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Attorneys for Plaintiff Lawrence Weinstein
and other persons similarly situated

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LAWRENCE WEINSTEIN, on behalf
of himself and others similarly situated,

Plaintiff,

vs.

**MORTGAGE CONTRACTING
SERVICES, LLC and DOES 1-50,**

Defendants.

Case No.: 5:14-CV-02521-JGB-SP

**PLAINTIFF’S NOTICE OF
MOTION AND MOTION FOR
ATTORNEYS’ FEES AND
EXPENSES FOR CLASS
REPRESENTATIVE SERVICE
AWARD; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

*[Filed concurrently with the
Declarations of Dennis Moss and
Lawrence Weinstein]*

Date: August 20, 2018
Time: 9:00 a.m.
Crtrm: 1
Judge: Hon. Jesus G. Bernal

Date Action Filed: October 14, 2016

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

2 **PLEASE TAKE NOTICE** that on August 20, 2018 at 9:00 a.m. in
3 Courtroom 1 of the above-captioned Court before Honorable Jesus G. Bernal,
4 United States District Court for the Central District of California, 3470
5 Twelfth Street, Riverside, California, Plaintiff Lawrence Weinstein
6 (“Plaintiff”), on behalf of himself and the class, will and hereby does move for
7 an order awarding:

8 (a) class counsel’s attorneys’ fees in the amount of One Million Dollars
9 (\$1,000,000), totaling 25% of the Four Million Dollar (\$4,000,000) Settlement
10 Fund;

11 (b) reimbursement of litigation expenses in the amount of \$20,175.40;

12 (c) a service award of \$20,000 to the named Plaintiff.

13 Plaintiff respectfully requests that the Court grant this motion because:

14 (a) the service award is justified in light of Plaintiff’s commitment to the case;

15 (b) the requested attorneys’ fees are fair and reasonable because Class Counsel

16 were able to achieve an extraordinary result through a settlement that makes

17 available a remedy to all class members that faced extremely high risks if

18 litigation continued, (c) Class Counsel expended extensive and longstanding

19 efforts to create a Four Million Dollar (\$4,000,000) fund; (d) the requested

20 fees comport with Ninth Circuit case law developed in similar common fund

21 litigation; and (e) the expenses for which reimbursement is sought were

22 reasonable and necessarily incurred in connection with the prosecution of this

23 action.

24 This motion is based upon this Notice of Motion and Motion, the

25 Memorandum of Points and Authorities; the Declarations of Lawrence and

26 Dennis Moss, the Class Action Settlement and Release (the “Settlement”)

27 previously filed with the Court (Dkt. 80); the Court’s Order granting preliminary

28

1 approval certification (Dkt. 81), and all papers filed in support thereof; the
2 argument of counsel; all papers and records on file in this matter; and such other
3 matters as the Court may consider.

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Dated: June 4, 2018

MOSS BOLLINGER LLP

By: /s/ Dennis F. Moss
Dennis F. Moss
Attorneys for Plaintiff Lawrence
Weinstein

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Counsel who represent the Plaintiff Class request that the Court award a
4 total of \$1 million in attorney fees. The requested fees amount to 25% of the
5 \$4 million Settlement Fund and represents a 2.14 multiplier on the collective
6 lodestar to date of \$468,452. The multiplier will be reduced as additional work
7 is performed. (See Settlement Agreement attached as Exhibit A to the Decl. of
8 Moss in Support of Preliminary Approval (Dkt.80.) and (Moss Fees Decl. ¶¶
9 23-25).

10 At the 25% benchmark, the requested fees are fair and reasonable
11 because Class Counsel were able to achieve an excellent Settlement that made
12 monetary benefits available to all class members. Had the case continued in
13 litigation, there were substantial risks that may have resulted in no recovery on
14 a class wide basis. Class Counsel’s achievement clearly warrants the fees
15 requested.

16 In contrast to zero, which is what Class members well might receive had
17 the case continued in litigation, Defendants will pay up to \$4 million into a
18 Settlement Fund created for the benefit of a class of inspectors, none of whom
19 were directly employed by MCS. As explained in Plaintiff’s Motion for
20 Preliminary Approval, the Settlement amounts to at least 24% of the maximum
21 theoretical recovery at trial—a reasonable percentage standing alone. (Dkt. 81
22 Order granting preliminary approval, page 14).

23 In light of the dire risks in this litigation, Counsel achieved an excellent
24 settlement for the class and the requested fees, consistent with the Ninth
25 Circuit benchmark, are fair and reasonable.

26 The Court has discretion to award Class Counsel fees as “a percentage of
27 [the] common fund” resulting from their efforts, and Class Counsel
28

1 respectfully request such an award here. *In re Volkswagen “Clean Diesel”*
2 *Mktg., Sales Practices, & Prods. Liab. Litig.*, No. 2672 CRB (JSC), 2017 WL
3 1047834, at *1 (N.D. Cal. Mar. 17, 2017); *see also Laffitte v. Robert Half Int’l*
4 *Inc.*, 1 Cal. 5th 480, 489-90 (2016) (“The lodestar method has been . . .
5 criticized for discouraging early settlement and consuming too large an amount
6 of judicial resources in its application.”). All the factors considered by Ninth
7 Circuit courts taking the percentage approach support the requested award,
8 including the results achieved, the risk of litigation, Class Counsel’s requisite
9 skill, the quality of Class Counsel’s work, the contingent nature of their
10 representation, and awards made in comparable cases).

11 Although not required in a common fund context, a lodestar cross-check
12 further supports the fee request here.

13 In addition, Class Counsel will need to spend significant additional time
14 on this matter before it concludes, none of which is included in the lodestar to
15 date. Class Counsel will be overseeing and assisting with the continuing
16 administration of the Settlement and distribution of the Settlement fund;
17 briefing, researching, and arguing final approval; and responding to objections.

18 Finally, Counsel’s request is supported by Class Members’ reaction so far
19 to the Settlement and to the requested fees. Although the deadlines to submit a
20 claim, an opt-out request, objection, or Payment Election Form have not yet
21 passed, more than five weeks have passed since commencement of the
22 dissemination of notice, which informed recipients that the present request would
23 be filed for up to 25% of the total Settlement Fund. In that time, no one opted
24 out, and no one submitted an objection. Thus, the Class supports the Settlement,
25 including the requested fee award and enhancement for the named Plaintiff.

1 **II. BACKGROUND**

2 **A The Complaint and Removal**

3 Plaintiff filed his class action complaint on February 4, 2014 in San
4 Bernardino Superior Court. Plaintiff's complaint was removed to this District
5 on December 8, 2014. (Docket #1). In approving the Settlement, the Court
6 approved the filing of the First Amended Complaint (Exhibit 4 to the
7 Settlement. See Docket #80)

8 Plaintiff's allegations arise from a business model through which MCS
9 provides residential inspection services to banks and other lending institutions
10 in California by retaining "vendors" who perform the inspections, or more
11 typically, retaining "vendors" who in turn engage inspectors to perform the
12 inspections. The vendors are considered independent contractors by MCS and
13 are not treated as MCS employees. The inspectors provided by the vendors
14 (who comprise the vast majority of the class) are not paid by MCS, and
15 similarly are not treated by MCS as MCS employees. (Moss Decl. in support
16 of Prelim. Approval ¶5.)

17 The FAC alleges that the members of the class were employees of MCS,
18 and therefore, MCS is liable to the employees for violations of California law.
19 In the FAC, Plaintiff alleges a failure to provide rest breaks and meal breaks,
20 to pay minimum wages, to pay overtime wages, and to reimburse members of
21 the Class for the costs they incurred. Plaintiff also alleges claims deriving
22 from these causes of action for untimely wages, unpaid final wages, improper
23 wage statements, violation of California Labor Code Section 226.8, violation
24 of Business and Professions Code 17200 et seq., and violation of California's
25 Private Attorneys General Act, Labor Code Sections 2698-2699.5. ("PAGA").
26 (Ex. 4 to Exhibit A to Moss Decl. in Support of Prelim Approval, Docket #
27 80).

28

1 **B Discovery**

2 Aside from voluntary exchanges of fact discovery, Plaintiff propounded
3 formal discovery in the form of interrogatories and Requests for Production to
4 which MCS responded. (Moss Fees Decl. ¶5) Class Counsel also reviewed
5 thousands of pages of documents and took a full day 30 (b) deposition in
6 Florida of to confirm MCS' business model and the degree of control exercised
7 over the inspections by MCS. In addition, Class counsel deposed the principal
8 of one of MCS' largest providers of inspectors in California. Class counsel
9 also reviewed records from a previous related case, and spoke to inspectors
10 from Northern, Central and Southern California. (Moss Fees Decl. ¶¶4, 8-9)

11 Plaintiff responded to MCS' document requests and interrogatories and sat
12 for a half-day of deposition. (*Id.* at ¶¶5,9.)

13 **C Class Certification Motion Was Filed and Completely Briefed**

14 Plaintiff filed a motion for class certification on January 11, 2016. (Dkt.
15 No. 26.) MCS filed its Opposition on February 22, 2016. (Dkt. No.32).
16 Plaintiff filed his reply on February 29, 2016. (Dkt. No.38). The Motion was
17 completely briefed by all parties, and the parties appeared for a hearing on the
18 Motion on March 14, 2016. (*See* Dkt. No.39). As part of its Opposition,
19 Defendant indicated its belief that summary judgment as to Plaintiff's claims was
20 appropriate, and it intended to file a Motion for Summary Judgment. On March
21 14, 2016, rather than hear the motion for class certification, the court continued
22 the hearing on the motion to allow time for Defendant to file a motion for
23 summary judgment. Although fully briefed, the contested motion for class
24 certification was never heard, nor ruled on. (Moss Fees Decl. ¶10)

25 **D Summary Judgment Filed and Denied**

26 MCS filed its Motion for Summary Judgment on May 17, 20116. (Dkt. 41 and
27 42.) Plaintiff filed his Opposition with evidence in support of the opposition
28

1 on June 23, 2016. (Dkt. No. 51.) The hearing on the motion was held on
2 October 24, 2016. The Court denied MCS' Motion in a comprehensive Order
3 dated November 17, 2016. (Dkt. No.65).

4 On December 9, 2016, Defendant substituted in as counsel Jones Day.
5 (Dkt. No. 66 and 67.) Jones Day relayed MCS's intention to seek to delay the
6 hearing on class certification, reopen discovery before the motion was
7 rescheduled, and seek leave to supplement MCS' opposition to class
8 certification. (Moss Fees Decl. ¶12) Thereafter, the parties agreed to stay
9 proceedings pending an effort at mediation. The Court approved the stay (Dkt.
10 No. 68-69.)

11 **E Mediation and Settlement**

12 The Parties secured a mediation date of June 28, 2017 with mediator
13 Robert Kaplan. Over a several-month period, the Parties engaged in
14 substantive negotiations over the data necessary to exercise informed judgment
15 at mediation. After reaching agreement on an exchange of data, and the
16 production of the necessary data by MCS, the mediation was held as
17 scheduled. The mediation was not immediately successful, and Plaintiff asked
18 the Court to lift the stay. Moss Decl. (Moss Fees Decl. ¶13). (Dkt. Nos. 73-
19 74).

20 The Parties could not agree on a schedule for the case going forward.
21 MCS expressed a desire to the Court to supplement its opposition to the
22 Motion for Class Certification following additional discovery. Plaintiff
23 opposed MCS' effort to supplement the Opposition to the Motion for Class
24 Certification. (Dkt. 75.)

25 Throughout the period following the failed mediation, the mediator
26 engaged the parties in an effort to achieve a settlement. (Moss Fees Decl. ¶15)
27 Ultimately, a settlement, subject to Court approval, was achieved. On August
28

1 23, 2017 the parties filed a Joint Notice of Settlement. (Dkt. No. 77.) After
2 August 23, 2017, disputes that generated numerous exchanges between
3 counsel, arose regarding the details of the notice process and the settlement
4 terms. Resolution involved extensive negotiations. (Moss Fees Decl. ¶15)
5 Once the details were worked out, Plaintiff filed a Motion for Preliminary
6 Approval. Preliminary Approval was granted on February 8, 2018 (Dkt. No.
7 82).

8 Subsequent to Preliminary Approval substantial work has been performed
9 by class counsel, including negotiations related to the process utilized for
10 ascertaining class members, and notice processes. There have also been emails,
11 phone calls, and meetings with class members. Plaintiff's counsel has engaged
12 in efforts at increasing the claims rate and engaged in negotiations and research
13 regarding modifying the Notice process subsequent to preliminary approval.
14 Further class counsel, as part of these efforts has been in constant contact with
15 the claims administrator. (Moss Fees Decl. ¶¶17-18)

16 **F Plaintiff's Role**

17 Plaintiff spent over 80 hours assisting class counsel and serving the
18 interests of the class. He traveled to Los Angeles from Redlands to meet with
19 counsel on several occasions, he assisted in strategy formulation, in preparing
20 counsel for the depositions Plaintiff's counsel took, prepared for and had his
21 deposition taken. He met with Plaintiff's counsel to respond to discovery and
22 analyzed and explained documents Defendant provided. He was instrumental in
23 resisting efforts by the mediator and Defendant to reach settlement for less than
24 \$4 million. Decl. of Weinstein, passim, (Moss Fees Decl. ¶¶53-56).

25 //
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28

1 **III. ARGUMENT**

2 **A. The Predominant Method for Determining Attorneys' Fees in**
3 **Class Action Cases that Create a Common Fund is the**
4 **Percentage Approach.**

5 The Supreme Court has recognized that “a litigant or a lawyer who
6 recovers a common fund for the benefit of persons other than himself or his
7 client is entitled to a reasonable attorney’s fee from the fund as a whole.”
8 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also, e.g., Stetson v.*
9 *Grissom*, 821 F.3d 1157, 1165 (9th Cir. 2016) (“In the absence of a contractual
10 or statutory basis for awarding fees, the district court may award reasonable
11 fees as a matter of federal common law when class counsel has recovered a
12 ‘common fund.’”). In deciding whether the requested fee amount is
13 appropriate, the Court’s role is to determine whether such amount is
14 “fundamentally ‘fair, adequate, and reasonable.’” *Staton v. Boeing Co.*, 327
15 F.3d 938, 963 (9th Cir. 2003) (quoting Fed. R. Civ. Proc. 23(e)).

16 Where a class settlement results in the creation of common benefits,
17 district courts may use either—or both—the “percentage-of-the-fund” or the
18 “lodestar-multiplier” method to determine a reasonable fee. *E.g., Vizcaino v.*
19 *Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). “Despite [courts’]
20 discretion, use of the percentage method in common fund cases appears to be
21 dominant.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D.
22 Cal. 2008); *see also, e.g., Vizcaino*, 290 F.3d at 1050-51 (“Calculation of the
23 lodestar, which measures the lawyers’ investment of time in the litigation,
24 provides a check on the reasonableness of the percentage award”); *Six Mexican*
25 *Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1994)
(affirming percentage award).

26 “The percentage method ‘is easy to calculate; it establishes reasonable
27 expectations on the part of plaintiffs’ attorneys as to their expected recovery;
28 and it encourages early settlement, which avoids protracted litigation.’”

1 *Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480, 503 (2016)) (citation omitted).

2 Here, the requested fee is fair, reasonable, and adequate under either the
3 percentage-of-fund or the lodestar-multiplier approach.

4 **1. The Requested Fee Amount is Reasonable Under the
Percentage-of-Fund Method.**

5 Under the percentage approach, class counsels' fees are calculated as a
6 percentage of the common benefits generated through their efforts. In the
7 Ninth Circuit, the "benchmark" percentage is 25%. *E.g.*, *Vizcaino*, 290 F.3d at
8 1048-50; *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir.
9 2015).

10 Here, Class Counsel's efforts generated a common fund of \$4 million for
11 the benefit of the Class. Class Counsel seeks an award of \$1 million in
12 attorneys' fees and \$20,175.40 in costs—an award warranted under either the
13 percentage or lodestar-multiplier approaches, given the value of the work
14 performed, the difficulty and risks presented, and the results achieved.

15 **2. The *Vizcaino* Factors Support the Award Requested.**

16 In determining the appropriateness of a fee award, the Ninth Circuit directs
17 courts to consider: "(1) the results achieved; (2) the risk of litigation; (3) the
18 skill required and the quality of work; (4) the contingent nature of the fee and
19 the financial burden carried by the plaintiffs; and (5) awards made in similar
20 cases." *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1046 (citing *Vizcaino*,
21 290 F.3d at 1048-1050). A court may also consider the volume of work
22 performed, counsel's skill and experience, the complexity of the issues faced,
23 and the reaction of the class. *See, e.g., In re Heritage Bond Litig.*, 02-ML-1475
24 DT, 2005 WL 1594403, at *18-23 (C.D. Cal. June 10, 2005).

25 Class Counsel Achieved an Excellent Recovery for the Class

26 The results obtained for the Class are the most important factor in determining
27 the appropriate fee award. *See Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983);
28 *Vizcaino*, 290 F.3d at 1049; *In re Omnivision*, 559 F. Supp. 2d at 1046; *see*

1 *also* Federal Judicial Center, Manual for Complex Litigation, § 27.71, p. 336
2 (4th ed. 2004) (the “fundamental focus is on the result actually achieved for
3 class members”).

4 Here, Class Counsel obtained a Settlement that confers a substantial
5 benefit to the Class, especially in light of the many risks involved in the action.
6 The Net Settlement Amount available to the class is approximately
7 \$2,823,500, or an average settlement share of approximately \$1,568 per Class
8 Member based on a Class size of 1800. If inspectors Defendant did not identify
9 come forward, the average will go down.

10 Plaintiffs Faced Significant Risks in this Litigation

11 Risk is an important factor in determining a fair fee award. *In re*
12 *Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1047 (“The risk that further
13 litigation might result in Plaintiffs not recovering at all, particularly a case
14 involving complicated legal issues, is a significant factor in the award of fees”)
(citing *Vizcaino*, 290 F.3d at 1048).

15 Plaintiff faced risks related to:

16 *i. Arbitration:* A number of vendors of defendant had entered into
17 arbitration agreements with their inspectors that could have made it impossible
18 for their inspectors to participate in the Class Action outside the parameters of
19 a Settlement that includes them in the Settlement class.

20 *ii. Class certification and decertification:* The class certification motion
21 was still pending at the time the settlement was reached. Although Plaintiff
22 thought the chances at certification on prevailing on the motion were good,
23 there was a risk of losing. There was also a risk of decertification. Defendant
24 had changed counsel after briefing on class certification to a firm that had the
25 resources and ability to possibly succeed in an attempt to decertify the class
26 once certified. The "employer" law was in a state of flux, and decisions
27 impacting the legal analysis herein from both federal and state courts could
28

1 have potentially provided a basis for pursuit of decertification.

2 *iii. Ultimate devolution of the case into mini-damages trials may have*
3 *proven extremely risky.* There are dozens of vendors that had contracted with
4 MCS to provide inspectors. Many of them are out of business. A number of
5 them entered into contracts with sub-vendors who also supplied MCS
6 inspectors but did not have agreements with MCS. If certification was
7 successful, and Plaintiff prevailed on its theory that MCS was a joint employer
8 of all California inspectors irrespective of the number of levels of vendors,
9 there was a risk that the case would devolve into mini-trials for the over 1800
10 class members because of variations in the amounts they were paid for each
11 inspection, the lack of uniformity in work hours per day, a lack of time
12 records, the fact that some inspectors during work days did not do MCS
13 inspections exclusively, variations in miles driven daily, variations in
14 inspection report uploading protocols during the class period that impacted
15 time spent in non-inspection activities, etc. Because of the prospect of mini-
16 trials following a liability determination, there was a real risk that several class
17 members would not come forward to participate in discovery, and trial. There
18 were risks related to variations in vendor recordkeeping, and thus MCS
19 recordkeeping that may have made damages calculations problematic.

20 While Plaintiffs believe they could overcome these challenges, any of
21 them could result in some or all of the Class members receiving nothing at all.
22 Moreover, even if Plaintiffs could overcome all of these challenges, the
23 Settlement allows class members to receive benefits promptly, without
24 significant delays that continued litigation would entail, both in this Court and
25 possibly on account of an appeal.

26 *Successfully Prosecuting This Matter Required Significant Skill and Effort on*
27 *the Part of Class Counsel*

28 The “prosecution and management of a complex class action requires

1 unique legal skills and abilities” that are to be considered when determining a
2 reasonable fee. *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1047 (citation
3 omitted); *see also Vizcaino*, 290 F.3d at 1048 (reasoning that the complexity of
4 the issues involved, and skill and effort displayed by class counsel are among
5 the relevant factors for determining the proper fee under the percentage
6 approach).

7 Class Counsel in this matter are experienced litigators who have
8 successfully prosecuted and resolved numerous other complex matters,
9 including wage and hour class actions arising under California law. (Moss
10 Decl., ¶¶28-32) Class Counsel’s skill and relevant experience were critical to
11 achieving the Settlement here.

12 As addressed more fully below and in counsels’ supporting declarations,
13 investigating, prosecuting, and settling this matter required considerable
14 commitment of time and resources by Class Counsel. (*See infra.*)

15 *Class Counsel Assumed Considerable Risk Litigating on an Entirely*
16 *Contingent Basis*

17 The Ninth Circuit has confirmed that a fair fee award must include
18 consideration of the contingent nature of the fee. *See, e.g., Vizcaino*, 290 F.3d
19 at 1050. Courts long have recognized that the public interest is served by
20 rewarding attorneys who assume representation on a contingent basis with an
21 enhanced fee to compensate them for the risk that they might be paid nothing
22 at all for their work. *See, e.g., In re Wash. Pub. Power Supply Sys. Sec. Litig.*,
23 19 F.3d 1291, 1299 (9th Cir. 1994) (“Contingent fees that may far exceed the
24 market value of the services if rendered on a non-contingent basis are accepted
25 in the legal profession as a legitimate way of assuring competent
26 representation for plaintiffs who could not afford to pay on an hourly basis
27 regardless whether they win or lose.”); *Vizcaino*, 290 F.3d at 1051 (observing
28 courts reward successful class counsel in contingency cases “by paying them a

1 premium over their normal hourly rates”). This factor deserves particular
2 weight under the unique circumstances of this matter.

3 If Class Counsel had been able to negotiate a fee directly with Class
4 Members, a 25% of the benefit created contingent fee would have been
5 eminently reasonable, if not low, for a case this complex, risky, and difficult.
6 Given the prospective risks and difficulties, it would have been quite
7 reasonable for Class Members to retain counsel at *no cost to them* unless
8 counsel succeeded, in which case counsel would be entitled to 25% of the total
9 of any fund created (after counsel’s expenses). This is especially true given the
10 willingness of Class Counsel’s law firms to advance more than 400-hours of
11 time and \$20,000 in costs, with no hope of recovering those funds unless the
12 case was successful.

13 Class Counsel prosecuted this matter on a purely contingent basis,
14 agreeing to advance all necessary expenses and agreeing that they would only
15 receive a fee if there was a recovery. (Moss Fees Decl., ¶¶20-21) Indeed, Class
16 Counsel received no compensation at all during four years of litigating this
17 case on behalf of the Class. (*Id.*) Class Counsel’s “substantial outlay,” and the
18 risk that none of it would be recovered, further supports the award of the
19 requested fees here. *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1047.

20 *Fees Awarded in Comparable Cases Exceed Those Requested Here*

21 Comparing the requested fees to awards in similar cases highlights the
22 reasonableness of this application. “[I]n most common fund cases, the award
23 exceeds” the 25% benchmark that guides Class Counsel’s request here. *Knight*
24 *v. Red Door Salons, Inc.*, No. 08–01520 SC, 2009 WL 248367, at *6 (N.D.
25 Cal. Feb. 2, 2009). “Empirical studies show that, regardless of whether the
26 percentage method or the lodestar method is used, fee awards in class actions
27 average around one-third of the recovery.” *Romero v. Producers Dairy Foods,*
28 *Inc.*, No. 1:05-cv-0484-DLB, 2007 WL 3492841, at *4 (E.D. Cal. Nov. 14,

1 2007) (quoting 4 Newberg and Conte, *Newberg on Class Actions* § 14.6 (4th
2 ed. 2007). “Under the percentage method, California has recognized that most
3 fee awards are 33 percent.” *Smith v. CRST Van Expedited, Inc.*, No. 10-CV-
4 1116-IEG (WMC), 2013 WL 163293, at *5 (S.D. Cal. 2013). And federal
5 courts in the Ninth Circuit routinely follow California’s approach, awarding
6 percentage recoveries in excess of the 25% benchmark. *See, e.g., In re Pac.*
7 *Enters. Secs. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33% award);
8 *Williams v. MGM-Pathe Comms. Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997)
9 (same); *Syed v. M-I, L.L.C.*, No. 1:12-cv-1718-DAD-MJS, 2017 WL 3190341,
10 at *8 (E.D. Cal. July 27, 2017) (awarding one-third of \$7 million common
11 fund); *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-DB2017, WL
12 3116626, at *13 (E.D. Cal. July 21, 2017) (awarding one-third of common
13 fund); *Bennett v. SimplexGrinnell LP*, No. 11-cv-1854-JST, Dkt. No. 278, at
14 11 (N.D. Cal. Sept. 3, 2015) (awarding 38.8% of common fund); *Lee v.*
15 *JPMorgan Chase & Co.*, Case No. 13-cv- 511-JLS, 2015 WL 12711659, at *8-
16 9 (C.D. Cal. Apr. 28, 2015) (awarding one-third of common fund); *Boyd v.*
17 *Bank of Am. Corp.*, No. SACV 13–0561–DOC (JPRx), 2014 WL 6473804, at
18 *10-11 (C.D. Cal. Nov. 18, 2014) (same); *Burden v. Select Quote Ins. Servs.*,
19 No. C 10-5966 LB, 2013 WL 3988771, at *5 (N.D. Cal. Aug. 2, 2013) (same);
20 *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 454 (E.D. Cal.
21 2013) (same); *Franco v. Ruiz Food Prods., Inc.*, No. 1:10-cv-02354-SKO,
22 2012 WL 5941801, at *25 (E.D. Cal. Nov. 27, 2012) (same); *Garcia v. Gordon*
23 *Trucking, Inc.*, No. 1:10-cv- 324-AWI-SKO, 2012 WL 5364575, at *11 (E.D.
24 Cal. Oct. 31, 2012) (same); *Singer v. Becton Dickinson Co*, No. 08-CV-821-
25 IEG (BLM), 2010 WL 2196104, at *8 (S.D. Cal. June 1, 2010) (awarding 33%
26 and citing two prior, similar Southern District awards); *Stuart v. Radioshack*
27 *Corp.*, No. C-07-4499 EMC, 2010 WL 3155645, at *8 (N.D. Cal. Aug. 9,
28 2010) (awarding one-third of common fund); *Fernandez v. Victoria’s Secret*

1 *Stores, LLC*, No. CV 06-04149 MMM, 2008 WL 8150856, at *16 (C.D. Cal.
 2 July 21, 2008) (awarding 34% of common fund); *Aguilar v. Wawona Frozen*
 3 *Foods*, No. 1:15-cv-00093-DAD-EPG, 2017 WL 117789 (E.D. Cal. Jan. 11,
 4 2017) (awarding 33% of fund); *Emmons v. Quest Diagnostics Clinical Labs,*
 5 *Inc.*, No. 1:13-cv-00474-DAD-BAM, 2017 WL 749018 (E.D. Cal. Feb. 24,
 6 2017) (awarding 33% of common fund); *Wren v. RGIS Inventory Specialists,*
 7 No. No. C-06-05778 JCS, 2011 WL 1230826, at *27-28 (N.D. Cal. Apr. 1,
 8 2011) (awarding 42% of \$27 million fund). Fees above the 25% benchmark are
 9 particularly common when settlements are under the \$5 million mark.

10 *The Reaction of the Class to Date Is Overwhelmingly Positive*

11 The deadline for class members to exclude themselves is June 19, 2018.
 12 The Class Notice informs class members that Class Counsel will seek a fee
 13 that, subject to Court approval, could amount to 25% of the Settlement Fund,
 14 and the Settlement Website makes the full Settlement Agreement available for
 15 Class Members' review. As of June 3, 2018, no one has opted for exclusion
 16 and there have been no objections

17 **B. Lodestar Cross-Check Confirms the Reasonableness of the Requested Fees**

18 Application of the lodestar method as a cross-check—or even as a
 19 preliminary method of calculating fees—confirms the reasonableness of the
 20 fees requested. The accompanying declaration of Dennis Moss sets forth the
 21 hours of work and billing rates used to calculate the lodestars here. As
 22 described attorneys for the Class have devoted a total of approximately 663.75
 23 hours to this litigation and have a total adjusted lodestar to date of \$468,452
 24 (Moss Fees Decl., ¶¶23-24) All of this time was reasonable and necessary for
 25 the prosecution of this action. See Ex. A to Moss Fees Decl. These amounts do
 26 not include the additional time that Class Counsel will have to spend going
 27 forward.
 28

1 **1. Class Counsel’s Hourly Rates Are Reasonable**

2 In assessing the reasonableness of an attorney’s hourly rate, courts
3 consider whether the claimed rate is “in line with those prevailing in the
4 community for similar services by lawyers of reasonably comparable skill,
5 experience and reputation.” *Blum v. Stenson*, 465 U.S. 886, 895-96 n. 11
6 (1984). Courts apply each biller’s current rates for all hours of work
7 performed, regardless of when the work was performed, as a means of
8 compensating for the delay in payment. *In re Wash. Pub. Power*, 19 F.3d at
9 1305.

10 Class Counsel here are experienced, highly regarded members of the bar.
11 They have brought to this case extensive experience in the area of class actions
12 and complex litigation. (Moss Fees Decl., ¶¶28-32). Class Counsel’s
13 customary rates are in line with prevailing rates in this District, have been
14 approved by courts in this District and other courts and/or are paid by hourly-
15 paying clients of firms in the community. (*Id.*, and Ex. B to Moss Fees Decl.)

16 **2. The Number of Hours Class Counsel Worked is Reasonable**

17 The number of hours that Class Counsel have billed is reasonable. *See*
18 *Caudle v. Bristow Optical Co.*, 224 F.3d 1014, 1028 (9th Cir. 2000) (counsel
19 entitled to recover for all hours reasonably expended).

20 Here, Class Counsel’s time summary, Ex. A to the Moss Fees Decl. sets
21 forth in detail the work performed in 1/10-hour increments.

22 **3. The Multiplier is Justified Given the Results Obtained, the Complexity of the Issues, and the Contingent Nature of the Representation**

23 Under the lodestar-multiplier method, courts may adjust the raw lodestar
24 amount based upon consideration of many of the same factors considered in
25 the percentage-of-fund analysis, such as (1) the results obtained; (2) whether
26 the fee is fixed or contingent; (3) the complexity of the issues involved; (4) the
27

28

1 preclusion of other employment due to acceptance of the case; and (5) the
2 experience, reputation, and ability of the attorneys. *See Kerr v. Screen Extras*
3 *Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975). “The district court *must* apply a
4 risk multiplier to the lodestar ‘when (1) attorneys take a case with the
5 expectation they will receive a risk enhancement if they prevail, (2) their hourly
6 rate does not reflect that risk, and (3) there is evidence the case was risky.’”
7 *Stetson*, 821 F.3d at 1166 (“Failure to apply a risk multiplier in cases that meet
8 these criteria is an abuse of discretion.”) (italics in original) (quoting *Stanger*
9 *v. China Elec. Motor, Inc.*, 812 F.3d 734, 741 (9th Cir.2016), and *Fischel v.*
10 *Equitable Life Assurance Soc’y*, 307 F.3d 997, 1008 (9th Cir. 2002)); *In re*
11 *Wash. Pub. Power*, 19 F.3d at 1300 (“‘[I]f this “bonus” methodology did not
12 exist, very few lawyers could take on the representation of a class client given
13 the investment of substantial time, effort, and money, especially in light of the
14 risks of recovering nothing.’ . . . [C]ourts have routinely enhanced the lodestar
15 to reflect the risk of non-payment in common fund cases.”) (citation omitted).

16 Class Counsel request a fee of \$1 million, which represents a multiplier
17 of approximately 2.14 on the total lodestar of \$468,452 incurred by Plaintiffs’
18 counsel in this litigation. (Moss Fees Decl., ¶34) Such a multiplier is within
19 the range of multipliers that the courts in the Ninth Circuit and elsewhere
20 regularly approve. *See, e.g., Vizcaino*, 290 F.3d at 1051 & Appendix
21 (approving multiplier of 3.65 and citing cases with multipliers as high as 19.6);
22 *In re Volkswagen*, 2017 WL 1047834, at *5 (Breyer, J.) (“‘Multipliers in the 3-
23 4 range are common in lodestar awards for lengthy and complex class action
24 litigation.’”) (quoting *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294,
25 298-99 (N.D. Cal. 1995)); *In re Nasdaq Market-Makers Antitrust Litig.*, 187
26 F.R.D. 465, 489 (S.D.N.Y. 1998) (“In recent years multipliers of between 3
27 and 4.5 have become common”) (citation omitted); *Maley v. Del Global Techs.*
28 *Corp.*, 186 F. Supp. 2d 358, 371 (S.D.N.Y. 2002) (holding “modest” multiplier

1 of 4.65 “fair and reasonable”); *Craft v. County of San Bernardino*, 624 F.
2 Supp. 2d 1113, 1125 (C.D. Cal. 2008) (upholding 25% of the fund award
3 resulting in a multiplier of approximately 5.2, and citing cases in support);
4 *Wershba v. Apple Computer*, 91 Cal. App. 4th 224, 255 (2001) (“Multipliers
5 can range from 2 to 4 or even higher.”).

6 Given the extensive effort required of Class Counsel to get to this point
7 and present the Settlement’s excellent benefits to the Class, in the face of the
8 risks presented, the complexity of the issues this litigation entailed, and the
9 risk of no recovery, both a “results multiplier” and a “risk multiplier” are well
10 warranted. *In re Wash. Pub. Power*, 19 F.3d at 1301-03; *see also, e.g.,*
11 *Gutierrez*, 2015 WL 2438274, at *5 (“Even though some of class counsel’s
12 claimed billing rates appear extraordinary . . . counsel waited patiently for
13 payment for several years.”); *Stetson*, 821 F.3d at 1166 (holding courts “*must*
14 apply a risk multiplier to the lodestar “when . . . the case was risky.”).

15 Class Counsel’s requested multiplier also is reasonable given that a 25%
16 fee award will compensate them not only for the work already performed, but
17 future work as well, as described above (including their continuing obligation
18 to the Class members to oversee the claims payment process). In effect, this
19 means that the final lodestar will be higher, and the 2.14 multiplier ultimately
20 lower. Together, all these factors support Class Counsel’s request here.

21 **C. Class Counsel Are Entitled to Reimbursement of Their**
Reasonable Litigation Expenses

22 Under well-settled law, Class Counsel are entitled to reimbursement of
23 the expenses they reasonably incurred investigating and prosecuting this
24 matter. *See Staton*, 327 F.3d at 974; *In re Media Vision Tech. Sec. Litig.*, 913
25 F. Supp. 1362, 1366 (N.D. Cal. 1995) (citing *Mills v. Electric Auto-Lite Co.*,
26 396 U.S. 375, 291-92 (1970)). To date, Class Counsel have collectively
27 incurred \$20,175.40 in unreimbursed litigation costs. (Moss Fees Decl., ¶35
28

1 and Ex. C.)

2 The expenses for which Class Counsel seek reimbursement were
3 reasonably necessary for the continued prosecution and resolution of this
4 litigation and were incurred by Class Counsel for the benefit of the class
5 members with no guarantee that they would be reimbursed. They are
6 reasonable in amount and the Court should approve their reimbursement.

7 *The Requested Service Award for Plaintiff is Reasonable and Justified*

8 The Court should grant the service award requested by Plaintiff to
9 compensate him for the effort and risk entailed in pursuing this litigation.

10 In the Order Granting Preliminary Approval, the Court stated:

11 “Plaintiff requests an incentive award of \$20,000 for the class
12 representative in this action. (Settlement Agreement at 17.) A court may grant
13 a modest incentive award to class representatives, both as an inducement to
14 participate in the suit and as compensation for the time spent in litigation
15 activities. See *In re Mego Fin. Corp.* 213 F.3d at 463 (finding the district court
16 did not abuse its discretion in awarding an incentive award to the Class
17 Representatives). The incentive award is 0.5% of the total gross settlement.
18 The Court is concerned about the apparent disproportionate incentive award.
19 See *Custom LED, LLC, v. eBay, Inc.* No. 12-cv-00350-JST, 2014 WL
20 2916871, at *10 (N.D. Cal. June 24, 2014) (approving \$7,500 incentive award
21 from \$3,320,000 total settlement amount); *Glass v. UBS Fin. Servs., Inc.*, No.
22 C-06-5068 MMC, 2007 WL 221862, at *1, 16-17 (N.D. Cal. Jan. 26, 2007)
23 (approving \$25,000 incentive awards from \$45,000,000 total settlement
24 amount). At the preliminary approval of class action settlement stage, the
25 Court finds the request for enhancement award potentially fair. However, the
26 parties should be prepared to discuss and justify the disproportionate award as
27 part of the final approval.”

28 Plaintiff clearly earned the \$20,000 incentive award. Plaintiff was a key

1 class advocate in Settlement negotiations. He was a strong voice of “no” in
2 connection with the mediator entreaties and Defendant’s offers during and
3 after the mediation. (Moss Fees Decl. ¶38). Mr. Weinstein was not an idle
4 participant throughout the litigation – assisting in preparation for the
5 depositions taken on behalf of the class, sitting for his deposition, reviewing,
6 analyzing and explaining documentary evidence as part of a team, and always
7 available to counsel. (Moss Fees Decl. ¶36-39, Weinstein Decl. passim)

8 Per Defendant, the class members known to it amount to approximately
9 1800 inspectors, the average recovery, if everyone filed a claim, is \$1559.75.
10 If the claims rate is low, it will be as high as \$2,105.66, 135% of 1559.75.
11 There are several inspectors who will be receiving in excess of \$10,000. The
12 amount of the increase any class member will receive as a consequence of a
13 reduction in the \$20,000 enhancement, relative to what they will be receiving,
14 is low. Up to 45% of any reduction may end up the property of Defendant.
15 The guaranteed payout in this case is 55% of the \$4,000,000.

16 As part of the Settlement, the named Plaintiff had to execute a general
17 release of claims, beyond the case specific release other class members are
18 covered by. (See Order Granting Preliminary Approval, Dkt. 82, Pg. 9-10
19 citing Settlement)

20 In the context of class action cases, incentive awards for the named
21 representatives are discretionary but nevertheless “fairly typical.” *Rodriguez v.*
22 *W. Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). Incentive awards are
23 designed “to compensate class representatives for work done on behalf of the
24 class, to make up for financial or reputational risk undertaken in bringing the
25 action, and, sometimes, to recognize their willingness to act as a private
26 attorney general.” *Id.* at 958–59. Factors to consider in determining whether to
27 approve an incentive award include:

28 1) the risk to the class representative in commencing suit, both financial and

1 otherwise; 2) the notoriety and personal difficulties encountered by the class
2 representative; 3) the amount of time and effort spent by the class
3 representative; 4) the duration of the litigation and; 5) the personal benefit (or
4 lack thereof) enjoyed by the class representative as a result of the litigation.
5 *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995),
6 cited by Judge Phillips in *Trujillo v. City of Ontario* 2009 WL 2632723, a case
7 that settled for \$2.75 million in which ten named Plaintiffs received
8 enhancements of \$10,000, and six named Plaintiffs received enhancements of
9 \$30,000 for a total of \$280,000 in enhancements.

10 All of the relevant factors favor the proposed incentive award. Mr.
11 Weinstein has contributed his time and resources to this case, aided class
12 counsel's discovery efforts and litigation strategy, provided supporting
13 declarations, and was pivotal in the settlement negotiations. (Decl. of
14 Weinstein passim, and Decl. of Moss ¶ 36-39) Given that Mr. Weinstein was
15 the only plaintiff named in the original Complaint, it is appropriate to
16 compensate him for extra time and effort he expended on the litigation.

17 In addition to the work performed on behalf of Class Members, Mr.
18 Weinstein undertook a financial risk in that, in the event of a judgment in favor
19 of Defendant, he may have been personally responsible for any costs awarded
20 in favor of Defendant. *See Whiteway v. FedEx Kinkos Office & Print Servs.,*
21 *Inc.*, 2007 WL 4531783, at *2-4 (N.D.Cal.2007).

22 Mr. Weinstein also took a huge risk related to his future by coming
23 forward and filing this class action because although future employers are not
24 supposed to retaliate against workers who bring these types of cases, this case
25 is a public record that prospective employers have access to. A prospective
26 employer looking at two equally qualified candidates will necessarily not hire
27 the one who sued a previous employer and cost his employer millions of
28 dollars.

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The impact of the enhancement on the claims of class members is not significant. There are at least 1800 class members. If the enhancement was reduced by \$15,000 the amount per class member would increase by an average of \$8.33. The larger the class, the smaller the impact on each class member's recovery. Given the possibility of a low claims rate, much of the reduction may end up in the hands of the Defendant or the cy pres recipient.

In the Order preliminarily approving the Settlement, the Court remarked that the enhancement represents 0.5% of the Settlement. This percentage of the benefit created as a service award is not extraordinary. See *Sandoval v. Tharaldson Employee Mgt., Inc.* 2010 WL 2486346 at *10 (C.D. Cal. 2010) approving a service award that was 1% of the gross settlement, and *In re Mego Fin. Corp Litig.* 213 F3d 454, 463 (9th Cir. 2000) approving a total of \$10,000 in service awards in a \$1.75 million settlement, constituting 0.56% of the settlement

IV. CONCLUSION

For all the foregoing reasons, Plaintiffs and Class Counsel respectfully request that the Court enter an Order: (a) awarding Class Counsel attorneys' fees in the amount of \$1 million, plus reimbursement of litigation costs in the amount of \$20,175.40; and (b) awarding the Plaintiff a service awards in the amount of \$20,000 for his effort and commitment on behalf of the class members.

Dated: June 1, 2018

MOSS BOLLINGER LLP

By: /s/ Dennis F. Moss

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8 For Plaintiff Lawrence Weinstein
9 and other persons similarly situated

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12

13 **LAWRENCE WEINSTEIN**, on behalf
of himself and others similarly situated,

14 Plaintiff,

15 vs.

16 **MORTGAGE CONTRACTING**
17 **SERVICES, LLC** and **DOES 1-50**,

18 Defendants.
19

Case No. 5:14-CV-02521-JGB-SP

DECLARATION OF DENNIS F.
MOSS IN SUPPORT OF
PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES AND
EXPENSES, AND FOR CLASS
REPRESENTATIVE SERVICE
AWARD

20
21 **DECLARATION OF DENNIS F. MOSS**

22 I, Dennis F. Moss, declare as follows:

23 1. I am admitted, in good standing, to practice as an attorney in the State
24 of California, the United States Supreme Court, the Ninth Circuit Court of Appeals,
25 and the United States District Courts for the Central, Northern, Eastern, and
26 Southern Districts of California. I am of counsel to the firm of Moss Bollinger, LLP.
27 Pursuant to the Court's February 8, 2018 Order Granting Preliminary Approval of
28 Class Settlement, I, along with Jeremy Bollinger and Ari Moss of Moss Bollinger,

1 LLP, and Samuel Deskin of Deskin Law Firm, have been preliminarily appointed
2 Class Counsel for the class that the Court provisionally certified for settlement
3 purposes. [Dkt. No. 82 at Pg. 17]

4 2. I submit this declaration in support of Plaintiff's Motion filed
5 concurrently herewith for Attorneys' Fees of \$ 1 million, expenses of \$20,175.40,
6 and for a Class Representative Service Award of \$20,000.

7 3. I actively participated in the prosecution of the litigation of this action
8 from the inception, and I have personal knowledge of the matters described below
9 and I am competent to testify thereto.

10 4. The work performed in this case prior to filing included initial
11 communications with Samuel Deskin regarding the possibility of this action, a
12 meeting and phone calls with the plaintiff, review of records from prior litigation
13 involving MCS, research on "joint employer", and "independent contractor"
14 principles under both State and Federal law, research on the viability of Defendant;
15 and the preparation of the complaint that was filed in San Bernardino Superior Court.

16 5. While the case was pending in Superior Court, the following occurred:
17 Review of defendant's response, a status conference, email and telephone exchanges
18 with defense counsel, initiation of discovery by plaintiff, review of responses, a
19 telephonic and written meet and confer process, research, and the filing of a motion
20 to compel discovery responses. During this period, our work also included meetings
21 and calls with plaintiff to respond to interrogatories and a Request for Production,
22 as well as preparation of the formal responses.

23 6. After defendant removed the case to Federal Court, I reviewed and
24 analyzed the removal documents filed by defendant, those provided by the Court,
25 and the Manual for Complex Litigation. I performed research, consulted with co-
26 counsel, and determined that seeking remand was not a prudent option.

1 7. Once in Federal Court, plaintiff's counsel participated in and completed
2 the Rule 23 (f) process and attended Court proceedings as required.

3 8. In the course of the litigation, in preparation for the depositions I
4 conducted, and in connection with discovery, disclosures, the Motion for Class
5 Certification, and our opposition to the Motion for Summary Judgment, I reviewed
6 thousands of pages of documents. Aside from Plaintiff, I interviewed other
7 inspectors from throughout the State as part of this litigation.

8 9. I took the deposition of one of MCS' largest providers of class member
9 inspectors here, in California, and I took the 30(b) deposition of Defendant in
10 Florida. I prepared the plaintiff for his deposition and defended his deposition. After
11 Plaintiff's deposition, Defendant's counsel tried to convince us to drop class claims
12 and settle on an individual basis. We summarily rejected the idea of abandoning the
13 class.

14 10. On January 11, 2016 I filed the motion for class certification. (Dkt. No.
15 26.) MCS filed its Opposition on February 22, 2016. (Dkt. No.32). I filed our reply
16 on February 29, 2016. (Dkt. No.38). The Motion was completely briefed by all
17 parties, and the parties appeared for a hearing on the motion on March 14, 2016.
18 (*See* Dkt. No.39). As part of its Opposition, Defendant indicated its belief that
19 summary judgment as to Plaintiff's claims was appropriate, and that it intended to
20 file a Motion for Summary Judgment. On March 14, 2016, rather than hear the
21 motion for class certification, the court continued the hearing on the motion to allow
22 time for Defendant to file its impending motion for summary judgment.

23 11. MCS filed its Motion for Summary Judgment on May 17, 2016. (Dkt.
24 41 and 42.) Plaintiff filed his Opposition on June 23, 2016. (Dkt. No. 51.) MCS
25 filed its Reply on June 30, 2016. (Dkt. No. 51). The hearing on the motion was held
26 on October 24, 2016. The Court denied MCS' Motion in a comprehensive Order
27 dated November 17, 2016. (Dkt. No.65). The Court did not rule on the pending
28

1 motion for class certification.

2 12. On December 9, 2016, Defendant substituted in as counsel Jones Day.
3 (Dkt. No.66 and 67.) Jones Day advised me of MCS's intention to seek to delay the
4 hearing on class certification, reopen discovery before the motion was rescheduled,
5 and seek leave to supplement MCS' opposition to class certification. Thereafter, the
6 parties agreed to stay proceedings pending an effort at mediation. The Court
7 approved the stay (Dkt. No. 68-69.)

8 13. The Parties secured a mediation date of June 28, 2017 with mediator
9 Robert Kaplan. Over a several-month period, the Parties engaged in substantive
10 negotiations over the data necessary to exercise informed judgment at the mediation.
11 After reaching agreement on an exchange of data, and the production of the
12 necessary data by MCS, we engaged in substantial data analysis. The mediation was
13 held as scheduled. The mediation was not immediately successful, and Plaintiff
14 asked the Court to lift the stay (Dkt. Nos. 73-74).

15 14. The Parties could not agree on a schedule for the case going forward.
16 MCS expressed a desire to the Court to supplement its opposition to the Motion for
17 Class Certification following additional discovery. Plaintiff opposed MCS' effort
18 to supplement the Opposition to the Motion for Class Certification. (Dkt. 75.)

19 15. Throughout the seven weeks following the failed mediation, the
20 mediator engaged the parties in an effort to achieve a settlement. Ultimately, a
21 settlement, subject to Court approval, was achieved. On August 23, 2017 the parties
22 filed a Joint Notice of Settlement. (Dkt. No. 77.) After the Joint Notice was filed,
23 dispute that precipitated numerous exchanges between counsel arose over the details
24 of the notice process and the formal settlement terms.

25 16. I prepared the Motion for Preliminary Approval of the Settlement.

26 17. Since Preliminary Approval, we have spent time dealing with
27 implementation of the class member identification process and notice processes.

1 18. After notice was published and notice mailings were carried out, I have
2 responded to class member inquiries telephonically, in person and through internet
3 exchanges. I have researched means to increase class participation, performed
4 additional research on class notice, collaborated with co-counsel, and drafted
5 proposals that were conveyed to Defense Counsel in an effort to increase class
6 participation.

7 19. There will be additional work between now and Final Approval.

8 20. Before agreeing to represent plaintiff and the proposed class in this
9 action, I and co-counsel carefully weighed potential benefits and risks. Having
10 reviewed previous litigation involving MCS, we fully expected that MCS would
11 mount a vigorous defense to this action, and that overcoming arbitration clauses that
12 some of MCS' vendors had with their inspectors, certifying the class, and ultimately
13 prevailing at trial would be both time consuming and difficult. As such, we
14 recognized that representing plaintiff and the proposed class in this case would
15 require significant investment of time and money. Since plaintiff was not able to
16 retain counsel on an hourly basis to pursue this litigation, we knew we would have
17 to represent plaintiff and the proposed class on a contingency basis, meaning that we
18 would only get paid for our efforts if successful in recovering damages – either
19 through settlement or judgment. We understood that there was a very real possibility
20 that we would never be able to recoup our investment of time and money in this case,
21 and even if we were ultimately able to, there would necessarily be a delay
22 (potentially of many years) between the time these expenditures were made and the
23 time that we were paid.

24 21. From the initiation of this case, we knew that MCS would devote
25 significant resources to this litigation, including hiring aggressive and skilled
26 attorneys who would provide a tenacious defense to this case. We also knew that
27 prevailing and ultimately collecting any recovery from MCS was never anywhere
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1 near certain, especially in light of the significant issues regarding the legal viability
 2 of plaintiffs' claims, whether plaintiff would be able to obtain the necessary
 3 discovery and evidence to support those claims and whether plaintiff would be able
 4 to successfully certify a class. We accepted and proceeded with this litigation in the
 5 face of this uncertainty, agreeing to undertake this litigation on a wholly contingent
 6 basis. We initiated complex, expensive and lengthy litigation, with no guarantee of
 7 compensation for the significant amount of time, money and effort that we were
 8 prepared to and did invest to prosecute this case.

9 22. By pursuing this litigation and devoting the significant resources
 10 that this litigation required, we necessarily had to forego developing and working
 11 on other cases available to us. Our contingency risk supports the requested fees.

12 23. As of June 3, 2018, class counsel devoted a total of 663.75 hours of
 13 professional time to the prosecution of this action.

14 24. At reasonable and regular rates this represents a lodestar of \$468,452.

Name	Rate	Hours	Total
Dennis Moss, Esq.	\$750.00	519.15	\$389,362.50
Jeremy Bollinger, Esq.	\$625.00	70.9	\$44,312.50
Samuel Deskin, Esq.	\$500.00	23.5	\$11,750.00
Ari Moss, Esq.	\$625.00	2.5	\$1,562.00
Evan Selik, Esq.	\$450.00	47.7	\$21,465.00
	Total:	663.75	\$468,452.00

22
 23 25. The above table was prepared from time records. Attached hereto as
 24 Exhibit "A" and incorporated herein by this reference is a summary of the time spent
 25 by attorneys on behalf of the Class to date in this litigation.

26 26. I performed the bulk of the work in the case and oversaw the work
 27 performed in this litigation by others. In my experience, the number of hours devoted
 28

1 to this case is well within the range of hours that reasonably would be expected under
2 the circumstances based on the amount of investigation required relative to the issues
3 presented in this action. Although the case was settled prior to the hearing on the
4 fully-briefed certification, the discovery investigative and settlement process were
5 extensive and very hard fought.

6 27. The hours (and resulting lodestar) reported here are, as noted above,
7 current as of June 3, 2018. Accordingly, these hours do not include the additional
8 time that will necessarily be devoted by class counsel to the prosecution of this action
9 going forward.

10 28. My hourly rate is \$750 per hour. I have been an employment/labor
11 lawyer since 1977 and handled numerous cases in all aspects of employment and
12 labor law, including but not limited to numerous federal and state wage and hour
13 class action cases, National Labor Relations Board proceedings, wrongful discharge
14 litigation, discrimination cases, administrative appeals involving wage and hour and
15 other employment issues, numerous arbitrations, and various other matters involving
16 both traditional labor-law (union/management law) and employment law issues in
17 the non-union context. My litigation experience has included over thirty arguments
18 in various courts of appeal, including the 9th Circuit, Federal Circuit, and the First,
19 Second, Third, Fourth and Sixth Appellate Districts of the California Court of
20 Appeal. Several of the appellate cases I argued grew out of wage and hour lawsuits.
21 I have argued three wage and hour cases in the California Supreme Court, the first
22 of which was the landmark case of *Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th
23 785. The most recent Supreme Court case I successfully argued was *Alvarado v.*
24 *Dart* 4 Cal.5th 542 (2018). Earlier this year the California Supreme Court granted
25 review in another one of my cases *Melendez v. San Francisco Baseball Associates,*
26 S245607. I have been lead counsel in dozens of class actions and collective actions
27 over the last eighteen years. These actions have been prosecuted in state as well as
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1 in federal court. I have written amicus briefs in several employment law cases,
2 including the landmark case of *Sav-on v. Superior Court* (2004) 34 Ca1.4th 319. I
3 have lectured on employment law matters before bar groups at least 15 times in the
4 last six years primarily on wage and hour and class action issues. I have been a
5 principal negotiator in wage and hour class action settlements that have yielded in
6 excess of Seventy Million Dollars (\$70,000,000.00). I have directly participated in
7 over forty mediations of wage and hour class actions in the last 7 years. I authored
8 articles published in the Daily Journal on class action waiver agreements. I was a
9 founding partner of Spiro Moss LLP.

10 29. The hourly rate for Jeremy Bollinger is \$650. Mr. Bollinger is a
11 founding partner of Moss Bollinger. Upon graduation from Harvard College in
12 1991, he embarked on a different career path before attending law school in 2002.
13 He graduated from Loyola Law School of Los Angeles and was admitted to the bar
14 in 2005. Upon graduation from law school, he joined the law firm Akin Gump
15 Strauss Hauer & Feld LLP (“Akin Gump”). At Akin Gump, he worked on litigation
16 matters of various size and complexity, including defending some of the largest
17 employers in the retail, food and beverage, and oil and gas industries in employment
18 class action lawsuits. In May 2016, he left Akin Gump to form Moss Bollinger,
19 LLP, a plaintiff’s employment law firm specializing in class action litigation.
20 Currently, he is counsel of record in at least fifteen class action matters throughout
21 California, in both state and federal courts. He has been intimately involved in
22 litigating and settling class action lawsuits for the last twelve years. Thus far he has
23 spent 70.9 hours working on this case.

24 30. Ari Moss’ hourly rate is \$625 per hour. He is a graduate of U.C.
25 Berkeley, and Loyola Law School in Los Angeles. He was admitted to the Bar in
26 2005, when he started working at Spiro Moss Barness Harrison & Barge, LLP (later
27 Spiro Moss). Later with Jeremy Bollinger, he formed the Moss Bollinger firm. He
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1 has been class counsel in over 40 class actions including cases against Hawaiian
2 Gardens Casino, Asian Pacific Health Care, American Guard Services, Real Time
3 Staffing, AEND Manufacturing, International Medication Systems, LLC, Charles
4 Schwab, Automotive Creations, Inc., Dakota Brothers, Panda Express, AIG, Koning
5 & Associates and Matrix Aviation. He was counsel of record in the published wage
6 and hour appellate decision *Negri v. Koning & Associates* (2013) 216 Cal.App.4th
7 392 (6th District). He has tried wage and hour cases in Marin County, San Mateo
8 County, and Los Angeles County.

9 31. The hourly rate for Evan Selik is \$450. He has practiced law in
10 California for 10 years, having moved here from Michigan after law school. His
11 work on this case was carried out in 2014. It primarily involved working with
12 Plaintiff in preparing discovery responses, review of documents, analysis of data,
13 working on meet and confer correspondence and negotiations related to discovery
14 we propounded, and the motion related thereto. He worked 47.7 hours on this case.

15 32. The hourly rate for Sam Deskin is \$500. He has been approved as class
16 counsel on over 5 consumer and wage and hour class actions.

17 33. All of the above counsel have been approved at the above hourly rates
18 in other class actions. Attached hereto as Exhibit B. is the Laffey Matrix which
19 evidences the propriety of the attorney's fees rates utilized in this analysis.

20 34. Class Counsel request a fee of \$1 million, which represents a multiplier
21 of approximately 2.14 on the total lodestar of \$468,452 incurred by Plaintiffs'
22 counsel in this litigation. Such a multiplier is within the range of multipliers that the
23 courts in the Ninth Circuit and elsewhere regularly approve. *See, e.g., Vizcaino*, 290
24 F.3d at 1051 & Appendix (approving multiplier of 3.65 and citing cases with
25 multipliers as high as 19.6); *In re Volkswagen*, 2017 WL 1047834, at *5 (Breyer, J.)
26 (“Multipliers in the 3-4 range are common in lodestar awards for lengthy and
27 complex class action litigation.”) (quoting *Van Vranken v. Atlantic Richfield Co.*,

1 901 F. Supp. 294, 298-99 (N.D. Cal. 1995)); *In re Nasdaq Market-Makers Antitrust*
2 *Litig.*, 187 F.R.D. 465, 489 (S.D.N.Y. 1998) (“In recent years multipliers of between
3 3 and 4.5 have become common”) (citation omitted); *Maley v. Del Global Techs.*
4 *Corp.*, 186 F. Supp. 2d 358, 371 (S.D.N.Y. 2002) (holding “modest” multiplier of
5 4.65 “fair and reasonable”); *Craft v. County of San Bernardino*, 624 F. Supp. 2d
6 1113, 1125 (C.D. Cal. 2008) (upholding 25% of the fund award resulting in a
7 multiplier of approximately 5.2, and citing cases in support); *Wershba v. Apple*
8 *Computer*, 91 Cal. App. 4th 224, 255 (2001) (“Multipliers can range from 2 to 4 or
9 even higher.”).

10 35. Class Counsel have incurred \$20,175.40 in unreimbursed litigation
11 costs. The expenses for which Class Counsel seek reimbursement were reasonably
12 necessary for the continued prosecution and resolution of this litigation and were
13 incurred by Class Counsel for the benefit of the class members with no guarantee
14 that they would be reimbursed. They are reasonable in amount and the Court should
15 approve their reimbursement. Attached hereto as Ex. C, and incorporated herein by
16 this reference, is a spreadsheet setting forth the reimbursable expenses.

17 36. Plaintiff Lawrence Weinstein, the Class Representative has been a
18 critical asset in the prosecution of this case. Since 2014 he has met with counsel
19 repeatedly, participated in easily over 50 phone conversations, participated
20 effectively and fully in the mediation and ensuing negotiations, always putting the
21 class' interests above his own. His participation was anything but passive. He
22 assisted in the formulation of the evolving strategy from the outset of the case. He
23 painstakingly analyzed and explained the thousands of documents that were a part
24 of this case, sharing his insight into how the documents, for example, were used by
25 MCS as a means to control inspectors. He helped formulate the questions utilized
26 in the depositions I took. He responded to discovery. He engaged in a day and a
27 half of deposition preparation and was deposed for approximately four hours. Often,

1 he would travel from Redlands to Los Angeles to meet with counsel. In connection
2 with his deposition he spent the night in the Los Angeles area.

3 37. Mr. Weinstein immediately rejected an offer to buy him off in exchange
4 for dismissal of his class claims. He made it a point to understand the legal positions
5 we were taking vis a vis employee rights, and the independent contractor, joint
6 employer, and class certification issues.

7 38. At the mediation, and during the weeks of negotiations that followed
8 Mr. Weinstein's contribution was especially significant not only as a provider of
9 facts, but as a voice of resistance to mediator entreaties. Absent his advocacy
10 throughout the process there was a chance the Settlement would not have been
11 reached at the \$4 million level.

12 39. Given the public record nature of this litigation, Mr. Weinstein may
13 endure lost job opportunities in the future. He clearly earned the \$20,000
14 enhancement the Settlement provides.

15 I declare under penalty of perjury that the foregoing is true and correct.
16 Executed June 1, 2018, at Sherman Oaks, California.

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18 /s/ Dennis F. Moss

19 Dennis F. Moss
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EXHIBIT A

DFM Hours - Weinstein v. MCS

10/22/2013	Sam Deskin contact re possible case	0.2
10/23/2013	Review documents from earlier case on this issue	2.25
10/25/2013	Call with Sam Deskin	0.1
11/26/2013	Meet with plaintiff. Prep retainer.	2
12/23/2013	Research law and MCS	3.25
1/26 - 1/28/2014	Client calls, research and prep complaint	6.2
1/28/2014	Email re inspector requirement	0.1
2/7/2014	Email Sam Deskin and plaintiff	0.3
4/10 - 4/14	Propound discovery	3.2
6/10/2014	Review Defendant's discovery responses and docum	1.9
7/11/2014	Review Discovery from Defendant; discuss with Evan	0.3
7/15/2014	Meet and Confer letter, work on with Evan	1.75
8/19/2014	Trial Setting Conference with travel	3.5
10/10/2014	Declaration for Ddiscovery Motion	0.2
11/26 - 12/12	Reply to Discovey Motion	1.25
	Prepare,travel, and appearance in San Bernardino on motion to compel at status conference;discuss removal with def's counsel;email co-counsel	4
12/9/2014	Review notice of removal and supporting papers;research and analyze	2.5
	Review order setting rule 26 conference;and standing order;research;call with pl. and co-counsel	2
12/15/2014	Review manual of complex litigation;and federal judicial center's class action guide	1.5
12/16/2014	Email to D's counsel re rule:23(F)	0.1
12/29/2014	Follow-up email exchange	0.1
1/8/2015	Researched drafting for 23(F)	0.5
1/8/2015	Call and follow-up	0.5
1/9/2015	Draft 23(F) report;call D's counsel	1.2
1/20/2015		
1/21/15-1/23-15	Emails, calls; review D's revisions;draft additional sections;timetable; progress report to client	3.2
	Research teeing up State court discovery Motion in Fed. Court in federal court	1.25
1/23/2015	Court's scheduling order	0.1
2/10/2015	Call w/Fresno based inspector	0.5
2/14/2015	prepare,Rule 23(F) conference appear;travel	3.5
2/19/2015		
2/20/2015	Prep stip for relief from rule 23-3 proposed order	1.2
	Emails re: 23-3 stip to D;call, review revisions from D.	0.5
3/18/2015	Calls, emails and revision of stip;discuss deadlines w/Pl and co-counsel;file stip	1.4
3/23/15-3/31/15	Emails and call re:initial disclosures	0.25
4/2/2015		

3/?/15	Depo notices for 3rd party vendors	0.5
	Discuss witnesses w/named Pl. for initial	
4/2/2015	disclosures;review documents for initial disclosures	3.8
4/9/2015	Prep. initial disclosure statement	0.75
4/10/2015	Email initial disclosure statement	0.1
	Email and discussion w/Evan Re: scheduled 3rd	
4/14/15-4/15/15	party depos.	0.5
4/15/2015	Judges order re: 23-3 relief	0.1
Jul-15	Email exchanges w/3rd party deponent.	0.2
	Prep for Euredjian depo incl. document review;	
7/14/15-7/15/15	meet w/Pl.;draft outline	7.8
7/16/2015	More depo prep and actual depo	5.25
7/19/15-7/20/15	Email and call; debrief Pl. re:depo of D. Euredjian	0.5
may-june 2015	Depo scheduling communications	0.4
	Depo prep. And Emails re:depo in FLA, review	
	documents from document production,file review,	
9/1/15-9/27/15	research	35.8
	Stip to continue court dates due to deponent's	
9/19/2015	previous maternity leave;call and draft	0.5
9/28/2015	Travel to Tampa;add'l prep for depo	10.5
9/29/2015	Deposition ;return trip to LA	16.5
10/9/2015	Email exchange w/CSR re:depo exhibits search	0.25
	Begin research for class cert. motion. Joint	
10/9/2015	employer" and "employee" federal and state	3
10/15/2015	Research for class cert.	3.25
11/23-15-11/30/15	Research for class cert. motion	31.5
12/20/15-12/31/15	Research;drafting; emails; calls re:class cert.	58
1/3/16-1/6/16	Class cert. motion and exhibits	20.2
1/8/16-1/9/16	Class cert motion	5.25
1/10/16-1/11/16	Finish motion	3.2
1/14/16-1/23/16	Emails and stip to continue, order	0.2
1/19/2016	Email exchange w/client	0.1
	Email re:Pl. depo;scheduling notice of depo client	
1/22/16-1/25-16	calls re:same	0.5
2/4/2016	File review; prep pl. for his depo;calls w/co-counsel	7.2
2/5/2016	More depo prep.. and depo; settlement discussions	5.5
	Read opposition to class cert and supporting	
2/22/2016	documents; analyze,begin research; call client	6.5
2/23/2016	Emails re:cert. motion	0.3

2/26/2016-		
2/27/2016	Research for reply and begin drafting	15.4
2/28/2016	Reply cert.	4.8
2/29/2016	Finish reply; emails	1.25
	Prepare for hearing on class cert; research new	
3/13/2016	cases Outline argument	5
3/14/2016	Prep.travel to/from Riverside, appear motion	3.75
3/15/2016-		
3/18/2016	Stip re: dates order	0.2
	Series of communications re: MSJ and new dates for	
5/16/2016	cert.	0.3
5/17/2016	Receive and review MSJ and supporting documents	1.75
5/23/2016-		
5/24/2016	Emails / calendaring	0.1
5/31/2016	Review notice of lodging	0.1
6/2/2016-6/10/2016	Calls with non-party witnesses	0.5
	Review non-party witness declaration tion draft	
6/15/2016	prepared by JB	0.3
6/20/2016-	Review JB draft of opp to summary judgement,	
6/22/2016	edits, discuss and research	3.6
	Realize mistake re: calemdaring calls to defense	
	counsel to allow for late filing prep, research and	
6/22/2016	pre. , ex parte application	4.2
6/23/2016	Review final of MSJ opp	0.75
6/24/2016	Review opp to ex parte	0.1
6/24/2016	Review scheduling order	0.1
6/26/2016	Call and email 3rd party witness	0.2
6/27/2016-		
6/29/2016	Calls and stip to change reply dates; order	0.2
	Review defendant's reply to MSJ and related docs;	
7/1/2016	research; email	1.7
	Email exchanges and discussions with JB re: reply	
7/3/2016	analysis	0.5
7/6/2016	Review new dates set by court, emails	0.2
	Changing dates due to vacation, clerk call, emails,	
8/9/2016-8/19/206	stip prep.,order prep.	0.25
10/6/2016-	Prep. Report to superior court, several email	
10/7/2016	exchanges, calls re: appearance	1.5
10/12/2016	Court call to superior court re: status of removal	0.5
10/22/2016-		
10/23/2016	Prep. for hearing on MSJ	3.2
	Prep, travel and hearing on MSJ;Debrief client and	
10/24/2016	co-counsel	4

11/17/2016- 11/18/2016	Review MSJ Order; discuss with and email co-counsel and client	0.75
11/21/2016- 11/22/2016	Draft mediation proposal; review with co-counsel	1
12/9/2016	Review substitution of attorneys; call colleagues re: new counsel	0.3
12/9/2016	Emails to co-counsel re: substitution, call	0.2
12/14/2016	Call Def. new counsel	0.2
12/15/2016	Review earlier mediation demand, email	0.1
1/3/2017	Calls and emails re: mediation	0.1
1/4/2017	Research and draft re: limits defendant wants to place on scope of class, calls and emails	1.75
1/10/2017- 1/16/2017	Emails with opp counsel and co-counsel, calls re: mediation scope, stay, and data	1.25
1/18/2017	Emails, call to mediator's scheduler re: dates	0.2
1/20/2017	Email Def. counsel re: dates	0.2
1/21/2017- 1/23/2017	Review stay straff; emails re: dates	0.2
2/21/2017- 2/22/2017	Emails re: mediation	0.3
2/22/2017- 2/25/2017	Emails with client re: mediation process and new date	0.5
3/4/2017	Call to client re: status and pre-mediation tasks	0.2
4/19/2017	Prepare joint report, emails, file	0.3
5/4/2017	Emails, calls re: court inaction on new date	0.2
5/12/2017	Emails re: mediation	0.1
5/23/2017- 5/25/2017	Communications re: data for mediation	0.5
6/5/2017	Emails and calls with opposition counsel, data analysis, prep questions re data needs Work with staff on data analysis and begin brief;	1.5
6/5/2017-6/15/2017	writing/research; calls with defendant, emails	8.75
6/16/2017- 6/17/2017	Memo to client and co-counsel with calls and emails	0.75
6/18/2017	Work on mediation brief	5.5
6/19/2017	Review staff's data analysis; relate additional tasks	0.4
6/19/2017	Legal research/brief writing	6.5
6/20/2017	Review new damage analysis; discuss w/staff	0.3
6/20/2017	Mediation brief	4.2
6/21/2017	Review email re: mediator's needs, review file, brief, damage model	3.75
6/22/2017	Emails re: mediation	0.5

6/23/2017	Review Def's mediation brief, emails re: mediation, transmit our brief and damages model	2.25
6/25/2017	Review recent precedent	0.4
6/27/2017	Mediation prep..	3.5
6/27/2017	Mediation with travel	15.5
6/29/2017	Calls, email exchanges re: mediators' post-mediation call	0.5
6/30/2017	Internal emails re negotiation strategy	0.1
7/5/2017	Emails from mediation service	0.1
7/3/2017-7/7/2017	Calls re: status report; prep status report; Review defendant's report	1
7/12/2017-		
7/13/2017	Email exchanges with mediator	0.2
7/14/2017	Call with mediator, debrief co-counsel	0.4
7/27/2017	Review court's scheduling notice; calendar	0.1
7/28/2017	Calls with mediator, file review, calls to co-counsel and plaintiff, draft memo and email to mediator	2.5
7/31/2017	Response email from mediator re: memo	0.1
8/1/2017-8/3/2017	Emails re: settlement demand-- co-counsel, mediator and me, internal discussions	1.5
8/8/2017	Email exchanges with co-counsel and mediator, discussions internally	0.75
8/14/2017	Joint statement plaintiff's section	0.4
8/16/2017-	Mediator's proposal, share with co-counsel, prep questions, internal discussions; mediator call and respond with notice proposals, etc.	3.5
8/18/2017		
8/19/2017-		
8/22/2017	Email exchanges with mediator	0.2
8/23/2017	Emails re: deal ; notice of settlement	0.2
8/31/2017	Review MOU draft	0.7
9/11/2017-	Draft print ad for possible notice, prep red line of MOU	2.5
9/12/2017		
9/13/2017	New bill from mediator	0.1
9/14/2017	Draft letter re: MOU to go with Red Line	3.2
9/21/2017	Call with defense counsel, call to co-counsel	0.4
9/25/2017	Review draft of letter to vendors/modify. Email exchanges	1
9/27/2017	Drafting , emails re: MOU, settlement, ascertainment of class, notice	2.2
9/28/2017-		
9/29/2017	Emails and call	0.3
10/1/2017	Call with opp. counsel; debrief internally	0.4
10/3/2017	Review revised MOU; prep redLine and comments	0.75

10/3 - 10/9/2017	Emails re MOU with Opp Counsel & Client	0.4
10/10/2017	Review modified letter to vendors, emails	0.4
10/11 - 10/14/2017	Emails re formal settlement	0.2
10/16/2017	Analysis and email re MOU/Mediator proposal disconnect	0.5
10/17/2017	Calls re MOU and final settlement; internal meeting	0.5
10-17-10/19	Draft settlement, draft notice	18
10/25-10/30	Negotiations over revisions and drafting	5
11/6-11/8	Draft preliminary approval documents	12.2
11/10/2017	Memo to mediator re problem with settlement - research and write; version for def atty	3.2
11/13-11/16	Work on settlement, notice, claim form; open issues; calls, emails to/from opposing counsel	4.8
11/16-11/17	Stip to continue filing date, emails, calls	0.5
1/4/2018	Calls, emails with mediator	0.2
1/5/2018	Ongoing negotiations with Defendant; draft and review all docs	3
1/9 - 1/12	Motion work Prelim Approval	8
1/7/2018	Review final settlement with client; discuss steps	0.7
1/8 - 1/11	Negotiations, emails re newspaper notice; calls with co-counsel	2.75
1/11/2018	Draft FAC per settlement, related emails, edits	1.6
1/12/2018	Receive and review edits of all docs; emails, more negotiations	2.25
1/15/2018	Finalize and file	1
2/8/2018	Review Order Granting Approval, calls and emails re same	0.5
2/9/2018	Emails with Admin. calls	0.2
2/13/2018	Emails and calls with admin	0.2
4/9/2018	Calls re Vendor and Aspen class ID results	0.4
4/17 - 4/25	Series of questions, analysis and answers re administration, class, class list	2.75
4/19/2018	Email to Court Clerk re date for final approval	0.1
4/24/2018	Update client	0.1
4/27/2018	Review weekly report	0.1
5/2/2018	Meeting with inspectors re claims process	4.75
May-18	Calls throughout month and emails from class members; related calls and emails to admin and opposing counsel	3.5
5/15 - 5/20	Research means to increase participation, initiate contact protocol, with JB and AM	4.2
5/20/2018	Contact facebook re Notice option	0.5

5/21/2018	Draft Proposal to increase claims rate and modify claimform; send to defendant/calls	1.5
5/30 - 6/4/2018	Work on fees motion documents; meet with client to review claims issue and for declaration. Discuss w. JB, Calls	23
		525.65

MCS – Jeremy Bollinger Time Records

5/20/2016: Meet with DFM to review strategy for opposition. Review defendant's motion for summary judgment and supporting documents (1.9 hours)

5/23/2016: Review prior pleadings to prepare arguments and factual background for Plaintiff's opposition to motion for summary judgment. (1.5 hours)

6/02/2016: conduct legal research in support of opposition to motion for summary judgement (3.5 hours)

6/06/2016: review transcripts of depositions and identify key cites for opposition to motion for summary judgment (3.7 hours).

6/10/2016: conduct legal research and draft factual background for opposition to motion for summary judgment (4.2 hours)

6/13/2016: conduct legal research and draft opposition to motion for summary judgment (6.2 hours)

6/14/2016: draft opposition to motion for summary judgment (5.6 hours)

6/15/2016: draft separate statement in support of opposition to motion for summary judgment (6.1 hours)

6/19/2016: draft separate statement in support of opposition to motion for summary judgment (4.3 hours)

6/20/2016: revise separate statement in support of opposition to motion for summary judgment (2.2 hours)

6/21/2016: compile compendium of evidence in support of opposition to motion for summary judgment (2.8 hours)

6/13/2017: conduct legal research for mediation brief (3.8 hours)

6/22/2017: review and revise mediation brief (3.2 hours)

6/27/2017: Mediation preparation (0.5 hours)

6/28/2017: travel to and attend mediation in San Diego (15.5 hours)

8/1-8/3/2017: Meet with DFM and AM re Mediation Proposal, Strategies; Write email to Mediator; Email exchanges (1.5 hours)

8/17/2017: Joint Statement (0.4 hours)

11/10/2017: Work with co-counsel on Memo to Mediator and Opposing Counsel (0.5 hours)

May 2018: Strategy sessions re effort to increase participation (2 hours)

5/30/2018: Prep time records (0.5 hours)

Ari Moss Hours - Weinstein v. MCS

2017 July	Review status of negotiations, provide input throughout month	0.75
8/3/2017	Meet with JB and DFM; 1st draft of JB's email to mediator	1.25
5/24/2018	Contact Rainmaker Institute about doing a facebook ad to increase participation; review with DFM	0.5
		2.5

Evan Selik Hours - Weinstein v. MCS

2014 July	Meet with Plaintiff to review discovery, organize documents, begin drafting responses	12
2014 August	Meet with Plaintiff a second time; organize data to determine exposure for responses; complete responses	16.5
2014 August	Engage in Meet and Confer; research re discovery	4
2014 September	Begin work on Discovery Motion	3.2
2014 October	Work on Discovery Motion	5.6
2014 November	Reply to Motion	1.5
2014 November	Supplemental Responses and related correspondence; emails and calls	4.9
		47.7

Sam Deskin Hours - Weinstein v. MCS

	Contact with Lawrence Weinstein; Reiew Docs LW provided and preview MCS litigation documents; Meet with DFM and review contact and previous	
2013 October	case. Go over documents.	3.75
November	Review Retainer; emails	0.25
January-February	Review Complaint and additional documents	
2014	provided by LW	0.5
2015 January	Review removal docs with DFM	0.25
February 2015 -		
May 2017	Periodic emails; calls with LW and DFM re status	1
	Review drafts of mediation brief and damages	
2017 June	model; emails and calls with DFM	1
	Attend mediation and participate in post-mediation	
2017 July	strategy	16.75
		23.5

EXHIBIT B

LAFFEY MATRIX

- [History](#)
- [Case Law](#)
- [Expert Opinions](#)
- [See the Matrix](#)
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			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., McDowell v. District of Columbia, Civ. A. No. 00-594 (RCL), LEXSEE 2001 U.S. Dist. LEXIS 8114 (D.D.C. June 4, 2001); Salazar v. Dist. of Col., 123 F.Supp.2d 8 (D.D.C. 2000).

* "Years Out of Law School" is calculated from June 1 of each year, when most law students graduate. "1-3" includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). "4-7" applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier "1-3" from June 1, 1996 until May 31, 1999, would move into tier "4-7" on June 1, 1999, and tier "8-10" on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

EXHIBIT C

Weinstein

COSTS

2/4/2014	San Bernardino Superior Court - Filing Fee	435
2/4/2014	Fax File Fee	15
10/10/2014	Motion	60
12/2/2014	Fax File Fee	15
12/8/2014	Removal to Federal Court	400
6/2/2015	CourtCall	86
7/24/2015	Janney and Janney	70
3/15/2015	Judy Samson CSR	1011
11/30/2015	Judy Samson	150
11/30/2015	Michael Musetta & Associates depo Fla	1156.45
1/1/2015	Janney and Janney	10
2/1/2016	Janney and Janney	95
3/19/2016	Janney and Janney	30
7/1/2016	Janney and Janney	187
8/1/2016	Janney and Janney	30
10/6/2016	Postage	0.47
10/7/2016	CourtCall	86
10/17/2016	One Legal	85.35
11/22/2016	Postage	0.47
5/12/2017	Judicate West	7695
6/30/2017	Ace Parking	24
7/17/2017	Janney and Janney	40
9/11/2017	Judicate West	7500
1/24/2018	Janney and Janney	154
5/30/2018	Pacer	4
	Aloft Hotel - Tampa 9/28/15	130.67
	Southwest Airlines - Tampa	400.99
	Willoughby 2/3/16	150
	Mileage & Parking	154
	TOTAL:	20175.4

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7 Facsimile: (818) 709-8971

8 For Plaintiff Lawrence Weinstein
9 and other persons similarly situated

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12

13 **LAWRENCE WEINSTEIN**, on behalf
of himself and others similarly situated,

14 Plaintiff,

15 vs.

16 **MORTGAGE CONTRACTING**
17 **SERVICES, LLC and DOES 1-50,**

18 Defendants.
19

Case No. 5:14-CV-02521-JGB-SP

DECLARATION OF LAWRENCE WEINSTEIN IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEYS' FEES AND EXPENSES AND FOR CLASS REPRESENTATIVE SERVICE AWARDS

Date: August 20, 2018

Time: 9:00 a.m.

Crtrm: 1

Judge: Hon. Jesus G. Bernal

22
23 **DECLARATION OF LAWRENCE WEINSTEIN**

24 I, Lawrence Weinstein, declare as follows:

25 1. I submit this declaration in support of Plaintiff's Motion for
26 Attorneys' Fees and Expenses and for Class Representative Service Awards. The
27

1 matters stated herein are true of my own knowledge or, where indicated, I am
2 informed and believe that they are true. If called upon as a witness, I could and
3 would competently testify as follows.

4 2. I am the named Plaintiff in the above captioned case.

5 3. I understood that by stepping forward as named plaintiff in this case, I
6 was taking certain risks, and that it was likely to generate some publicity and be
7 associated with my name in the future. I was also aware of the negative notoriety
8 associated with being a named plaintiff and class representative, and that stepping
9 forward as a plaintiff in this lawsuit may have a negative impact on my ability to
10 find future employment.

11 4. As a named Plaintiff, I have understood my duty to act in the best
12 interest of the Class as a whole, which I believe I have done.

13 5. I have participated in this litigation throughout its pendency. My
14 participation has included:

15 a) initial phone calls and meetings with class counsel;

16 c) prior to filing complaint, extensive discussions with attorney Dennis
17 Moss, on the phone and in person, regarding day to day operations of the
18 residential inspection business;

19 d) locating, providing and explaining to counsel all documents and emails I
20 had regarding Defendant and vendors of Defendant;

21 e) meeting with class counsel to review and respond to interrogatories and
22 requests for production of documents;

23 f) assist class counsel in preparation for depositions of David Euredjian,
24 and Defendant's Person Most knowledgeable;

25 g) review and analyze boxes of documents produced by Defendant;

26 g) preparation for my deposition;

27 g) deposition;

- 1 h) review deposition transcript;
- 2 i) participate in pre-mediation settlement discussions ;
- 3 j) declaration input and review in connection with Motion;
- 4 k) phone calls in which class counsel debriefed me on developments as the
- 5 case progressed;
- 6 l) extensive collaboration with class counsel in preparation for mediation;
- 7 m) attendance at and active participation at day-long mediation;
- 8 n) numerous phone calls during months of post-mediation negotiations;
- 9 o) review of MOU and Final Settlement; and
- 10 p) calls and a meeting regarding claims and claims rate issues.

11 6. I approved and support the settlement because I believe that it is in the
12 best interests of the Class.

13 7. To date, I conservatively estimate I spent no less than 85 hours of time in
14 connection with this case.

15 8. I live in Redlands, California. With one exception, whenever I met with
16 class counsel, it was necessary for me to travel to Sherman Oaks, California. I
17 travelled to San Diego, California to attend the mediation. In connection with my
18 deposition preparation and deposition, I spent two days and stayed overnight in
19 the Los Angeles area.

20 I declare under penalty of perjury, under the laws of the State of California,
21 that the foregoing is true and correct.

22 Executed this 1st day of June, 2018, at Redlands, California.

23
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28


Lawrence Weinstein