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11 on behalf of himself and all others similarly
12 situated and on behalf of the general public.

13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 RICHARD TERRY, on behalf of himself and all
16 others similarly situated, and on behalf of the
17 general public,

18 Plaintiff,

19 v.

20 HOOVESTOL, INC.; and DOES 1-100,

21 Defendants.

Case No. 3:16-cv-05183-JST

[Assigned to the Honorable Jon S. Tigar]

**PLAINTIFF'S NOTICE OF MOTION AND
UNOPPOSED MOTION FOR
ATTORNEYS' FEES, COSTS, AND CLASS
REPRESENTATIVE GENERAL RELEASE
PAYMENT**

Date: May 9, 2019

Time: 2:00 p.m.

Judge: Hon. Jon S. Tigar

Dept.: 9

1 **TO: ALL PARTIES HEREIN AND TO THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on May 9, 2019, at 2:00 p.m. or as soon thereafter as the matter
3 can be heard in Courtroom No. 9 of the above entitled courthouse located at 450 Golden Gate Avenue,
4 San Francisco, California 94102, Plaintiff Richard Terry (hereinafter "Plaintiff") will move this Court
5 for an Order Granting Plaintiff's Motion for Attorneys' Fees, Costs, and Class Representative General
6 Release Payment:

- 7 1. Approval of an award of attorneys' fees and costs to Class Counsel in the amount of \$25,000
- 8 as set forth in the Parties' Joint Stipulation and Settlement Agreement;
- 9 2. Approval of an award of costs to Class Counsel in the amount of \$19,293.68 as set forth in
- 10 the Parties' Joint Stipulation and Settlement Agreement;
- 11 3. Approval of a General Release Payment to the named Plaintiff not to exceed \$2,500 as set
- 12 forth in the Parties' Joint Stipulation and Settlement Agreement.

13 Defendant Hoovestol, Inc. (hereinafter "Defendant" or "Hoovestol") does not oppose this
14 Motion.

15 This Motion is made pursuant to Federal Rule of Civil Procedure 23(h) and the Court's Order
16 granting Plaintiff's Motion for Preliminary Approval of Class Action Settlement. The basis of
17 Plaintiff's Motion is that Class Counsel's request for attorneys' fees and costs is fair, reasonable, and
18 in accordance with the agreement of the Parties and that Plaintiff's agreement to a general release of
19 claims, and his efforts and assistance in this case, justify the requested general release payment.

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This motion is based upon this notice, the accompanying Memorandum of Points and Authorities filed herewith; the accompanying Declaration of David Mara, Esq. filed herewith; the Court’s Order Granting Preliminary Approval of Class Action Settlement and Provisional Class Certification (Dkt. No. 65); the filings on record in this case; and upon such further evidence, both documentary and oral, that may be presented at the hearing of this motion.

Dated: February 12, 2019

THE TURLEY & MARA LAW FIRM, APLC

By: */s/ Jill Vecchi* _____

David Mara, Esq.
Jill Vecchi, Esq.
Matthew Crawford, Esq.
Attorneys for Plaintiff RICHARD TERRY

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1 **I. INTRODUCTION**

2 This motion seeks an Order approving Class Counsel’s request for attorneys’ fees and costs
 3 in accordance with the Parties’ Joint Stipulation and Settlement Agreement that was preliminarily
 4 approved by this Court on December 7, 2018. (*See* Dkt. No. 65). As set forth in Plaintiff’s
 5 preliminary approval motion, this is a \$100,000 class action settlement achieved on behalf of
 6 approximately seventy-nine (79) class members.¹ The settlement represents a fair, adequate, and
 7 reasonable resolution to this litigation, as it provides definite and significant recovery in light of
 8 the risks of further litigation, with class members estimated to receive an average recovery of
 9 \$635.52.² The Parties contend the proposed settlement is reasonable in light of the strengths of
 10 Plaintiff’s case, risks of further litigation, and the estimated values of Plaintiff’s claims at trial.
 11 The value of this settlement is further increased because it is a “fixed-sum” settlement in which
 12 one hundred percent (100%) of the Net Settlement Amount (“NSA”) will be distributed amongst
 13 the class members, and none of the funds will revert to Defendant. Class members will not need
 14 to submit any claim forms or take any other further affirmative actions to receive the share of the
 15 funds they are entitled to.

16 The settlement represents a fair recovery for the Class, and a well-crafted compromise of
 17 the divergent positions of the Parties. Further, the settlement has been reached after considerable
 18 negotiation which was guided by the efforts of a highly experienced mediator. Each side evaluated
 19 the strengths and weaknesses of their case and independently concluded that this settlement
 20 represents a responsible means of addressing the claims of Plaintiff and the defenses of Defendant.

21 This recovery represents a positive outcome for the class members, all of whom are hourly

22 ¹ Since Defendant gathered the data this case, an additional approximately forty (40) non-exempt
 23 hourly paid drivers began working for Defendant before the end of the Class Period on December
 24 7, 2018. This increase was due to a higher than normal driver turnover and Defendant acquiring
 25 new contracts in California. It should be noted that these additional Class Members will not have
 26 extensive work weeks since they only worked for Defendants for approximately one year of the
 27 Class Period. Defendant will provide a declaration explaining this increase to be filed alongside
 Plaintiff’s final approval motion.

28 ² The Net Settlement Amount is approximately \$50,206.32. \$50,206.32 divided by 79 Class
 29 Members = \$635.52. Plaintiff will file a declaration from the settlement administrator with his
 final approval motion which will provide the Court with the final average and high settlement
 payments.

1 drivers, who may normally not possess the means to individually pursue his or her own claims.
 2 The class members in this case have received the benefit of working with experienced and
 3 knowledgeable wage and hour attorneys who have vigorously pursued, litigated, negotiated, and
 4 eventually settled this highly contested matter and reach a successful resolution. Therefore, for all
 5 the of the foregoing reasons, Class Counsel respectfully requests that it be awarded attorneys' fees
 6 in the amount of \$25,000, representing twenty-five percent (25%) of the settlement, a percentage
 7 that has been established as the benchmark in common fund cases in the Ninth Circuit, and costs
 8 in the amount of \$19,293.68 (originally estimated not to exceed \$20,000).

9 **II. ATTORNEYS' FEES AND COSTS ARE REASONABLE**

10 **A. Class Counsel Have Extensive Experience Acting as Class Counsel**

11 Class counsel's experience in complex class action matters is extensive. Mara Dec. ¶¶ 2-8.
 12 Indeed, Class Counsel were class counsel in *Hohnbaum et al. v. Brinker Restaurant Corp et al.*,
 13 which is the subject case in the landmark decision of *Brinker Restaurant Corp. v. Superior Court*,
 14 53 Cal.4th 1004 (2012). Mara Dec. ¶ 4.

15 Plaintiff's Counsel has prosecuted numerous cases on behalf of employees for California
 16 Labor Code violations and, thus, are experienced and qualified to evaluate the class claims and to
 17 evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the
 18 defenses asserted in this action. Mara Dec. ¶ 9. This experience instructed Plaintiff's counsel on
 19 the risks and uncertainties of further litigation and guided their determination to endorse the
 20 proposed settlement.

21 **B. The Court Should Approve of the Requested Attorneys' Fees, Costs, and Class Representative General Release Payment**

22 **i. The Requested Attorneys' Fees are Reasonable**

23 Jurisdiction over the incident matter is pursuant to diversity under the Class Action Fairness
 24 Act, codified at 28 U.S.C. § 1332(d). *See* Dkt. #1. The law concerning the assessment and approval
 25 of class action attorneys' fees is substantive and, under *Erie* principles, the analysis as to the
 26 reasonableness of the attorneys' fees here is to be resolved by California law. *Mangold v. Cal.*
 27 *Public Util. Comm*, 67 F.3d 1470 (9th 1995).³

28 ³ *See also Carnes v. Zamani*, 488 F.3d 1057, 1059 (9th Cir. 2007) ("In a diversity case, the law of

1 California Supreme Court in *Laffitte v. Robert Half International Inc.*, 1 Cal.5th 480, 503 (2016)
 2 explained:

3 We join the overwhelming majority of federal and state courts in holding that when
 4 class action litigation establishes a monetary fund for the benefit of the class members,
 5 and the trial court in its equitable powers awards class counsel a fee out of that fund, the
 6 court may determine the amount of a reasonable fee by choosing an appropriate
 7 percentage of the fund created. The recognized advantages of the percentage method—
 8 including relative ease of calculation, alignment of incentives between counsel and the
 class, a better approximation of market conditions in a contingency case, and the
 encouragement it provides counsel to seek an early settlement and avoid unnecessarily
 prolonging the litigation...—convince us the percentage method is a valuable tool that
 should not be denied our trial courts. *Id.*

9 Since *Serrano v. Priest*, 20 Cal.3d 25, 48 (1977) (“*Serrano III*”), there has been a “ground
 10 swell of support for mandating the percentage-of-the-fund approach in common fund cases.”
 11 *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 27 (2000). *Lealao* discusses at length
 12 the judicial perception of the lodestar method as unfair and arbitrary for fostering collusively low
 13 settlements for a high fee award and for placing the trial court in the unfavorable position of
 14 determining reasonable hours and billing rates. *Id.* at 29-30.

15 Class Counsel has undertaken representation at their own expense, with compensation
 16 contingent on providing a benefit to the class. Participating Class Members will benefit by the
 17 terms of the settlement. Because there is a defined and clearly traceable monetary benefit to the
 18 class, the Court can base an award of attorneys’ fees on the class members’ benefit, using a
 19 common fund approach. Class Counsel’s request for 25% of the common fund is fair compensation
 20 for obtaining a favorable result for the Class Members and, in doing so, undertaking complex,
 21 risky, expensive, and time-consuming litigation purely on a contingent basis.

22 **b. The Percentage Requested is Reasonable**

23 The fees here were wholly contingent, and the case presented far more risk that the usual
 24 contingent fee case. There was the prospect of the enormous cost inherent in class action litigation,
 25 as well as a long battle with Defendant who had retained experienced, reputable legal counsel.
 26 That prospect has previously become reality, in both trial courts and the Court of Appeals, and in
 27 other wage and hour class litigation. Class Counsel risked not only a great deal of time, but also a

1 great deal of expense, to ensure the successful litigation of this action on behalf of all Class
2 Members.

3 There is no general rule on what is a reasonable percentage of a common fund:

4 No general rule can be articulated on what is a reasonable percentage of a common
5 fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a
6 common fund in order to assure that the fees do not consume a disproportionate
7 part of the recovery obtained for the Class, although somewhat larger percentages
8 are not unprecedented. Newberg on Class Actions, 3rd Ed., 1992, §14.03.

9 Regarding percentage fee awards, Newberg states: “[A]chievement of a substantial
10 recovery with modest hours expended should not be penalized but should be rewarded for
11 considerations of time saved by superior services performed.” *Id.* at § 14.01.

12 **c. The Fee Requested is Within the Range of Fees
13 Approved in Comparable Cases**

14 The requested fee of \$25,000 is 25% of the GSA and is in line with the federal
15 “benchmark,” which California has endorsed. *In Re Consumer Privacy Cases*, 175 Cal. App. 4th
16 545, 556 (2009). A review of class action settlements over the past ten (10) years shows that courts
17 have historically awarded fees in the range of 20% to 50%, depending on the circumstances of the
18 case.⁴ California Superior and District Court judges have adopted the percentage method for

19 ⁴ For example:

20 (1) *Birch v. Office Depot*, S.D. Cal. 2007, USDC, Case No. 06 CV 1690 (Hon. Dana
21 M. Sabraw--awarding attorney’s fees of 40% of \$16,000,000 settlement in pre-certification
22 meal/rest period class action);

23 (2) *Watson v. Raytheon Company*, USDC Southern District, Case No. CV-10-cv-
24 00634 LAB RBB (Hon. Larry B. Burns – awarding attorneys’ fees of \$666,666.67, 33-1/3% of a
25 \$2,000,000 settlement in a certified misclassification class action);

26 (3) *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. CV-09-
27 2745 DMS JMA, (Hon. Dana M. Sabraw – awarding attorneys’ fees of \$500,000, 33-1/3% of
28 \$1,500,000 settlement in a pre-certification expense reimbursement, rest and meal period class
29 action);

30 (4) *Mayville, et al. v. Kor Hotel Group, L.L.C., et al.*, USDC Central District, Case
31 No.CV-04-8461 ABC (RCx) (Hon. Audrey B. Collins -- awarding attorneys’ fees of \$480,000,
32 30% of \$1,600,000 settlement in pre-certification meal and rest period class action);

33 (5) *Albrecht v. Rite-Aid*, San Diego Superior Court Case No. 729298 (Hon. J. Richard
34 Haden -- awarding attorney's fees of 33% of \$25,000,000 settlement in certified overtime class
35 action);

36 (6) *Domino’s Pizza Overtime Cases*, Orange County Superior Court Case No. JCCP
37 4498 (Hon. Gail A. Andler -- awarding attorneys’ fees of \$1,500,000, 30% of \$5,000,000
38 settlement in pre-certification meal and rest period class action);

39 (7) *Wilcox v Albertsons*, San Diego Superior Court Case No. GIC833922 (Hon. Linda
40 B. Quinn -- awarding attorneys’ fees of 33% of \$22,500,000 settlement in certified rest and meal

1 determining fee awards in the range of that requested by Class Counsel herein or even larger. As
 2 the fee requested here is less than the fees customarily awarded in California under the common
 3 fund doctrine, it is respectfully requested the Court grant this request at final approval. The
 4 reasonableness of the fee is further evidenced when cross-checked against the Lodestar Method.

5 **d. A Lodestar Cross-Check Confirms the Reasonableness**
 6 **of the Requested Fee**

7 Class Counsel's fee request is also reasonable when calculated using the lodestar method.
 8 Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably
 9 spent on the case and the reasonable hourly compensation of the attorney. *Serrano III*, 20 Cal.3d
 10 at 48. The court then enhances this lodestar figure by a "multiplier" to account for a range of
 11 factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of
 12 success achieved. *Id.* at 49.⁵

13 As of the filing of Plaintiff's preliminary approval motion, Class Counsel worked two
 14 hundred and fifty-two (252) hours on this case. Mara Dec. ¶ 10. Applying Class Counsel's hourly
 15 rates to the total hours worked as of the filing of Plaintiff's preliminary approval motion results in
 16 a lodestar fee of \$148,000. Mara Dec. ¶ 11; **Exhibit 1** attached to the Mara Dec. All of the work

17 _____
 18 class action);

19 (8) *Konica Minolta Wage Cases*, Orange County Superior Court Case No. J.C.C.P.
 20 4527 (Hon. David C. Velasquez—awarding attorneys' fees of 33% of \$6,000,000 settlement in
 21 pre-certification expense reimbursement class action);

22 (9) *Green, et al. v. Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No.
 23 CV-09-0069 DMS (CAB) (Hon. Dana M. Sabraw – awarding attorneys' fees of 33% of a
 24 \$500,000 settlement in a pre-certification vacation policy class action);

25 (10) *Gardner v. GC Services, LP.*, USDC Southern District, Case No. 10cv0997-IEG
 26 (CAB) – (Chief Justice Irma E. Gonzalez – awarding attorneys' fees of 30% of a \$975,000
 27 settlement in a pre-certification failure to pay straight and overtime wages class action);

28 (11) *Gallen v. Gambro Healthcare, Inc.*, Orange County Superior Court, Case No. 04
 29 CC 00571 (Hon. Nancy Wieben Stock – approving award of attorneys' fees 30% of a \$17,500,000
 30 settlement in a pre-certification overtime wages class action);

31 (12) *Dunn v. The Kroger Company, et al.*, Los Angeles Superior Court, Case No. BC
 32 323252 (Hon. Elihu M. Berle – approving attorneys' fees of 30% of a \$19,500,000 in a pre-
 33 certification meal and rest break class action); and

34 (13) *Jones v. Casual Male Retail Group, Inc.*, San Diego Superior Court, Case No. 37-
 35 2009-00089721 (Hon. Kevin A. Enright – approving attorneys' fees of 33% of a \$299,500 in a
 36 pre-certification misclassification class action).

37 ⁵ See also *Ketchum v. Moses*, Cal.4th 1122, 1132-36 (2001); *PLCM Group, Inc. v. Drexler*, 22
 38 Cal.4th 1084 (2000); *Thayer v. Wells Fargo Bank*, 92 Cal. App. 4th 819, 834 (2001), (“[t]here is
 39 no ... rule limiting the factors that may justify an exercise of judicial discretion to [adjust the]
 40 lodestar”).

1 performed by Class Counsel was reasonable and necessary to the prosecution of this case and are
 2 reflected in the result achieved. Mara Dec. ¶ 12. As Class Counsel's lodestar fee is in excess of
 3 their fee request, a multiplier on their lodestar fee is not sought herein. Mara Dec. ¶ 13. In fact, the
 4 requested fee results in a so-called "negative multiplier" which suggests the percentage of the fund
 5 amount is reasonable and fair. *See Chun-Hoon v. McKee Foods Corp.*, 716 F.Supp.2d 848, 854
 6 (2010); *In re Portal Software, Inc. Securities Litigation*, 2007 U.S. Dist. LEXIS 88886, 2007 WL
 7 4171201, at *16 (N.D. Cal. 2007).

8 **i. Counsel's Hourly Rates are Reasonable**

9 Class Counsel's hourly rates are between \$450 and \$875 and are in line with rates approved
 10 for wage and hour class action attorneys in this jurisdiction. A reasonable hourly rate is the
 11 prevailing rate charged by attorneys of similar skill and experience in the relevant community.
 12 *PLCM Group, Inc. v. Drexler*, 22 Cal.4th 1084, 1095 (2000). When determining a reasonable
 13 hourly rate, courts may consider factors such as the attorney's skill and experience, the nature of
 14 the work performed, the relevant area of expertise, and the attorney's customary billing rates.
 15 *Flannery v. California Highway Patrol*, 61 Cal. App. 4th 629, 632 (1998).

16 Class Counsel's skill and experience support their hourly rates. Furthermore, other wage
 17 and hour attorneys working as class counsel before California courts charge comparable, if not
 18 higher, rates. *See Exhibit 2* to Mara Dec. (copy of Westlaw Court Express's Legal Billing Report,
 19 Volume 14, Number 3, California Region for December 2012 and 2012 National Law Journal
 20 survey of hourly billing rates for Partners and Associates); *Exhibit 3* to the Mara Dec. (2014
 21 Declaration of Richard Pearl in *Hohnbaum et al. v. Brinker Restaurant Corp et al*, SDSC Case No.
 22 GIC834348).

23 **ii. Counsel's Total Hours are Reasonable**

24 In determining a lodestar, reasonable hours include, in addition to time spent during
 25 litigation, the time spent before the action is filed, including time spent interviewing the clients,
 26 investigating the facts and the law, and preparing the initial pleadings. *See New York Gaslight*
 27 *Club, Inc. v. Carey*, 447 U.S. 54, 62 (1980). Further, the fee award should include fees incurred

1 to establish and defend the attorneys' fee claim. *Serrano v. Priest*, 32 Cal.3d 621, 639 (1982)
 2 (“*Serrano IV*”).

3 As of the filing of Plaintiff's motion for preliminary approval, Class Counsel has worked
 4 a total of two hundred and fifty-two (252) hours on this case. Mara Dec. ¶ 10; *see also Exhibit 1*
 5 attached to the Mara Dec. The work performed by Class Counsel in order to achieve a settlement
 6 that will provide valuable consideration to the Class, is detailed in the Declaration of David Mara,
 7 Esq., which is filed concurrently with this motion. Mara Dec. ¶¶ 14, 18, 21.

8 Class Counsel's many tasks, in summary form, included the following: pre-filing
 9 investigation and legal research; drafting the complaint; legal research and investigation into
 10 claims asserted; investigation into Defendant's policies and practices; communicating with the
 11 class representative; interviewing and meeting putative class members; drafting strategy and
 12 damage memoranda; draft a discovery plan for purposes of the certification motion; analyze
 13 records produced by representative and class members; research into Defendant's defenses; draft
 14 stipulations; review Defendant's notice of removal; review Defendant's Substitution of Attorney;
 15 request Defendant's contracts with the United States Postal Service; review and analyze contracts
 16 Defendant had with the United States Postal Service; draft list of data needed from Defendant in
 17 order to prepare for meaningful discussions of a class-wide and global settlement; review, analyze,
 18 and distil damage exposure models from records Defendant produced; draft mediation and damage
 19 exposure models; prepare for and participate in mediation; review and analyze discovery and
 20 documents produced by Defendant; respond to discovery propounded by Defendant; meet with
 21 class certification expert; prepare expert disclosures; review Defendant's expert disclosures;
 22 defend deposition of class certification expert; create exhibits for use in case; prepare for and take
 23 deposition of Defendant's Federal Rule of Civil Procedure 30(b)(6) witness; prepare Plaintiff for
 24 a deposition; defend Plaintiff's deposition; draft and file motion for class certification and
 25 supporting papers; review Defendant's opposition to Plaintiff's motion for class certification;
 26 prepare and file a reply in support of Plaintiff's motion for class certification; prepare and file a
 27 supplemental brief in support of Plaintiff's motion for class certification; review Defendant's

1 opposition to Plaintiff's supplemental brief; prepare and file a reply in support of Plaintiff's
 2 supplemental brief; prepare for class certification hearing; numerous conferences with Defendant's
 3 counsel regarding issues throughout the litigation and settlement; engage in settlement negotiations
 4 after mediation; negotiate terms of the settlement; edit settlement agreement; edit notice packet
 5 documents; discussions with claims administrator regarding its duties; review and proof Notice
 6 Packet papers from claims administrator; review of weekly status reports from the administrator
 7 regarding the class' participation; discussions and meetings with class members regarding the
 8 Notice Packet; draft and edit attorney fee motion and supporting papers; and prepare the motion
 9 for final approval of the settlement. Mara Dec. ¶ 14, 18, 21. All of the tasks and work performed
 10 were reasonable and necessary to the prosecution of this case and justified, particularly in light of
 11 the result achieved. Mara Dec. ¶ 27.

12 **ii. The Costs of Litigation Were Reasonable**

13 Class Counsel seek reimbursement of their actual litigation costs and expenses in the sum
 14 of \$19,293.68. These costs were all reasonable and necessary to the prosecution of this case, and
 15 are fair and reasonable and unopposed by Defendant. Mara Dec. ¶ 31; *see also Exhibit 1* attached
 16 to the Mara Dec.

17 **iii. The Requested Class Representative General Release Payment is Reasonable**

18 The Joint Stipulation provides for an enhancement payment to the Class Representative in
 19 the amount of \$2,500. The requested enhancement is appropriate and reasonable and unopposed
 20 by Defendant. This payment is made in exchange for Plaintiff providing Defendant with a general
 21 release of his claims. *See Exhibit 5* attached to the Mara Dec. at Section I, paragraph K and Section
 22 III, paragraph K.

23 There are also other factors supporting the request that Plaintiff receive \$2,500. For
 24 example, the work Plaintiff performed in this case. Plaintiff Richard Terry has submitted a
 25 declaration detailing the efforts he expended on behalf of the class in order to advance this case to
 26 its successful conclusion. There is no question that this case would not have reached the same
 27 result but for Plaintiff's involvement and input at all stages of the litigation. Here is a summation
 28

1 of Plaintiff's efforts: Plaintiff had meetings and conversations with his attorneys about his
2 experience working for Defendant and the policies and practices that covered his and other drivers'
3 employment with Defendant; Plaintiff looked for and provided documents from his employment
4 with Defendant to his attorneys; Plaintiff aided in preparing discovery propounded on Defendant;
5 worked with his attorneys' in responding to discovery propounded on him by Defendant; traveled
6 to California from his out-of-state residence to prepare for and sit for his deposition on October 6,
7 2017; provided his attorneys with contact information for other drivers who worked for Defendant;
8 remained available by phone during mediation and settlement negotiations; and completely and
9 carefully read settlement agreement.

10 As representative for the absent class members, Mr. Terry risked a potential judgment taken
11 against them for attorneys' fees and costs if this matter had not been successfully concluded. Case
12 law holds that a losing party is liable for the prevailing party's costs, *Early v. Superior Court*, 79
13 Cal.App.4th 1420, 1433 (2000), and in some wage and hour actions, such as this case, pursuant to
14 California Labor Code § 218.5, for attorneys' fees as well. Though the fee agreement provides that
15 Class Counsel would pay such costs, Mr. Terry would nevertheless have had a cost bill entered
16 against him leaving him ultimately liable for potentially hundreds of thousands of dollars in the
17 unexpected possibility that Class Counsel did not meet their obligation to cover those costs.

18 Unfortunately, there have been several judgments entered against class representatives, e.g.,
19 *Koehl v. Verio, Inc.* 142 Cal.App.4th 1313, 1328 (2006) (a wage and hour class action where
20 Defendant prevailed at trial, the named Plaintiffs were held liable, jointly and severally for the
21 Defendant's attorneys' fees); *Whiteway v. Fedex Kinkos Office & Print Services, Inc.*, 2007 U.S.
22 Dist. LEXIS 95398 (N.D. Cal. 2007) (a wage and hour misclassification case lost on summary
23 judgment, after the case was certified, the named Plaintiff was assessed costs in the sum of
24 \$56,788.). The risk of payment of Defendant's costs, in itself alone, is a sufficient basis for an
25 award of the requested enhancement sum. Few individuals are willing to take this risk, and it is
26 clear that the appointed Class Representatives here championed a cause on behalf of others with
27 potentially huge monetary risks.

28

1 Courts have regularly and routinely granted approval of settlements containing such
 2 enhancements. *See, e.g., Staton v. Boeing*, 327 F.3d 938, 977 (9th Cir. 2003). In Class Counsel's
 3 experience, the typical enhancement award in wage and hour cases ranges from \$5,000 to \$75,000,
 4 although some awards may be higher. *Mara Dec.* ¶ 33. Very commonly there is more than one
 5 class representative who receive awards in the above range.⁶

6 Additionally, it is common knowledge that the modern-day work force is quite mobile,
 7 with employees holding several jobs in a career during their lifetime. It is also true that prospective
 8 employers in this computer, high-tech age "Google" and/or do extensive background checks and
 9 have access to Court databases to see if applicants have ever filed a lawsuit or have ever been sued.
 10 Here, Plaintiffs cost their former and employer a substantial sum of money by their courage to step
 11 forward to vindicate not only their own rights but also, those of the similarly situated individuals,
 12 all of whom will now receive substantial payments due to the initiation of this action. Such conduct
 13 will not be lost on a prospective employer who has to choose between an applicant who has never
 14 sued an employer and one who has done so. The requested enhancement far from compensates
 15 Mr. Terry for opportunities he may lose in the future because of the exercise of a Constitutional
 16 right to Petition the Courts for redress of a grievance.

17 The enhancement request is modest for the work performed, risks undertaken for payment
 18 of fees and costs if this case had not been successfully concluded, stigma on future employment
 19 opportunities, and the benefits all members of the class as well as all current and future class
 20 members will enjoy as a result of Mr. Terry's efforts.

21 III. CONCLUSION

22 In light of the foregoing, Plaintiff requests the Court find the Settlement fair, reasonable,
 23 and adequate and grant this motion for Class Counsel's attorneys' fees, reimburse the costs Class

24
 25 ⁶ *See, e.g., Cook v. Niedert*, 142 F.3d 1004, 1015 (7th Cir. 1998); *Roberts v. Texaco*, 979 F. Supp.
 26 185 (S.D.N.Y. 1997) ("present or past employee whose present position or employment credentials
 27 or recommendation may be at risk by reason of having prosecuted the suit, who therefore lends his
 28 or her name and efforts to the prosecution of litigation at some personal peril, a substantial
 29 enhancement award is justified"); *Thornton v. East Texas Motor Freight*, 497 F.2d 416, 420 (6th
 30 Cir. 1974) ("We also think there is something to be said for rewarding those drivers who protect
 31 and help to bring rights to a group of employees who have been the victims of discrimination.").

1 Counsel incurred in litigating this matter, and approve Mr. Terry's class representative general
2 release payment.

3
4 Dated: February 12, 2019

THE TURLEY & MARA LAW FIRM, APLC

/s/ Jill Vecchi

David Mara, Esq.

Jill Vecchi, Esq.

Matthew Crawford, Esq.

Representing Plaintiff RICHARD TERRY

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