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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

QIUZI HU, an individual, **EDWIN RAMIREZ**, an individual, **IVAN RONCERIA**, an individual, **WENZHI FEI**, an individual, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

JOSE M. PLEHN-DUJOWICH, a.k.a. JOSE M. PLEHN, an individual; **BIZQUALIFY LLC**, a California limited liability company; and **POWERLYTICS, INC.**, a Delaware corporation,

Defendants.

Case Number: 3:18-cv-01791-JCS

Honorable Joseph C. Spero

NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES, COSTS, AND INCENTIVE AWARDS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: February 14, 2020

Time: 2:00 p.m.

Courtroom: G

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on February 14, 2020, at 2:00 p.m., or as soon thereafter as the matter may be heard before the Honorable Joseph C. Spero in Courtroom G of the above-entitled court located at 450 Golden Gate Avenue, San Francisco, California, Plaintiffs Qiuzi Hu, Edwin Ramirez, Ivan Ronceria, and Wenzhi Fei (collectively, “Class Representatives”), on behalf of themselves and the Settlement Class, will and hereby move the Court for an order awarding (1) \$300,000 in attorneys’ fees and expenses, and (2) incentive award payments to Class Representatives in the following amounts: \$6,000 to Plaintiff Qiuzi Hu; \$7,000 to Plaintiff Edwin Ramirez; \$5,000 to Plaintiff Ivan Ronceria; and \$2,000 to Plaintiff Wenzhi Fei.

This Motion is brought pursuant to the Parties’ Stipulation of Class Action Settlement and Release of Claims (“Class Settlement Agreement”) (Dkt. 99-1¹) and Rule 23 of the Federal Rules of Civil Procedure, and is based on this notice, the supporting Memorandum of Points and Authorities, the supporting declarations filed herewith, and the pleadings and papers on file in this action and any other matter of which this Court may take notice.

Respectfully submitted,

Date: November 18, 2019

DHILLON LAW GROUP INC.

By: /s/ Harmeet K. Dhillon

Harmeet K. Dhillon (SBN: 207873)

Krista L. Baughman (SBN: 264600)

Gregory R. Michael (SBN: 306814)

Attorneys for Plaintiffs and Settlement Class

¹ The unredacted Class Settlement was filed under seal with the Court on August 9, 2019. Dkts. 100-4, 108.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to Sections 3.5.1 and 3.5.2 of the Class Settlement Agreement,² Class Representatives respectfully move this Court for an award of (1) attorneys' fees and costs to Class Counsel totaling \$300,000 to compensate them for their work in achieving a substantial Settlement on behalf of the Settlement Class, and for (2) incentive payments to Class Representatives in the total amount of \$20,000, to be divided as follows: \$6,000 to Plaintiff Qiuzi Hu; \$7,000 to Plaintiff Edwin Ramirez; \$5,000 to Plaintiff Ivan Ronceria; and \$2,000 to Plaintiff Wenzhi Fei.

This Settlement arises from Class Representatives' allegations that Defendants Jose M. Plehn-Dujowich and BizQualify, LLC fraudulently misled approximately 240 persons, primarily university students, into enrolling in Defendants' online Global Financial Data Project, which Defendants falsely advertised as being operated by the University of California. An estimated minimum of 140 individuals paid \$2,413 each (and sometimes more) to enroll in the GFDP, only later to find out that the GFDP was not what Defendants professed it to be.

This case provided unique challenges, including prolonged periods in which Defendants refused to participate in this litigation and the assertion of novel claims based on theories of employment. After conducting a thorough pre-filing investigation; pursuing early mediation; taking efficient yet comprehensive discovery; and securing certification of the Class, California Subclass, and FLSA Collective, Class Counsel and Class Representatives were able to negotiate the terms of this Settlement. The Class Settlement Agreement provides for the creation of a Settlement Fund, of which \$375,000 is to be allocated for payments to the Settlement Class, to be secured by a Joint Stipulation for Conditional Entry of Final Judgment in the amount of \$1,000,000 and a Stock Pledge and Security Agreement signed by Dr. Plehn-Dujowich.

At the time of this filing, approximately 80 Claims have been received by Class Counsel. While the precise sum due to each Settlement Class Member will not be known until after the Claims Period concludes on December 20, 2019, the current trend of submissions indicates that all

² All capitalized words are given their definitions set forth in the Class Settlement Agreement. Dkt. 99-1.

1 claimants will fully recover the course fees they paid to Defendants, if not more—an excellent
2 result for the Settlement Class.

3 Under the loadstar calculation method—which was agreed upon by the Parties and is
4 appropriately applied here, where there exist applicable fee shifting statutes—Class Counsel’s time
5 multiplied by reasonable hourly rates amounts to more than \$533,000 in loadstar fees. Class
6 Counsel also incurred out of pocket costs and expenses incurred in investigating, prosecuting, and
7 settling this case—including in their capacity as Settlement Administrator—in the total amount of
8 \$13,208.62. Accordingly, the issuance of an award of \$300,000 for fees and costs is exceedingly
9 reasonable.

10 Courts frequently grant incentive awards to named plaintiffs in class actions such as this
11 one. Here, Class Representatives request that the Court award a total amount of \$20,000 in the form
12 of such incentive awards, to be divided amongst the four Class Representatives as follows: \$6,000
13 to Plaintiff Qiuzi Hu; \$7,000 to Plaintiff Edwin Ramirez; \$5,000 to Plaintiff Ivan Ronceria; and
14 \$2,000 to Plaintiff Wenzhi Fei. Each of the Class Representatives made substantial contributions to
15 this case, including investigating the circumstances giving rise to this action, retaining counsel,
16 providing testimony, and mediating and settling this case. Their contributions to this case have
17 provided the Settlement Class Members—many of whom reside abroad—an opportunity to claim
18 compensation from Defendants that would likely have been impractical for such Members to
19 achieve on their own. Class Representatives amply deserve to be compensated for their time and
20 effort in obtaining this Settlement on behalf of the Settlement Class.

21 As set forth in the Class Settlement Agreement, the amounts awarded by this Court in the
22 form of attorneys’ fees and costs and incentive awards will have no bearing on the amounts
23 allocated to each Settlement Class Member. Class Representatives respectfully request that the
24 Court issue an order awarding (1) \$300,000 in attorneys’ fees and expenses, and (2) incentive
25 award payments to Class Representatives in the following amounts: \$6,000 to Plaintiff Qiuzi Hu;
26 \$7,000 to Plaintiff Edwin Ramirez; \$5,000 to Plaintiff Ivan Ronceria; and \$2,000 to Plaintiff
27 Wenzhi Fei.

28 //

II. NATURE OF THE CASE

A. Factual Background

Between July 2016 to April 2017, the Settlement Class Members (approximately 240 individuals), including Class Representatives, enrolled in Defendants' online educational program, the GFDP. Zhang Declaration ISO Class Certification Motion (Dkt. 60-12) ("Zhang Decl."), ¶¶3-5; Fei Declaration ISO Class Certification Motion (Dkt. 60-8) ("Fei Class Cert. Decl."), ¶3; Hu Declaration ISO Class Certification Motion (Dkt. 60-9) ("Hu Class Cert. Decl."), ¶3; Ramirez Declaration ISO Class Certification Motion (Dkt. 60-10) ("Ramirez Class Cert. Decl."), ¶3; Ronceria Declaration ISO Class Certification Motion (Dkt. 60-11) ("Ronceria Class Cert. Decl."), ¶3; Dhillon Declaration ISO Class Certification Motion (Dkt. 60-2) ("Dhillon Class Cert. Decl. "), ¶¶6-12.

Defendants advertised the GFDP as being operated by the University of California ("UC"); it was not. Zhang Class Cert. Decl., Exs. 1-2; Hu Class Cert. Decl., ¶3; Ramirez Class Cert. Decl., ¶3; Ronceria Class Cert. Decl., ¶3; Fei Class Cert. Decl., ¶3. Despite approximately 140 Settlement Class Members paying \$2,413 (and sometimes more) in the form of a "course fee," and committing substantial time and effort to Defendants' program, Defendants failed to provide the promised educational instruction, UC course certifications, or letters of recommendation. Dhillon Class Cert. Decl., ¶10; Zhang Class Cert. Decl., ¶5, Exs. 1-2; Hu Class Cert. Decl., ¶¶3-9; Ramirez Class Cert. Decl., ¶¶3-9; Ronceria Class Cert. Decl., ¶¶3-9; Fei Class Cert. Decl., ¶¶3-9. This Action followed.

B. Procedural History

Class Representatives initiated this Action on March 22, 2018, asserting individual and putative class and collective action claims against Dr. Plehn-Dujowich and BizQualify. Dkt. 1. On June 29, 2018, Dr. Plehn-Dujowich and BizQualify filed a motion to dismiss claims one through five of the complaint under Fed. R. Civ. P. Rule 12(b)(6) for failure to state a claim. Dkt. 32. Class

Representatives responded to the motion on July 31, 2018, by filing the First Amended Complaint (“FAC”).³ Dkt. 40.

The operative FAC asserts thirteen causes of action for: (1) failure to pay minimum wage in violation of Federal Fair Labor Standards Act (“FLSA”) (29 U.S.C. §§ 201, et seq.); (2) failure to pay minimum wage in violation of state law (Cal. Lab. Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1); (3) failure to provide accurate wage statements (Cal. Lab. Code § 226); (4) failure to reimburse required business expenses (Cal. Lab. Code § 2802); (5) failure to pay earned wages upon discharge (Cal. Lab. Code §§ 201-203); (6) false advertising (Cal. Bus. & Prof. Code § 17500); (7) unfair competition (Cal. Bus. & Prof. Code § 17200); (8) violation of the California Consumer Legal Remedies Act (Cal. Civ. Code § 1750, et seq.); (9) fraud (Cal. Civ. Code §§ 1709, 1710); (10) negligent misrepresentation (Cal. Civ. Code § 1710(2)); (11) breach of implied contract; (12) quantum meruit; and (13) civil theft (Cal. Pen. Code § 496). Dkt. 40. Claim one (FLSA) is asserted by all Class Representatives and the FLSA Collective. Claims two through five (California Labor Code violations) are asserted by Class Representatives Hu, Ramirez, and Fei and the California Subclass. Claims six through thirteen are asserted by all Class Representatives and the Class.

Defendants failed to timely respond to the FAC and the Court entered default against Defendants on September 13, 2018. Dkt. 52. On February 25, 2019, the Court granted Class Representatives’ motion to certify the Class and California Subclass, and to conditionally certify the FLSA Collective, defined as follows:

Class: All persons who enrolled in the [GFDP]. Excluded from the Class are Defendants’ officers and directors and the immediate families of the Defendants’ officers and directors. Also excluded from the Class are the Defendants’ legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or have had a controlling interest.

California Subclass: All members of the Class who resided in California during any portion of their participation in the [GFDP], and/or who performed work in California for the [GFDP], at any point.

³ The FAC joined Powerlytics, Inc. as a defendant to the Action. On February 19, 2019, the Court granted Class Representatives’ stipulated request to voluntarily dismiss all claims against Powerlytics, Inc. Dkt. 76.

FLSA Collective: All persons who enrolled in the [GFDP] while residing in, or who performed work for the project in, the United States or any territory of possession of the United States.

Dkt. 80. By definition, all members of the California Subclass and FLSA Collective are also members of the Class.

Defendants filed a motion to set aside the defaults entered against them on March 5, 2019, and requested that the Action be stayed and referred to a magistrate judge for a judicial settlement conference, which motion Class Representatives opposed. Dkts. 83, 87, 88. On March 6, 2019, the Court issued an Order Rescinding Authorization to Disseminate Class Notices in light of Defendants' motion to set aside the defaults. Dkt. 84. The Court held a hearing on Defendants' motion to set aside the defaults on April 9, 2019, took Defendants' motion under submission, and referred this matter to Chief Magistrate Judge Joseph C. Spero for a settlement conference to be held on April 23, 2019.

Following an arm's-length negotiation, the Parties reached terms of settlement at the April 23, 2019 settlement conference. The Parties thereafter entered into the Class Settlement Agreement. Dkt. 99-1. The Parties jointly moved for preliminary approval of the Settlement, which the Court granted on September 16, 2019, and the Court concurrently granted Defendants' motion to set aside the defaults.⁴ Dkts. 99, 107, 109. A final approval hearing for the Class Settlement is scheduled to be heard concurrently with this Motion.

III. THE SETTLEMENT PROVIDES SUBSTANTIAL RELIEF TO THE CLASS

The Class Settlement Agreement defines the Settlement Class as "all Class Members," including Class Representatives, who do not opt out of the Settlement:

Settlement Class: All Class Members, including Class Representatives, who do not exclude themselves from the Class or Settlement Class, pursuant to the procedures set forth in Section 6.3 of the Settlement Agreement and the Class Notice.

⁴ On October 28, 2019, this action was reassigned to Chief Magistrate Judge Joseph C. Spero. Dkt. 110.

Dkt. 99-1, p. 10. Thus, by definition, the proposed Settlement Class is coextensive with the certified Class, which in turn encompasses all members of the California Subclass and FLSA Collective. Following final approval of this Settlement by the Court, the Court may properly decertify the California Subclass and FLSA Collective, enter final judgment as to the Settlement Class and Defendants, and dismiss with prejudice all claims asserted in the Action, while retaining jurisdiction to enforce the Settlement Agreement.

A. Settlement Consideration

In exchange for dismissal and release of all claims against Defendants by the Settlement Class, Defendants have agreed to establish a Settlement Fund in an amount no less than \$375,000 and no greater than \$695,000, comprised of the following:

(1) \$375,000 to be allocated and paid to the Settlement Class in accordance with the terms of the Class Settlement Agreement;

(2) incentive payments to the Class Representatives in an amount to be determined by the Court, and not to exceed a combined total of \$20,000; and

(3) attorneys' fees and costs, in an amount to be determined by the Court and paid to Class Counsel, not to exceed \$300,000. Dkt., 99-1 § 3.1.

Within ninety days of this Court's final approval of the Class Settlement, Defendants agree to pay \$150,000 into the Settlement Fund, followed by monthly payments of \$10,000 until the Settlement Fund is fully paid. Dkt., 99-1 § 3.2. Class Counsel, in its capacity as Settlement Administrator, will hold all funds in, and disperse all funds from, a Settlement Account opened and used solely for the purposes of effectuating this Settlement.

Upon final approval of the Class Settlement by the Court, Defendants have also agreed to sign the Joint Stipulation for Conditional Entry of Final Judgment ("Joint Stipulation"), attached as Exhibit 1 to the Settlement Agreement. Dkt., 99-1 § 3.3. The Joint Stipulation requests that the Court enter a Stipulated Judgment in the amount of \$1,000,000 against Defendants, jointly and severally, in the event that (a) Defendants fail to perform any obligation under the Settlement Agreement; (b) Class Representatives have given Defendants written notice specifying the failure to perform; and (c) after the expiration of thirty days following service of such written notice, Defendants have failed

1 to cure the failure to perform. Defendants agree that upon signing the Joint Stipulation, all factual
 2 admissions stated therein, including the proposed judgment attached thereto, will have preclusive
 3 effect in any future proceeding between either or both Defendants and any Settlement Class
 4 Member.

5 Defendant Plehn-Dujowich has also agreed to sign the Stock Pledge and Security Agreement,
 6 attached as Exhibit 2 to the Settlement Agreement, upon final approval of the Settlement Agreement
 7 by the Court. Dkt., 99-1 § 3.4. Upon signing, Defendant Plehn-Dujowich will pledge and collaterally
 8 assign shares in Powerlytics, Inc., to the Settlement Administrator, for the benefit of the Settlement
 9 Class. In the event of any default, the Settlement Administrator would be entitled to dispense with
 10 the shares and allocate the proceeds to the Settlement Class.

11 **B. Notice to the Settlement Class**

12 Class Counsel, in its capacity as Settlement Administrator, has diligently carried out the
 13 Notice Program set forth in Section 6 of the Settlement Agreement. Dkt., 99-1 § 6. Class Counsel
 14 disseminated the Class Settlement Notice by mail, email, and WeChat where possible. At the time of
 15 this filing, Class Counsel has received approximately 80 Claims, almost entirely through the
 16 Settlement Website, which enables claimants to fill out, e-sign, and submit a Claim online.

17 **C. Claim Submission, Allocation, and Payment of Settlement Funds**

18 Each Settlement Class Member is entitled to submit one claim for financial compensation on
 19 or before December 20, 2019. Dkt. 99-1 § 8. Any Settlement Class Member who does not submit a
 20 valid, timely Claim will not be entitled to any financial compensation from the Settlement Fund.

21 The Settlement creates a Settlement Fund in the total amount of up to \$695,000. The
 22 Settlement Fund shall be paid out in the following order:

- 23 (1) Each Class Representative shall be refunded their \$2,413 course fee and shall, subject to
 24 Court approval, receive an incentive payment not to exceed a combined total of \$20,000,
 25 split amongst the four Class Representatives;
- 26 (2) Any award of attorneys' fees and costs approved by the Court shall be paid to Class Counsel
 27 under the Settlement Agreement, which amount is not to exceed \$300,000;

(3) The remaining \$345,348 of the Settlement Fund will be paid to the Settlement Class Members who submit a valid and timely Claim, in the order in which the Claims were received by the Settlement Administrator.

The Settlement Agreement gives priority to those Settlement Class Members who submit a valid Claim and proof that he or she paid a “course fee” to enroll in the GFDP. Accordingly, if the total amount of documented “course fees” paid by Settlement Class Members is equal to or greater than \$345,348, those Settlement Class Members who fail to submit documentation of any “course fee” will not receive any settlement payment, while those who do submit such documentation will receive a pro rata share of the remaining Settlement Fund, based on the amount he or she paid in comparison to the course fee amounts paid by all other claimants. Dkt. 99-1 § 8.3.

If the total amount of documented “course fees” paid by Settlement Class Members is less than \$345,348, then the funds will be split as follows: all those who submitted proof of payment of a “course fee” will be entitled to a full refund of the amount paid, and pro rata split of any remaining funds; those who do not submit such proof will be entitled to receive a pro rata split of any funds remaining after refunds of course fees have been allocated to the other claimants. Dkt. 99-1 § 8.3.

Defendants are required by the Settlement Agreement to make payments on a monthly basis for approximately five years. Dkt. 99-1 § 3.2. All disbursements to the Settlement Class Members shall be made in the order that the Claims were received by Class Counsel (in its capacity as Settlement Administrator). Dkt. 99-1 § 3.5.3.

D. Settlement Administration

Class Counsel has agreed to serve as the Settlement Administrator for this Settlement. As Settlement Administrator, Class Counsel has been, and will continue to be, responsible for all administrative tasks associated with the Settlement, including: (a) arranging for dissemination of the Class Notices and Claim Forms to Settlement Class Members, in accordance with the Notice Program; (b) answering inquiries from Settlement Class Members; (c) receiving and maintaining on behalf of the Court and the Parties any correspondence regarding requests for exclusion from the Settlement; (d) establishing the Settlement Website that posts Class Notices, Claim Forms, and other related documents, including privileged access to an unredacted version of the Settlement Agreement; (e) receiving and processing Claims and distributing cash payments to Class

Representatives, Class Counsel, and Settlement Class Members; and (g) otherwise assisting with implementation and administration of the Settlement Agreement terms. Dkt. 99-1 § 7.

The attorneys' fees incurred in connection with Class Counsel's duties as Settlement Administrator are intended to be accounted for in the Fee and Expense Award set by the Court at the final approval hearing. Dkt. 99-1 § 7.2. Accordingly, all fees and costs associated with Class Counsel's work as Settlement Administrator has been included in its assessment and request for fees and costs in this Motion. Class Counsel will not be entitled to claim any additional fees following completion of its duties as Settlement Administrator. *Id.*

E. Incentive Payments to Class Representatives

The Parties have agreed that as compensation for their diligence in prosecuting this Action on behalf of the Settlement Class that Class Representatives deserve incentive payments in an amount to be determined by the Court. Specifically, the Settlement Agreement proposes the following: Hu shall receive an incentive payment of up to \$6,000; Ramirez shall receive an incentive payment of up to \$7,000; Ronceria shall receive an incentive payment of up to \$5,000; and Fei shall receive an incentive payment of up to \$2,000. Dkt. 99-1 § 3.5.1.

F. Attorneys' Fees and Costs

Several claims asserted by the Settlement Class entitle the Settlement Class to recover reasonable attorneys' fees and costs. *See* 29 U.S.C. § 216(b); Cal. Lab. Code §§ 203, 226(h), 1194, 2802; Cal. Penal Code § 496(c); Cal. Civ. Code § 1780(d). The Parties have agreed that in conjunction with the final approval of the Settlement Agreement, the Court shall determine the reasonable attorneys' fees and costs recoverable by the Settlement Class (the "Fee and Expense Award"), which is to be paid to Class Counsel. Dkt. 99-1 § 11.

The Class Settlement Agreement provides that the Fee and Expense Award will be calculated using a lodestar method (i.e. reasonable hourly rate multiplied by reasonable hours expended), and that the Fee and Expense Award shall not exceed \$300,000. Dkt. 99-1 § 3.5.2. The Fee and Expense Award paid by Defendants shall constitute full satisfaction of Defendants' obligations to pay amounts to any person, attorney, or law firm for attorneys' fees or costs in this Action on behalf of Class Representatives and all Settlement Class Members.

Class Counsel will not be separately compensated in connection with its role as Settlement Administrator. Costs associated with the distribution of settlement payments will either be paid for from the Settlement Fund or, where possible, deducted from the settlement amount payable to the claimant on whose behalf the cost is incurred (e.g., if a claimant requests that a check be mailed to China at a cost of \$2.00, rather than sent by some other less expensive means, that claimant shall bear the \$2.00 cost associated with that request, via deduction from his/her settlement payment).

G. *Cy Pres*

No Settlement Funds are to be returned to Defendants. If, after the final settlement distribution is made to the Settlement Class Members, any portion of the Settlement Fund remains unclaimed, those monies will, subject to the Court's final approval, be paid to the Parties' agreed-upon *cy pres* recipient: UC Berkeley Extension, located at 1995 University Ave., Suite 200, Berkeley, California 94704-7000, subject to the Court's approval in the Final Approval Order. Dkt. 99-1 § 3.5.5.

UC Berkeley Extension offers relatively low cost educational opportunities of a nature similar to that advertised, but not delivered, by Defendants' GFDP. According to information on its website, UC Berkeley Extension does not receive funding from the University of California, and donations it receives are used to develop new curricula and educational formats; create and sustain new public service programs; renovate classroom facilities; and keeping course fees affordable to low-income students.⁵ Thus, selection of UC Berkeley Extension as the *cy pres* recipient is highly appropriate, because it offers courses of a nature similar to that which the Settlement Class Members intended to enroll in when enrolling in the GFDP.

IV. ARGUMENT

A. Class Counsel Are Entitled to Attorneys' Fees and Costs.

Rule 23(h) of the Federal Rules of Civil Procedure provides that, "[i]n a certified class action, the court may award reasonable attorneys' fees and nontaxable costs that are authorized by

⁵ UC Berkeley's website may be accessed at the following url:
<https://extension.berkeley.edu/static/about/give/?linkid=footernav>.

1 law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). “Where a settlement produces a common
 2 fund for the benefit of the entire class, courts have discretion to employ either the lodestar method or
 3 the percentage-of-recovery method.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942
 4 (9th Cir. 2011). Because the benefit to the class is “easily quantified in common-fund settlements,”
 5 district courts are permitted to award attorneys a percentage of the common fund in lieu of the often
 6 more time-consuming task of calculating the lodestar.” *Id.* However, “[t]he ‘lodestar method’ is
 7 appropriate in class actions brought under fee-shifting statutes (such as federal civil rights, securities,
 8 antitrust, copyright, and patent acts)” *Id.* at 941. “The lodestar figure is calculated by
 9 multiplying the number of hours the prevailing party reasonably expended on the litigation (as
 10 supported by adequate documentation) by a reasonable hourly rate for the region and for the
 11 experience of the lawyer.” *Id.*

12 Here, Class Representatives pursued claims under statutes with fee-shifting provisions. *See*
 13 29 U.S.C. § 216(b); Cal. Lab. Code §§ 203, 226(h), 1194, 2802; Cal. Pen. Code § 496(c); Cal. Civ.
 14 Code § 1780(e); *Kim v. Euromotors W./The Auto Gallery*, 149 Cal. App. 4th 170, 181 (2007) (a
 15 plaintiff is a “prevailing plaintiff” under the Consumer Legal Remedies Act when he obtains net
 16 monetary recovery “because of a judgment or settlement”). Accordingly, the lodestar calculation
 17 method is appropriate.⁶ *See, e.g., Apple Computer, Inc. v. Superior Court*, 126 Cal. App. 4th 1253,
 18 1270 (2005) (attorney’s fees “under a fee-shifting statute are determined using the lodestar
 19 method”); *Tait v. BSH Home Appliances Corp.*, No. SACV100711DOCANX, 2015 WL 4537463, at
 20 *11 (C.D. Cal. July 27, 2015) (using the lodestar approach to award fees in excess of \$4,000,000
 21 where the percentage of recovery method would justify a starting point of only \$300,000 to
 22 \$400,000); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Products Liab. Litig.*, 55 F.3d 768,
 23 821 (3d Cir. 1995) (“ ‘[b]ecause,’ in a fee-shifting case, ‘the lodestar award is de-coupled from the
 24 class recovery, the lodestar assures counsel undertaking socially beneficial litigation (as legislatively
 25 identified by the statutory fee shifting provision) an adequate fee irrespective of the monetary value
 26 of the final relief achieved for the class.’ ”).

27 ⁶ The Class Settlement Agreement specifies that the lodestar calculation method shall apply to the
 28 determination of the Fee and Expense Award. Dkt. 99-1 § 3.5.2.

B. The Requested Fee and Expense Award is Fair, Reasonable, and Justified.

1. The requested fee award is presumptively reasonable because it resulted from arm's length negotiations.

Courts have encouraged litigants to resolve fee issues by arms-length negotiation. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998) *overruled on other grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011). Indeed, “[i]deally, of course, litigants will settle the amount of a fee.” *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). While the Court must perform its own evaluation to verify that the requested fees are reasonable and not the product of collusion, it should give weight to the judgment of the Parties and their counsel where, as here, the fees were agreed to through arm's length negotiations after the parties agreed on the other key deal terms. *See, e.g., In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128, 2008 WL 4820784, * 3 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement).

Here, the Parties agreed to cap the fees and costs award at \$300,000, a product of an arms' length negotiation conducted with the assistance of Chief Magistrate Judge Joseph C. Spero, an experienced and well-respected settlement judge. Dkt. 92; Dhillon Decl., ¶16.⁷ They did so only after reaching an agreement on the other key terms of settlement—namely classwide monetary relief. Indeed, unlike many class settlements, there is no “clear sailing provision” in the Class Settlement Agreement; Defendants remain free to oppose this Motion, and the amount of fees ultimately awarded by the Court will not impact the amounts paid to the Settlement Class Members. Dhillon Decl., ¶19. These facts serve as “independent confirmation that the fee was not the result of collusion or a sacrifice of the interests of the class.” *Hanlon*, 150 F.3d at 1029.

2. Class Counsel's fees are reasonable under the lodestar calculation method.

“There is a strong presumption that the lodestar figure represents a reasonable fee.” *Fischel v. Equitable Life Assur. Soc'y of the United States*, 307 F.3d 997, 1007 (9th Cir. 2002) (internal

⁷ The Parties previously attempted, unsuccessfully, to reach settlement through private mediation in June 2018.

quotation omitted). “The lodestar method requires multiplying the number of hours the prevailing party reasonably expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region and for the experience of the lawyer.” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir. 2015) (internal quotation omitted). A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. *See Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986).

The efforts expended by Class Counsel were manifestly reasonable, and served to directly benefit the Class. In total, Class Counsel expended approximately 1,243 hours during the nearly two years of representing Class Representatives and Class, broken down as follows:

Attorney/Staff Name ⁸	Year of Admission to CA Bar	Years of Practice	Number of Hours	Hourly Rate ⁹	Total
Harmeet K. Dhillon, Esq.	2000 (1995 – NY)	24	194.2	\$700-900	\$164,062.50
Krista L. Baughman, Esq.	2009	10	18.7	\$450-500	\$8,855.00
Gregory R. Michael, Esq.	2015	4	853.9	\$325-400	\$314,587.00
Peng Shao, Esq.	2017	2	87.9	\$300	\$25,470.00
Dorothy Yamamoto, Esq.	2015	4	18	\$300	\$5,400.00
Michael Fleming, Esq.	2018	1	15.9	\$200-300	\$3,580.00
Rav Grewal, Esq.	2015	4	.5	\$350	\$175.00
Paralegals/Law Clerks (Parsa Nozzari, Soha Malik, Stephen Neilsen)	—		54.7	\$200	\$10,940.00
Total			1,243.8		\$533,069.50

All the time that Class Counsel devoted to litigating this case was reasonably necessary and directly benefitted the Class. Class Counsel conducted an extensive investigation both before filing

⁸ Litigation on this case has spanned nearly two years with staff turnover in those years.

⁹ Many of the attorney’s hourly rates have risen during the course of this litigation.

1 the initial complaint and in the months that followed, including by interviewing numerous witnesses,
 2 issuing seven subpoenas, and seeking the voluntary production of documents and information from
 3 Defendants and other witnesses. Dhillon Decl., ¶¶2-4. Class Counsel also conducted substantial
 4 research in furtherance of the claims asserted by Class Representatives, including their novel
 5 employment claims. Dhillon Decl., Ex. 1-2. After initiating this action, Class Counsel also attempted
 6 to reach early settlement with Defendants through private mediation. Dhillon Decl., ¶¶6-9.
 7 Unfortunately, mediation was unsuccessful, and Defendants thereafter ceased participating in this
 8 action for several months, until they later resurfaced and sought to set aside the defaults entered
 9 against them by the Court. Dhillon Decl., ¶¶10-11.

10 As a result of Class Counsel's efforts, Class Representatives successfully secured
 11 certification of the Class and ultimately this Settlement. Dkt. 80. The amounts set forth above do not
 12 include the additional time that Class Counsel will spend seeking final approval of, and
 13 implementing the Settlement, including assisting Settlement Class Members with their claims and
 14 overseeing settlement administration generally over the next five years. These responsibilities will
 15 require substantial work by Class Counsel over the coming months and years. Dhillon Decl., ¶¶21-
 16 22.

17 Class Counsel's hourly rates range from \$200 per hour for paralegal and law clerks to \$900
 18 per hour for lead trial counsel. Their respective hourly rates are manifestly reasonable when
 19 considered in the context of their respective years of litigation experience and their educational and
 20 work histories. Harmeet K. Dhillon is a prominent trial lawyer who graduated from University of
 21 Virginia School of Law and then clerked for the Honorable Paul Niemeyer of the United States
 22 Court of Appeals, Fourth Circuit. Dhillon Decl., ¶24. Gregory R. Michael, a 2015 graduate from UC
 23 Hastings, performed over 65% of the work at rates of \$300 to \$400 per hour, under the supervision
 24 of Ms. Dhillon. Michael Decl., ¶¶2-5. Such rates are reasonable in the San Francisco Bay Area. *See*
 25 *Ridgeway v. Wal-Mart Stores Inc.*, 269 F. Supp. 3d 975, 985 (N.D. Cal. 2017) (collecting cases);
 26 *Superior Consulting Servs., Inc. v. Steeves-Kiss*, No. 17-CV-06059-EMC, 2018 WL 2183295, at *5
 27 (N.D. Cal. May 11, 2018) ("district courts in Northern California have found that rates of \$475-\$975
 28 per hour for partners and \$300-\$490 per hour for associates are reasonable").

When calculating attorneys' fees under the lodestar method, courts may also consider other "enhancement" factors to adjust the lodestar award.¹⁰ In this case, the fee requested by Class Counsel is substantially less than the lodestar, equating to a multiplier of approximately 0.56, or 56% of the actual lodestar fees incurred. As such, no consideration of enhancements factors is necessary; however, consideration of such factors further supports the amount of fees requested. Class Counsel undertook representation of this matter on a pure contingency-fee basis, shouldering the risk of expending substantial costs and time in litigating the action without any monetary gain in the event of an adverse judgment. Dhillon Decl., ¶34; *see also In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994) ("Contingent 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."). Class Counsel also secured an excellent result for the Class: an opportunity for those harmed by Defendants' false representations to claim compensation. This result was achieved, in part, through the assertion of novel claims based on the theory that the Settlement Class Members were employees of the GFDP, and entitled to substantial compensation as a result of their work for Defendants. Class Counsel are also members of a small litigation boutique, and the substantial time and resources devoted to this litigation has precluded their acceptance of other employment. Dhillon Decl., ¶34. Accordingly, the requested fee amount is reasonable, and should be approved by the Court.

3. Class Counsel is entitled to recover reasonable costs.

Attorneys are entitled to "recover as part of the award of attorneys' fees those out-of-pocket expenses that would normally be charged to a fee paying client." *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994); *Alvarado v. Nederend*, No. 1:08-CV-01099 OWW DL, 2011 WL 1883188, at

¹⁰These factors include the following: (1) the risks presented by the contingent nature of the case; (2) the result obtained and the importance of the lawsuit to the public; (3) the novelty and difficulty, of the questions involved and the skill requisite to perform the legal service properly; and (4) the preclusion of other employment by the attorney due to acceptance of the case. *See Parkinson v. Hyundai Motor America*, 796 F Supp. 2d 1160, 1173-75 (C.D. Cal. 2010).

*10 (E.D. Cal. May 17, 2011) (noting that “filing fees, mediator fees, ground transportation, copy charges, computer research, and database expert fees ... are routinely reimbursed in these types of cases”) (citation omitted). Here, Class Counsel incurred \$13,208.62 in costs necessary to secure the resolution of this litigation. Dhillon Decl., ¶33. This amount includes costs for mediation fees, deposition and travel expenses, filing and service fees, and other typical costs such as printing, copying, and Westlaw research charges. Dhillon Decl., Ex. 2. Class Counsel will also incur additional costs in bringing a motion for final approval of the Class Settlement Agreement, and in its capacity as Settlement Administrator; counsel should be fully reimbursed for these costs.

4. The “percentage of the fund” cross-check supports the reasonableness of the fee request.

A common cross-check regarding the reasonableness of a fee award is its percentage of the total value of the benefits conferred on the class. *See Hanlon*, 150 F.3d at 1029. In this case, Class Counsel secured \$375,000 for the Settlement Class and Class Representatives, and request an award of \$300,000 in additional fees and costs. As per the Class Settlement Agreement, the amount ultimately awarded by the Court for fees and costs will not affect the amount of compensation available to the Settlement Class. Nevertheless, if this Settlement had been structured as a “common fund” settlement consisting of \$675,000, Class Counsel’s requested fees and costs award would amount to 44.4%.

While this figure is greater than the default 25%, it is justified in this case, where the claims asserted in the action include fee-shifting provisions, and, as discussed above, Class Counsel obtained an excellent result for the Settlement Class while asserting novel employment claims and agreed to represent Class Representatives on a contingency-fee basis. *Tait*, No. SACV100711DOCANX, 2015 WL 4537463, at *11 (using the lodestar approach to award fees in excess of \$4,000,000 where the percentage of recovery method would justify a starting point of only \$300,000 to \$400,000); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Products Liab. Litig.*, 55 F.3d at 821 (“ ‘[b]ecause,’ in a fee-shifting case, ‘the lodestar award is de-coupled from the class recovery, the lodestar assures counsel undertaking socially beneficial litigation (as legislatively

identified by the statutory fee shifting provision) an adequate fee irrespective of the monetary value of the final relief achieved for the class.’ ”).

C. The Class Representative Incentive Awards Are Reasonable.

“Incentive awards are fairly typical in class action cases,” but the decision to approve and the amount of such awards are matters within the court’s discretion. *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009); *see also In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000), as amended (June 19, 2000). Generally speaking, incentive awards are meant to “compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes to recognize their willingness to act as a private attorney general.” *Rodriquez*, 564 F.3d at 958-59. In assessing an incentive award request, the court must consider “the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions . . . [and] the amount of time and effort the plaintiff expended in pursuing the litigation.” *Staton v. Boeing Co.*, 327 F.3d 928, 977 (9th Cir. 2003).

The requested incentive awards—\$6,000 to Plaintiff Qiuzi Hu; \$7,000 to Plaintiff Edwin Ramirez; \$5,000 to Plaintiff Ivan Ronceria; and \$2,000 to Plaintiff Wenzhi Fei—are well justified. As set forth in the declarations filed with this Motion, Class Representatives devoted dozens of hours in order to bring this case on behalf of the Settlement Class. Hu Decl., ¶2; Ramirez Decl., ¶2; Ronceria Decl., ¶2; Fei Decl., ¶2. Their involvement included compiling and organizing a massive amount of evidence related to the GFDP, including by reaching out to the Settlement Class Members individually and by groups, as well as reviewing pleadings and other court filings, and, in the case of Edwin Ramirez, sitting for a deposition and attending mediation and a settlement conference in person. Dhillon Decl., ¶¶35-36. Class Representatives respectfully request that the Court approve the incentive awards in the amounts requested.

V. CONCLUSION

For the foregoing reasons, Class Representatives respectfully request that the Court grant the Motion for Attorneys’ Fees, Costs, and Incentive Awards, and issue an order awarding (1) \$300,000 in attorneys’ fees and expenses to Class Counsel, and (2) incentive award payments to Class

Representatives in the following amounts: \$6,000 to Plaintiff Qiuzi Hu; \$7,000 to Plaintiff Edwin Ramirez; \$5,000 to Plaintiff Ivan Ronceria; and \$2,000 to Plaintiff Wenzhi Fei.

Respectfully submitted,

Date: November 18, 2019

DHILLON LAW GROUP INC.

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