.)

### 14 **III. ARGUMENT**

#### 15 **A. This Court Should Approve the Fee Request**

16 The California Supreme Court has confirmed the manner in which attorney's fees should  
17 be calculated in class action/common fund cases. *Laffitte v. Robert Half Intern. Inc.* (2016) 1  
18 Cal.5th 480. In *Laffitte* the Supreme Court affirmed the trial court's decision to award fees in an  
19 employment class action in the amount of one third of the common fund, representing a lodestar  
20 multiplier of between 2.03 and 2.13. *Id.* at 487.

21 In making this determination, the Supreme Court held that a trial court could rely  
22 primarily on the percentage-of-recovery method in calculating a fee award based on a common  
23 fund. *Id.* at 503. The Supreme Court reasoned: "The recognized advantages of the percentage  
24 method – including relative ease of calculation, alignment of incentives between counsel and the  
25 class, a better approximation of market conditions in a contingency case, and the encouragement  
26 it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation –  
27 convince us the percentage method is a valuable tool that should not be denied our trial courts."  
28 *Id.* (citations omitted). Accordingly, "[w]e join the overwhelming majority of federal and state

1 courts in holding that when class action litigation establishes a monetary fund for the benefit of  
2 the class members, and the trial court in its equitable powers awards class counsel a fee out of  
3 that fund, the court may determine the amount of a reasonable fee by choosing an appropriate  
4 percentage of the fund created.” *Id.*

5 The Supreme Court also approved – at the trial court’s discretion – the use of a lodestar  
6 “cross-check” to confirm the reasonableness of the percentage award.<sup>3</sup> *Id.* at 504. In doing so,  
7 however, the Supreme Court noted “that trial courts conducting lodestar cross-checks have  
8 generally not been required to closely scrutinize each claimed attorney-hour, but have instead  
9 used information on attorney time spent to focus on the general question of whether the fee  
10 award appropriately reflects the degree of time and effort expended by the attorneys.” *Id.* at 505  
11 (quotation omitted). Indeed the Supreme Court specifically approved the trial court’s cross-  
12 check through “counsel declarations summarizing overall time spent, rather than demanding and  
13 scrutinizing daily time sheets in which the work performed was broken down by individual  
14 task.” *Id.*

15 Here, regardless of whether the Court utilizes a percentage or lodestar method, Class  
16 Counsel’s fee request of \$140,000 is reasonable and should be approved.

17 **1. The Fee Request Is Reasonable As a Percentage of the Recovery**

18 The common fund doctrine holds that “when an action brought by a plaintiff or plaintiffs  
19 for the benefit of all results in the creation or preservation of [a common] fund, such plaintiff or  
20 plaintiffs may be awarded attorneys’ fees out of the fund.” *21<sup>st</sup> Century Ins. Co. v. Superior*  
21 *Court* (2009) 47 Cal.4<sup>th</sup> 511, 522. Indeed, it is appropriate to pay fees out of a common fund,  
22 even in a fee-shifting case, “to avoid the unjust enrichment of those who benefit from the fund  
23 that is created, protected, or increased by litigation and who otherwise bear none of the litigation  
24 costs.” *Sobel v. Hertz Corporation* (D. Nev. 2014) 53 F.Supp.3d 1319, 1326. In other words, just

25  
26 <sup>3</sup> The Court’s Preliminary Approval Order may indicate that the Court prefers to primarily use the  
27 lodestar method with the percentage method as a cross check, which is the reverse of the  
28 procedure discussed in *Laffitte*, and which in Class Counsel’s experience is more commonly used  
in wage and hour class actions with a common fund, like this case. (Ex. 9, pp.13-14.) *Laffitte*,  
however, makes clear doing so would be within the Court’s discretion (1 Cal.5th at 504) and  
analyzing in either direction equally confirms the reasonableness of the fee request.

1 as a single plaintiff in a contingency case shares a part of his or her award with her attorney, so  
2 should a class.

3 Thus, in determining the appropriate percentage of a common fund, “the amount of  
4 attorney’s fees typically negotiated in comparable litigation should be considered in the  
5 assessment of a reasonable fee in representative actions . . . . Given the unique reliance of our  
6 legal system on private litigants to enforce substantive provisions of law through class ... actions,  
7 **attorneys providing the essential enforcement services must be provided incentives roughly**  
8 **comparable to those negotiated in the private bargaining that takes place in the legal**  
9 **marketplace**, as it will otherwise be economic for defendants to increase injurious behavior.”

10 *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4<sup>th</sup> 19, 47 (emphasis added).

11 In individual cases, the contingency percentage for employment matters typically ranges  
12 from 33% to up to 48%. (Curtis Decl. ¶ 7.)

13 In California state court, the typical percentage fee in class action cases is approximately  
14 one-third of the recovery. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4<sup>th</sup> 43, 66 n.11 (“Empirical  
15 studies show that, regardless whether the percentage method or lodestar method is used, fee  
16 awards in class actions average around one-third of the recovery.”); *Laffitte v. Robert Half*  
17 *International, Inc.* (2014) 231 Cal.App.4<sup>th</sup> 860 (applying percentage of recovery method and  
18 awarding 33.33% of the common fund) *review granted and opinion superseded*. Even in the  
19 Ninth Circuit where the benchmark percentage fee in class actions is 25%, courts regularly award  
20 one third when that amount is still less than class counsel’s lodestar, as is the case here. See e.g.  
21 *Alvarado v. Nederend* (E.D. Cal., May 17, 2011) 2011 WL 1883188at \*8 (“Class Counsel seeks  
22 an attorney's fee award of \$165,523, or 33 1/3% of the Settlement amount. This is significantly  
23 less than Class Counsel's asserted lodestar of \$198,593.75.”); *Vasquez v. Coast Valley Roofing,*  
24 *Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 491 (“Class Counsel seeks an attorney's fee award of  
25 \$100,000, or 33 1/3% of the common fund. This is significantly less than Class Counsel's asserted  
26 lodestar of \$178,475.”); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal., Nov. 14, 2007) 2007  
27 WL 3492841, at \*2–4 (granting attorney's fees of \$80,000 where lodestar was \$257,584.50).

1 Class Counsel’s fee request of \$140,000 represents one-third of the \$420,000 cash  
2 settlement amount and 32.7% of the approximate \$428,000 common fund (which includes the  
3 payroll tax gross up). Accordingly, the fee request is reasonable under the percentage-of-  
4 recovery approach.

5 **2. The Fee Request Is Reasonable under a Lodestar Analysis**

6 *a. Class Counsel’s lodestar far exceeds the requested fees*

7 The lodestar analysis starts by examining two variables: (1) hourly rates and (2) hours spent.

8 With respect to the hourly rate, a court should consider the prevailing market rate.

9 *Ketchum v. Moses* (2001) 24 Cal.4<sup>th</sup> 1122, 1133; *Serrano v. Unruh* (1982) 32 Cal.3d 621, 629.

10 This rate may be established through a declaration by Class Counsel. *Wershba v. Apple*  
11 *Computer, Inc.* (2001) 91 Cal.App.4<sup>th</sup> 224, 254-55 (relying on Plaintiff’s counsel’s declarations as  
12 sufficient evidence to demonstrate the appropriate hourly rate).

13 The best indicator of a reasonable market rate is the actual rate charged by an attorney to  
14 his or her private clients. *Ohio-Sealy Mattress Mfg. Co. v. Sealy, Inc.* (7<sup>th</sup> Cir. 1985) 776 F.2d  
15 646, 660. As explained by one court of appeal: “When an attorney’s customary billing rate is the  
16 rate at which the attorney requests the lodestar be computed and that rate is within the range of  
17 prevailing market rates, the courts should consider this rate when fixing the hourly rate to be  
18 allowed. When the rate is not contested, it is *prima facie* reasonable.” *Islamic Center of*  
19 *Mississippi v. City of Starkville, Miss.* (5<sup>th</sup> Cir. 1989) 876 F.2d 465, 469.

20 Here, the hourly rates charged by Class Counsel to their individual clients on non-  
21 contingency matters is \$800 (for Baker), \$655 (for Schwartz), and \$585 (for Curtis). (Curtis Decl.  
22 ¶ 6.) Moreover, nearly all the time billed on this matter were at Class Counsel’s previous rates of  
23 \$750 (for Baker), \$615 (for Schwartz), and \$550 (for Curtis). (*Id.*) These rates are well within  
24 the range of the prevailing market, they are the rates that Class Counsel charge individual clients  
25 on an hourly basis, and they are *prima facie* reasonable. (Curtis Decl. ¶¶ 5-7.)

26 As for the “hours spent” component, **Class Counsel is typically compensated “for all**  
27 **time reasonably expended in pursuit of the ultimate result achieved** in the same manner that  
28 an attorney traditionally is compensated by a fee-paying client for all time reasonably expended  
on a matter.” *Hensly v. Eckerhart* (1983) 461 U.S. 424, 431 (emphasis added); accord *Meister v.*

1 *Regents of University of California* (1998) 67 Cal.App.4th 437, 447-48. In this case, Class  
2 Counsel has expended approximately 409 hours to date on this case. (Curtis Decl. ¶ 8.) They  
3 have done so efficiently given the complexity of this case, the varied claims, the need to refile a  
4 second action to get approval of this settlement and the need to try to intervene in an overlapping  
5 matter. (Curtis Decl. ¶¶ 10-12). Class Counsel’s attorney with the lowest billing rate has also  
6 done the lion’s share of the work on this case. (Curtis Decl. ¶ 8.)

7 For these reasons, the current lodestar calculation of \$228,318 is reasonable and indeed is  
8 considerably more than the \$140,000 fees requested. The requested fees equal a negative 1.63  
9 multiplier.

10 *b. The requested fees are reasonable because the lodestar adjustment*  
11 *factors would only further raise Class Counsel’s fees*

12 A lodestar “may be adjusted by the court based on factors including, as relevant herein,  
13 (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them,  
14 (3) the extent to which the nature of the litigation precluded other employment by the attorneys,  
15 (4) the contingent nature of the fee award.” *Ketchum*, 24 Cal.4th at 1132. Each of the above  
16 factors supports raising the lodestar, not reducing it below the negative 1.63 multiplier imposed  
17 by the Settlement Agreement.

18 As to the first and second factors, OneWest had a number of meritorious defenses to  
19 Plaintiff’s claims and there were a significant number of fact-specific issues with which to  
20 grapple. As further detailed in the Motion for Preliminary Approval, some courts have ruled that  
21 the *de minimis* doctrine bars claims for unpaid work of less than 10 minutes, as was the case here.  
22 See, e.g. *Lindow v. United States* (9th Cir.1984) 738 F.2d 1057, 1062. OneWest’s timekeeping  
23 policy and meal period policy also arguably comply with California law so it would argue any  
24 proof of liability would have to be individualized. Despite the issues raised by this case, Class  
25 Counsel has nevertheless obtained significant relief for the Class. These factors, therefore, justify  
26 a positive multiplier.

27 As to the third factor, Class Counsel is small shop. While they have considerable class  
28 action experience, taking on a case like this requires them to turn down other work that would  
result in quicker and safer fees. *Romero*, 2007 WL 3492841, at \*4 (noting significance of a small

1 shop having to devote substantial resources to a class action causing it to turn away significant  
2 amounts of other business). This factor also justifies a positive multiplier.

3 Fourth, Class Counsel took this case on contingency and advanced all costs. In doing so,  
4 Class Counsel exposed themselves to legal liability from the class members and faced the risk  
5 that they would receive nothing. “Because payment is contingent upon receiving a favorable  
6 result for the class, an attorney should be compensated both for services rendered and for the risk  
7 of loss or nonpayment assumed by accepting and prosecuting the case.” *In re Quantum Health*  
8 *Resources, Inc.* (C.D. Cal. 1997) 962 F.Supp. 1254, 1257; accord *Rader v. Thrasher* (1962) 57  
9 Cal.2d 244, 253. This factor too justifies a positive multiplier.

10 The adjustment factors, therefore, confirm that Class Counsel’s fee request also should be  
11 granted under a lodestar analysis.

### 12 **3. The Catalyst Doctrine Further Supports The Fee Request**

13 Finally, trial courts have discretion to grant a fee award for non-monetary relief that  
14 results from the lawsuit. More specifically, under CCP § 1021.5, a court may “award attorneys  
15 fees to a ‘successful party’ in any action that ‘has resulted in the enforcement of an important  
16 right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary,  
17 has been conferred on the general public or a large class of persons, (b) the necessity and  
18 financial burden of private enforcement are such as to make the award appropriate, and (c) such  
19 fees should not in the interest of justice be paid out of the recovery, if any.” *Graham v. Daimler*  
20 *Chrysler* (2004) 34 Cal.4th 553, 564; accord *Tipton-Whittington v. City of Los Angeles* (2004) 34  
21 Cal.4th 604. “A plaintiff will be considered a ‘successful party’ where an important right is  
22 vindicated ‘by activating defendants to modify their behavior.’” *Id.* at 567. “The term ‘successful  
23 party,’ as ordinarily understood, means the party to the litigation that achieves its objectives.” *Id.*  
24 at 571.

25 Here, Plaintiff sued because eTIME was incapable of capturing OneWest’s non-exempt  
26 employee’s worktime before and after they could click the timestamp in eTIME and because  
27 OneWest’s policy of requiring non-exempt employees to request their manager to edit their time  
28 records was not a sufficient solution to eTIME’s limitation. While OneWest’s successor, CIT

1 Bank, does not acknowledge that it changed eTIME in response to this lawsuit, the facts are that  
2 this lawsuit was filed in September 2015 and CIT modified eTIME three and a half months later.  
3 (Ex. 6, ¶ 33.) Employees can now personally edit their time entries instead of requesting their  
4 supervisors to do so. (*Id.*) This gives employees a better opportunity to receive compensation for  
5 their worktime that eTIME does not capture. This change substantially solves the problem going  
6 forward that prompted Plaintiff to sue.

7 The Court should, therefore, also consider the benefit Plaintiff has provided to current and  
8 future employees who will now have the ability to edit their own time records and avoid the harm  
9 Plaintiff and the Class Members suffered. This further supports the fee request here.

10 \*\*\*

11 In sum, Class Counsel's fee request is reasonable under both a percentage of recovery and  
12 a lodestar analysis and the catalyst doctrine further supports it. Class Counsel therefore ask that  
13 the Court grant the requested fee award of \$140,000.

14 **B. The Requested Enhancement Payment Should Be Approved**

15 The use of incentive payments to representative plaintiffs in class actions has long been  
16 approved by California courts. *See In re Cellphone Fee Termination Cases* (2010) 186  
17 Cal.App.4<sup>th</sup> 1380, 1383 (affirming award of \$10,000 to each of the four class representatives);  
18 *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4<sup>th</sup> 399, 412.

19 Class representative enhancement awards of \$10,000—as Plaintiff requests here—or more  
20 are commonly granted. *Van Vranken v. Atl. Richfield Co.* (N.D. Cal.1995) 901 F.Supp. 294, 299  
21 (approving \$50,000 enhancement award to plaintiffs); *Glass v. UBS Financial Services, Inc.*  
22 (N.D. Cal. Jan.26, 2007) 2007 WL 221862, at \*17 (approving \$25,000 enhancement to each  
23 named plaintiff); *Lemus v. H & R Block Enterprises LLC* (N.D. Cal., Aug. 22, 2012) 2012 WL  
24 3638550, at \*6 (approving \$15,000 incentive award to named plaintiff who spent 60 hours  
25 working on case and signed a general release); *Rausch v. Hartford Financial Servs. Group* (D.  
26 Or. Feb.26, 2007) 2007 WL 671334, \*3 (“the Court finds Reynolds is entitled to \$10,000 as a  
27 reasonable incentive award, particularly in light of his perseverance in pursuing this matter to a  
28 successful outcome...”); *Razilov v. Nationwide Mut. Ins. Co.* (D. Or. Nov.13, 2006) 2006 WL



1 3312024, \*1 (approving incentive awards in the amounts of \$10,000 to class representative).

2 **Most significantly, the named plaintiffs in the related *Rickerd* action – which involved**  
3 **branch personnel (as opposed to this case, which involves non-branch personnel) – each**  
4 **received \$10,000 enhancement payments last year.** (Curtis Decl., Ex. 10, ¶ 12.)

5 Plaintiffs are generally entitled to incentive compensation for initiating the litigation on  
6 behalf of the absent class members, taking the time to prosecute the case, and incurring financial  
7 and personal risk. *See Clark v. American Residential Services LLC* (2009) 175 Cal.App.4<sup>th</sup> 785,  
8 803 (reiterating the rule that “[a]n incentive award is appropriate ‘if it is necessary to induce an  
9 individual to participate in the suit.’”) The “criteria courts may consider in determining whether  
10 to make an incentive award include: 1) the risk to the class representative in commencing suit,  
11 both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class  
12 representative; 3) the amount of time and effort spent by the class representative; 4) the duration  
13 of the litigation; and 5) the personal benefit (or lack thereof) enjoyed by the class representative  
14 as a result of the litigation.” *In re Cellphone Fee Termination Cases*, 186 Cal.App.4<sup>th</sup> at 1394-95.

15 As to the first factor, Plaintiff assumed the risk of this litigation, including the risk that the  
16 case would have an adverse impact on her career in the banking sector or that she would be liable  
17 for OneWest’s costs if she lost the case. *Whiteway v. Fed Ex Kinkos Office & Print Services, Inc.*  
18 (N.D. Cal. Dec. 17, 2007) 2007 WL 4531783, at \*2–4; (Curtis Decl., ¶ 14).

19 As to the second and third factors, Plaintiff spent 25-35 hours assisting counsel while  
20 balancing the obligation of a new job and her family. She provided invaluable assistance in  
21 explaining how the timekeeping practices at OneWest worked, helping Class Counsel develop her  
22 claims and prosecute this action. (Curtis Decl., ¶ 14.)

23 Under the fourth factor, Plaintiff is truly unique compared to the average class  
24 representative. This litigation has lasted two and a half years. More significantly, this case’s  
25 unusual procedural posture required Plaintiff to stay engaged in two different lawsuits, and  
26 review and execute three different settlement agreements. (*Id.*) That resolve justifies the  
27 requested enhancement.

28

1 Most relevant to the fifth factor, Plaintiff potentially could have settled her personal case  
2 and recovered far more, far sooner, for herself. But she commendably chose to instead pursue a  
3 class recovery. (*Id.*) That significance cannot be overstated. Plaintiff also will recover no more  
4 than any other class member, which further supports the enhancement. *See Razilov*, 2006 WL  
5 331204 at \*4 (approving payment of an incentive award where the only benefit a class  
6 representative would receive from the settlement was the same statutory damages award other  
7 class members would receive).

8 Moreover, Plaintiff's service as class representative has provided meaningful benefit to  
9 the class members. Most will receive hundreds of dollars for claims that they were shorted a  
10 couple of minutes of worktime each day. And, as discussed above, following Plaintiff's filing  
11 this lawsuit, the practice that robbed employees of compensation was substantially fixed when  
12 CIT modified eTIME so non-exempt employees can now personally edit their time entries instead  
13 of requesting their supervisors to do so.

14 Accordingly, an enhancement payment of \$10,000 is appropriate in this case.

15 **C. Class Counsel Should Be Awarded Their Costs**

16 Finally, Class Counsel has incurred \$18,297.54 in hard costs in litigating this case, which  
17 is over \$2,000 more than the \$16,000 cap set forth in the Settlement Agreement. That loss  
18 supports the reasonableness of the requested costs. See e.g. *Alvarado*, 2011 WL 1883188, at  
19 \*10.

20 Class Counsel's hard costs are set forth in Exhibit 5 to the Curtis Declaration. Similar  
21 costs like filing fees, mediator fees, ground transportation, copy charges, computer research, and  
22 database expert fees are routinely reimbursed in these types of cases. See *In re United Energy*  
23 *Corp. Sec. Litig.* (C.D.Cal.1989) 1989 WL 73211, at \*6 (quoting Newberg, Attorney Fee Awards,  
24 § 2.19 (1987)). It is appropriate for the class – collectively – to now share in the cost of litigating  
25 this matter. *In re Omnivision Technologies, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036  
26 (“Attorneys may recover their reasonable expenses that would typically be billed to paying clients  
27 in non-contingency matters.”); *In re Media Vision Technology. Securities. Litigation* (N.D. Cal.  
28 1995) 913 F.Supp. 1362, 1366 (“Reasonable costs and expenses incurred by an attorney who

1 creates or preserves a common fund are reimbursed proportionally by those class members who  
2 benefit by the settlement.”).

3 Class Counsel should be awarded reimbursement of its hard litigation costs at the capped  
4 amount of \$16,000.

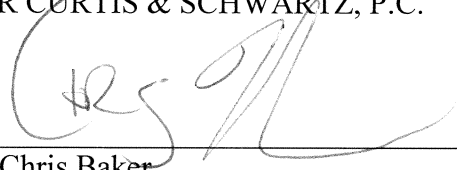
5 **IV. CONCLUSION**

6 For all of the reasons set forth above, Plaintiff respectfully requests that the Court, in  
7 addition to approving Plaintiff’s motion for final approval, issue an order awarding Class Counsel  
8 fees in the amount of \$140,000 and costs in the amount of \$16,000. Plaintiff also requests that the  
9 Court issue an enhancement award of \$10,000.

10  
11 Dated: February 14, 2018

BAKER CURTIS & SCHWARTZ, P.C.

12  
13 By: \_\_\_\_\_

  
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