

THIERMAN BUCK LLP

MARK R. THIERMAN, Bar No. 072913

JOSHUA D. BUCK, Bar No. 258325

LEAH L. JONES, Bar No. 276448

7287 Lakeside Drive

Reno, NV 89511

Telephone: 775.284.1500

Fax No.: 775.703.5027

Attorneys for Plaintiff

KAREN MARTINEZ AND THE CLASS

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

KAREN MARTINEZ, on behalf of herself
and all other similarly situated individuals,

Plaintiff,

v.

JOHN MUIR HEALTH, and DOES 1
through 50, inclusive,

Defendants.

Case No. 4:17-cv-05779-CW

**NOTICE OF MOTION AND PLAINTIFF'S
MOTION FOR FINAL APPROVAL OF
ATTORNEY'S FEES AND COSTS**

DATE: November 19, 2019

TIME: TBA

DEPT: Courtroom 2, 4th Floor

JUDGE: Hon. Claudia Wilken

COMPLAINT FILED: Oct. 6, 2017

FAC FILED: Dec. 1, 2017

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on November 19, 2019, or as soon thereafter as the matter may be heard by the Honorable Claudia Wilken of the United States District Court of the Northern District of California, located at 1301 Clay Street, Courtroom 2 – 4th Floor, Oakland, CA 94612, Class Counsel, will and hereby do, move this Court for an award of attorney’s fees in the amount of \$2,375,000.00 and reimbursement of \$35,000.00 in litigation costs advanced on behalf of the class over the course of the litigation. As more fully discussed in the following memorandum, this motion is made on the grounds that the requested fee is reasonable under the common fund doctrine. Moreover, the fee request represents 1/4 of the \$9,500,000.00 settlement fund and is consistent with applicable Ninth Circuit benchmark of 25%. In addition, the requested fee is appropriate under a lodestar cross-check method. The lodestar calculation with a 3.61 multiplier equals one-quarter of the total settlement fund. *See* Declaration of Joshua D. Buck, hereinafter Buck Decl. at ¶ 26.

Specifically, Class Counsel respectfully contend that the following factors justify the full amount of the fees sought:

- **The result achieved:** The efforts of Class Counsel over the course of the litigation have culminated in a \$9,500,000.00 *non-reversionary* cash settlement, including \$356,250.00 in PAGA settlement funds. Buck Decl. ¶ 16. In addition to the State of California receiving \$356,250.00, should the Court approve the requested attorney’s fees, litigation costs, and enhancement requests, the Class Members will share \$6,676,750. *Id.*;
- **The risk and complexity of the issues in this case:** Litigating this case as a class action was both complex and posed numerous risks including whether the charting work required by Defendants and tracked by the EPIC and MIDAS software systems compared to employees’ time records and testimony provided data sufficient to support the class claims of off-the-clock, overtime, and unpaid wage claims. *Id.* ¶¶ 4-14. During the course of this litigation, Class Counsel filed one amended complaint after Defendant attempted to circumvent the litigation process by attempting to negotiate individual settlements and releases with putative FLSA class members, successfully opposed Defendant’s Motion to Dismiss, and successfully obtained class certification of a class of more than 6,200 individuals in this fact and data intensive, and highly contested case. *See* Dkt. generally.

- 1 • **The contingent nature of the litigation:** Class Counsel have performed substantial work
2 (891.25 hours) over the last three-plus years including: extensive pre-filing investigations
3 of Plaintiff's claims; preparation for two mediation sessions, which required the review of
4 voluminous pay, clock/KRONOS records, timestamp records from two hospital tracking
5 software systems (EPIC and MIDAS), equal to thousands of pages of documents, millions
6 of lines of sample time clock and EPIC/MIDAS data; searched out reputable EPIC/MIDAS
7 software experts, as well as a separate damages expert; conducted extensive interviews
8 with potential opt-in plaintiffs/witnesses and secured declarations supporting a successful
9 motion for 29 U.S.C. § 216(b) conditional certification and notice; all with no guarantee of
10 recovery whatsoever. Buck Decl. ¶ 25. Class Counsel, as of this date, have also advanced,
11 and will advance, approximately \$35,000.00 in litigation costs. *Id.*, ¶ 30;
- 8 • **Fee Awards in similar cases.** The \$9,500,000.00 non-reversionary cash settlement amount
9 is in line with comparable hospital wage and hour class actions asserting similar allegations
10 of off-the-clock and unpaid work, unpaid overtime, meal and rest break violations. In
11 addition, the fee requested here—25% of the settlement fund—is consistent with, and
actually less than, fees awarded by courts in other settlements involving similar claims that
were alleged here.

12 This motion is based on this Notice of Motion and Motion; the accompanying
13 Memorandum of Points and Authorities; the Memoranda in support of Plaintiff's Unopposed
14 Motion for Preliminary Approval and supporting declarations (Dkt. Nos. 62, 65); the "Settlement
15 Agreement" (Dkt. No. 62-1, Exhibit 2); the declarations of Class Counsel, Joshua D. Buck ("Buck
16 Decl."), Mark R. Thierman ("Thierman Decl."), and Leah L. Jones ("Jones Decl."); the Court's
17 Order on Supplemental Briefing (Dkt. Nos. 67, 67-1), the Motion for Final Approval of Class
18 Action Settlement (which will be filed no later than October 14, 2019; all pleadings and papers on
19 file with this Court; and all such arguments as may be heard by the Court.

21 DATED: July 9, 2019

Respectfully Submitted,

23 /s/Joshua D. Buck
24 JOSHUA D. BUCK
25 THIERMAN BUCK, LLP
26 Attorneys for Plaintiff, KAREN MARTINEZ
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TABLE OF CONTENTS

I. SUMMARY OF WORK PERFORMED	1
II. ARGUMENT	3
A. Class Counsel Are Entitled To A Reasonable Fee On A Common Fund Theory.....	3
B. The Fee Award Should Be Calculated As A Percentage Of The Common Fund.....	4
C. The Requested Fee Award Is Consistent With Applicable Ninth Circuit Benchmark	6
1. The Result Achieved Measured Against Award in Similar Cases	7
2. The Risk and Complexity of the Case Support the Fees Requested.....	11
3. The Contingent Nature of the Representation and the Efforts and And Costs Expended by Class Counsel Justify the Fee Requested.....	13
D. The Requested Fee Is Reasonable Under A Lodestar Crosscheck	13
1. The Time and Labor Required	15
2. The Requisite Skill Necessary.....	16
3. The Preclusion of Other Employment.....	16
4. The Customary Fee	17
5. Experience, Reputation, And Ability of the Attorneys	18
E. Class Counsel Should Recover the Litigation Costs and Expenses Actually Incurred For The Benefit Of The Class	19
III. CONCLUSION	19

TABLE OF AUTHORITIES

Cases

<i>Antonopulos v. North American Thoroughbreds, Inc.</i> , 1991 WL 427893 (S.D.Cal. May 6, 1991).....	7
<i>Beckman v. KeyBank, N.A.</i> , 293 F.R.D. 467 (S.D.N.Y. 2013)	15
<i>Bennett v. Simplexgrinnell LP</i> , 2015 WL 12932332 (N.D. Cal. 2015).....	6
<i>Bluetooth Headset Prods. Liab. Litig.</i> , 654 F.ed 935 (9th Cir. 2011).....	3
<i>Blum v. Stenson</i> , 465 U.S. 886 (1984)	3, 4
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980)	3, 4
<i>Brailsford v. Jackson Hewitt Inc.</i> , 2007 WL 1302978 (N.D. Cal. 2007).....	6
<i>Brinker Rest. Corp. v. Superior Court</i> , 53 Cal. 4th 1004, 273 P.3d 513 (2012)	8
<i>Brooks v. Life Care Centers of America</i> , 2015 WL 13298569 (C.D. Cal. 2015).....	10
<i>Camacho v. Bridgeport Fin., Inc.</i> , 523 F.3d 973 (9th Cir. 2008).....	17, 18
<i>Camden I Condominium Ass’n. v. Dunkley</i> , 946 F.2d 768 (11th Cir. 1991).....	5
<i>Ching v. Siemens Indus.</i> , 2014 WL 2926210 (N.D. Cal. June 27, 2014)	13
<i>De Mira v. Heartland Employment Service, LLC.</i> , 2014 WL 1026282 (N.D. Cal. 2014).....	12
<i>Fischel v. Equitable Life Assur. Soc’y of the United States</i> , 307 F.3d 997 (9th Cir. 2002).....	6
<i>Galeener v. Source Refrigeration & HVAC, Inc.</i> , No. 3:13-CV-04960-VC, 2015 WL 12977077 (N.D. Cal. Aug. 21, 2015).....	7
<i>Garner v. State Farm Ins.</i> , 2010 WL 1687829 (N.D. Cal. April 22, 2010)	6

1	<i>Gonzalez v. City of Maywood,</i>	
2	729 F.3d 1196 (9th Cir. 2013).....	17
3	<i>Gutierrez v. Wells Fargo Bank, N.A.,</i>	
4	2015 WL 2438274 (N.D. Cal. May 21, 2015)	15
5	<i>Hanlon v. Chrysler Corp.,</i>	
6	150 F.3d 1011 (9th Cir. 1988).....	14
7	<i>Harris v. Marhoefer,</i>	
8	24 F.3d 16 (9th Cir. 1994).....	19
9	<i>Hensley v. Eckerhart,</i>	
10	461 U.S. 424 (1983).....	7
11	<i>Hernandez v. Kovacevich,</i>	
12	2005 WL 2435906 (E.D.Cal. Sept. 30, 2005).....	6
13	<i>In re Activision Sec. Litig.,</i>	
14	723 F. Supp. (N.D. Cal. 1989)	5, 6
15	<i>In re Avista Corp. Sec. Litig.,</i>	
16	2007 WL 4568933 (E.D.Wash. Dec. 20, 2007).....	7
17	<i>In re Bluetooth Headset Prods. Liab. Litig.,</i>	
18	654 F.3d 935 (9th Cir. 2011).....	6, 8
19	<i>In re Combustion, Inc.,</i>	
20	968 F.Supp. 1116 (W.D.La.1997).....	7
21	<i>In re En-ron Corp. Secs., Derivative & ERISA Litig.,</i>	
22	586 F.Supp.2d 732 (S.D. Tex. 2008)	15
23	<i>In re Heritage Bond Litig,</i>	
24	2005 WL 1594403, n.12 (C.D. Cal Jun. 10, 2005)	6
25	<i>In Re HP Inkjet Printer,</i>	
26	<i>Litg.</i> , 716 F.3d 1173 (9th Cir. 2013)	14, 15
27	<i>In re Immunex Sec. Litig.,</i>	
28	864 F.Supp. 142 (W.D.Wash.1994).....	7
	<i>In re M.D.C. Holdings Sec. Litig.,</i>	
	1990 WL 454747 (S.D. Cal Aug. 30, 1990)	7
	<i>In re Magsafe Apple Power Adapter Litig.,</i>	
	No. 5:09-CV-01911-EJD, 2015 WL 428105 (N.D. Cal. 2015)	18
	<i>In re Mego Fin. Corp. Sec. Litig.,</i>	
	213 F.3d 454 (9th Cir. 2000).....	7
	<i>In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.,</i>	
	2017 WL 6040065 (N.D. Cal. Dec. 6, 2017)	7, 12, 13

1	<i>In re Omnivision Techs., Inc.</i> ,	
2	559 F. Supp. 2d 1036 (N.D. Cal. 2008)	8
3	<i>In re Online DVD-Rental Antitrust Litig.</i> ,	
4	779 F.3d 934 (9th Cir. 2015).....	4, 7
5	<i>In re Pacific Enterprises Sec. Litig.</i> ,	
6	47 F.3d 373 (9th Cir.1995).....	6
7	<i>In re Payment Card Interchange Fee and Merch. Disc. Antitrust Litig.</i> ,	
8	991 F.Supp.2d 437 (E.D.N.Y. 2014).....	15
9	<i>In re Public Ser. Co. of New Mexico</i> ,	
10	1992 WL 278452 (S.D.Cal. July 28, 1992).....	7
11	<i>In re Vitamins Antitrust Litig.</i> ,	
12	No. 99–197, MDL 1285, 2001 WL 34312839 (D.D.C. July 16, 2001).....	7
13	<i>In re Washington Pub. Power Supply Sys. Sec. Litig.</i> ,	
14	19 F.3d 1291 (9th Cir. 1994).....	13
15	<i>In re WorldCom, Inc. Sec. Litig.</i> ,	
16	388 F.Supp.2d 319 (S.D.N.Y. 2005).....	15
17	<i>Integrity Staffing Solutions, Inc. v. Busk</i> ,	
18	135 S.Ct. 513 (2014)	11
19	<i>Kelly v. Wengler</i> ,	
20	822 F.3d 1085 (9th Cir. 2016).....	14
21	<i>Kerr v. Screen Extras Guild, Inc.</i> ,	
22	526 F.2d 67 (9th Cir. 1975).....	14
23	<i>Kurzweil v. Philip Morris Cos.</i> ,	
24	Nos. 94 Civ. 2373, 94 Civ. 2546, 1999 WL 1076105 (S.D.N.Y. Nov.30, 1999).....	7
25	<i>Linney v. Cellular Alaska P'ship</i> ,	
26	1997 WL 450064 (N.D.Cal.1997).....	6
27	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i> ,	
28	2008 WL 4473183 (S.D. Cal. 2008)	10
	<i>Mathis v. Spears</i> ,	
	857 F.2d 749 (9th Cir. 1988).....	18
	<i>Morganstein v. Esber</i> ,	
	768 F. Supp. 725 (C.D. Cal. 1991).....	4
	<i>Nichols v. SmithKline Beecham Corp.</i> ,	
	2005 WL 950616 (E.D.Pa. April 22, 2005)	7
	<i>Parks v. Eastwood Ins. Servs., Inc.</i> ,	
	240 Fed. App'x 172 (9th Cir. 2007).....	16, 17

1	<i>Pasquale v. Kaiser Foundations Hospitals, Inc.</i> ,	
2	2010 WL 11591905 (S. D. Cal. Mar. 15, 2010).....	10
3	<i>Paul, Johnson, Alston & Hunt v. Grauly</i> ,	
4	886 F.2d 268 (9th Cir. 1989).....	4, 5
5	<i>Pennsylvania v. Delaware Valley Citizens' Council for Clean Air</i> ,	
6	478 U.S. 546 (1986).....	14
7	Portal Act applies to Nevada wage and hour law (<i>In re: Amazon.com, Inc., Fulfillment Center Fair</i>	
8	<i>Labor Standards Act (FLSA) And Wage and Hour Litigation</i> ,	
9	2017 WL 2662607 (2017).....	11, 12
10	<i>Rabin v. Concord Assets Grp., Inc.</i> ,	
11	1991 U.S. Dist. LEXIS 18273 at *4, 1991 WL 275757 (S.D.N.Y. Dec. 19, 1991).....	15
12	<i>Razilov v. Nationwide Mut. Ins. Co.</i> ,	
13	<i>et al.</i> , 2006 WL 3312024 (D. Or. Nov. 13, 2006).....	7
14	<i>Six (6) Mexican Workers v. Ariz. Citrus Growers</i> ,	
15	904 F.2d 1301 (9th Cir. 1990).....	3, 4
16	<i>State of Fla. v. Dunne</i> ,	
17	915 F.2d 542 (9th Cir. 1990).....	5, 14
18	<i>Steiner v. America Broadcasting Co. Inc.</i> ,	
19	248 Fed. Appx. 780 (9th Cir. 2007).....	15
20	<i>Sutton v. Bernard</i> ,	
21	504 F.3d 688 (7th Cir. 2007).....	5
22	<i>Swedish Hosp. Corp. v. Shalala</i> ,	
23	1 F.3d 1261 (D.C. Cir. 1993).....	4, 5
24	<i>Torrisi v. Tucson Elec. Power Co.</i> ,	
25	8 F.3d 1370 (9th Cir. 1993).....	13
26	<i>Vizcaino v. Microsoft Corp.</i> ,	
27	142 F. Supp. 2d 1299 (W.D. Wash. 2001).....	12
28	<i>Vizcaino v. Microsoft Corp.</i> ,	
	290 F.3d 1043 (9th Cir. 2002).....	6, 13, 15
	<i>Weiss v. Mercedes-Benz of N. Am.</i> ,	
	899 F.Supp. 1297 (D.N.J. 1995).....	15
	<u>Statutes</u>	
	29 U.S.C. § 216(b).....	3
	Lab. Code § 203	8
	Lab. Code § 226	8

1 Lab. Code § 226.7 8

2 Lab. Code § 2698 8

3 **Rules**

4 FRCP 23 12

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF WORK PERFORMED

Over the last three-plus years, Class Counsel have collectively devoted 891.25 hours in litigating this action. *See*, Buck Decl. ¶ 25; Thierman Decl. ¶¶ 5, 7; Jones Decl. at ¶ 8. The area of law involved in this case—whether the charting work required by Defendants and tracked by the EPIC and MIDAS software systems compared to employees’ time records and testimony provides data sufficient to support the class claims of off-the-clock, overtime, and unpaid wage claims—required analysis, research, and review of a fact and data intensive area of the law. This case was both hotly contested and vigorously litigated since its inception.¹ A detailed summary of the type of work performed in this case, broken down by category, as well as the hours spent by Class Counsel, is set forth in the Buck Decl. at ¶¶ 24-26, Thierman Decl. ¶ 7, and Jones Decl. ¶¶ 7-8.

The work performed by Class Counsel to date on this case has been extensive, as one would expect in a case of this size (over 6,200 class members), where the case spanned a class period of over six and half years² and involved data intensive and the intersection of complex federal and state law legal issues. In summary, Class Counsel: (1) conducted extensive investigations into Defendant’s policies and practices through informal and formal discussions and analysis of voluminous data with Defendant’s counsel prior to and through the litigation, including numerous interviews with multiple opt-ins plaintiffs and potential witnesses; (2) developed comprehensive conditional and class certification as well as trial strategies; (3) participated in extensive meet and

¹ The full background of this litigation, as well as the settlement terms, are set forth in the Preliminary Approval Motion at Dkt. No. 62 p. 2-5 and will also be set forth in the Motion for Final Approval which will be filed on October 14, 2019.

² The “Class Period(s)” vary slightly pursuant to the underlying statutory claims: the FLSA causes of action span from October 13, 2013 to the date of preliminary approval, June 18, 2019 (Dkt. No. 66). The California regular rate and off the clock causes of action commence October 13, 2012, the California meal/rest break and waiting time penalties causes of action commence October 13, 2013, and the itemized wage and PAGA causes of action commence on October 13, 2015—all of which close on the date of preliminary approval, or June 18, 2019.

1 confer sessions with defense counsel on a host of discovery related and mediation issues; (4)
2 exchanged hundreds of emails with defense counsel, to/from experts and consultants, as well as
3 potential opt-ins and declarant witnesses; (5) propounded written discovery in the form of
4 interrogatories and requests for production; (6) organized, reviewed and analyzed thousands of
5 pages of documents and millions of lines of sample time clock, EPIC, and MIDAS data; (7)
6 conducted extensive expert consultations and review of expert analysis by two EPIC/MIDAS
7 software experts and one damages expert; (8) engaged in detailed motion practice including
8 successfully obtaining conditional certification and successfully defeating Defendant's motion to
9 dismiss on all but one theory of the nine causes of action alleged; (9) prepared for two separate
10 mediations—the first of which was unilaterally cancelled by Defendants just three days prior to the
11 scheduled mediation—attended one, then continued to negotiate for several months before
12 ultimately accepting the mediator's settlement proposal; (9) drafted/revised the settlement
13 agreement, notice, claim forms, Motions for Preliminary Approval; and (10) will continue to
14 expend attorney hours attending the preliminary and final approval hearings, drafting the final
15 approval motion, coordinating with and answering questions from class members throughout the
16 claims process, and working with Defense Counsel and the Claims Administrator to ensure the
17 claims process is executed. Buck Decl. ¶¶ 5-15, 24-25.

20
21 More specifically, due to the complexity of the EPIC/MIDAS/data issues involved in this
22 case, both relating to the merits and class certification, Class Counsel were required to constantly
23 re-evaluate the data provided and evidence needed to support: (a) the alleged claims, (b) class
24 certification theories, and (c) the overall litigation and trial strategy. Buck Decl. ¶¶ 4-15. To
25 facilitate the necessary inquiries, Plaintiff propounded her First Set of Interrogatories, which
26 included 15 separate interrogatories, as well as two sets of Requests for Production, which included
27 28 separate requests. *Id.* at ¶ 9. Over the course of this case, Defendants produced in excess of

3,000 pages of documents and over 1 million lines of time, pay, EPIC, and MIDAS data. *Id.* at ¶ 18. Each of the documents and the supporting analysis was processed and reviewed by Class Counsel to support Plaintiff’s claims, the conditional certification motion, the opposition to Defendant’s motion to dismiss, and two mediation briefs.

The declarations of Class Counsel contain further detail regarding the time devoted to this case over the last three years broken down by categories for each biller per the “Procedural Guidance for Class Action Settlements in the Northern District” at p.3. Buck Decl. ¶¶ 24-26.

II. ARGUMENT

Class Counsel are requesting the Ninth Circuit benchmark of 25% of the common fund. *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). Nevertheless, Class Counsel provides case precedence and analysis supporting Class Counsel’s fee request under both: (1) the common fund (percentage of the total benefit made available to the settlement class) and (2) the lodestar method. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.ed 935, 942 (9th Cir. 2011) (holding that “[w]here a settlement produces a common fund for the benefit of the entire class, courts have discretion to employ either the lodestar method or the percentage-of-the recovery method” to determine the reasonableness of attorneys’ fees.).

A. Class Counsel Are Entitled To A Reasonable Fee On A Common Fund Theory

Courts have long recognized that when Counsel’s efforts result in the creation of a common fund that benefits plaintiffs and unnamed class members, counsel have an equitable right to be compensated from that fund as a whole. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (U.S. Supreme Court “has recognized consistently that a litigant or a lawyer who recovers a common fund ... is entitled to a reasonable attorney’s fee from the fund as a whole”). The traditional method for calculating a fee award in common fund cases is to award counsel a percentage of the total fund. *See, Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). The common

1 fund doctrine rests on the understanding that attorneys should normally be paid by their clients and,
 2 unless attorneys' fees are paid out of the common fund, those who benefit from the fund will be
 3 "unjustly enriched." *Boeing*, 444 U.S. at 478. To prevent this result, courts exercise their inherent
 4 equitable powers to assess attorney's fees against the entire fund, thereby spreading the cost of
 5 those fees among all those who benefit from it. *Id.* Here, the Settlement creates a \$9,500,000.00
 6 non-reversionary cash settlement fund to be distributed to the State of California and
 7 approximately 6,200 class members.

9 **B. The Fee Award Should Be Calculated As A Percentage Of The Common Fund**

10 Most circuits, including the Ninth Circuit, vest the district court with discretion in a
 11 common fund case to choose either the "percentage-of-the-fund" or the "lodestar" method in
 12 calculating fees. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015).
 13 Regardless of what method is chosen as the primary method to calculate attorney's fees, the Ninth
 14 Circuit encourages district courts to conduct "a cross-check using the other method." *Id.* The
 15 fairest way to calculate a reasonable fee when contingency fee litigation has produced a common
 16 fund—and the way that best promotes efficiency in litigation—is by awarding Class Counsel a
 17 percentage of the total fund. *See, e.g., Blum*, 465 U.S. at 900 n.16; *Six Mexican Workers v. Arizona*
 18 *Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. Cal. 1990) (common fund fee is generally
 19 "calculated as a percentage of the recovery"); *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d
 20 268, 272 (9th Cir. 1989); *Morganstein v. Esber*, 768 F. Supp. 725, 728 (C.D. Cal. 1991).

21 The percentage of the fund method has been adopted by the courts because it comports with
 22 the legal marketplace, where counsel's success is frequently measured in terms of the results they
 23 have achieved. *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1269 (D.C. Cir. 1993). By assessing
 24 the amount of the fee in terms of the amount of the benefit conferred on the class, the percentage
 25 method "more accurately reflects the economics of litigation practice" which, "given the
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1 uncertainties and hazards of litigation, must necessarily be result-oriented.” *Id.* (internal quotations
2 and citations omitted). The percentage of the fund approach mirrors this aspect of the market and,
3 accordingly, reflects the fee that would have been negotiated by the class members in advance, had
4 such negotiations been feasible, given the prospective uncertainties and anticipated risks and
5 burdens of the litigation. *See, Paul, Johnson, Alston & Hunt*, 886 F.2d at 271; *Sutton v. Bernard*,
6 504 F.3d 688, 692 (7th Cir. 2007). Indeed, the retainer agreement signed by Plaintiff set forth the
7 fact that the attorneys’ fees in this case must be approved by the court but that attorneys’ fees
8 sought may be awarded up to 35% of the total recovery. Buck Decl. ¶ 23. Furthermore, the Notice
9 to Class Members will include the amount of fees sought by Class Counsel providing the
10 opportunity for Class Members voice their opinion as to the appropriateness of Class Counsel’s fee
11 request prior to final approval. *Id.*

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14 The percentage approach to common fund fee awards has other benefits and advantages as
15 well. Most notably, it aligns the incentives of the class members and their counsel and thus
16 encourages counsel to both spend their time efficiently and maximize the size of the class’s
17 recovery, rather than their own lodestar hours. *See e.g., In re Activision Sec. Litig.*, 723 F. Supp. at
18 1375 (N.D. Cal. 1989); *State of Fla. v. Dunne*, 915 F.2d 542, 545 (9th Cir. 1990) (recognizing a
19 “recent ground swell of support for mandating a percentage-of-the-fund approach in common fund
20 cases”); *Camden I Condominium Ass’n. v. Dunkley*, 946 F.2d 768, 773 (11th Cir. 1991) (“[E]very
21 Supreme Court case addressing the computation of a common fund fee award has determined such
22 fees on a percentage of the fund basis.”). Indeed, if plaintiffs’ attorneys were not able to use the
23 common fund method approach, they would be incentivized to “churn” cases solely to justify their
24 fee award. The percentage method is also easier for courts to calculate than any alternative
25 method, since, unlike the lodestar multiplier method, it does not require courts to evaluate the
26 reasonableness of hours incurred or hypothesize about how day-to-day or hour-by-hour decisions
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might have been made differently by counsel. *In re Activision Sec. Litig.*, 723 F. Supp. at 1378. In light of these benefits, courts have resoundingly approved the percentage of the fund method for calculating a reasonable fee award in common fund cases.

C. The Requested Fee Award Is Consistent With Applicable Ninth Circuit Benchmark

The Ninth Circuit has “established a 25 percent ‘benchmark’ in percentage-of-the-fund cases that can be ‘adjusted upward and downward to account for any unusual circumstances involved in [the] case.’” *Fischel v. Equitable Life Assur. Soc’y of the United States*, 307 F.3d 997, 1006 (9th Cir. 2002) (citation omitted); *see also In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) (“we have allowed courts to award attorneys a percentage of the common fund in lieu of the often more time-consuming task of calculating the lodestar”).

Here, Class Counsel is requesting the 25% benchmark even though this Circuit has approved fee awards well above the benchmark amount. *See e.g., In re Pacific Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir.1995) (affirming fee award equal to 33% of \$12,000,000.00 fund); *Bennett v. Simplexgrinnell LP*, 2015 WL 12932332 at *7 (N.D. Cal. 2015) (awarding fee of 38.8% plus costs of the \$4,900,000.00 settlement fund); *Garner v. State Farm Ins.*, 2010 WL 1687829 (N.D. Cal. April 22, 2010) (awarding fee of 30% of the \$15 million settlement fund); *In re Activision Sec. Litig.*, 723 F.Supp. at 1375 (32.8% fee); *Linney v. Cellular Alaska P’ship*, 1997 WL 450064, *7 (N.D.Cal.1997) (33.3% fee); *In re Heritage Bond Litig.*, 2005 WL 1594403, at *18, n.12 (C.D. Cal Jun. 10, 2005) (noting that more than 200 federal cases have awarded fees higher than 30%); *Hernandez v. Kovacevich*, 2005 WL 2435906, *8 (E.D.Cal. Sept. 30, 2005) (32.5% fee).³ Courts in other Circuits have also awarded attorney fees in amounts greater than 25% of the common fund as well.⁴

³ *See also, Vizcaino v. Microsoft Corp*, 290 F.3d 1043, 1047 (9th Cir. 2002) (28% fee award of \$96,885,000.00 Settlement Fund); *Brailsford v. Jackson Hewitt Inc*, 2007 WL 1302978 at * 5

Courts consider the following factors to determine whether to apply either an upward or downward adjustment from the benchmark: (1) the results obtained by counsel; (2) the risks and complexity of issues in the case; (3) whether the attorneys' fees were entirely contingent upon success and whether counsel risked time and effort and advanced costs with no guarantee of compensation; (4) whether awards in similar cases justify the requested fee; and (5) whether the class was notified of the requested fees and had an opportunity to inform the Court of any concerns they have with the request. *In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.*, 2017 WL 6040065, at *2 (N.D. Cal. Dec. 6, 2017). Here, each of these factors supports the 25% benchmark fee requested.

1. The Result Achieved Measured Against Awards in Similar Cases

Of the relevant factors considered, the "most critical factor" in determining appropriate attorneys' fees "is the degree of success obtained." *Hensley v. Eckerhart*, 461 U.S. 424, 436

(N.D. Cal. 2007) (awarding fee equal to 30% of settlement fund); *In re M.D.C. Holdings Sec. Litig.*, 1990 WL 454747, *7,10 (S.D. Cal Aug. 30, 1990) (awarding 30% fee); *Razilov v. Nationwide Mut. Ins. Co., et al.*, 2006 WL 3312024, *3 (D. Or. Nov. 13, 2006) (awarding 30% fee of \$19,250,000.00 settlement fund); *In re Immunex Sec. Litig.*, 864 F.Supp. 142, 146 (W.D.Wash.1994) (awarding fees equal to 30% of \$14,000,000.00 settlement fund); *In re Avista Corp. Sec. Litig.*, 2007 WL 4568933, *5 (E.D.Wash. Dec. 20, 2007) (30% fee of \$9,500,000.00 settlement fund); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 460 (9th Cir. 2000) (affirming award of fees equal to one-third of total recovery); *In re Public Ser. Co. of New Mexico*, 1992 WL 278452, at *1, *12 (S.D.Cal. July 28, 1992) (awarding one-third); *Antonopulos v. North American Thoroughbreds, Inc.*, 1991 WL 427893, at *1, *4 (S.D.Cal. May 6, 1991) (awarding one-third); *Galeener v. Source Refrigeration & HVAC, Inc.*, No. 3:13-CV-04960-VC, 2015 WL 12977077, at *1 (N.D. Cal. Aug. 21, 2015) (awarding fees equal to 30% of \$10,000,000.00 settlement fund).

⁴ See, e.g., *Nichols v. SmithKline Beecham Corp.*, 2005 WL 950616, at *1, *24 (E.D.Pa. April 22, 2005) (awarding fee equal to 30% of a \$65 million fund comprising of between 9.3% and 13.9% of total damages.); *In re Combustion, Inc.*, 968 F.Supp. 1116, 1136–1141 (W.D.La.1997) (awarding fee equal to 36% of the settlement fund); *In re Buspirone Antitrust Litig.*, No. 01–MD–1410, at 4, 42–45 (S.D.N.Y. Apr. 11, 2003) (awarding 33.3% of a \$220 million dollar fund, which produced a multiplier of 8.46); *In re Cardizem CD Antitrust Litig.*, No. 99–MD–1278, at 18–20 (E.D.Mich. Nov. 26, 2002) (awarding 30% of a \$110 million dollar fund, which produced a multiplier of 3.7); *In re Vitamins Antitrust Litig.*, No. 99–197, MDL 1285, 2001 WL 34312839, at *10 (D.D.C. July 16, 2001) (awarding about 34% of about a \$360 million dollar fund); *Kurzweil v. Philip Morris Cos.*, Nos. 94 Civ. 2373, 94 Civ. 2546, 1999 WL 1076105, at *1–2 (S.D.N.Y. Nov.30, 1999) (awarding 30% of about a \$124 million dollar fund, which produced a multiplier of 2.46).

(1983); *see also In re Bluetooth*, 654 F.3d at 942; *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008). Class Counsel respectfully submit that the result achieved in this case, particularly when compared to both the settlement amounts of other similar cases alleging a violation of the FLSA and California wage and hour laws (as well as the fees awarded to counsel in those cases) is exceptional and justifies the full fee requested. The \$9,500,000.00 *non-reversionary* cash settlement amount is outstanding. Additionally, the \$356,250.00 to the State of California for PAGA claims is significant. Should the Court approve the requested attorney's fees, litigation costs, and enhancement requests, the Class Members will share \$6,676,750. The total settlement amount represents an approximately 44% recovery of the total potential unpaid wage exposure, not including potential exposure for penalties or interest.⁵ *See* Buck Decl. ¶¶ 16-19.

Class Counsel submit that perhaps the best gauge of the success achieved in this case is to measure the results achieved against other cases alleging similar wage and hour violations that have been approved by other courts in this Circuit. A review of settlement amounts, class number,

⁵ The exposure for potential meal and rest break penalties under Lab. Code § 226.7, itemized wage statement penalties under Lab. Code § 226, waiting time penalties under Lab. Code § 203, and PAGA penalties under Lab. Code § 2698, et seq., was significantly higher than the exposure for the hard regular rate and overtime damages. The calculated exposure on these penalties was in the nine (9) figures. There were many reasons for discounting the applicability of these penalties. As an initial matter, all penalties are derivative of the underlying claims for unpaid wages. In the event that Plaintiff was unsuccessful in the recovery of the underlying wages or in the event that certification was not maintained, the penalty exposure would be zero. But even in the event that Plaintiff was successful in proving her underlying claims, numerous hurdles would remain with respect to the penalty claims. First, the recovery of even a fraction of the penalties potentially recoverable in this case would severely impact the continued business operations of Defendant, John Muir Hospital. Second, the PAGA penalties are entirely discretionary with the Court and Plaintiff believed it would be unlikely that the Court would impose a penalty that would impact the continued viability of a long standing health care institution in the Walnut Creek area. Third, the recovery of waiting time penalties requires a showing of willfulness and, without conceding a litigation position, Plaintiff admits that such a heightened showing would prove difficult at trial. Fourth, again without conceding a litigation position should this Settlement not be approved, the recovery of meal and rest break penalties on a class-wide basis may be problematic in light of the standard for certification of those claims under *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 273 P.3d 513 (2012), and the fact that Defendant maintained a facially compliant meal and rest break policy. Furthermore, many employees attested in declarations that it was their choice to forgo their meal and rest breaks or that they chose to take their rest break at a later time. (*See* Dkt. Nos. 29-1, et seq.). For these reasons, the penalty exposure is not considered when calculating the Settlement's value in comparison to the total exposure.

approximate class recovery, and corresponding fee awards from comparable settlements, further demonstrates the excellence of the results achieved in this case by Class Counsel, and the reasonableness of the fee request. Below is a chart measuring the results of this case against comparable settlements:

Case	Gross Settlement Amount	Potential Class Number	Class Period	Approx. Class Member Recovery	PAGA	Percentage of Attorney's Fees Awarded
<i>Martinez v. John Muir</i> (this case)	\$9,500,000	6,200	10/13/2013 to 6/18/2019 (see fn. 2)	\$1,077.86 (average) [payouts based on total hours worked]	\$356,250	25%: \$2,375,000
<i>Howard et al. v. So. Cal. Permanente</i> . Case No. BC 586369, Sup. Ct. Cal. County Los Angeles, (Nov. 2017) (overtime, meal and rest breaks and PAGA allegations)	\$2,290,000	467	3/12/2011 to 12/1/2016	\$5,387.00 (average)	\$17,175.	25%: \$572,500
<i>Ababa, et al. v. Promise Hospital of East Los Angeles</i> , Case No. BC566121, Sup. Ct. Cal., County Los Angeles (July 2017) (overtime, meal and rest breaks and PAGA allegations)	\$5,000,000	1708	12/10/2010 to 2/28/2017	\$1,900.65 (average) [pro rata share based on workweeks worked]	\$43,750	33 1/3% \$1,666,665
<i>Bart v. Parkview</i>	\$2,550,000	2,539	6/10/10 to	\$592.87	\$17,500.	33 1/3%

1	<i>Cmty Hosp. Med. Ctr.</i> , Case No. RIC 1406044 (Sup. Ct. County Riverside, CAL 2016) (final approval of misclassification; overtime, meal and rest breaks and PAGA allegations)			4/4/2016	(average)		\$805,000.
2							
3							
4							
5							
6							
7							
8	<i>Brooks v. Life Care Centers of America</i> , 2015 WL 13298569 (C.D. Cal. 2015) (overtime, meal and rest breaks and PAGA allegations)	\$1,686,981	4517	3/27/2008 to 7/15/2015	\$469.01 (average)	\$7,500.	25%: \$421,729
9							
10							
11							
12							
13	<i>Pasquale v. Kaiser Foundations Hospitals, Inc.</i> , 2010 WL 11591905 (S. D. Cal. Mar. 15, 2010) (overtime, meal, rest break violations)	\$3,700,000	174	4/29/2004 to 6/26/2009	\$13,000	Unknown	30%: \$1,233,333
14							
15							
16							
17							
18							
19	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i> , 2008 WL 4473183 (S.D. Cal. 2008) (preliminary approval of misclassification; overtime, meal and rest breaks and PAGA allegations)	\$5,400,000	770	10/4/2003 to 10/6/2008	Unknown (based on workweeks worked)	\$33,333.33	25%: \$1,350,000
20							
21							
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24							
25							
26							

As reflected in the chart above, the fees sought by Class Counsel here are commensurate with, and actually lower than, the percentage of fees awarded in other comparably similar hospital

wage and hour cases. Accordingly, this factor supports Counsel's request for the 25% benchmark.

2. The Risk and Complexity of the Case Support the Fees Requested

Class action cases such as this are, by definition, inherently complex. Obtaining class certification, defeating a motion to dismiss, preparing for and participating in mediation, with an eye to developing a class-wide trial plan consistent with due process and maintaining class certification through trial are complex issues that require specialized knowledge and skill. Buck Decl. ¶ 4. Additionally, litigating a large class action (i.e., over 6,200 class members) against a well-funded and respected Defendant like John Muir Health represented by highly skilled defense counsel requires attorneys who are willing to take substantial risks.⁶ In this litigation Defendant changed defense counsel early in the litigation, settling on representation for most of the procedural

⁶ Indeed, Thierman Buck, LLP took substantial risk with this case and well as several other cases that have been appealed to the Ninth Circuit Court of Appeals and the Supreme Court of the United States. Two such cases are *Busk v. Integrity Staffing Solutions, Inc.*, and *Walden v. The State of Nevada, ex rel. Nevada Department of Corrections*.

In *Busk v. Integrity Staffing Solutions, Inc.*, Case No. 2:10-CV-01854-RLH-RJJ originally filed in the United States District Court District of Nevada on October 22, 2010, Counsel was successful on their appeal to the Ninth Circuit on a matter of first impression where the Court held FLSA collective actions and state law class actions could be brought in the same federal lawsuit (*Busk v. Integrity Staffing Solutions*, 713, F.3d 525 (2013)), which remains good law today; lost at the Supreme Court on the question of whether employer mandated anti-theft-security searches constituted "work" within the FLSA and as a postliminary activity under the Portal-to-Portal Act (*Integrity Staffing Solutions, Inc. v. Busk*, 135 S.Ct. 513 (2014)); and won again at the Sixth Circuit Court of appeals on the question of whether the Portal-to-Portal Act applies to Nevada wage and hour law (*In re: Amazon.com, Inc., Fulfillment Center Fair Labor Standards Act (FLSA) And Wage and Hour Litigation*, 2017 WL 2662607 (2017)). The Sixth Circuit decision has been appealed yet again to the Supreme Court of the United States (Case No. 18A766 distributed to conference and responses requested and provided). Thierman Buck, LLP's lodestar for the complete loss at the Supreme Court alone was \$1,633,280.50. Counsel will continue to expend attorney time and expenses while continuing to litigate this case.

In *Walden v. The State of Nevada, ex rel. Nevada Department of Corrections*, Case No. 3:14-cv-00320-MMD-WGC removed to the United States District Court District of Nevada on June 17, 2014, Counsel recently argued at the Ninth Circuit Court of Appeals on the questions of whether the State of Nevada waived sovereign immunity from the FLSA by statute and/or by removal to federal court from state court. Oral argument was held March 13, 2019. To date, Thierman Buck, LLP has a lodestar of \$1,580,254.00 in cost over five-plus years of intense litigation and will continue to expend attorney time and expenses while continuing to litigate this case, potentially having to appeal to the Supreme Court.

history with the attorneys at Littler Mendelson P.C. Littler boasts itself as the largest global employment and labor law practice devoted exclusively to representing management.⁷ Buck Decl.

¶ 5. There is no doubt that the quality of defense counsel both increased the risks of this case and required Class Counsel to devote more resources to litigating this action. *Id.* Litigating against experienced counsel and a well-funded defendant, as was the case here, is a factor further justifying the 25% benchmark. *See e.g., In re Nat'l Collegiate Athletic Ass'n*, 2017 WL 6040065, at *3; *De Mira v. Heartland Employment Service, LLC.*, 2014 WL 1026282, at *2 (N.D. Cal. 2014) (“Defendant was represented by an experienced and well-resourced defense firm. Had Class Counsel failed to vigorously prosecute this case, it is unlikely that this settlement could have been achieved”); *Vizcaino v. Microsoft Corp.*, 142 F. Supp. 2d 1299, 1303 (W.D. Wash. 2001), *aff'd*, 290 F.3d 1043 (9th Cir. 2002) (“Class Counsel’s risk was even greater, and their work made more difficult, because Microsoft is one of the nation’s largest and most formidable companies and it, and several law firms, defended the case vigorously for several years.”)

The risks involved in this case included:

- The risk of losing at trial and recovering nothing for the class in light of Defendant’s defenses to the underlying claims. *See*, Dkt. Nos 10 (Motion to Dismiss), 39 (Motion for Preliminary Approval) at p. 6:19-28, p. 7:1-16, outlining the genuine disputes as to material facts relative to the ability of Plaintiff to maintain certification under the FLSA or be granted class certification pursuant to FRCP 23; whether the EPIC/MIDAS records were sufficient to support Plaintiffs theories of liability; whether Defendant had knowledge of off-the-clock work and/or if employees deliberately prevented the employer from acquiring knowledge of off-the-clock work; and whether non-discretionary bonuses were properly included in calculating the regular rate of pay.
- The risk that after further litigation and the expense of time consuming additional discovery and depositions that Defendant would be successful on a motion for decertification and beat back Plaintiff’s motion for FRCP 23 class certification.
- The substantial likelihood of appeals regarding liability and the assessment of penalties extending this litigation and prolonging any recovery to the class.

⁷ <https://www.littler.com/locations>; last visited June 14, 2019.

Buck Decl. at ¶¶ 4-8. Accordingly, this factor supports Counsel's request for the 25% benchmark.

3. The Contingent Nature of the Representation and the Efforts and Costs Expended by Class Counsel Justify the Fee Requested

As recently observed by this Court in *In re Nat'l Collegiate Athletic Ass'n*, 2017 WL 6040065 at *4:

Courts have long recognized that the public interest is served by rewarding attorneys who assume representation on a contingent basis with an enhanced fee to compensate them for the risk that they might be paid nothing at all for their work.” *Ching v. Siemens Indus.*, 2014 WL 2926210, at *8 (N.D. Cal. June 27, 2014) (emphasis added). “This mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases.” *Vizcaino II*, 290 F.3d at 1051 (emphasis added). And “[c]ontingent fees that may far exceed the market value of the services if rendered on a non-contingent basis are accepted in the legal profession as a legitimate way of assuring competent representation for plaintiffs who could not afford to pay on an hourly basis regardless whether they win or lose.” *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994).

For the past three-plus years, Class Counsel have prosecuted this case on a contingency fee basis while advancing all labor and costs for the benefit of the 6,200 Class Members as well as the State of California. Buck Decl. ¶ 22. In total, Class Counsel have invested approximately \$657,341.00 of their own labor and over \$35,000.00 in litigation costs (including expert witness fees) with no guarantee whatsoever of any recovery. *Id.* ¶ 29. The contingent nature of the representation, as well as the considerable amount of time and costs expended justify the fee requested. *See, Torrasi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376-77 (9th Cir. 1993) (“Class counsel, however, have the case on a contingency. Moreover, it is a double contingency; first, they must prevail on the class claims, and then they must find some way to collect what they win.”).

D. The Requested Fee Is Reasonable Under A Lodestar Crosscheck

A cross-check of the percentage-based fee by comparison to Class Counsel's lodestar confirms that the 25% benchmark is reasonable. Under the lodestar method, the lodestar is

1 calculated by multiplying the reasonable hours expended by a reasonable hourly rate. *See*
 2 *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986); *Kelly*
 3 *v. Wengler*, 822 F.3d 1085, 1099 (9th Cir. 2016). The court may then apply an upward adjustment
 4 to a lodestar in common fund cases (through a positive multiplier) to reflect "reasonableness"
 5 factors, including:
 6

7 (1) the amount involved and the results obtained; (2) the time and labor
 8 required; (3) the novelty and difficulty of the questions involved; (4) the
 9 skill requisite to perform the legal services; (5) the preclusion of other
 10 employment due to acceptance of the class; (6) the customary fee; (7)
 the experience, reputation, and ability of the attorneys; and (8) awards
 in similar cases.

11 *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975); *see also Hanlon v. Chrysler*
 12 *Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1988) (a lodestar figure "may be adjusted upward or
 13 downward to account for several factors including the quality of the representation, the benefit
 14 obtained for the class, the complexity and novelty of the issues presented, and the risk of
 15 nonpayment") (citing *Kerr*). The Ninth Circuit requires "only that fee awards in common fund
 16 cases be reasonable under the circumstances." *State of Fla. v. Dunne*, 915 F.2d 542, 545 (9th Cir.
 17 1990). However, it is not necessary for the fee award to be equally justifiable under both the
 18 lodestar and the percentage methods, or for the percentage method to be precise when used as a
 19 cross-check. *In Re HP Inkjet Printer Litg.*, 716 F.3d 1173, 1190 (9th Cir. 2013).

21 Currently, Class Counsel's combined lodestar is \$657,341.00. *See*, Buck Decl. ¶¶ 25-26.
 22 Thus, the requested fee currently results in a lodestar multiplier of 3.61, which will decrease both
 23 prior to Final Approval and over the claims administration process (assuming Final Approval is
 24 granted) as Class Counsel continue to perform work for the Class well after final approval is
 25 entered. Specifically, Class Counsel will spend additional time throughout the notice working with
 26 Defense Counsel and the Claims Administrator to facilitate the notice documents and process,
 27
 28

1 answering class member inquiries, preparing the Motion for Final Approval, and working with
 2 Defendant and the claims administrator to resolve any Class Member disputes through the date of
 3 payment and post-distribution accounting. *Id.*

4
 5 Class Counsel's multiplier of 3.61 is in line with multipliers that are routinely approved in
 6 this Circuit. *See Vizcanio*, 290 F.3d at 1051 n. 6 (approving multiplier of 3.65 and citing recent
 7 cases approving multipliers as high as 19.6); *Steiner v. America Broadcasting Co. Inc.*, 248 Fed.
 8 Appx. 780, 783 (9th Cir. 2007) (affirming award with multiplier of 6.85); *Gutierrez v. Wells Fargo*
 9 *Bank, N.A.*, 2015 WL 2438274, at *7 (N.D. Cal. May 21, 2015) (awarding a multiplier of 5.5
 10 mainly on account of the fine results achieved on behalf of the class, the risk of non-payment they
 11 accepted, the superior quality of their efforts, and the delay in payment). Indeed, multipliers
 12 ranging from 1 to 4 are presumptively reasonable. *See Newburg, Attorney Fee Awards*, § 14.03 at
 13 14-5 (1987) ("multiples ranging from one to four are frequently awarded in common fund cases
 14 when the lodestar method is applied.")⁸

16 **1. The Time and Labor Required**

17 As described in the accompanying declarations, Class Counsel together have devoted
 18 891.25 hours of attorney time to this litigation over the course of the last three-plus years. *See Buck*
 19 *Decl.* ¶¶ 24-26; *Thierman Decl.* ¶¶ 4-7.; *Jones Decl.* ¶¶ 7-8. In reaching this figure, Class Counsel
 20 have exercised billing judgment, ensuring that only time appropriately charged to a paying client
 21

22
 23
 24 ⁸ *See also In re Payment Card Interchange Fee and Merch. Disc. Antitrust Litig.*, 991 F.Supp.2d
 25 437, 448 (E.D.N.Y. 2014) (multiplier of "about 3.41"); *Beckman v. KeyBank, N.A.*, 293 F.R.D.
 26 467, 481 (S.D.N.Y. 2013) ("Courts regularly award lodestar multipliers of up to eight times the
 27 lodestar, and in some cases, even higher multipliers"); *In re En-ron Corp. Secs., Derivative &*
 28 *ERISA Litig.*, 586 F.Supp.2d 732, 741 (S.D. Tex. 2008) (multiplier of 5.2); *In re WorldCom, Inc.*
Sec. Litig., 388 F.Supp.2d 319 (S.D.N.Y. 2005) (4.0 multiplier); *Weiss v. Mercedes-Benz of N. Am.*,
 899 F.Supp. 1297 (D.N.J. 1995) (9.3 multiplier), *aff'd*, 66 F.3d 314 (3d Cir. 1995); *Rabin v.*
Concord Assets Grp., Inc., 1991 U.S. Dist. LEXIS 18273 at *4, 1991 WL 275757, at *2 (S.D.N.Y.
 Dec. 19, 1991) (awarding 4.4 multiplier and explaining that "multipliers of between 3 and 4.5 have
 been common.") (internal quotation marks and citation omitted).

1 was included. *See* Buck Decl. ¶¶ 24, 27; Thierman Decl. ¶ 8.; Jones Decl. ¶ 7. In addition, Class
2 Counsel efficiently allocated work within the team to avoid duplication of efforts. *Id.*

3 **2. The Requisite Skill Necessary**

4 Plaintiff's Counsel's declaration testimony attests that each of the attorneys involved in this
5 case has considerable experience with wage and hour actions that support the hourly billing rates
6 and the overall reasonableness of the Plaintiff's fees request. *See* Buck Dec. ¶¶ 2, 23-27; Thierman
7 Decl. ¶ 2; Jones Decl. ¶¶ 3, 6-9. The proper litigation of this case included far more than the
8 requisite skill necessary to obtain conditional certification and defend a motion to dismiss. Instead,
9 it required counsel to become well versed in discrete areas of hospital data tracking/software, the
10 requisite analysis of said data, and the evolving law related to time tracking and PAGA claims.
11 Buck Decl. ¶ 4. Having presided over this case from its inception, this Court has observed the
12 efforts of counsel for the last three years and is in a unique position to comment on the skill with
13 which Class Counsel have litigated this action. Class Counsel respectfully submit that they have
14 demonstrated the kind of high ethics, good judgment and skill expected from attorneys appearing
15 before this Court throughout the litigation of this case.

18 **3. The Preclusion of Other Employment**

19 Due to the intense demands presented by this case, Class Counsel were forced to forgo
20 work on other fee generating cases in order to advance the interest of the 6,200 member class. *See*
21 Buck Dec. ¶ 29; Thierman Decl. ¶ 5; Jones Decl. ¶ 7. *Parks v. Eastwood Ins. Servs., Inc.*, 240 Fed.
22 App'x 172, 175 (9th Cir. 2007) (approving increase to lodestar multiplier because "[p]reclusion
23 from seeking other employment is a proper basis for an enhancement.) Undertaking the instant
24 litigation on behalf of Plaintiff and the Class necessarily required the use of attorney time in
25 litigating this case. It is true, Plaintiff's Counsel was not required to take Plaintiff's case, but upon
26 taking this case, Thierman Buck, LLP was bound by both the ABA Rules of Professional Conduct
27
28

1 and the California Rule of Professional Conduct, specifically, but not limited to: Rule 1.1 to
 2 competently represent Plaintiff with thoroughness and preparation reasonably necessary for the
 3 representation; Rule 1.3 to act with reasonable diligence and promptness in representing a client;
 4 and, Rule 2.1, as an advisor, exercise independent professional judgment and render candid advice
 5 by referring not only to the law but to other considerations such as moral, economic, social and
 6 political factors, that may be relevant to the client's situation. Buck Decl. ¶ 29. Indeed, on
 7 average, Class Counsel's firm typically receives 3-5 calls per day from potential clients seeking
 8 redress for unpaid wages and other employment related concerns. *Id.* As a result of having
 9 accepted this particular case and having invested nearly 857 hours into the action, Plaintiff's
 10 counsel has been precluded from taking additional cases. *Id.*

11 **4. The Customary Fee**

12
 13 The 25% benchmark requested fee is consistent with the applicable Ninth Circuit authority
 14 and with the fees awarded in similar cases. *See* Section II.C.1, above. It also falls within the range
 15 of multipliers approved by the Ninth Circuit and district courts in this and other Circuits. *See*
 16 Section II.D, above. In light of both the customary percentage and the range of multipliers
 17 commonly approved, Class Counsel respectfully submit that the fee request of the 25% benchmark
 18 is reasonable.
 19

20
 21 Class Counsel's hourly rates are also reasonable. *See* Buck Dec. ¶¶ 24-25, 27-28; Thierman
 22 Decl. ¶ 7-8; Jones Decl. ¶¶ 8-9 (setting forth hourly rates in this case). The reasonable hourly rate
 23 for computing the lodestar amount is based on the "prevailing market rates in the relevant
 24 community" for similar work performed by attorneys of comparable skill, experience, and
 25 reputation. *See Gonzalez v. City of Maywood*, 729 F.3d 1196, 1205 (9th Cir. 2013); *Camacho v.*
 26 *Bridgeport Fin., Inc.*, 523 F.3d 973, 980 (9th Cir. 2008). Here, the relevant community is the
 27 Northern District of California where reasonable rates for partners range from \$560 to \$800,
 28

1 associates range from \$285 to \$510, and paralegals and litigation support staff range from \$150 to
2 \$250. *See In re Magsafe Apple Power Adapter Litig.*, No. 5:09-CV-01911-EJD, 2015 WL 428105,
3 at *12 (N.D. Cal. 2015) (collecting cases). The hourly rates sought by Counsel here are in line
4 with the rates charged by attorneys with similar skill and experience on similar matters in this
5 District. *See* Buck Dec. ¶ 28; Thierman Decl. ¶¶ 7-8; Jones Decl. ¶¶ 8-9.

7 Furthermore, it is proper to refer to survey data to evaluate reasonableness of attorneys'
8 fees. *Mathis v. Spears*, 857 F.2d 749, 755-56 (9th Cir. 1988). A survey conducted by the National
9 Law Journal for the year 2011 confirms that the rates charged by Plaintiffs' Counsel are
10 reasonable. According to this survey, law firms in California, such as Manatt, Phelps & Phillips, or
11 Sheppard, Mullin & Richter, customarily charge between \$676 and \$860 per hour for partners, and
12 between \$550 and \$635 per hour for associates. *See* Jones Dec., ¶ 9, Exhibit 1 ("2011 Survey"). It
13 is worth noting that these defense attorneys are paid on a monthly basis and do not have to advance
14 any costs in a case. In contrast, Plaintiff's counsel is only paid if they win, which in this case will
15 result in payment for currently employed and formerly employed hospital care workers.

17 It is well settled in this Circuit that the affidavits of the fee applicant's attorneys and other
18 attorneys regarding prevailing fees in the community, and rate determinations in other cases, are
19 satisfactory evidence of the prevailing market rate. *Camacho*, 523 F.3d at 980. Here, Class
20 Counsel have presented sufficient evidence to support their hourly rates including: (1) declarations
21 from Counsel and others supporting the hourly rates charged; and (2) rate determinations from
22 other cases supporting the hourly rates sought here. *See* Buck Dec. generally; Thierman Decl.
23 generally; Jones Decl. generally.

25 5. Experience, Reputation, And Ability of the Attorneys

26 Class Counsel's experience, reputation and ability, which are detailed in the accompanying
27 declarations, support the requested multiplier as well. *See* Buck Dec. ¶ generally; Thierman Decl.
28

generally; Jones Decl. ¶ generally. A cursory review of the Docket in this case and Class Counsel's success on said motions, speaks to the skill and ability with which Class Counsel litigated this matter. Obtaining an excellent result on behalf of the State of California and class members based on a complex area of the law was no small feat given the relentless effort, vigor and skill employed by Defendant's numerous experienced and able counsel in pursuing various defensive strategies.

E. Class Counsel Should Recover The Litigation Costs And Expenses Actually Incurred For The Benefit Of The Class

Class Counsel also seek reimbursement from the settlement fund in the amount of \$35,000.00 for litigation costs advanced during the course of this case. This amount is authorized under the terms of the Settlement Agreement at ¶ 24 (Dkt. 62-1). These out-of-pocket expenses were incurred for the Class Members' benefit during this litigation and include filing fees, process service fees, mediator's fees, expert witness fees, travel expenses, photocopies, document imaging, postage, and research. Reimbursement is appropriate for the same reasons attorney's fees should be paid out of the fund: all beneficiaries should bear their fair share of the costs of litigation, and these are the normal costs of litigation that clients traditionally pay. Reimbursement of reasonable out-of-pocket expenses that were "incidental and necessary to the representation of those clients" is appropriate. *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994). As set forth in the Buck Decl. ¶ 30, all of the costs sought were necessary in connection with the prosecution of this litigation and were made for the benefit of the Class.

/ / /

/ / /

/ / /

III. CONCLUSION

Based on the information and reasons provided above, Plaintiff respectfully requests that the Court enter an order granting approval of Class Counsel's fee request of the 25% benchmark and litigation costs incurred in this case.

DATED: July 9, 2019

Respectfully Submitted,

/s/Joshua D. Buck
JOSHUA D. BUCK
THIERMAN BUCK, LLP
Attorneys for Plaintiff, KAREN MARTINEZ

THIERMAN BUCK, LLP

7287 Lakeside Drive

Reno, NV 89511

(775) 284-1500 Fax (775) 703-5027

Email: info@thiermanbuck.com www.thiermanbuck.com

THIERMAN BUCK LLP

MARK R. THIERMAN, SB# 72913

JOSHUA D. BUCK, SB# 258325

LEAH L. JONES, SB# 276448

7287 Lakeside Drive

Reno, NV 89511

Tel: 775.284.1500

Fax: 775.703.5027

info@thiermanbuck.com

ATTORNEYS FOR PLAINTIFF

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

KAREN MARTINEZ, on behalf of herself and
all other similarly situated individuals,

Plaintiff,

vs.

JOHN MUIR HEALTH, and DOES 1 through
50, inclusive,

Defendant(s).

Case No.: 4:17-cv-05779-CW

**DECLARATION OF JOSHUA D. BUCK
IN SUPPORT OF PLAINTIFF'S
MOTION FOR ATTORNEYS' FEES
AND COSTS**

DATE: November 19, 2019

TIME: TBA

DEPT: Courtroom 2, 4th Floor

JUDGE: Hon. Claudia Wilken

COMPLAINT FILED: Oct. 6, 2017

FAC FILED: Dec. 1, 2017

I, Joshua D. Buck, hereby declare and state as follows:

1. The following declaration is based upon my own personal observation and knowledge, and if called upon to testify to the things contained herein, I could competently so testify.

2. I am an attorney at law and partner with the Thierman Buck, LLP and I am admitted to practice law in the states of California and Nevada, and the United States District Court District of Nevada, Northern District of California, Southern District of California, Central District of California, the Sixth Circuit Court of Appeals, the Ninth Circuit Court of Appeals, the

Eleventh Circuit Court of Appeals, and the United States Supreme Court. Attached hereto as Exhibit 1 is a current CV which lists my qualifications and case experience. I estimate that I have recovered approximately \$50 million dollars in unpaid wages on behalf of employees during the last 11 years of my wage-hour class action practice.

3. I am the attorney of record for Plaintiff KAREN MARTINEZ (“Plaintiff”) in this action against Defendant JOHN MUIR HEALTH (“JMH”). I have handled all aspects of this litigation from the initial client intake up to and including the negotiations of the Settlement Agreement.

CLASS COUNSEL’S EFFORTS, THE COMPLEXITY OF THE CASE AND RISKS

INVOLVED IN LITIGATION

4. Class action cases such as this are, by definition, inherently complex. Obtaining class certification, defeating a motion to dismiss, preparing for and participating in mediation, with an eye to developing a class-wide trial plan consistent with due process and maintaining class certification through trial are complex issues that require specialized knowledge and skill. The proper litigation of this case included far more than the requisite skill necessary to obtain conditional certification and defend a motion to dismiss. Instead, it required counsel to become well versed in discrete areas of hospital data tracking/software, the requisite analysis of said data, and the evolving law related to time tracking and PAGA claims.

5. In this litigation Defendant changed defense counsel early in the litigation settling on representation for most of the procedural history with the attorneys at Littler Mendelson P.C. Littler boasts itself as the largest global employment and labor law practice devoted exclusively to representing management. There is no doubt that the quality of defense counsel both increased the risks of this case and required Class Counsel to devote more resources to litigating this action.

6. The risks involved in this case were significant. The greatest risk was the risk of losing at trial and recovering nothing for the class in light of Defendant’s defenses to the underlying claims including genuine disputes as to material facts relative to the ability of Plaintiff to maintain certification under the FLSA or be granted class certification pursuant to FRCP 23; whether the EPIC/MIDAS records were sufficient to support Plaintiffs theories of liability;

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Reno, NV 89511

(775) 284-1500 Fax (775) 703-5027

Email: info@thiermanbuck.com www.thiermanbuck.com

whether Defendant had knowledge of off-the-clock work and/or if employees deliberately prevented the employer from acquiring knowledge of off-the-clock work; and whether non-discretionary bonuses were properly included in calculating the regular rate of pay

7. Additionally, risks of further litigation and the expense of time consuming additional discovery and depositions that Defendant would be successful on a motion for decertification and beat back Plaintiff's motion for FRCP 23 class certification were considered in Counsel's efforts and litigation strategies.

8. Furthermore, the substantial likelihood of appeals regarding liability and the assessment of penalties extending this litigation and prolonging any recovery to the class were considered in Counsel's efforts and litigation strategies.

9. I have engaged in settlement discussions on and off with counsel for JMH since before the filing of the lawsuit. My first interaction was with Defense attorney Michael Bruno. We agreed to mediate the action with Mark S. Rudy pre-filing. As this Court is aware, though filings with this Court, that mediation never took place and generated a certain amount of consternation from Plaintiff and the attorneys at my firm. Nevertheless, JMH did disclose certain data prior to the first cancelled mediation for a certain subset of the Class of individuals that we were seeking to represent. JMH provided a summary of punch data and data from the EPIC and MIDAS charting software system for case managers who were employed at JMH during the relevant time period of this case, which is October 13, 2012 up to the date this Court enters preliminary approval ("Class Period"). To facilitate the necessary inquiries, Plaintiff propounded her First Set of Interrogatories, which included 15 separate interrogatories, as well as two sets of Requests for Production, which included 28 separate requests. Preliminary approval was granted on June 18, 2019.

10. Following this Court's grant of conditional certification of the FLSA Classes, I propounded class-wide discovery on Defendant and asked for employment documents for all patient care employees who were employed by JMH during the Class Period. Most notably, I sought punch data along with data from the EPIC and MIDAS software systems. It was my belief that the data would prove to be instrumental in proving that Plaintiff and putative class members

1 worked off the clock. After I propounded discovery and prior to sending out the FLSA Notice, I
 2 agreed with counsel for JMH, Lisa Horgan and Robert Hulteng, that the Parties should attempt to
 3 have another mediation session with Mr. Rudy.

4 11. I had previously requested all collective and class wide information with respect
 5 to payroll data, KRONOS punch data, time entry data into the EPIC and MIDAS software
 6 systems, and information with respect to the bonuses paid by JMH in formal discovery. As part
 7 of our agreement to mediate, Defendants agreed to provide this information under the mediation
 8 privilege for a sampling of employees. Defendant agreed to provide all the data for the case
 9 manager employee group (which was already produced, in part, prior to the first mediation) and
 10 a random sample of 5% patient care group. The total Class size was 6,266 persons; 5%
 11 represented 314 class members.

12 12. My firm received the data for mediation on month prior to the mediation. I then
 13 forwarded that data to Plaintiff's data analyst, Jim R. Toney, for his review and analysis. Mr.
 14 Toney was able to fully analyze the data to determine the applicable hourly rate of pay for all
 15 class members and the difference, if any, between the punch data and the EPIC/MIDAS data
 16 entry. By doing so, Mr. Toney was able to determine whether, and to what extent, the sample
 17 group of employees were working off the clock during their meal periods or pre/post shift. Mr.
 18 Toney's analysis was provided to mediator Rudy as an attachment to Plaintiff's mediation brief
 19 prior to the scheduled mediation.

20 13. On October 31, 2018, the Parties participated in a full day mediation session with
 21 Mark Rudy, a respected mediator with extensive experience resolving employment actions and
 22 class actions. My law partner, Mark Thierman, along with our data analyst Mr. Toney, were
 23 present for Plaintiff. Attorneys Robert Hulteng and Lisa Horgan were present for JMH. Without
 24 revealing confidential settlement communications, the Parties had significant discussions and
 25 disagreements about the significance of the data produced by Defendant and the extent to which
 26 it supported or weakened Plaintiff's claims. The Parties were unable to reach agreement at the
 27 mediation but agreed to continue to discuss our respective positions once we had a greater
 28 understanding of the data at issue.

14. Following the mediation, I hired two experts in the EPIC/MIDAS software system. These individuals were experts in the nature of the data created by the software programs, the exportability of the data, the functionality of the programs, and the practical implementation of the programs. One of the experts previously worked as an “At the Arm” technician and assisted in setting up EPIC/MIDAS in various hospitals across the United States and was very familiar with the practical realities that faced patient care employees and the need for accurate patient charting.

15. The Parties continue to exchange position statements that refuted the other sides’ arguments and the current state of the law with respect to numerous areas of disagreement. Namely, the Parties disagreed as to, among other things, (i) whether the data was even able to be fully ascertained to support Plaintiff’s claims; (ii) whether the data could support the certification of the Rule 23 class and the continued certification of the FLSA Classes; (iii) whether the data could demonstrate whether an individual was actually working or simply whether the individual logged on and then took a legitimate break from work to which there would be no liability. Finally, after months of extensive continued mediated settlement discussions through Mr. Rudy and exchange of additional information and documents, the Parties agreed to the basic terms of the Settlement on March 28, 2019 by accepting Mr. Rudy’s mediator’s proposal.

THE RESULTS ACHIEVED AND CLASS COUNSEL’S EFFORTS

16. The efforts of Class Counsel over the course of the litigation have culminated in a \$9,500,000.00 *non-reversionary* cash settlement, including \$356,250.00 in PAGA settlement funds. In addition to the State of California receiving \$356,250.00, should the Court approve the requested attorney’s fees, litigation costs, and enhancement requests, the Class Members will share \$6,676,750.00

17. Litigating this case as a class action was both complex and posed numerous risks including whether the charting work required by Defendants and tracked by the EPIC and MIDAS software systems compared to employees’ time records and testimony provided data sufficient to support the class claims of off-the-clock, overtime, and unpaid wage claims. During the course of this litigation, Class Counsel filed one amended complaint after Defendant attempted to

1 circumvent the litigation process by attempting to negotiate individual settlements and releases
 2 with putative FLSA class members, successfully opposed Defendant's Motion to Dismiss, and
 3 successfully obtained class certification of a class of more than 6,200 individuals in this fact and
 4 data intensive, and highly contested case.

5 18. The Total Settlement Amount of \$9.5 million represents an approximate 44%
 6 recovery of the total potential unpaid wage exposure, not including potential exposure for
 7 penalties or interest.

8 19. The Settlement represents a compromise between experienced counsel for Plaintiff
 9 and Defendant based upon each Party's honest assessment of the legal and factual strengths and
 10 weaknesses of their respective position. From Plaintiff's perspective, the Total Settlement
 11 Amount represents at 44% recovery of the total exposure of hard damages (not including
 12 penalties) that Defendant faced. Plaintiff's expert on damages calculated the exposure of the Off-
 13 the-Clock and regular rate claims to be approximately 21.5 million. (This exposure does not
 14 include potential penalties that could be recovered.) The exposure was calculated by Plaintiff's
 15 data analyst after punch data with the time stamp data from the EPIC/MIDDAS software system.

16 20. The exposure for potential meal and rest break penalties under Lab. Code § 226.7,
 17 itemized wage statement penalties under Lab. Code § 226, waiting time penalties under Lab. Code
 18 § 203, and PAGA penalties under Lab. Code § 2698, et seq., was significantly higher than the
 19 exposure for the hard regular rate and overtime damages identified above. The calculated
 20 exposure on these penalties was in the nine (9) figures. There were many reasons for discounting
 21 the applicability of these penalties. As an initial matter, all penalties are derivative of the
 22 underlying claims for unpaid wages. In the event that Plaintiff was unsuccessful in the recovery
 23 of the underlying wages or in the event that certification was not maintained, the penalty exposure
 24 would be zero. But even in the event that Plaintiff was successful in proving her underlying
 25 claims, numerous hurdles would remain with respect to the penalty claims. First, the recovery of
 26 even a fraction of the penalties potentially recoverable in this case would severely impact the
 27 continued business operations of Defendant. Second, the PAGA penalties are entirely
 28 discretionary with the Court and Plaintiff believed it would be unlikely that the Court would

1 impose a penalty that would impact the continued viability of a long standing health care
 2 institution in the Walnut Creek area. Third, the recovery of waiting time penalties requires a
 3 showing of willfulness and, without conceding a litigation position, Plaintiff admits that such a
 4 heightened showing would prove difficult at trial. Fourth, again without conceding a litigation
 5 position, should this Settlement not be approved, the recovery of meal and rest break penalties on
 6 a class-wide basis may be problematic in light of the standard for certification of those claims
 7 under *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 273 P.3d 513 (2012), and the fact
 8 that Defendant maintained a facially compliant meal and rest break policy. Furthermore, many
 9 employees attested in declarations that it was their choice to forgo their meal and rest breaks or
 10 that they chose to take their rest break at a later time. (*See* ECF Nos. 29-1, *et seq.*). For these
 11 reasons, the penalty exposure is not considered when calculating the Settlement's value in
 12 comparison to the total exposure.

13 21. Plaintiff agreed to resolve her claims on her behalf and on behalf of the class at an
 14 estimated 44% recovery of the total potential for the following principal reasons. First, as with
 15 all settlements, a recovery at 44% the total potential recovery represents a relatively quick and
 16 certain payout for all members of the Class. Second, resolving the action as a total non-
 17 reversionary payout to all members of the Class takes away any risk that the action may not
 18 ultimately proceed to trial on a class-wide basis. By resolving the case on a class-wide basis, all
 19 class members will be receiving funds whereas there is significant risk that the amount paid to
 20 absent class members would be zero. Third, the case was highly disputed as to what the data
 21 actually showed. Plaintiff alleged that the EPIC and MIDDAS, in comparison to the punch data,
 22 demonstrated that Plaintiff and other class members were working off-the-clock pre- and post-
 23 shift and during the workday. Defendant, on the other hand, argued that while the data may have
 24 showed a computer entry while an employee was "off-the-clock", it did not conclusively
 25 demonstrate that the employee was actually working because (i) the entry could have been made
 26 by another employee on behalf of an employee who forgot to log-off, (ii) the duration of the work
 27 was incalculable, (iii) even if an employee made an entry "off-the-clock", that employee could
 28 have then proceeded to take a legally compliant break. Ultimately, in Defendant's opinion, all of

these factors negated class-wide treatment of the issues and would undercut any potential liability. In short, the class, liability, and damage issues in this case were all hotly contested. The Parties reached their Settlement following the exchange of numerous position statements, the production of thousands of pages of evidence and millions of lines of data, and only after mediator Mark S. Rudy submitted his own mediator's proposal to resolve the action. For these reasons, and the reasons more fully expressed throughout this declaration, Plaintiff's request for attorneys' fees and costs is warranted.

CLASS COUNSEL ATTORNEYS' FEES AND COSTS

22. My firm took this case on a contingency basis such that no attorneys' fees or expenses would inure to our benefit absent collection of a judgment or settlement. As such, Class Counsel has not been paid for any of their time or reimbursed for any expenses as of this date. For the past three-plus years, Class Counsel have prosecuted this case on a contingency fee basis while advancing all labor and costs for the benefit of the 6,200 Class Members as well as the State of California.

23. It should also be noted that the retainer agreement signed by Plaintiff set forth the fact that the attorneys' fees in this case must be approved by the court but that attorneys' fees sought may be awarded up to 35% of the total recovery. Additionally, should the Court grant preliminary approval of the Settlement, Notice to Class Members will include the amount of fees sought by Class Counsel providing the opportunity for Class Members to object to Class Counsel's fee request prior to final approval.

24. I have reviewed my time and billing reports, and expenses in support of Plaintiff's request for attorneys' fees and costs in this case, which were and are maintained during the regular course of business. I have spent 412.30 hours to date, and should the Court grant preliminary approval I will continue to expend hours answering class member questions, reviewing and documenting the opt-in process, and assisting in the drafting motions as needed. I estimate that I will spend another 80 hours (forty hours on drafting, twenty on review, ten hours on the preliminary and final approval hearings, and ten on correspondence) for a total of approximately 492.30 hours:

Joshua D. Buck

Partner Rate: \$750.00

Description of Work Performed	Hours Billed	Total
Drafting Documents (e.g. Pleadings; Motions; Stipulations; Extensions)	93.55	\$70,162.50
Review and Documentation (e.g. Pleadings; Motions; Stipulations; Extensions; Discovery)	127.75	\$95,812.50
Correspondence (e.g., Email; Phone Communications with Plaintiff; Interviews with Putative Class Members/Declarants/Witnesses/putative class members; Experts; Claims Administrator)	110.00	\$82,500.00
Research	11.25	\$8,437.50
Meetings (e.g. Strategy: Case Updates)	43.00	\$32,250.00
Travel	26.75	\$20,062.50
Additional Future Work	80.00	\$60,000.00
TOTALS	492.30	\$369,225.00

25. Myself, my partner Mark Thierman, and our associate Leah Jones, have invested significant attorney and professional staff time in this case from investigation through settlement. Class Counsel recorded their time in 15-minute increments. Class Counsel's reasonable hours and lodestar are accurately reflected in the summary chart below:

Class Counsel's Hourly Rates and Experience						
Name	Position	Bar Admission	Experience	Hours	Rate	Lodestar
Mark R. Thierman	Partner	1976	43 years	199.55	\$1,000	\$199,550.00
Joshua D. Buck	Partner	2008	11 years	492.30	\$750	\$369,225.00
Leah L. Jones	Associate	2011	8 years	180.00	\$450	\$81,000.00

Josh H. Hendrickson	Of Counsel	2012	7 years	19.4	\$390	\$7,566.00
Totals				891.25		\$657,341.00

26. As the charts demonstrate, Class Counsel's total lodestar in the case to date is \$657,341.00 and Class Counsel has expended 891.25 hours. Class Counsel's requested fee represents a 3.61 multiplier on Class Counsel's lodestar. Further, based on my experience in comparable wage and hour class and collective actions, Class Counsel can reasonably expect to expend additional and substantial hours of attorney and staff time during the settlement administration and distribution process, without any additional compensation, which even further reduces the reasonable multiplier on Class Counsel's time.

27. Class Counsel have thoroughly reviewed the time entries recorded in this case and, exercising billing judgment, have removed any time for non-essential tasks or duplicative efforts. All of the time our law firm has submitted to the Court for compensation is (i) of the kind and character that Plaintiffs' counsel would normally bill to paying clients, (ii) time that counsel normally tracks and seeks to be paid for at the conclusion of successful contingency litigation, and (iii) added value to the case and was reasonably necessary to give the Class Members the best possible change for a favorable outcome.

28. Class Counsel's requested hourly rate is reasonable and consistent with the rates of attorneys of comparable skill, reputation and experience performing work of comparable complexity in the Bay Area. Furthermore, the requested hourly rate is consistent with the customary rates awarded to other attorneys with similar experience involving civil rights litigation in this jurisdiction. Based upon my litigation experience and billing judgment, I believe that the hours expended were reasonable.

29. The work done on this case to date and the continued work on this case will necessarily preclude other work. As a result of having accepted this particular case and having invested 891.25 hours into the action, Plaintiff's counsel has been precluded from taking

THIERMAN BUCK, LLP

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Reno, NV 89511

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Email: info@thiermanbuck.com www.thiermanbuck.com

1 additional cases. It is true, Plaintiff's Counsel was not required to take Plaintiff's case, but upon
2 taking this case, Thierman Buck, LLP was bound by both the ABA Rules of Professional Conduct
3 and the Nevada Rule of Professional Conduct, specifically, but not limited to: Rule 1.1 to
4 competently represent Plaintiff with thoroughness and preparation reasonably necessary for the
5 representation; Rule 1.3 to act with reasonable diligence and promptness in representing a client;
6 and, Rule 2.1, as an advisor, exercise independent professional judgment and render candid advice
7 by referring not only to the law but to other considerations such as moral, economic, social and
8 political factors, that may be relevant to the client's situation.

9 30. Class Counsel also seek a total reimbursement of \$35,000 in expenses incurred
10 and expected to be incurred during the course of the litigation. These expenses are reflected in
11 the books and records of Class Counsel's firms and a true and correct itemization of those costs
12 is attached hereto as Exhibit 2. These expenses were reasonable expended and necessary in
13 furtherance of the litigation.

14 I have read the forgoing declaration consisting of this page and seven (7) others and
15 declare under penalty of perjury under the laws of the United States of America and the States of
16 California and Nevada that the foregoing is true and correct.

17 Executed on July 9, 2019, in Reno, Nevada.

18 /s/Joshua D. Buck

19 Joshua D. Buck
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EXHIBIT 1

EXHIBIT 1



7287 Lakeside Drive
Reno, NV 89511
T: (775) 284-1500
F: (775) 703-5027
info@thiermanbuck.com
www.ThiermanBuck.com

Joshua D. Buck
Partner, Thierman Buck LLP

Case Experience

Evans v. Wal-Mart Stores, Inc., No. 14-16566, 2016 WL 4269904, at *1 (9th Cir. Aug. 15, 2016) (reversing lower court decision and holding that waiting time penalties were recoverable for overtime pay violations)

Busk v. Integrity Staffing Solutions, Inc., 713 F.3d 525 (9th Cir. Nev. Apr. 12, 2013), *cert. granted* 2014 WL 801096 (Mar. 3, 2014), *rev'd on other grounds*, No. 13-433, 2014 WL 6885951 (U.S. Dec. 9, 2014)

Saldana, et. al. v. SMX, LLC, Master File No. 14-MC-2504 (W.D. Ky.) (\$3,773,002.50 class action settlement on behalf of persons who worked at Amazon.com fulfillment warehouses for the time spent going through the anti-theft security screening at the beginning of the meal period and at the end of the shift)

Afrouz Nikmanesh, et. al. v. Wal-Mart Stores, Inc., Case No. 8:15-cv-00202-AG-JCG (C.D. Cal.) (\$800,000 class and collective action settlement on behalf of Pharmacists who were required to attend immunization trainings and certifications without compensation)

Kwesi Jones, et. al. v. Farmers Insurance Exchange, Case No. BC412413 (Los Angeles County Superior Court) (\$3,900,000 class action settlement for unpaid wages resulting from pre-shift work on behalf of insurance claims adjusters)

Richard Balint v. Paris LV Operating Co., LLC, Case No. A-16-731891-C (Clark County, Nevada, District Court) (\$525,000 class and collective action settlement on behalf of employees who were classified as exempt from overtime)

Christina John, et. al. v. Caesars Enterprise Services, Case No. A-16-743972-C (Clark County, Nevada, District Court) (\$1 million class and collective action settlement on behalf of call center employees who did not receive compensation for pre and post shift work activities)

Randy Clayton, et. al. v. On Demand Sedan Services, Inc., Case No. A-16-734923-C (Clark County, Nevada, District Court) (\$424,500 class and collective action settlement on behalf of limousine drivers were not incorrectly classified as exempt from overtime)

Markus Levert, et. al. v. Trump Ruffin Tower I, LLC d/b/a Trump International Hotel Las Vegas, Case No. A-14-700559-C (Clark County, Nevada, District Court) (\$130,000 class and collective action settlement for off-the-clock violations)

Brandy Welch, et. al. v. Golden Gate Casino, LLC d/b/a Golden Gate Hotel & Casino, Case No. 2:13-cv-01089-RFB-GWF (D. Nev.) (\$750,000 class and collective action settlement on behalf of casino employees who were not paid for training time, pre-shift activities, and who were not paid the correct overtime rate of pay)

Jamye Berry v. Aria Resort & Casino, LLC, Case No. 2:14-cv-01321-APG-VCF (D. Nev.) (\$860,000 class and collective action settlement on behalf of table games supervisors who were not paid overtime)

Judith Smith v. Mandalay Corporation d/b/a Mandalay Bay Resort and Casino, Case No. 2:14-cv-02158-APG-VCF (D. Nev.) (\$100,000 settlement on behalf of poker room employees who were required to perform work activities without compensation)

Nicole McDonagh, et. al. v. Harrah's Las Vegas, Inc., Case No. 2:13-cv-01744-CWH (\$850,000 class and collective action settlement on behalf of casino dealers who were required to attend pre-shift meetings off-the-clock)

Darlene Lewis v. Nevada Property 1, LLC, Case No. 2:12-cv-01564-RFB-GWF (D. Nev.) (\$9.75 million settlement on behalf of employees for pre-shift work activities)

Raymond Sullivan, et. al. v. Desert Palace, Inc. d/b/a Caesars Palace, Case No. A-14-710505-C (Clark County, Nevada, District Court) (\$1.3 million collective and class action settlement on behalf of employees who picked up a cash bank off-the-clock)

Raymond Sullivan, et. al. v. Riviera Holdings Corp. dba Riviera Hotel and Casino, Case No. 2:14-cv-00165-APG-VCF (D. Nev.) (\$690,000 collective and class action case on behalf of employees who used a cash bank)

Tiffany Sargant, et. al. v. HG Staffing, LLC, MEI-GSR Holdings LLC dba Grand Sierra Resort, Case No. 3:13-cv-453-LRH-WGC (D. Nev.) (conditionally certified class of employees who worked off-the-clock, including employees who use a cash bank)

Danielle Ficken, et. al. v. New Castle Corp. dba Excalibur Hotel and Casino, Case No. 2:13-cv-00600-APG-GWF (D. Nev.) (\$1.1 million collective and class settlement on behalf of employees who use a cash bank)

Tenisha Martin, et. al. v. Ramparts, Inc. dba Luxor Hotel and Casino, 2:13-cv-00736-APG-VCF (D. Nev.) (\$1.3 million collective and class settlement on behalf of employees who use a cash bank)

Dorothy Turk-Mayfield v. Wynn Las Vegas, LLC, Case No. A-13-683389-C (Clark County, Nevada, District Court) (\$1.8 million class action settlement for off-the-clock banking activities)

Darlene Lewis v. ARIA Resort & Casino, LLC, Case No. A-12-663812-C (Clark County, Nevada, District Court) (\$1.39 million class action settlement for off-the-clock banking

activities)

Natalie Antionett Garcia, et. al. v. American General Finance Management Corporation, et. al., Case No. 09-CV-1916-DMG (OPx) (\$1.7 million class settlement improper payment of wages)

Jeffrey Clewell v. Heavenly Valley Ltd, Case No. 12-CV-00282-DC (Douglas County, Nevada, District Court) (\$625,000 class settlement for unpaid overtime and waiting time penalties)

Salvador Duarte, et. al. v. General Parts, Inc., et al., Case No. RG-13-670382 (Alameda County, California, Superior Court) (\$650,000 class action settlement for alleged off-the-clock violations)

Victor Zapata v. M.C. Gill Corporation, Case No. BC409066 (Los Angeles County, California, Superior Court) (reaching a \$1 million class settlement for improper rounding)

Clarence Edwards v. Circus Circus Casinos, Inc., Case No. A-14-701172-C (Clark County, Nevada, District Court) (\$500,000 class action settlement for alleged off-the-clock violations)

Pablo C. Martinez, et al. v. Victoria Partners, dba Monte Carlo Resort and Casino, Case No. 2:14-cv-00144-APG-NJK (\$481,224 class action settlement for off-the clock banking violations and pre and post-shift meeting activities)

Dominique Whitaker, et al. v. Countrywide Home Loans, Inc., et al., Case No. CV09-5898-CAS (PJWx) (\$7.5 million class action settlement for alleged off-the-clock violations).

Speaking Engagements

Speaker, National Employment Lawyers Association (NELA) Wage and Hour Conference, *Navigating the Challenges in Representing Service Industry or “Tipped” Employees* (2017)

Speaker, South Lake Tahoe Family Resource Center, *Forum on Immigrant Rights in the Workplace* (2017)

Speaker, National Business Institute, *Human Resource Law*

Selected Publications

Contributor, *Wage and Hour Laws: A State-by-State Survey* (3rd Ed.) (2016)

Co-Author, *Employer-Sponsored Wellness Programs: Should Your Employer Be The Boss of More Than Your Work Life?*, 38 Sw. L. Rev. 465 (2009)

Past Experience

Associate, Thierman Law Firm (2010-2015)

Judicial Clerk, Nevada Supreme Court for the Honorable Ron D. Parraguirre (2008-2010)
Law Student Extern, Schonbrun DeSimone Seplow Harris & Hoffman LLP (2008)
Volunteer, Neighborhood Legal Services (NLS) Workers' Rights Clinic

Admissions

California (2008)
Nevada (2011)
USDC Northern District of California
USDC Southern District of California
USDC Central District of California
Ninth Circuit Court of Appeals
Eleventh Circuit Court of Appeals
United States Supreme Court

Education

Southwestern School of Law, J.D., *cum laude* (2008)
University of Iowa, B.A., with honors in History (2001)

EXHIBIT 2

EXHIBIT 2

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04/26/19

Thierman Buck LLP
Job Profit Detail
December 2014 through April 2019

Date	Source Name	Memo	Account	Amount	Balance
Muir adv. Martinez					
04/06/2016	Stamps.com		5092-3 Postage	-6.45	-6.45
05/04/2016	Stamps.com		5092-3 Postage	-0.47	-6.92
10/16/2016	LWDA	Re: John Muir...	5092-7 Filings	-75.00	-81.92
11/20/2016	Thomson Reuters - ...	Account 1000...	5092-5 Westlaw Re...	-56.61	-138.53
07/26/2017	Southwest Airlines	Josh	5092-11 Travel	-172.98	-311.51
08/15/2017	Hotels.com	John Muir Me...	5092-11 Travel	-406.89	-718.40
08/15/2017	Hotels.com	John Muir Me...	5092-11 Travel	-406.89	-1,125.29
08/28/2017	Mark S. Rudy, A Pr...	Matter ID 115...	5092-17 Mediation	-7,000.00	-8,125.29
09/11/2017	The Grill		5092-12 Meals	-78.88	-8,204.17
10/06/2017	courts/NDCA		5092-7 Filings	-400.00	-8,604.17
10/27/2017	JTC Corporation	Invoice 171003	5092-15 Data Experts	-900.00	-9,504.17
11/02/2017	Thomson Reuters - ...	Account 1000...	5092-5 Westlaw Re...	-16.91	-9,521.08
12/05/2017	One Legal	Account 0003...	5092-7 Filings	-81.90	-9,602.98
01/02/2018	Thomson Reuters - ...	Account 1000...	5092-5 Westlaw Re...	-134.56	-9,737.54
01/02/2018	Thomson Reuters - ...	Account 1000...	5092-5 Westlaw Re...	-21.85	-9,759.39
01/02/2018	Thomson Reuters - ...	Account 1000...	5092-5 Westlaw Re...	-463.98	-10,223.37
02/06/2018	Pacer		5092-8 Pacer Resea...	-1.40	-10,224.77
02/15/2018	Southwest Airlines	Josh	5092-11 Travel	-5.60	-10,230.37
02/15/2018	Southwest Airlines	Josh	5092-11 Travel	-376.98	-10,607.35
03/05/2018	Joshua R. Hendrick...	Invoices: Febr...	5092-30 Contract Att...	-1,189.50	-11,796.85
03/14/2018	Hotels.com		5092-11 Travel	-297.46	-12,094.31
03/14/2018	Southwest Airlines		5092-11 Travel	-591.68	-12,685.99
03/17/2018	Southwest Airlines		5092-11 Travel	-176.98	-12,862.97
03/17/2018	Southwest Airlines	Josh	5092-11 Travel	-176.98	-13,039.95
03/20/2018	Uber	Josh	5092-11 Travel	-20.29	-13,060.24
03/20/2018	Reno-Tahoe Airport	Josh	5092-6 Parking	-53.00	-13,113.24
03/20/2018	Meals	Josh	5092-12 Meals	-4.75	-13,117.99
03/20/2018	Starbucks	Josh	5092-12 Meals	-8.81	-13,126.80
03/20/2018	Meals	Josh	5092-12 Meals	-26.99	-13,153.79
03/21/2018	Uber	Josh	5092-11 Travel	-20.68	-13,174.47
03/21/2018	Meals	Josh	5092-12 Meals	-30.67	-13,205.14
03/23/2018	Starbucks	Josh	5092-12 Meals	-7.75	-13,212.89
04/16/2018	Hotwire	Mark	5092-11 Travel	-985.72	-14,198.61
04/16/2018	Meals	Mark	5092-12 Meals	-131.11	-14,329.72
04/17/2018	Thierman Buck LLP	refund mediati...	5092-17 Mediation	7,000.00	-7,329.72
04/17/2018	Parking	Mark	5092-6 Parking	-6.00	-7,335.72
04/18/2018	Meals	Mark	5092-12 Meals	-51.33	-7,387.05
04/18/2018	Meals	Mark	5092-12 Meals	-66.36	-7,453.41
04/18/2018	Hotel	Mark	5092-11 Travel	-152.76	-7,606.17
04/18/2018	Meals	Mark	5092-12 Meals	-130.64	-7,736.81
04/18/2018	Meals	Mark	5092-12 Meals	-117.32	-7,854.13
04/18/2018	Parking	Mark	5092-6 Parking	-5.00	-7,859.13
04/19/2018	Fastrack	Mark	5092-11 Travel	-25.00	-7,884.13
05/02/2018	Thomson Reuters - ...	Account 1000...	5092-5 Westlaw Re...	-107.91	-7,992.04
05/02/2018	Thomson Reuters - ...	Account 1000...	5092-5 Westlaw Re...	-10.55	-8,002.59
05/02/2018	Thomson Reuters - ...	Account 1000...	5092-5 Westlaw Re...	-86.99	-8,089.58
05/09/2018	Thomson Reuters - ...	Account 1000...	5092-5 Westlaw Re...	-117.55	-8,207.13
05/23/2018	Mark S. Rudy, A Pr...	File No.:1158...	5092-17 Mediation	-7,500.00	-15,707.13
10/27/2018	Uber	Josh	5092-11 Travel	-7.77	-15,714.90
10/30/2018	Meals	Josh/Mark/JT	5092-12 Meals	-323.80	-16,038.70
10/30/2018	Parking	Mark	5092-6 Parking	-1.08	-16,039.78
10/31/2018	Chevron	Josh	5092-11 Travel	-40.52	-16,080.30
10/31/2018	Meals	Josh	5092-12 Meals	-10.88	-16,091.18
10/31/2018	Hotel	Josh	5092-11 Travel	-391.24	-16,482.42
10/31/2018	Xfinity WiFi	Mark	5092-11 Travel	-7.95	-16,490.37
10/31/2018	Meals	Mark	5092-12 Meals	-140.34	-16,630.71
10/31/2018	Parking	mark	5092-6 Parking	-34.00	-16,664.71
11/01/2018	Meals	Josh	5092-12 Meals	-11.92	-16,676.63
11/04/2018	JTC Corporation	181101	5092-15 Data Experts	-1,929.29	-18,605.92
12/13/2018	Thomson Reuters - ...	Account 1000...	5092-5 Westlaw Re...	-13.56	-18,619.48
12/13/2018	Thomson Reuters - ...	Account 1000...	5092-5 Westlaw Re...	-249.65	-18,869.13
01/02/2019	JTC Corporation	Invoice 181215	5092-15 Data Experts	-8,200.00	-27,069.13
01/07/2019	The Grill	Mark/Josh	5092-12 Meals	-82.25	-27,151.38
01/14/2019	ORC International, I...		5092-30 Contract Att...	-3,000.00	-30,151.38
02/22/2019	Thomson Reuters - ...	Invoice: 8389...	5092-5 Westlaw Re...	-20.81	-30,172.19
02/22/2019	Thomson Reuters - ...	Invoice: 8389...	5092-5 Westlaw Re...	-47.32	-30,219.51
03/31/2019	JTC Corporation	Invoice 190408	5092-15 Data Experts	-950.00	-31,169.51

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04/26/19

Thierman Buck LLP
Job Profit Detail
December 2014 through April 2019

Date	Source Name	Memo	Account	Amount	Balance
03/31/2019	Thomson Reuters - ...	Account 1000...	5092-5 Westlaw Re...	-4.43	-31,173.94
04/22/2019	Eric Brown	Invoice 2019-...	5092-23 Discovery ...	-2,400.00	-33,573.94
Total Muir adv. Martinez				-33,573.94	-33,573.94
TOTAL				-33,573.94	-33,573.94

THIERMAN BUCK LLP
7287 Lakeside Drive
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email: info@thiermanbuck.com www.thiermanbuck.com

THIERMAN BUCK LLP

MARK R. THIERMAN, Bar No. 072913

JOSHUA D. BUCK, Bar No. 258325

LEAH L. JONES, Bar No. 276448

7287 Lakeside Drive

Reno, NV 89511

Telephone: 775.284.1500

Fax No.: 775.703.5027

Attorneys for Plaintiff

KAREN MARTINEZ AND THE CLASS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

KAREN MARTINEZ, on behalf of herself
and all other similarly situated individuals,

Plaintiff,

v.

JOHN MUIR HEALTH, and DOES 1
through 50, inclusive,

Defendants.

Case No. 4:17-cv-05779-CW

**DECLARATION OF LEAH L. JONES IN
SUPPORT OF PLAINTIFF'S MOTION
FOR ATTORNEYS' FEES AND COSTS**

DATE: November 19, 2019

TIME: TBA

DEPT: Courtroom 2, 4th Floor

JUDGE: Hon. Claudia Wilken

COMPLAINT FILED: Oct. 6, 2017

FAC FILED: Dec. 1, 2017

Leah L. Jones, being duly sworn, upon oath, deposes and says:

1. I am an Associate attorney with Thierman Buck, LLP and I am admitted to practice law in the states of California and Nevada. I am also admitted to the United States District Court District of Nevada, Central District of California, Northern District of California, Eastern District of California, Southern District of California, the United States Court of Appeals for the Ninth Circuit, and the Supreme Court of the United States.

2. I graduated from Southwestern School of Law in Los Angeles, California, in 2009 and I have been a licensed attorney since 2011 in California and 2013 in Nevada. I began

THERMAN BUCK LLP

7287 Lakeside Drive

Reno, NV 89511

(775) 284-1500 Fax (775) 703-5027

Email: info@thermanbuck.com www.thermanbuck.com

working as an Associate at Thierman Buck, LLP shortly after being sworn into the Nevada Bar.

3. I have been working exclusively on employee matters, including being actively involved as counsel of record in wage and hour class actions, including: *Sullivan et al. v. Amar Enterprises, Inc. d/b/a Skylark Limousine, Harinder Gahunia*, Case No. 1-12-cv-230085 (Super. Ct. Cal.) (stipulated dismissal after settlement of California wage, meal, rest break, and PAGA claims); *Welch v. Golden Gate Casino*, Case No. 2:13-cv-01089-RFB-GWF (D. Nev.) (collective and class action case settlement approved in the amount of \$750,000 for off-the-clock, unpaid, and underpaid work); *Tiffany Sargent, et. al. v. HG Staffing, LLC, MEI-GSR Holdings LLC dba Grand Sierra Resort*, Case No. 3:13-cv-453-LRH-WGC (D. Nev.) (settled individual claims after denial in part of defendants' summary judgement on FLSA and Nevada wage claims, as well as ADEA claims); *Raymond Sullivan, et. al. v. Riviera Holdings Corp. dba Riviera Hotel and Casino*, Case No. 2:14-cv-00165-APG-VCF (D. Nev.) (collective and class action case settlement approved in the mount of \$690,000 for unpaid wages on behalf of employees who use a cash bank); *Walsh v. ITS Logistics, LLC*, Case No. 3:16-cv-00607-MMD-WGC (D. Nev.) (collective and class action settlement of \$190,000.00 for computer boot and log time for class of 81 individuals); *London Aaron v. Wenevada, LLC*, Case No. A-18-777457-C (Clark County, Nevada, District Court) (\$600,000 class settlement for shift jamming and failure to pay daily overtime).

4. Thierman Buck, LLP is counsel of record for Plaintiff and the conditionally certified class in the above captioned case.

5. I make this declaration upon personal knowledge and in support of Plaintiff's Motion For Preliminary Approval of Collective and Class Action Settlement.

6. I have participated in nearly all aspects of this litigation, particularly drafting Plaintiffs' Motion for Conditional Certification and Notice, conducting all of the client and putative opt-in interviews, drafting the supporting declarations, and answering questions from putative opt-ins. I have been responsible for drafting and review of the various case conference reports, stipulations between counsel, initial discovery requests, and review of discovery responses and data analysis. I have also assisted in the drafting of the original complaint, the

amended complaint, and Plaintiffs' Opposition to Defendant's Motion to Dismiss, as well as the mediation materials and motions related to Court approval of the Settlement.

7. I have reviewed my time and billing reports, and expenses in support of Plaintiffs' request for attorneys' fees and costs in this case, which were and are maintained during the regular course of business. I have spent 144 hours to date, and should the Court grant preliminary approval I will continue to expend hours answering class member questions, reviewing and documenting the opt-in process, and assisting in the drafting motions as needed. I estimate that I will spend another 36 hours (twelve hours each on drafting, review, and correspondence) for a total of approximately 180 hours. This will necessarily preclude other work. Moreover, have exercised billing judgment, ensuring that only time appropriately charged to a paying client was included.

8. My hourly billing rate for Nevada is \$450.00 per hour. The most recent case where my fee rate of \$450.00 was approved was *London Aaron v. Wenevada, LLC*, Case No. A-18-777457-C (Clark County, Nevada, District Court) (granting class counsel's request for attorney's fees). I have produced a chart containing the "Description of Work Performed", "Hours Billed", and "Total" \$ value here:

Leah L. Jones

Associate Rate: \$450.00

Description of Work Performed	Hours Billed	Total
Drafting Documents (e.g. Pleadings; Motions; Stipulations; Extensions)	69.75	\$31,387.50
Review and Documentation (e.g. Pleadings; Motions; Stipulations; Extensions; Discovery)	14.00	\$6,300.00
Correspondence (e.g., Email; Phone Communications with Plaintiff; Interviews with Putative Class Members/Declarants/Witnesses/putative class members; Experts; Claims Administrator)	49.25	\$22,162.50.00
Research	10.00	\$4,500.00
Meetings (e.g. Strategy: Case Updates)	1.00	\$450.00
Additional Future Work	36	\$10,800.00
TOTALS	180.00	\$81,000.00

1 9. Many lawyers, including myself, hold licenses in both California and Nevada. A
2 few California firms regularly provide legal services to Nevada litigants and vice versa. There
3 are not any regularly conducted well recognized fee surveys limited to Nevada attorneys,
4 especially Reno based attorneys. In support of the fees charged, I have attached a survey of
5 law firms of comparable status located in California, such as Manatt, Phelps & Phillips, or
6 Sheppard, Mullin & Richter, customarily charge between \$676 and \$860 per hour for partners,
7 and between \$550 and \$635 per hour for associates, attached as Exhibit 1, hereinafter "2011
8 Survey".

9 I declare under penalty of perjury under the laws of the United States of America and the
10 State of Nevada that the foregoing is true and correct.

11 Executed on July 9, 2019, in Reno, Nevada.

12
13 /s/Leah L. Jones

14 Leah L. Jones
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THERMAN BUCK LLP

7287 Lakeside Drive

Reno, NV 89511

(775) 284-1500 Fax (775) 703-5027

Email info@thermanbuck.com www.thermanbuck.com

EXHIBIT 1

EXHIBIT 1

THE NATIONAL LAW JOURNAL



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The 2011 Law Firm Billing Survey

It appears that modest annual billing rate increases are here to stay. For the third year in a row, law firms showed restraint with hourly rate increases, inching up at a rate only slightly higher than inflation in many cases.

December 19, 2011

It appears that modest annual billing rate increases are here to stay. For the third year in a row, law firms showed restraint with hourly rate increases, inching up at a rate only slightly higher than inflation in many cases. The average firmwide billing rate, which combines partner and associate rates, increased by 4.4 percent during 2011, according to *The National Law Journal's* annual Billing survey. That followed on the heels of a 2.7 percent increase in 2010 and a 2.5 percent increase in 2009 — all of which paled in comparison to the go-go, prerecession days when firms could charge between 6 and 8 percent more each year.

It's a buyer's market



"Before the recession, I think we had a seller's market," said Altman Weil consultant Ward Bower. "There was so much demand that law firms were in the driver's seat and could get what they wanted. Clients are in the driver's seat now, and they aren't going to pay those increases. They're exerting much more control over pricing, strategy and staffing decisions."

BY THE NUMBERS

A nationwide sampling of law firm billing rates

We asked the respondents to our 2011 survey of the nation's 250 largest law firms to provide a range of hourly billing rates.

Firms report using alternatives to the billable hour

Law firms report on the percentages of revenue obtained through variations on the billable hour and true alternatives.

Firms report their billing rates by associate class

A sampling of hourly rates charged by law firms that establish billing rates based on associate class.

FURTHER READING: See last year's survey.

2011

BILLING SURVEY

A SPECIAL REPORT

Firm Name	Principal or Largest Office	Average full- time equivalent Attorneys	Firmwide Average Billing Rate	Firmwide Median Billing Rate	Partner Billing Rate: High	Partner Billing Rate: Low	Partner Billing Rate: Average	Partner Billing Rate: Median	Associate Billing Rate: High	Associate Billing Rate: Low	Associate Billing Rate: Average
Baker, Donelson, Beaman, Caldwell & Barkovitz	Memphis, Tenn.	527	\$311	\$310	\$595	\$250	\$357	\$345	\$315	\$160	\$228
Beebe, Bass & Krieger	Riverside, Calif.	105	\$385	\$380	\$515	\$275	\$395	\$375	\$375	\$205	\$245
Briggs and Morgan	Minneapolis	185			\$625	\$325			\$305	\$230	
Brown and Cason	Orlando, Fla.	100	\$347	\$350	\$570	\$285	\$435	\$395	\$350	\$180	\$265
Bryan Cave	St. Louis	908	\$475	\$460	\$705	\$375	\$505	\$553	\$540	\$200	\$388
Bulfinch	Durham	198			\$700	\$325	\$490		\$425	\$225	\$270
Carlton Fields	Tampa, Fla.	270	\$397	\$400	\$815	\$320	\$470	\$470	\$380	\$195	\$282
Coyne	Philadelphia	57	\$415	\$410	\$600	\$335	\$470	\$490	\$500	\$225	\$270
Day Pitney	Parsippany, N.J.	324	\$447	\$450	\$960	\$330	\$537	\$525	\$470	\$225	\$317

Firm Name	Principal or Largest Office	Average full- time equivalent Attorney	Firmwide Average Billing Data	Firmwide Median Billing Rate	Partner Billing Rate: High	Partner Billing Rate: Low	Partner Billing Rate: Average	Partner Billing Rate: Median	Associate Billing Rate: High	Associate Billing Rate: Low	Associate Billing Rate: Average
Flannery Coles Harper & Scalo	New York	188			\$790	\$460		\$825	\$440	\$275	
Fox Rothchild	Philadelphia	450	\$413	\$420	\$725	\$325	\$488	\$483	\$455	\$180	\$207
Frost Brown Todd	Cincinnati	401	\$296	\$295	\$515	\$205	\$340	\$340	\$265	\$110	\$200
Gardner Wynne Sewell	Dallas	285	\$435	\$450	\$815	\$380	\$650	\$650	\$500	\$225	\$325
Gilbert	Newark, N.J.	118	\$506	\$480	\$720	\$400	\$400	\$405	\$425	\$245	\$280
Harris Beach	Rochester, N.Y.	178			\$390	\$275			\$280	\$180	
Hiscock & Barclay	Syracuse, N.Y.	171	\$280	\$240	\$750	\$185	\$304	\$265	\$350	\$150	\$207
Hedgson Russ	Buffalo, N.Y.	189			\$885	\$240	\$378	\$380	\$420	\$180	\$234
Holland & Knight	Washington	940	\$348	\$405	\$965	\$600	\$590	\$520	\$485	\$175	\$299
Hughes Hubbard & Reed	New York	300	\$433	\$815	\$990	\$825	\$828	\$800	\$695	\$270	\$633

Firm Name	Principal or Largest Office	Average full- time equivalent Attorneys	Firmwide Average Billing Rate	Firmwide Median Billing Rate	Partner Billing Rate: Jury	Partner Billing Rate: Law	Partner Billing Rate: Arbitration	Partner Billing Rate: Mediation	Associate Billing Rate: Jury	Associate Billing Rate: Law	Associate Billing Rate: Arbitration
Day Pitney	Parsippany, N.J.	324	\$447	\$450	\$980	\$380	\$537	\$525	\$470	\$235	\$317
Dickinson Wright	Belmont	229			\$800	\$325			\$320	\$200	
Dickstein Shapiro	Washington	335	\$560	\$550	\$1000	\$540	\$880	\$670	\$545	\$225	\$435
Dinsmore & Bahr	Orlando	407	\$308	\$205	\$830	\$150	\$375	\$370	\$340	\$130	\$217
DLA Piper	New York	3348	\$585	\$615	\$1120	\$530	\$747	\$730	\$730	\$320	\$500
Dorsey & Witthorn	Winnipeg	87	\$425	\$405	\$810	\$235	\$320	\$425	\$465	\$180	\$204
Duane Morris	Philadelphia	629	\$503	\$500	\$875	\$375	\$575	\$570	\$530	\$225	\$365
Dyreus Gossett	Detroit	333	\$408	\$400	\$885	\$310	\$482	\$485	\$385	\$260	\$309
Epslein Becker & Green	New York	300	\$428	\$426	\$850	\$350	\$510	\$500	\$550	\$105	\$341
Fidachuk Gallagher Horne & Schon	New York	180			\$730	\$480		\$625	\$440	\$275	

Firm Name	Principal or Largest Office	Average full- time equivalent Attorneys*	Firmwide Average Billing Data	Firmwide Median Billing Data	Partner Billing Rate; High	Partner Billing Rate; Low	Partner Billing Rate; Average	Partner Billing Rate; High	Associate Billing Rate; High	Associate Billing Rate; Low	Associate Billing Rate; Average
Hughes Hubbard & Reed	New York	300	\$633	\$616	\$980	\$625	\$928	\$800	\$685	\$270	\$633
Husch Blackwell	St. Louis	651	\$341	\$340	\$850	\$225	\$396	\$300	\$425	\$175	\$220
Jackson Kelly	Charleston, W.Va.	170	\$276	\$275	\$505	\$255	\$319	\$325	\$260	\$155	\$208
Kayin Sapich	New York	125	\$681	\$585	\$1000	\$800	\$681	\$695	\$705	\$410	\$570
Kelley Dye & Warren	New York	321	\$474	\$400	\$625	\$480	\$634	\$645	\$595	\$275	\$425
Krable Henderson Cleary & Beebe	Wilmington	208	\$339	\$310	\$735	\$415	\$525	\$500	\$405	\$295	\$345
Lane Powell	Seattle	100	\$405	\$425	\$645	\$340	\$400	\$480	\$380	\$225	\$285
Leitner & Gage	Kansas City, Mo.	29	\$337	\$340	\$735	\$275	\$390	\$400	\$410	\$205	\$245
Lewis, Rice & Fingersh	St. Louis	162	\$276		\$470	\$270			\$320	\$150	
Lovvater Sandler	Roseland, N.J.	240	\$479	\$480	\$635	\$435	\$613	\$595	\$600	\$280	\$400

*Attorney numbers are from KLI-250 published in April 2011.

Firm Name	Principal or Largest Office	Average bill- time equivalent Attorneys	Firmwide Average Billing Rate	Firmwide Median Billing Rate	Partner Billing Rate: Min	Partner Billing Rate: Low	Partner Billing Rate: Average	Partner Billing Rate: High	Associate Billing Rate: Min	Associate Billing Rate: Low	Associate Billing Rate: Average
Loebenstein Sapiloff	Roseland, N.J.	240	\$478	\$480	\$885	\$435	\$813	\$585	\$550	\$250	\$400
Manatt, Phelps & Philips	Los Angeles	322	\$802	\$820	\$850	\$540	\$878	\$670	\$550	\$215	\$484
McCoy, Delella, Munier & Carbone	Montclair, N.J.	272	\$245	\$275	\$575	\$200	\$550	\$575	\$325	\$185	\$250
McKenna Long & Aldridge	Atlanta	426	\$472	\$455	\$800	\$405	\$582	\$540	\$510	\$215	\$374
McKenna & Freuden	Wilmington, N.C.	208	\$320	\$310	\$455	\$210	\$410	\$410	\$310	\$180	\$240
Miller & Marin	Chattanooga, Tenn.	184	\$313	\$325	\$510	\$240	\$368	\$375	\$275	\$185	\$215
Nelson Muller & Riley	Columbia, S.C.	398	\$310	\$310	\$650	\$225	\$412	\$400	\$350	\$170	\$255
Nixson Pruitt	Columbia, S.C.	179			\$650	\$235			\$285	\$170	
Patt Hogg	Washington, D.C.	12	\$540	\$540	\$190	\$110	\$550	\$815	\$710	\$240	\$410

* Attorney numbers are from N.J. 254 published in April 2011.

Firm Name	Principal or Largest Office	Average full- time equivalent Attorneys*	Firmwide Average Billing Rate	Firmwide Median Billing Rate	Partner Billing Rate: High	Partner Billing Rate: Low	Partner Billing Rate: Average	Partner Billing Rate: Median	Associate Billing Rate: High	Associate Billing Rate: Low	Associate Billing Rate: Average
Paxon Bopp	Washington	512	\$538	\$540	\$800	\$410	\$658	\$646	\$570	\$240	\$410
Popper Hamilton	Philadelphia	459			\$825	\$380	\$657		\$480	\$235	\$344
Ponder Cole	Seattle	893	\$482		\$875	\$285	\$450	\$545	\$580	\$215	\$588
Phelps Dunbar	New Orleans	280	\$236	\$225	\$485	\$190	\$281	\$275	\$245	\$150	\$188
Polakoff Broderick	Kansas City, Mo.	408			\$830	\$270			\$335	\$205	
Saul Ewing	Philadelphia	220	\$431	\$450	\$750	\$350	\$502	\$490	\$495	\$245	\$326
Schulte Roth & Zapp	New York	408	\$615	\$620	\$935	\$770	\$648	\$640	\$675	\$285	\$808
Seyfarth Shaw	Chicago	702	\$437	\$425	\$700	\$355	\$528	\$525	\$505	\$225	\$341
Sheppard Mullin Richter & Hammond	Los Angeles	485			\$880	\$500			\$635	\$275	
Shumaker, Loop & Kendrick	Toledo, Ohio	208	\$345	\$365	\$555	\$265	\$384	\$375	\$320	\$185	\$252

* Attorney numbers are from ILJ 250 published in April 2011.

Firm Name	Principal or Largest Office	Average full-time equivalent attorneys	Firmwide Average Billing Rate	Firmwide Median Billing Rate	Partner Billing Rate: High	Partner Billing Rate: Low	Partner Billing Rate: Average	Partner Billing Rate: Median	Associate Billing Rate: High	Associate Billing Rate: Low	Associate Billing Rate: Average	Associate Billing Rate: Median
Shumaker, Loop & Kendrick	Toledo, Ohio	208	\$345	\$365	\$555	\$285	\$384	\$378	\$320	\$186	\$252	
Steel River	Portland, Ohio	873	\$385	\$395	\$525	\$320	\$451	\$740	\$500	\$195	\$282	
Strasburger & Price	Dallas	181	\$363	\$382	\$830	\$211	\$396	\$397	\$332	\$199	\$260	
Thompson & Smith	Dallas	149	\$320	\$320	\$775	\$405	\$545	\$595	\$480	\$260	\$350	
Thompson Coburn	St. Louis	325			\$750	\$315			\$445	\$195		
Ulrich & Bonner	Cleveland	128	\$316	\$316	\$525	\$275	\$405		\$490	\$200	\$280	
Vedder Price	Chicago	245	\$445	\$445	\$735	\$295	\$500	\$480	\$520	\$285	\$345	
Winkler	Dallas	75	\$400	\$400	\$680	\$365	\$475		\$410	\$215	\$430	
Winston & Strawn	Chicago	888	\$567	\$550	\$1130	\$580	\$713	\$700	\$600	\$350	\$434	
Wolfe & Campbell	Louisville, Ky.	183	\$312	\$360	\$500	\$240	\$325		\$275	\$180	\$220	

* Attorney numbers are from R.L. 250 published in April 2011.

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2011

BILLING SURVEY

A SPECIAL REPORT

Principal or Largest Office	Average Full- Time Equivalent Attorneys	Firmwide Average Billing Rate	Firmwide Median Billing Rate	Partner Billing Rate: High	Partner Billing Rate: Low	Partner Billing Rate: Average	Partner Billing Rate: Median	Associate Billing Rate: High	Associate Billing Rate: Low	Associate Billing Rate: Average	Associate Billing Rate: Median
Atlanta, Ga.	527	\$311	\$310	\$685	\$250	\$357	\$345	\$315	\$180	\$228	\$225
Baltimore, Md.	105	\$358	\$300	\$475	\$275	\$317	\$315	\$375	\$200	\$265	\$240
Minneapolis	105			\$625	\$325			\$305	\$130		
Cincinnati, Ohio	160	\$317	\$300	\$375	\$200	\$335	\$305	\$350	\$180	\$265	\$265
St. Louis	508	\$475	\$400	\$705	\$375	\$505	\$553	\$540	\$200	\$355	\$380
Springfield	178			\$700	\$325	\$440		\$425	\$225	\$275	
Tampa, Fla.	270	\$387	\$400	\$815	\$320	\$470	\$470	\$380	\$105	\$262	\$265
Philadelphia	50	\$400	\$400	\$800	\$350	\$510	\$400	\$550	\$275	\$330	\$330
Passaic, N.J.	324	\$447	\$450	\$880	\$380	\$537	\$525	\$470	\$235	\$317	\$315
Dallas	220			\$400	\$225			\$320	\$200		

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2011

BILLING SURVEY

A SPECIAL REPORT

Colton	220	\$580	\$580	\$1000	\$540	\$680	\$970	\$545	\$225	\$435	\$465
Washington	335	\$580	\$580	\$1000	\$540	\$680	\$970	\$545	\$225	\$435	\$465
Chicago	477	\$500	\$295	\$630	\$100	\$375	\$370	\$310	\$130	\$217	\$220
New York	3348	\$505	\$615	\$1120	\$530	\$747	\$730	\$730	\$320	\$504	\$510
Minneapolis	75	\$400	\$1050	\$100	\$25	\$570	\$520	\$340	\$180	\$29	\$29
Philadelphia	820	\$503	\$500	\$875	\$375	\$575	\$570	\$530	\$225	\$305	\$305
London	333	\$700	\$400	\$65	\$370	\$482	\$18	\$190	\$190	\$38	\$38
New York	300	\$420	\$425	\$850	\$350	\$510	\$500	\$550	\$185	\$341	\$325
Washington	80	\$720	\$400	\$720	\$400	\$720	\$400	\$720	\$400	\$720	\$400
Philadelphia	450	\$413	\$420	\$725	\$325	\$480	\$483	\$455	\$180	\$207	\$205
Chicago	401	\$200	\$290	\$515	\$305	\$340	\$340	\$340	\$150	\$200	\$200

Cincinnati	401	\$208	\$205	\$515	\$203	\$340	\$340	\$285	\$150	\$200	\$200
Dallas	285	\$435	\$450	\$815	\$380	\$550	\$550	\$500	\$225	\$325	\$320
Newark, N.J.	199	\$505	\$450	\$725	\$400	\$583	\$505	\$475	\$285	\$380	\$320
Rochester, N.Y.	178			\$390	\$275			\$280	\$160		
Syracuse, N.Y.	174	\$258	\$240	\$750	\$155	\$201	\$285	\$350	\$150	\$20	\$105
Buffalo, N.Y.	199			\$685	\$240	\$378	\$360	\$420	\$180	\$234	\$225
Washington	310	\$445	\$415	\$815	\$310	\$450	\$420	\$385	\$175	\$265	\$200
New York	300	\$633	\$615	\$900	\$825	\$828	\$800	\$695	\$270	\$533	\$540
St. Louis	251	\$341	\$340	\$880	\$225	\$395	\$390	\$425	\$175	\$228	\$210
Charleston, W.Va.	170	\$275	\$275	\$505	\$255	\$319	\$325	\$280	\$155	\$208	\$205
New York	425	\$685	\$685	\$1000	\$835	\$811	\$835	\$705	\$510	\$819	\$825
New York	324	\$474	\$400	\$825	\$480	\$834	\$845	\$505	\$275	\$475	\$420

New York	321	\$474	\$400	\$825	\$400	\$634	\$645	\$585	\$275	\$425	\$420
Irvine, Calif.	288	\$430	\$415	\$735	\$415	\$525	\$500	\$485	\$205	\$345	\$325
Seattle	100	\$405	\$425	\$845	\$340	\$480	\$450	\$300	\$225	\$285	\$285
Kansas City, Mo.	281	\$337	\$340	\$735	\$275	\$300	\$300	\$110	\$105	\$240	\$245
St. Louis	182	\$275		\$470	\$270			\$320	\$150		
Portland, Ore.	289	\$430	\$400	\$805	\$415	\$515	\$500	\$480	\$250	\$400	\$300
Los Angeles	322	\$802	\$820	\$850	\$540	\$575	\$870	\$550	\$215	\$184	\$508
Minneapolis	272	\$475	\$275	\$805	\$405	\$570	\$540	\$510	\$215	\$374	\$375
Atlanta	425	\$472	\$455	\$800	\$405	\$582	\$540	\$510	\$215	\$374	\$375
Minneapolis	209	\$452	\$410	\$840	\$405	\$570	\$540	\$510	\$215	\$374	\$375

Los Angeles	400			\$860	\$505			\$835	\$276		
Toledo, Ohio	208	\$345	\$305	\$555	\$265	\$304	\$375	\$320	\$195	\$252	\$250
Portland, Ore.	373	\$305	\$395	\$825	\$320	\$451	\$450	\$500	\$185	\$282	\$275
Dallas	101	\$303	\$382	\$630	\$211	\$395	\$307	\$332	\$100	\$250	\$238
Dallas	316	\$520	\$520	\$175	\$440	\$504	\$505	\$480	\$250	\$388	\$350
St. Louis	325			\$750	\$315			\$445	\$185		
Cleveland	173	\$316		\$500	\$200	\$500		\$300	\$200		
Chicago	240	\$445	\$445	\$736	\$285	\$500	\$480	\$520	\$265	\$345	\$335
Dallas	204	\$400		\$680	\$105	\$472		\$470	\$215	\$300	
Chicago	888	\$557	\$650	\$1130	\$580	\$713	\$700	\$600	\$390	\$434	\$413
Cleveland	181	\$312	\$350	\$600	\$210	\$525		\$275	\$180	\$220	\$235

Milwaukee	208	\$321	\$310	\$550	\$245	\$413		\$310	\$205	\$241	
Chattanooga, Tenn.	184	\$313	\$325	\$010	\$240	\$380	\$375	\$275	\$185	\$215	\$216
Columbia, S.C.	380	\$310	\$310	\$850	\$220	\$412	\$400	\$350	\$170	\$255	\$250
Columbia, S.C.	178			\$350	\$235			\$205	\$170		
Washington	512	\$540	\$540	\$990	\$410	\$599	\$540	\$570	\$240	\$610	\$415
Philadelphia	450			\$825	\$300	\$557		\$480	\$235	\$344	
Seattle	831	\$400		\$875	\$205	\$590	\$545	\$300	\$215	\$800	
New Orleans	280	\$230	\$225	\$465	\$190	\$281	\$275	\$245	\$150	\$189	\$190
Kansas City, Mo.	450			\$030	\$270			\$235	\$225		
Philadelphia	220	\$431	\$450	\$750	\$350	\$502	\$490	\$480	\$245	\$320	\$300
NY	800	\$010	\$030	\$035	\$270	\$840	\$440	\$070	\$255	\$600	\$500
Chicago	702	\$437	\$426	\$780	\$355	\$528	\$525	\$505	\$225	\$341	\$340

* Attorney numbers are from HLD 250 published in April 2011.

THIERMAN BUCK LLP
7287 Lakeside Drive
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email: info@thiermanbuck.com www.thiermanbuck.com

THIERMAN BUCK LLP
MARK R. THIERMAN, Bar No. 072913
JOSHUA D. BUCK, Bar No. 258325
LEAH L. JONES, Bar No. 276448
7287 Lakeside Drive
Reno, NV 89511
Telephone: 775.284.1500
Fax No.: 775.703.5027

Attorneys for Plaintiff
KAREN MARTINEZ AND THE CLASS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

KAREN MARTINEZ, on behalf of herself
and all other similarly situated individuals,

Plaintiff,

v.

JOHN MUIR HEALTH, and DOES 1
through 50, inclusive,

Defendants.

Case No. 4:17-cv-05779-CW

**DECLARATION OF MARK R.
THIERMAN IN SUPPORT OF
PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES AND COSTS**

DATE: November 19, 2019
TIME: TBD
DEPT: Courtroom 2, 4th Floor
JUDGE: Hon. Claudia Wilken

COMPLAINT FILED: Oct. 6, 2017
FAC FILED: Dec. 1, 2017

I, Mark R. Thierman, being duly sworn, upon oath, deposes and says:

1. The following declaration is based upon my own personal observation and knowledge, and if called upon to testify to the things contained herein, I could competently so testify.

2. I am an attorney at law and partner with Thierman Buck, LLP and I am admitted to practice law in the states of California and Nevada, and the United States District Court of Nevada, Northern District of California, Southern District of California, Central District of

THIERMAN BUCK LLP
 7287 Lakeside Drive
 Reno, NV 89511
 (775) 284-1500 Fax (775) 703-5027
 Email: info@thiermanbuck.com www.thiermanbuck.com

California, the Sixth Circuit Court of Appeals, the Ninth Circuit Court of Appeals, the Eleventh Circuit Court of Appeals, and the United States Supreme Court. Attached hereto as Exhibit 1 is a current CV which lists my qualifications and case experience. I estimate that I have obtained over a billion dollar in restitution for improper wage payments to employees.

3. Thierman Buck, LLP is counsel of record for Plaintiff and the conditionally certified class in the above-captioned case.

4. I have participated in nearly all aspects of this litigation, particularly attending and arguing both the hearings regarding the Motion to Dismiss and Motion for Conditional Certification, as well as the all-day mediation. Additionally, as a Partner in our firm, I also oversaw a great deal of the work that was performed in this case and was instrumental in the negotiations, which commenced prior to the filing of the complaint and lasted for several months after the second mediation.

5. I have reviewed my time and billing reports, and expenses in support of Plaintiff's request for attorneys' fees and costs in this case, which were and are maintained during the regular course of business. I have spent 159.55 hours to date, and should the Court grant preliminary approval I will continue to expend hours answering class member questions, reviewing and documenting the opt-in process, and assisting in the drafting motions as needed. I estimate that I will spend another 40 hours (eight hours on drafting, twenty-two on review, and ten on correspondence) for a total of approximately 199.55 hours. The work done on this case to date and the continued work on this case will necessarily preclude other work.

6. Our firm took this case on a contingency basis, such that no attorneys' fees or expenses would incur absent collection on a judgment or settlement. As such, our firm has not been paid for any of their time or reimbursed for any advanced expenses.

7. As shown in the chart below, I have invested significant attorney and professional staff time into this case from investigation through settlement.

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///

///

THERMAN BUCK LLP

7287 Lakeside Drive

Reno, NV 89511

(775) 284-1500 Fax (775) 703-5027

Email: info@thermanbuck.com www.thermanbuck.com

Mark R. Thierman

Partner Rate: \$1,000

Description of Work Performed	Hours Billed	Total
Review and Documentation (e.g. Pleadings; Motions; Stipulations; Extensions; Discovery)	72.50	\$72,500.00
Correspondence (e.g., Email; Phone Communications with Plaintiff; Interviews with Putative Class Members/Declarants/Witnesses/putative class members; Experts; Claims Administrator)	41.25	\$41,250.00
Meetings (e.g. Strategy: Case Updates)	19.25	\$19,250.00
Travel	26.50	\$26,500.00
Additional Future Work	40	\$40,000.00
TOTALS	199.55	\$199,550.00

8. My requested hourly rate is reasonable and consistent with the rates of attorneys of comparable skill, reputation and experience performing work of comparable complexity in California and Nevada. Based on my litigation experience and billing judgment, I believe that the hours expended were reasonable.

9. Thierman Buck also seeks reimbursement of expenses incurred during the course of the litigation. These expenses are reflected in the books and records of the firm. An itemized listing of our firm's reasonable expenses is attached to the Declaration of Joshua D. Buck.

10. Thierman Buck has taken on a substantial risk by expending the time it has dedicated to this case in that it would not be compensated for its legal services without a successful result.

I declare under penalty of perjury under the laws of the United States of America and the State of Nevada that the foregoing is true and correct.

Executed on July 9, 2019, in Reno, Nevada.

/s/Mark R. Thierman

Mark R. Thierman

EXHIBIT 1

EXHIBIT 1

MARK R. THIERMAN

Executive Summary

1976 Harvard Law School graduate with 42 years' experience representing both management side and employee side in labor relations and employment litigation. In approximately 250 class actions certified, conditionally certified or certified for settlement purposes (including those tried to completion), obtained over a ***Billion dollars*** in restitution for improper wage payments to employees. Many precedent setting cases, including argued before the United States Supreme Court in the case of *Integrity Staffing Sols., Inc. v. Busk*, 135 S. Ct. 513, 190 L. Ed. 2d 410 (2014). A copy of Westlaw Attorney Litigation History Report from 1990 to 2019 is attached hereto—NB Westlaw does not include many NLRB, arbitration and other administrative cases or nor report cases before 1990.

Contact Information

7287 Lakeside Drive
Reno, NV 89511
Tel (775) 284-1500, fax (775) 703-5029
email mark@thiermanbuck.com website www.thiermanbuck.com

Education

BA 1973 New York University, New York, NY
Phi Beta Kappa, Magna Cum Laude, Founders Day Award, Class Representative at Graduation, Mr. Justice Bloustein Award for Pre-Law Studies, Adolph Ochs Adler (New York Times) Award for Community Service and Scholarship.

JD 1976 Harvard Law School. Cambridge, MA
Admitted to practice in the state courts of California and Nevada, all federal Courts located in those states, US Supreme Court and 2nd, 3rd, 5th, 6th, 8th, 9th, 11th and DC Circuit Court of Appeals. Pro hoc admission to USDC in Texas, Alabama, Minnesota, and New York.

Publications Include

"Lowest Responsible Bidder: A Guide to Merit Shop Construction: (1985-Executive Enterprises, New York, pp. 328)
Returning to Fundamentals: Applying the National Labor Relations Act to Class Action Employment Litigation, California Labor and Employment Review, State Bar Sept.2003
"Safety Plan Builder: OSHA Compliance Software & Text" (1995- JIAN Tools for Sale, Mountain View, CA, pp 231text plus complied database)
Chapter on OSHA Compliance in "Advising California Employers" 2000, California Continuing Education of the Bar, Berkeley, CA.
"Build Your Own California Safety Manual on Disk"1991 Parley Intern'l, Emeryville, CA.
Understanding California and Federal Prevailing Wage Law, Almost" 1987, McGraw Hill's Daily Pacific Builder, two part series with various reprinting;
Apprenticeship and Prevailing Wage, (id.)
"What to Do When the Union Calls (1987 McGraw Hill, Daily Pacific Builder);

“Terminating Union Agreements and the Collective Bargaining Process” Chapter I of The ABC’s of Going Open Shop and Staying That Way (Associated Builders & Contractors National Office, Washington DC 1984);
Advantages and Design Criteria of Individualized and Master Pension and Health Insurance Plans for Public Works Contractors, IRCC Magazine
“Contracting with Rules for Wage Rates In Mind” by McGraw Hill, April 9, 1987,
California’s Union Chickens Have Come Home To Roost (Engineering News Record)
Many seminars, radio show and other recognition.

WESTLAW

Litigation History Report

Caseload | Document List

Thierman, Mark R.

Organization: Thierman Law Firm Reno, Nevada 89511-7552 (775) 284-1500 (Approx. 2 pages)

Sort By: Document Type A-Z

Dockets by year initiated	21	22	121	23	31	34	34	19	23	5	386
Judicial opinions	25	30	22	19	20	18	32	23	17	6	238

Case Types

Type

Sort By: Type A-Z

2010

Total

Appeals

1

2

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1

0

0

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0

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11

Art, Entertainment, and Sports Law

0

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1

0

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1

Bankruptcy

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1

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3

Business Organizations

0

1

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1

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3

Civil Rights

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1

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7

Commercial Law and Contracts

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Communications

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Constitutional Law

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Creditor/Debtor

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Criminal Justice

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2

Domestic Relations/Family Law

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Employment/Labor

29

23

123

20

35

38

27

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409

Finance and Banking

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Government

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Insurance

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Intellectual Property - Copyrights

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Intellectual Property: Generally

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Real Property

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Science, Computers, and Technology

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Securities Law

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Torts/Negligence

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7

Wheat flour

2

Sort By: Name: A-Z

Litigation History Report saved to "Mark's publi

* Other variations of this client/party name may appear in this list.

Sort By: Type: A-Z

6

Son By:	Role: A-Z

Total

Westlaw

Petitioner	0	1	2	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	5
Plaintiff	39	42	137	41	48	49	64	39	37	11	575								
Respondent	0	0	0	1	1	0	0	0	0	0	3								

Federal Courts

Federal Court

Sort By: Federal Court: A-Z

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	Total
Eighth Circuit (Appellate & District)	0	0	0	0	0	0	0	1	0	0	2
United States District Court, D. Minnesota	0	0	0	0	0	0	0	0	0	0	1
United States District Court, W.D. Missouri	0	0	0	0	0	0	0	1	0	0	1
Eleventh Circuit (Appellate & District)	1	1	115	0	1	19	19	0	0	0	158
United States Court of Appeals, Eleventh Circuit	0	0	11	0	0	0	0	0	0	0	11
United States District Court, N.D. Alabama	1	1	104	0	1	19	19	0	0	0	147
Fifth Circuit (Appellate & District)	0	1	0	0	0	0	0	0	1	1	3
United States District Court, N.D. Texas	0	1	0	0	0	0	0	0	0	0	1
United States District Court, S.D. Texas	0	0	0	0	0	0	0	0	1	1	2
Ninth Circuit (Appellate & District)	35	42	20	30	35	26	40	34	32	8	350

Showing 10 of 31 | [Show All](#)

State Courts

State Court

Sort By: State Court: A-Z

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	Total
California	7	5	4	5	4	2	0	0	1	0	47
California Court of Appeal	3	2	1	3	1	1	0	0	0	0	14
California Superior Court	2	3	0	0	0	0	0	0	0	0	9
California Superior Court, Alameda County	1	0	0	1	0	1	0	0	1	0	4
California Superior Court, Los Angeles County	1	0	1	0	1	0	0	0	0	0	11
California Superior Court, Sacramento County	0	0	0	0	1	0	0	0	0	0	1
California Superior Court, San Francisco County	0	0	1	0	0	0	0	0	0	0	3
California Superior Court, Santa Clara County	0	0	1	1	0	0	0	0	0	0	2
California Superior Court, Ventura County	0	0	0	0	0	0	0	0	0	0	2
Supreme Court of California	0	0	0	0	1	0	0	0	0	0	1
Nevada	0	0	4	11	6	4	7	4	5	2	43
Nevada District Court	0	0	1	3	0	0	0	0	0	0	4
Nevada District Court, Clark County	0	0	3	8	6	4	7	2	5	2	37
Supreme Court of Nevada	0	0	0	0	0	0	0	2	0	0	2

Showing 14 of 14 | [Show Less](#)

Judges

Name

Sort By: Name: A-Z

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	Total
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<https://1.next.westlaw.com/Professionals/Report/1231B74A1DD211B2A94F0002013BC4/LitigationHistory?contextData=%28sc.DocLink%29&transitionType=ProfessionalReferences&docSource=...> 4/9

	Westlaw															
Carey, Hon. Jacqueline Scott	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Cory, Hon. Kenneth C.	0	0	2	1	0	0	0	0	0	0	0	0	0	0	0	3
Crosley, Hon. H. Waller	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	2
Dawson, Hon. Kent J.	1	1	1	2	0	0	1	0	0	0	0	0	0	0	0	7
Delaney, Hon. Carolyn K.	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Delaney, Hon. Kathleen E.	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Dorsey, Hon. Jennifer A.	0	0	0	0	1	1	1	1	1	1	1	1	1	0	0	6
Douglas, Hon. Michael L.	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	2
Du, Hon. Miranda	0	0	0	1	1	0	0	2	5	5	0	0	0	0	0	14
Duffy-Lewis, Hon. Maureen	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	2
Eick, Hon. Charles F.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Elias, Hon. Emilie Harris	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Farrs, Hon. Jerome	0	0	0	0	1	0	2	0	0	0	0	0	0	0	0	3
Fassett, Hon. Gary Allen	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0	5
Feinstein, Hon. Katherine	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Farenbach, Hon. Cam	1	0	0	2	3	2	0	0	1	0	0	0	0	0	0	9
Farrs, Hon. Edward A.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Fischer, Hon. Dale S.	1	2	0	0	0	0	0	0	0	0	0	0	0	0	0	3
Fitzgerald, Hon. Michael W.	0	0	1	0	0	0	0	0	0	2	1	1	0	0	0	5
Fogel, Hon. Jeremy	1	2	0	0	0	0	0	0	0	0	0	0	0	0	0	4
Foley, Hon. George W.	1	0	1	5	1	1	2	3	3	0	0	0	0	0	0	18
Freedman, Hon. Robert	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
Freeman, Hon. Debra	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	2
Freeman, Hon. Kenneth R.	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Friedland, Hon. Michelle T.	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Fybel, Hon. Richard D.	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Galan, Hon. Fernando J. Jr.	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Gandhi, Hon. Jay C.	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Gee, Hon. Dely M.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Gibbons, Hon. Mark	0	0	0	0	0	0	0	0	0	0	0	2	0	0	0	2
Goldman, Hon. Marc L.	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
Goodwin, Hon. Alfred T.	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Gordon, Hon. Andrew P.	0	0	0	3	5	3	0	2	2	2	0	0	0	0	0	15
Gould, Hon. Ronald M.	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
Gulford, Hon. Andrew J.	1	1	0	0	0	3	1	1	1	1	0	0	0	0	0	9
Hale, Hon. David J.	0	0	0	0	0	3	0	0	2	0	0	0	0	0	0	5
Hardesty, Hon. James W.	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	2
Henderson, Hon. Thelton E.	0	0	0	0	0	1	2	0	0	0	0	0	0	0	0	3

Westlaw

Hicks, Hon. Larry R.	0	3	2	3	2	1	8	9	5	6	39
Hoffman, Hon. Carl W.	0	2	2	2	1	1	0	0	1	0	10
Hogue, Hon. Amy D.	0	0	0	0	1	0	0	0	0	0	1
Hollows, Hon. Gregory G.	0	0	0	0	0	0	0	0	0	0	1
Huber, Hon. Joseph	2	0	0	0	0	0	0	0	0	0	2
Hug, Hon. Proctor Ralph Jr.	0	0	0	0	0	0	0	0	0	0	1
Hunt, Hon. Roger L.	1	2	0	0	0	0	0	0	0	0	5
Hurwitz, Hon. Andrew D.	0	0	0	0	0	0	1	0	0	0	1
Ivols, Hon. Raymond J.	1	0	0	0	0	0	0	0	0	0	1
Ivols, Hon. Sandra S.	1	0	0	0	0	0	0	0	0	0	2
Johnston, Hon. Robert J.	0	1	0	0	0	0	0	0	0	0	2
Jones, Hon. Robert C.	7	6	2	1	2	6	6	1	7	1	49
Kagan, Hon. Elena	0	0	0	0	1	0	0	0	0	0	1
Kaplan, Hon. Lewis A.	3	1	0	0	0	0	0	0	0	0	5
Kardon, Hon. Victor B.	0	0	0	0	1	0	0	0	0	0	1
King, Hon. Lloyd	0	0	0	0	0	0	0	0	0	0	1
Kohnert, Hon. Joanna S.	0	0	0	2	0	0	0	1	0	0	3
Klein, Hon. Joan Dempsey	0	0	0	2	0	0	0	0	0	0	2
Kleinberg, Hon. James Paul	0	2	0	0	0	0	0	0	0	0	2
Kleinfeld, Hon. Andrew J.	0	0	0	0	0	0	1	0	0	0	1
Komar, Hon. Jack	0	0	0	0	0	0	0	0	0	0	2
Koppa, Hon. Nancy J.	2	0	0	1	5	0	6	2	0	0	17
Kriesler, Hon. Sandy R.	0	0	0	1	0	0	0	0	0	0	1
Kuini, Hon. Carolyn B.	0	0	0	0	0	0	0	0	0	0	1
Kwan, Hon. Ruth Ann	0	0	0	0	0	0	0	0	0	0	1
Lake, Hon. Slim	0	0	0	0	0	0	0	0	1	0	1
Laporte, Hon. Elizabeth D.	0	0	0	0	0	0	0	1	0	0	1
Leen, Hon. Peggy A.	2	2	0	0	2	1	1	2	0	0	13
Leeason, Hon. Joseph F. Jr.	0	0	0	0	1	1	0	1	0	0	3
Lloyd, Hon. Howard R.	0	0	0	0	1	0	0	0	0	0	2
MacKinnon, Hon. Alexander F.	0	0	0	0	0	0	1	0	0	0	1
Mahran, Hon. James C.	1	1	2	2	10	1	5	5	3	0	33
Majors, Hon. Barbara L.	2	0	0	0	0	0	0	0	0	0	3
Marchiano, Hon. James John	1	0	0	0	0	0	0	0	0	0	1
Margulies, Hon. Sandra L.	1	0	0	0	0	0	0	0	0	0	1
Matz, Hon. A. Howard	2	1	0	0	0	0	0	0	0	0	3
McByde, Hon. John H.	0	1	0	0	0	0	0	0	0	0	1
McDermott, Hon. John E.	0	1	0	0	0	0	0	0	0	0	2

Name	Westlaw									
	1	2	3	4	5	6	7	8	9	10
McCombs, Hon. M. Margaret	0	0	0	0	0	0	0	0	0	1
McKibben, Hon. Howard D.	0	0	1	1	2	0	0	0	0	4
McNamee, Hon. Stephen M.	1	0	0	0	0	0	0	0	0	1
Mendez, Hon. John A.	0	0	0	0	0	0	0	0	0	1
Wiley, Hon. Salfary A.	0	0	0	0	0	0	1	0	0	1
Morrow, Hon. Margaret M.	0	0	0	1	0	0	0	0	0	1
Mozz, Hon. J. Frederick	0	0	0	0	0	1	0	0	0	1
Murkin, Hon. Frederick F.	0	0	0	0	0	0	1	0	0	1
Nagle, Hon. Margaret A.	0	0	0	0	0	0	0	0	0	1
Narans, Hon. Gloria M.	5	6	2	2	0	0	0	3	0	19
Nelson, Hon. Thomas G.	0	0	0	0	0	0	0	0	0	1
Nguyen, Hon. Jacqueline H.	0	0	0	0	0	1	1	0	0	3
Nurley, Hon. Troy L.	0	0	0	0	0	0	1	0	0	1
O'Connell, Hon. Beverly Reid	0	0	0	0	0	0	1	0	0	1
O'Scantlan, Hon. Diamond F.	0	0	0	2	0	0	0	0	0	2
Oliver, Hon. Rozella A.	0	0	0	0	0	0	0	1	0	1
Orlick, Hon. William H.	0	0	0	0	2	1	0	0	1	4
Orino, Hon. S. James	0	0	0	0	0	0	0	0	0	1
Owens, Hon. John B.	0	0	0	0	0	0	0	0	1	1
Palazuelos, Hon. Yvette M.	0	0	0	0	0	0	0	0	1	1
Parada, Hon. Oswald	0	0	0	0	0	0	0	0	0	1
Parraguirre, Hon. Ron D.	0	0	0	0	0	0	0	2	0	2
Paehl, Hon. Marilyn Hall	0	1	0	0	0	0	0	0	0	1
Perkin, Hon. Henry S.	0	0	0	0	1	0	0	0	0	1
Pickering, Hon. Kristina	0	0	0	0	0	0	0	2	0	2
Pirgerson, Hon. Dean D.	2	1	0	4	0	2	3	0	0	14
Pio, Hon. Philip M.	0	1	1	1	2	0	0	0	0	7
Reagel, Hon. Reana	0	1	0	0	0	0	0	0	0	1
Rawlinson, Hon. Johnnie B.	0	0	0	0	0	0	1	0	0	1
Reel, Hon. Manuel L.	0	0	0	0	1	0	0	0	0	1
Reinhart, Hon. Stephen Roy	0	0	1	0	0	1	0	0	0	2
Robert, Hon. James L.	1	0	0	0	0	0	0	0	0	2
Rosenberg, Hon. Alicia G.	0	0	0	0	0	0	0	0	0	1
Ryu, Hon. Donna M.	0	0	0	0	0	1	0	0	0	1
Sabraw, Hon. Dana M.	1	0	0	0	0	0	0	0	0	2
See, Hon. Ramona G.	0	0	0	0	0	0	0	0	0	2
Silverman, Hon. Barry G.	0	0	0	0	0	1	0	0	0	1
Tringelton, Hon. James K.	0	0	0	1	0	0	0	0	0	1

	Westlaw															
Smith, Hon. Milan D. Jr.	0	0	0	1	0	1	0	0	0	0	0	0	0	0	0	4
Smith, Hon. N. Randy	0	0	0	1	0	2	1	0	0	0	0	0	0	0	0	4
Smith, Hon. Winifred	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Snyder, Hon. Christina A.	0	3	2	0	0	0	0	0	0	0	0	0	0	0	0	6
Schragan, Hon. Ronald Michael	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	2
Sobonoye, Hon. Sonia	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	2
Stanton, Hon. Jeannine L.	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0	1
Stem, Hon. Michael L.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
Stiglic, Hon. Lida S.	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Straub, Hon. Chester J.	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Thomas, Hon. Clarence	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
Thomas, Hon. Sidney R.	0	0	0	1	0	2	0	0	0	0	0	0	0	0	0	3
Trot, Hon. Stephen S.	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	2
Turnham, Hon. John R.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Turner, Hon. Paul	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
Walsh, Hon. Patrick J.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Walter, Hon. John F.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Wanger, Oliver W.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Wardlaw, Hon. Kim McLane	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
Watanabe, Hon. Michael J.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Watson, Hon. Michael H.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
West, Hon. Carl James	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	4
Whyte, Hon. Ronald M.	0	2	2	0	1	0	0	0	0	0	0	0	0	0	0	5
Wiese, Hon. Jerry A. III.	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Wiley, Hon. John Shepard Jr.	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	2
Wilken, Hon. Claudia	0	2	0	0	0	0	0	0	0	0	1	1	0	0	0	4
Wisatch, Hon. Andrew J.	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
Wiscaille, Hon. Carla Marie	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Wright, Hon. Ois D. II.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Wu, Hon. George H.	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	2

Showing 182 of 182 | [Show Less](#)