

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The Honorable Thomas S. Zilly

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

KEVIN G. BOYD, an individual, on
behalf of himself and all others similarly
situated,

Plaintiff,

v.

BANK OF AMERICA, N.A., and DOES 1
through 10, inclusive,

Defendant.

Case No. 2:18-cv-01207-TSZ

**CLASS COUNSEL’S NOTICE OF
MOTION AND MOTION FOR AN
AWARD OF ATTORNEYS’ FEES AND
COSTS AND AWARDED CLASS
REPRESENTATIVE SERVICE PAYMENT**

NOTE ON MOTION CALENDAR:
April 2, 2021

1 **TO THE COURT, ALL PARTIES, AND TO THEIR ATTORNEYS OF RECORD**
2 **HEREIN:**

3 **PLEASE TAKE NOTICE THAT**, on April 2, 2021, or as soon thereafter as counsel may
4 be heard by the Honorable Thomas S. Zilly, of the United States District Court, Western District
5 of Washington, located at 700 Stewart Street, Suite 15229, Seattle, WA 98101-9906, duly
6 appointed Class Counsel, Joshua H. Haffner and Graham G. Lambert of Haffner Law PC (“Class
7 Counsel”), will and hereby do move for an order awarding attorneys’ fees in the amount of
8 \$67,500.00 and expenses in the amount of \$6,608.13, and for permission to pay Class
9 representative Kevin G. Boyd an incentive award of \$5,000.00.

10 This motion is based on this notice, the accompanying Memorandum of Points and
11 Authorities, the declaration of Joshua H. Haffner, and all documents and arguments submitted in
12 support thereof.

13

14 DATED: January 14, 2021

HAFFNER LAW PC

15

16

By: /s/Graham G. Lambert

17

Joshua H. Haffner

18

Graham G. Lambert

19

Attorneys for Plaintiff

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. INTRODUCTION 1

II. OVERVIEW OF ACTION 2

III. THE SETTLEMENT BENEFITS OBTAINED..... 3

IV. THIS COURT SHOULD GRANT CLASS COUNSEL’S APPLICATION FOR ATTORNEYS’ FEES AND COSTS..... 3

 A. The Standard For Approval Of Attorneys’ Fees In A Class Action..... 3

 B. Class Counsel’s Requested Fee Is Reasonable Based On The Percentage Of The Fund Method..... 5

 1. The Results Achieved 5

 2. The Risks Of Litigation. 6

 3. The Skill Required And The Quality Of The Work 7

 4. The Contingent Nature Of The Fee 7

 5. Awards In Similar Cases..... 8

 6. The Settlement Was The Product Of Fair And Reasonable Negotiations..... 8

 C. Class Counsel’s Requested Fee Is Reasonable Based On The Lodestar Cross-Check..... 9

 1. Class Counsel’s Lodestar Is Reasonable 9

 2. Class Counsel’s Lodestar Multiplier Is Appropriate 10

 a. The Quality Of The Representation..... 10

 b. The Benefit Obtained For The Class 11

 c. The Complexity And Novelty Of The Issues Presented..... 11

 d. Risk Of Non-Payment..... 12

 D. The Court Should Also Award Class Counsel Their Reasonable Costs..... 12

1 V. THE INCENTIVE PAYMENT TO REPRESENTATIVE PLAINTIFF IS
2 FAIR AND REASONABLE 12

3 VI. CONCLUSION..... 14
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

TABLE OF AUTHORITIES

Cases

Barbosa v. Cargill Meat Solutions Corp., 297 F.R.D. 431 (E.D. Cal. 2013)..... 5, 8

Barnes v. The Equinox Grp., Inc., 2013 WL 3988804 (N.D. Cal. Aug. 2, 2013) 5, 8

Bowles v. Wash. Dep’t of Ret. Sys., 121 Wash.2d 52 (1993)..... 4

Castillo v. Bank of America, NA., 980 F.3d 723 (9th Cir. 2020)..... 4

Carranza v. Dovex Fruit Co., 190 Wash.2d 612 (2018).....11

Certification from United States Dist. Court for W. Dist. of Washington in Sampson v. Knight Transportation, Inc., 193 Wash.2d 878 (2019).....1, 6, 11, 12

Cook v. Niedert, 142 F.3d 1004 (7th Cir. 1998) 12

Graham v. DaimlerChrysler Corp, 34 Cal.4th 553 (2004)..... 7

Grunin v. International House of Pancakes, 513 F.2d 114 (8th Cir.), *cert. denied*, 423 U.S. 864 (1975)..... 4

Hanlon v. Chrysler Corp., 150 F.3d 1011 (9th Cir. 1998) 4, 9, 10

Hensley v. Eckerhart, 461 U.S. 424 (1983) 5

In re Bluetooth Headset Products Liability Litigation, 654 F.3d 935 (9th Cir. 2011) 9

In re Cont’l Ill. Sec. Litig., 962 F.2d 566 (7th Cir. 1992); 13

In re Dun & Bradstreet Credit Services Customer Litigation, 130 F.R.D. 366 (S.D. Ohio 1990).....13

In re Immunex Securities Litigation, 864 F.Supp. 142 (W.D. Wash. 1994).....13

In re Wash. Pub. Power Supply Sys. Sec. Litig., 19 F.3d 1291 (9th Cir. 1994).....7

Jones v. Amalgamated Warbasse Houses, Inc., 97 F.R.D. 355 (E.D.N.Y. 1982), *aff’d* 721 F.2d 881, *cert. denied* 446 U.S. 944 4

Kern Oil and Refining Co. v. Tenneco Oil Co., 792 F.2d 1380 (9th Cir. 1986), *cert. denied*, 480 U.S. 906 (1987) 3

Lewis v. Anderson, 692 F.2d 1267 (9th Cir. 1982)..... 4

1 *Lusby v. GameStop Inc.*, 2015 WL 1501095 (N.D. Cal. Mar. 31, 2015)..... 5, 8

2 *Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301 (9th Cir. 1990)..... 5

3 *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375 (1970)..... 4

4 *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268 (9th Cir. 1989).....4, 5

5 *Shaffer v. Cont’l Cas. Co.*, 362 F. App’x. 627 (9th Cir. 2010)..... 9

6 *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301 (9th Cir. 1990).....5

7 *Spicer v. Chicago Bd. Options Exchange Inc.*, 844 F.Supp. 1226 (N.D. Ill. 1993)..... 13

8 *Staton v. Boeing Co.*, 327 F.3d 938 (9th Cir. 2003)13

9 *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482 (E.D. Cal. 2010)..... 5, 8

10 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002).....3, 5, 6, 7, 9, 10

11 *Wert v. US Bank Corp.*, No. 13-cv-3130-BAS-AGS, 2017 WL 5167397 (S.D. Cal. 2017) 1

12 **Statutes**

13 28 U.S.C. § 1332(d)3

14 28 U.S.C. § 1712(b)(2)3

15 Code of Washington § 49.46.0904

16 Code of Washington § 49.52.0704, 6

17 **Rules**

18 Fed.R.Civ.Proc. 23(h)3

19

20

21

22

23

24

25

26

27

28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Duly designated Class Counsel respectfully seeks an order awarding attorneys’ fees in the amount of \$67,500.00 and expenses in the amount of \$6,608.13. The requested fee is the product of arm’s length negotiations between Class Counsel and Defendant Bank of America, N.A. (“Defendant” or “BofA”), which took place only after agreement had been reached on all other general terms of the class settlement. The fee requested represents 30% of the common fund. This is appropriate, as district courts within the Ninth Circuit have established that “[a]warding 30% of the common fund for attorneys’ fees is typical in wage and hour cases.” *Wert v. US Bank Corp.*, No. 13-cv-3130-BAS-AGS, 2017 WL 5167397, at *7 (S.D. Cal. Nov. 7, 2017). The requested fee constitutes a 1.53 lodestar multiplier on Plaintiff’s counsel’s hourly billing, well within accepted standards.

Class Counsel vigorously prosecuted this matter to ultimately arrive at this settlement. Class Counsel engaged in extensive discovery and investigation of this case, including, among other things, (a) multiple meetings and conferences with Plaintiff; (b) written discovery; (c) analysis of the legal positions taken by Defendant; (d) investigation into the viability of class treatment of the Claims asserted in this Action; (e) analysis of potential class-wide damages; (f) research of the applicable law with respect to the Claims asserted in the Action and the potential defenses thereto, including in particular the decision in *Certification from United States Dist. Court for W. Dist. of Washington in Sampson v. Knight Transportation, Inc.*, 193 Wash.2d 878 (2019) (hereinafter *Knight Transp.*); and (g) assembling data for calculating damages. Thereafter, through protracted arm’s length negotiations in mediation with Michael Loeb, Esq., an experienced mediator with over 30 years of experience in labor and employment, including extensive work in wage and hour class actions, Class Counsel successfully negotiated a settlement that will ensure that Class Members receive remuneration for wage and hour violations.

Class Counsel also seek approval of payment of class incentive awards. As described below, the class representative participated in this action, placed himself at risk, and assisted with

1 its prosecution. The class representative deserves an appropriate class incentive award.
2 Accordingly, for the reasons set forth herein, Plaintiff respectfully requests that the Court grant
3 this motion, and award attorneys' fees and costs, and class representative incentive award.

4 **II. OVERVIEW OF ACTION**

5 On August 16, 2018, Plaintiff Kevin G. Boyd ("Plaintiff") filed his action against
6 Defendant in the United States District Court for the Western District of Washington alleging a
7 class action on behalf of all Washington residents who formerly or currently worked for
8 Defendant as mortgage brokers. Dkt. No. 1. The complaint alleged that Defendant violated
9 Washington law by failing to provide paid rest breaks and non-sales time based on its pay plan
10 which pays an hourly rate as a recoverable draw, which is then clawed back from commissions
11 earned. *Id.*

12 Class counsel worked up the case through multiple meetings and conferences with
13 Plaintiff, initial disclosures, formal written discovery, and informal production of class-wide
14 data. In addition, Class Counsel researched and analyzed applicable Washington wage and hour
15 law, the positions and defenses put forth by Defendant, the viability of class-wide resolution, and
16 the potential amount of class-wide damages. Declaration of Joshua H. Haffner ("Haffner
17 Decl."), ¶ 3. After undertaking the above and meeting and conferring, the parties agreed to
18 participate in mediation in order to potentially resolve the lawsuit. *Id.*

19 On November 6, 2019, the parties participated in an all-day private mediation session
20 with Michael Loeb, Esq., as experienced mediator with over 30 years' experience in labor and
21 employment cases, including extensive work in wage and hour class actions. Haffner Decl., ¶ 4.
22 The parties were able to reach a settlement at the mediation. *Id.*

23 On July 8, 2020, the Court granted in part Plaintiff's motion for preliminary approval of
24 the class action settlement. Dkt. No. 27. However, the Court deferred preliminary approval as it
25 pertained to the class notice. *Id.* On December 16, 2020 the Court granted approval of the
26 proposed notice and ordered that the instant motion for attorneys' fees be filed by January 12,
27 2021. Dkt. No. 35.

1 **III. THE SETTLEMENT BENEFITS OBTAINED**

2 Under the settlement, class members will be eligible to receive a portion of the \$225,000
3 settlement fund based on the amount of time worked during the applicable period. As there are
4 approximately 376 Class Members, if the Court approves the proposed attorneys' fees (\$67,500),
5 litigation costs (\$6,608.13), administration costs (\$13,500), and class representative incentive
6 award (\$5,000), and that all eligible Class Members participate, the average recovery per class
7 member will be approximately \$352.11.

8 Having conferred this significant, concrete, and substantial benefit on the Class, Class
9 Counsel now seek an award of attorneys' fees and costs, and also seeks an incentive award for
10 the class representative, in the amounts that Defendant previously agreed to pay in settling this
11 case.

12 **IV. THIS COURT SHOULD GRANT CLASS COUNSEL'S APPLICATION FOR**
13 **ATTORNEYS' FEES AND COSTS**

14 **A. The Standard For Approval Of Attorneys' Fees In A Class Action.**

15 Federal Rule of Civil Procedure 23(h) provides that in a class action, "the court may award
16 reasonable attorney's fees and nontaxable costs authorized by law or by agreement of the parties."
17 Here, jurisdiction in this action is premised on 28 U.S.C. § 1332(d) as revised under the Class
18 Action Fairness Act and the causes of action alleged in the operative complaints all derive from
19 the Washington state law.¹ There are no federal claims alleged in this action. Accordingly,
20 Washington state law applies to both the determination of the right to an attorneys' fee and the
21 method of its calculation. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002);
22 *Kern Oil and Refining Co. v. Tenneco Oil Co.*, 792 F.2d 1380, 1388 (9th Cir. 1986), *cert. denied*,
23 480 U.S. 906 (1987) (state law applies in determining not only the right to fees, but also in
24 determining the method of calculating the fees.).

25 ¹ The Class Action Fairness Act's provisions (PL 109-2, 2005 S 5) do not apply to the grant of
26 attorneys' fees here because the settlement is not a "coupon settlement" and even if it were,
27 "[n]othing in this subsection shall be construed to prohibit application of a lodestar with a
multiplier method of determining attorney's fees." 28 U.S.C. § 1712(b)(2).

1 Class Counsel are entitled to attorneys' fees and costs pursuant to Revised Code of
2 Washington 49.46.090 which provides for attorneys' fees when an employee receives "less than
3 the amounts to which such employee is entitled" as well as Revised Code of Washington
4 49.52.070 which provides for attorneys' fees when an employer willfully withholds wages. In
5 addition to Washington law, Class Counsel are entitled to attorneys' fees and costs on the basis
6 that they created a substantial benefit to the Class. *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 392,
7 394-395 (1970) (courts award the cost of litigating "where a plaintiff has successfully maintained
8 a suit, usually on behalf of a class, that benefits a group of others in the same manner as
9 himself...[and] in cases where the litigation has conferred a substantial benefit on the members
10 of an ascertainable class"); *Lewis v. Anderson*, 692 F.2d 1267, 1270 (9th Cir. 1982) (the
11 "substantial benefit doctrine...permits a plaintiff to recover attorneys' fees if his action has
12 conferred a substantial benefit upon a class").

13 When evaluating the reasonableness of attorneys' fees for class action settlements, courts
14 within the Ninth Circuit have the discretion to use either the percentage of the fund or the lodestar
15 method. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998) (Overruled on
16 separate grounds by *Castillo v. Bank of America, NA.*, 980 F.3d 723 (9th Cir. 2020)); *Bowles v.*
17 *Wash. Dep't of Ret. Sys.*, 121 Wash.2d 52, 72 (1993). However, Washington law generally favors
18 the percentage of the fund method when a common fund is recovered. *Bowles*, 121 Wash.2d at
19 72. Regardless of the method used, however, the goal is the same: to reasonably compensate
20 counsel for their efforts in creating the common fund. *Paul, Johnson, Alston & Hunt v. Graulty*,
21 886 F.2d 268, 271-72 (9th Cir. 1989).

22 Once a court has determined that attorneys' fees are to be awarded to attorneys for the
23 class, the amount of the award is within the discretion of the court. *Jones v. Amalgamated*
24 *Warbasse Houses, Inc.*, 97 F.R.D. 355, 361 (E.D.N.Y. 1982), *aff'd* 721 F.2d 881, *cert. denied*
25 466 U.S. 944 (*citing, Grunin v. International House of Pancakes*, 513 F.2d 114 (8th Cir.), *cert.*
26 *denied*, 423 U.S. 864 (1975)). Here, Class Counsel's requested fee is reasonable under both
27 methods.

1
2 **B. Class Counsel’s Requested Fee Is Reasonable Based On The Percentage Of
The Fund Method.**

3 Where courts apply the common fund doctrine, attorneys’ fees are calculated using the
4 percentage of the fund method. *Bowles*, 121 Wash.2d at 72. The benchmark award in common
5 fund cases is 25% of the recovery obtained, with 20-30% as the usual range. See *id.* The Ninth
6 Circuit echoes this approach. *Vizcaino*, 290 F.3d at 1047 (citing *Paul, Johnson*, 886 F.2d at 272).
7 The amount of fees requested – 30% of the total – is well within the range of reasonableness.
8 See *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 448 (E.D. Cal. 2013) (“The
9 typical range of acceptable attorneys’ fees in the Ninth Circuit is 20 percent to 33.3 percent of
10 the total settlement value.”); see also *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 492
11 (E.D. Cal. 2010) (collecting recent wage and hour cases in which counsel received fee awards in
12 the range of 33.3% to 30% of the common fund); *Lusby v. GameStop Inc.*, 2015 WL 1501095,
13 *9 (N.D. Cal. Mar. 31, 2015) (finding a one third fee award appropriate because the results
14 achieved, the risk of litigation, the skill required and the quality of work, and the contingent
15 nature of the fee and the financial burden carried by the plaintiffs); *Barnes v. The Equinox Grp.,*
16 *Inc.*, 2013 WL 3988804, *4 (N.D. Cal. Aug. 2, 2013) (awarding one-third of gross settlement in
17 fees and costs because counsel assumed substantial risk and litigated on a contingency fee-basis).

18 When assessing the reasonableness of requested fees, courts within the Ninth Circuit
19 evaluate the following non-exhaustive list of factors: (1) the results achieved; (2) the risks of
20 litigation; (3) the skill required and the quality of the work; (4) the contingent nature of the fee
21 and the financial burden carried by the plaintiffs; and (5) awards made in similar cases. *Vizcaino*,
22 290 F.3d at 1048-50; *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311
23 (9th Cir. 1990). Here, these factors confirm the reasonableness of Class Counsel’s requested
24 fees.

25 **1. The Results Achieved.**

26 Courts recognize that the result achieved is an important factor to be considered in making
27 a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (“[T]he most critical factor is the

1 degree of success obtained.”); see also *Vizcaino*, 290 F.3d at 1048, 1050.

2 Here, the result achieved, whether judged by the difficulty of the litigation or simply based
3 on the benefits obtained, is favorable, substantial, and would have not occurred but for the fact that
4 Class Counsel took on this case with no guarantee of any results. Plaintiff does not believe that
5 any of the legal issues, and related factual inquiries, were insurmountable. However, there was
6 undeniably a significant contingency risk, and at a minimum any successful outcome would have
7 entailed lengthy and expensive trial court and appellate court proceedings. Defendant likewise has
8 acknowledged the litigation risk to both sides, and the cost and duration of likely contested
9 proceedings absent settlement, as reflected by the substantial amount to be paid in settlement.

10 As a result of Plaintiff’s diligent representation and advocacy, Defendant has agreed to pay
11 \$225,000 to the Class. This is a good result particularly considering the ruling in *Knight Transp.*,
12 which held that “the MWA does not require nonagricultural employers to pay their piece-rate
13 employees per hour for time spent performing activities outside of piece-rate work.” *Knight*
14 *Transp.*, 193 Wash.2d at 893. This effectively ended Plaintiff’s minimum wage claim because
15 Plaintiff and the Class, as mortgage loan officers, frequently earned in a week far in excess of
16 minimum wage due to the commissions they earned on sales, even factoring in non-sales time.

17 After the ruling in *Knight Transp.*, Plaintiff was essentially left with only a rest break
18 violation claim under Revised Code of Washington § 49.52.070. Plaintiff valued the rest break
19 violation claim at a maximum amount of \$1,251,428.44. In light of the risks, uncertainty, costs
20 and additional time posed by further litigation, Plaintiff’s recovery of \$225,000 is a good result for
21 Plaintiff and the Class.

22 2. The Risks Of Litigation.

23 As discussed above, Plaintiff faced a nearly insurmountable hurdle as to his minimum wage
24 claim. However, there were other risks to his remaining claims, including the risk that Defendant
25 may defeat class certification and that Defendant may prevail on the merits of the rest break
26 violation claim. For example, Plaintiff and the Class were paid an hourly rate which was then
27 clawed-back by commissions. Defendant would argue that because of this hourly pay, Plaintiff

1 and the Class were actually paid for their rest breaks. Thus, there were certainly risks moving
2 forward up to and including Defendant prevailing and Plaintiff and the Class taking nothing.

3 **3. The Skill Required And The Quality Of The Work.**

4 The effort and skill displayed by counsel and the complexity of the issues involved are
5 additional factors used in determining a proper fee. *Vizcaino*, 290 F.3d at 1048. An enhancement
6 is appropriate when “an exceptional effort produced an exceptional benefit.” *Graham v.*
7 *DaimlerChrysler Corp*, 34 Cal.4th 553, 582-83 (2004) (internal citations omitted).

8 Class Counsel’s vigorous handling of the case to this point demonstrates their skill in
9 litigating the issues presented by Plaintiff’s complaint. Despite the early stage of the litigation,
10 and the considerable risk of recovering nothing at all, as discussed above, Class Counsel
11 obtained a non-reversionary \$225,000 settlement fund. This is an excellent result, particularly in
12 light of the *Knight* decision, which came down during the course of the litigation.

13 In addition, Plaintiff was represented by experienced and capable counsel. Joshua H.
14 Haffner, the principal at Haffner Law PC, has been practicing for over 23 years, and handled
15 numerous class actions including a \$97 million judgment in California for rest break violations
16 arising out of a commission based pay plan for mortgage loan officers. Haffner Decl., ¶¶ 6-7.

17 **4. The Contingent Nature Of The Fee.**

18 “Courts have long recognized that the public interest is served by rewarding attorneys who
19 assume representation on a contingent basis with an *enhanced fee* to compensate them for the risk
20 that they might be paid nothing at all for their work.” *In re Wash. Pub. Power Supply Sys. Sec.*
21 *Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994). “This mirrors the established practice in the private
22 legal market of rewarding attorneys for taking the risk of nonpayment by paying them a *premium*
23 over their normal hourly rates for winning contingency cases.” *Vizcaino*, 290 F.3d at 1051
24 (emphasis added). Here, Class counsel prosecuted this case on a purely contingent fee basis,
25 advancing all attorney time and costs, and risking recovering nothing. Haffner Decl., ¶ 14. Thus,
26 the contingent nature of Class counsel’s representation supports the requested fee award.

1 analysis and negotiations.

2 **C. Class Counsel’s Requested Fee Is Reasonable Based On The Lodestar**
3 **Cross-Check.**

4 The amount of attorneys’ fees sought here is also reasonable under the “lodestar” method,
5 which “provides a check on the reasonableness of the percentage award.” *Vizcaino*, 290 F.3d at
6 1050; *see Shaffer v. Cont’l Cas. Co.*, 362 F. App’x. 627, 631 (9th Cir. 2010) (affirming district
7 court’s decision to use the lodestar method to cross-check the percentage method); *see also In re*
8 *Bluetooth Headset Products Liability Litigation*, 654 F.3d at 944 (stating “we have also
9 encouraged courts to guard against an unreasonable result by cross-checking their calculations
10 against a second method” of determining fees). Here, the modest lodestar multiplier of only 1.53
11 to Class Counsel’s lodestar multiplier to date, supports finding that the requested fees are
12 reasonable.

13 **1. Class Counsel’s Lodestar Is Reasonable.**

14 The first step in performing the lodestar cross-check is to determine the number of hours
15 expended by counsel and multiply that by the reasonable hourly rate. *Hanlon*, 150 F.3d at 1029.
16 The court may then enhance the lodestar by a multiplier to arrive at a reasonable fee. *Id.* (a
17 lodestar figure “may be adjusted upward or downward to account for several factors including
18 the quality of the representation, the benefit obtained for the class, the complexity and novelty of
19 the issues presented, and the risk of nonpayment”).

20 Class Counsel Joshua H. Haffner and Graham G. Lambert have expended 12.8 and 72.3
21 hours pursuing this action to date. Haffner Decl., ¶¶ 10-11. Class Counsel spent significant time
22 investigating and researching the legal issues of this case as well as analyzing the policies and
23 procedures associated with Defendant’s compensation plan, briefing the issues for mediation,
24 analyzing payroll data, and communicating with Plaintiff regarding the case. Haffner Decl., ¶ 10.
25 In addition, Class counsel expects there was additional time not accounted for in the lodestar
26 including communicating with class members during the notice process and guiding this case
27 through final approval of the settlement. Class Counsel vigorously and efficiently prosecuted this

1 action on behalf of Plaintiff and the class and obtained an excellent result. The hours expended
2 by Class Counsel reflect this and are reasonable.

3 Class Counsel's hourly rates are also reasonable. Mr. Haffner's hourly rate of \$900 per
4 hour is reasonable based on his 23 years of experience, record or results, and the going rate in Los
5 Angeles. Haffner Decl., ¶ 10. A reasonable hourly rate for Mr. Lambert's services, based on his
6 experience and record, and the going rate in Los Angeles, is \$450.² Haffner Decl., ¶ 11.

7 Multiplying the number of hours worked by Mr. Haffner and Mr. Lambert by their
8 respective hourly rates results in a total lodestar of \$44,055.00.

9 2. Class Counsel's Lodestar Multiplier Is Appropriate.

10 To determine the appropriate multiplier to be applied to a lodestar, courts have generally
11 applied the following factors: (a) the quality of the representation; (b) the benefit obtained for the
12 class; (c) the complexity and novelty of the issues presented; and (d) the risks of nonpayment.
13 *Hanlon*, 150 F.3d at 1029. Here, the requested 1.53 lodestar multiplier is appropriate. *See*
14 *Vizcaino*, 290 F.3d at 1051, n.6 (affirming a multiplier of 3.65 while noting that the majority of
15 lodestar multipliers to be in the 1.5-3.0 range).

16 **a. The Quality Of The Representation.**

17 The skill required to litigate this case to a successful conclusion is evident not only in the
18 result achieved, but in the steps necessary to reach that result. By way of example, the following
19 topics (both factual and legal) were analyzed and discussed in detail and to the Court's
20 satisfaction:

- 21 • The complex implications of Defendant's compensation plan whereby Defendant

22
23 ² Both Mr. Haffner and Mr. Lambert have been approved by multiple courts at these rates including
24 in *Flannagan, et. al. v. Bank of America Corp. et al.*, New York Supreme Court, County of Suffolk,
25 Case No. 613647/2018, a class action for mortgage loan officers for failure to wages; *Johnson v.*
26 *US Bank National Association*, United States District Court, Southern District of California, Case
27 No. 19-CV-286 JLS (LL), a class action for mortgage loan officers for failure to wages; *Segovia*
28 *v. California Fair Plan Association*, Los Angeles Superior Court, Case No. BC672505 an
insurance bad faith class action for inclusion of an unlawful wildfire smoke sublimit in homeowner
policies; and *McCraine v. Virgin Galactic, LLC*, California Superior Court, County of Kings, Case
No. 19C0125, a wage and hour class action on behalf of non-exempt employers.

1 paid an hourly rate as a recoverable draw which was then clawed back from sales commission the
2 following month and the impact of said payment plan on whether or not rest breaks, as non-
3 productive time, were being compensated in accordance with Washington law;

4 • The implications of Defendant’s compensation plan as to whether or not it paid
5 individuals at least minimum wage for all hours worked;

6 • The legal impact of *Knight Transp.*, 193 Wash. 2d 878 (2019) on Plaintiff’s
7 minimum wage theory;

8 • Whether the common issues of fact and law which outweighed the individual
9 issues in certifying the class; and

10 • The amount of damages Plaintiff and the Class were entitled to based on these
11 claims.

12 All of these issues were analyzed, researched, and argued by Class Counsel; all were key
13 elements that led to a significant result.

14 **b. The Benefit Obtained For The Class.**

15 As discussed above, this action conferred a significant benefit on the Class. Because of
16 Plaintiff’s actions, Class members will receive remuneration for wage and hour violations arising
17 out of Defendant’s pay plan. Defendant has agreed to pay \$225,000 to the Class for said
18 violations. Thus, the Class is obtaining a significant benefit in the form of compensation that they
19 otherwise would not have received.

20 **c. The Complexity And Novelty Of The Issues Presented.**

21 This case presented numerous complex and novel issues of fact and law. Foremost among
22 them was the somewhat gray area of whether Washington wage and hour law requires the separate
23 compensation of all time worked by piece-rate workers. District courts have previously rejected
24 the notion but the recent case of *Carranza v. Dovex Fruit Co.*, 190 Wash.2d 612 (2018), which
25 required separate compensation for agricultural workers, cast doubt on whether this was still the
26 case for nonagricultural workers, such as Plaintiff. See *Knight Transp.*, 193 Wn.2d at 884-885.
27 Further, *Knight Transp.* involved the compensation of truck drivers on a per mile or per load

1 basis, a far cry from the compensation plan in this case which involved hourly draw and claw
 2 back from commissions for mortgage salespersons. Therefore, the complexity and novelty of the
 3 case support the reasonableness of the lodestar multiplier here.

4 **d. Risk Of Non-Payment.**

5 The representative plaintiff executed a contingent fee agreement. Thus, Class Counsel
 6 would only receive payment for services if they prevail in the matter. Multipliers are used to
 7 mirror the established practice in the private legal market of rewarding attorneys for taking the
 8 risk of nonpayment by paying them a premium over their normal hourly rates for winning
 9 contingency cases. *Vizcaino*, 290 F.3d at 1051. Here, Class Counsel undertook this case on a
 10 contingency basis and, as discussed above, faced the significant prospect of not making any
 11 recovery. Thus, this factor also supports the reasonableness of the lodestar multiplier.

12 **D. The Court Should Also Award Class Counsel Their Reasonable Costs**

13 Class Counsel incurred expenses and costs in the amount of \$6,608.13. Haffner Decl., ¶
 14 13. The costs are included in the total being requested as an award to Class Counsel. These
 15 modest costs are reasonable under the circumstances of this litigation with the lion's share being
 16 attributable to mediation fees.

17 **V. THE INCENTIVE PAYMENT TO REPRESENTATIVE PLAINTIFF IS FAIR
 18 AND REASONABLE**

19 Settlements in class actions may grant incentive awards to the named plaintiffs in
 20 recognition of their efforts on the class's behalf. "Because a named plaintiff is an essential
 21 ingredient of any class action, an incentive award is appropriate if it is necessary to induce an
 22 individual to participate in the suit." *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998). "Since
 23 without a named plaintiff there can be no class action, such compensation as may be necessary to
 24 induce him to participate in the suit could be thought the equivalent of the lawyers' non-legal but
 25 essential case-specific expenses, such as long-distance phone calls, which are reimbursable." *In*
 26 *re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 571 (7th Cir. 1992); *Staton v. Boeing Co.*, 327 F.3d 938,
 27 966 (9th Cir. 2003).

1 Here, Plaintiff Kevin G. Boyd has been unfailingly dedicated and loyal to the Class
2 throughout the litigation. Apart from the moderate incentive requested here, he will recover
3 nothing apart from the relief available for Settlement Class Members. He has not attempted to
4 leverage a class action for personal gain and has foregone any potential individual claims for the
5 benefit of the Class as a whole. He actively participated in and kept informed of the progress of
6 this litigation and settlement, and at all times remained cognizant of their obligations to the Class.
7 By serving in this representative capacity, for the benefit of others and without any expectation
8 of significant individual gain, he exposed himself to substantial financial risk of responsibility for
9 defense litigation costs if unsuccessful on the merits. Accordingly, Class Counsel is applying to
10 the Court for permission to make a service payment of \$5,000.00 for his services as a class
11 representatives.

12 In fact, numerous courts have approved incentive awards higher than the amount
13 requested here. *See In re Immunex Securities Litigation*, 864 F.Supp. 142, 145 (W.D. Wash. 1994)
14 (approving \$25,000 incentive awards to each of 11 class representatives as part of a \$14 million
15 settlement); *Spicer v. Chicago Bd. Options Exchange Inc.*, 844 F.Supp. 1226, 1266-68 (N.D. Ill.
16 1993) (approving \$10,000 incentive awards for each of three representatives, and noting
17 numerous other decisions approving incentives ranging from \$2,500 to \$100,000); *In re Dun &*
18 *Bradstreet Credit Services Customer Litigation*, 130 F.R.D. 366, 374 (S.D. Ohio 1990)
19 (approving \$215,000 in incentive awards in absence of any objection by the class, ranging
20 between \$35,000 and \$55,000 per representative, as part of an \$18 million settlement).
21 In the context of this action, the \$5,000 incentive payment to the named plaintiff representative
22 is fair and reasonable and should be approved.

23 ///

24
25 ///

26
27 ///

1 **VI. CONCLUSION**

2 For all the foregoing reasons, Plaintiff respectfully requests that the Court grant this
3 motion and the relief sought herein, and grant such other relief as the Court deems just and proper.
4

5 DATED: January 14, 2021

HAFFNER LAW PC

7 By: /s/ Graham G. Lambert
8 Joshua H. Haffner
9 Graham G. Lambert
10 Attorneys for Plaintiff and
11 all others similarly situated
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The Honorable Thomas S. Zilly

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

KEVIN G. BOYD, an individual, on behalf of himself and all others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A., and DOES 1 through 10, inclusive,

Defendant.

Case No. 2:18-cv-01207-TSZ

**DECLARATION OF JOSHUA H. HAFFNER
IN SUPPORT OF PLAINTIFF’S MOTION
FOR ATTORNEYS’ FEES AND COSTS AND
CLASS ACTION INCENTIVE AWARD**

NOTE ON MOTION CALENDAR:
April 2, 2021

DECLARATION OF JOSHUA H. HAFFNER

I, Joshua H. Haffner,

1. I am an attorney licensed to practice in this Court and am Counsel of record for Plaintiff in this case. I have personal knowledge of the facts set forth herein. If called as a witness, I could and would competently testify thereto.

2. This declaration is submitted in support of the Plaintiff’s Motion for Award of Attorneys’ Fees and Costs and Class Action Incentive Award.

3. Class counsel worked up the case through multiple meetings and conferences with

1 Plaintiff, initial disclosures, formal written discovery, and informal production of class-wide
2 data. In addition, Class Counsel researched and analyzed applicable Washington wage and hour
3 law, the positions and defenses put forth by Defendant, the viability of class-wide resolution, and
4 the potential amount of class-wide damages. After undertaking the above and meeting and
5 conferring, the parties agreed to participate in mediation to potentially resolve the lawsuit.

6 4. On November 6, 2019, the parties participated in an all-day private mediation
7 session with Michael Loeb, Esq., as experienced mediator with over 30 years' experience in
8 labor and employment cases, including extensive work in wage and hour class actions. The
9 parties were able to reach a settlement at the mediation.

10 5. I am managing this case at Haffner Law PC. I have been practicing law in
11 California since 1997. I attended University of Texas-Austin for my undergraduate degree,
12 graduating in 1993 with high honors, and attended Hastings College of the Law for law school,
13 graduating in 1996, cum laude. I was admitted to practice law in the State of California in 1997,
14 the State of New York in 1998, the State of Washington in 2018, and have been admitted to
15 practice in multiple federal district and appellate courts over the years.

16 6. I have been practicing complex civil litigation, including class actions, for
17 approximately 23 years. I have extensive experience handling class actions. In particular, I have
18 broad experience litigating wage and hour class actions involving issues raised by activity-based
19 compensation systems, like piece-rate or commission-based payment plans.

20 7. I served as class counsel in the *Ibarra v. Wells Fargo* Action, an action involving
21 a commission-based pay plan and allegations it failed to compensate for rest breaks, which
22 resulted in a judgment in May 2018 in excess of \$97 million for rest break violations. Other
23 class actions where I have acted as class counsel are:

- 24 i. *Washington v. Key Health Medical Solutions*, Los Angeles Superior Court,
25 Case No. BC358270, class action for unfair business practice against a
26 medical lien provider;
- 27 ii. *Rosario v. JAL Passenger Services America, Inc.*, Los Angeles Superior
28 Court, Case No. BC380345, a wage and hour class action;

- 1 iii. *Estrada v. Harbor Express*, Los Angeles Superior Court, Case No.
2 BC508808, a wage and hour action on behalf of truck drivers;
- 3 iv. *Kirk v. First American*, Los Angeles Superior Court, Case No. BC329482,
4 unfair business practices class action against a title insurance company;
- 5 v. *Mendoza v. Pacer*, United States District Court, Southern District of
6 California, Case No. 13-cv-2344-LAB (JMA), a wage and hour action on
7 behalf of truck drivers;
- 8 vi. *Constableo v. MBK Builders, Inc.*, Orange County Superior Court, Case
9 No. 30-2013-00649426, a construction defect class action;
- 10 vii. *Jackson v. Travelers Commercial Ins. Co.*, Los Angeles Superior Court,
11 Case No. BC639944, an insurance bad faith class action for inclusion of
12 an unlawful wildfire smoke sublimit in homeowner policies; and
- 13 viii. *Leitzbach v. Atlas Van Lines, Inc.*, United States District Court, Central
14 District of California, Case No. 2:16-cv-08790-GW-E, a trucker
15 misclassification class action;
- 16 ix. *Kang v. Wells Fargo Bank, N.A.*, United States District Court, Northern
17 District of California, Case No. 5:17-cv-06220 -BLF, a currently pending
18 action for mortgage loan officers for failure to pay minimum wage and
19 vacation time;
- 20 x. *Castro v. Osterkamp Trucking, Inc.*, Los Angeles Superior Court, Case
21 No. BC 669582, a currently pending certified class wage and hour action
22 on behalf of truck drivers;
- 23 xi. *Moreno v. JCT Logistics, Inc.*, United States District Court, Central
24 District of California, Case No. 5:17-cv-02489-JGB-KK, a currently
25 pending wage and hour certified class action on behalf of truck drivers;
- 26 xii. *Frias v. Farmers Group, Inc., et al*, Los Angeles Superior Court, Case No.
27 BC638626, an insurance bad faith class action for inclusion of an unlawful
28 wildfire smoke sublimit in homeowner policies;

- 1 xiii. *Flannagan, et. al. v. Bank of America Corp. et al.*, New York Supreme
2 Court, County of Suffolk, Case No. 613647/2018, a class action for
3 mortgage loan officers for wage and hour violations. This action settled
4 several related class actions, including *Fernandez, et al. v. Bank of*
5 *America, NA*, United States District Court, Central District of California,
6 Case No. 2:17-cv-06104-MWF-JC);
- 7 xiv. *McCraime v. Virgin Galactic, LLC*, Kings County Superior Court, Case
8 No. 19C0125, a wage and hour class action on behalf of non-exempt
9 employers at Virgin’s space facilities in Mojave, California;
- 10 xv. *Johnson v. US Bank National Association*, United States District Court,
11 Southern District of California, Case No. 19-CV-286 JLS (LL), a class
12 action for mortgage loan officers for wage and hour violations. This
13 action settled several related class actions, including *Loud v. US Bank*
14 *National Association*, United States District Court, Central District of
15 California, Case No. 8:18-cv-01235-DOC-DFM;
- 16 xvi. *Rodriguez v. Marshalls of CA, LLC*, United States District Court, Central
17 District of California, Case No. 2:18-cv-01716-MWF (SP), consolidated
18 with *Paulino v. Marshalls of CA LLC*, United States District Court,
19 Central District of California, Case No. 2:18-cv-03618-MWF (SP), wage
20 and hour class action and PAGA representative action for retail employees
21 in California;
- 22 xvii. *Vasquez v. Residence Mutual Ins. Co., et al.*, Orange County Superior
23 Court, Case No. 30-2019-01054332-CU-CO-NJC, an insurance bad faith
24 class action for inclusion of an unlawful wildfire smoke sublimit in
25 homeowner policies;
- 26 xviii. *Segovia v. California Fair Plan Association*, Los Angeles Superior Court,
27 Case No. BC672505, an insurance bad faith class action for inclusion of
28 an unlawful wildfire smoke sublimit in homeowner policies; and

1 xix. *Lanuza v. California Automobile Ins. Co.*, Los Angeles Superior Court,
2 Case No. 18STCV05007, an insurance bad faith class action for inclusion
3 of an unlawful wildfire smoke sublimit in homeowner policies.

4 8. In addition to *Ibarra v. Wells Fargo*, I have experience litigating class actions
5 through trial. The *Kirk v. First American* class action against a title company for overcharging
6 for services was tried in Los Angeles Superior Court in late 2013 and early 2014. I was one of
7 the lead counsel for the Plaintiff Class present during the trial. The case resulted in a verdict for
8 the Plaintiff Class.

9 9. A reasonable billable rate for my services, based on my 23 years of experience,
10 record, and the going rate in Los Angeles, is \$900.00 an hour. A reasonable hourly rate for Mr.
11 Lambert's services, based on his experience and record, and the going rate in Los Angeles, is
12 \$450. These rates were recently submitted in the motion for attorneys' fees in multiple cases,
13 including the *Flannagan* action, the *Johnson* action, the *Segovia* action, and the *McCraine*
14 action, all which were granted at the indicated rate. The *Flannagan* action settled several related
15 class actions, including *Fernandez, et al. v. Bank of America, NA* (C.D. Cal. Case No. 2:17-cv-
16 06104-MWF-JC), for failure to pay wages to mortgage loan officers. Although these are
17 reasonable hourly rates for our services, my office often works, and worked on this case, on a
18 contingency basis, rather than an hourly.

19 10. I have been involved in nearly every aspect of this case, from drafting the pleadings,
20 meeting and conferring with defense counsel, researching relevant theories of the case, briefing and
21 attending mediation, and participating in settlement negotiations. Since the inception of this case, I
22 have tracked the time that I have worked on this case. I have worked a total of 12.8 hours on this
23 case. Thus, my total fees associated with this case on a lodestar basis would be \$11,520.00.

24 11. Mr. Lambert, who is an associate at Haffner Law PC, has also worked on this
25 case since its inception, and he has worked 72.3 hours on this matter. Mr. Lambert has been an
26 attorney since May of 2015 and has worked on numerous class actions in that time. Mr.
27 Lambert's total fees for this case on a lodestar basis are \$32,535.00.

28

1 12. Thus, total hourly fees for this case by Haffner Law PC, based on the work of the
2 attorneys set forth above, is \$44,055.00.

3 13. To date, Haffner Law PC has incurred expenses of \$6,608.13 in pursuing the
4 instant litigation.

5 14. Haffner Law PC took this case on a contingency basis.

6 I declare under penalty of perjury under the laws of the United States that the foregoing is
7 true and correct.

8 Executed on this 14th day of January 2021, at Los Angeles, California.

9
10 By: /s/Joshua H. Haffner
Joshua H. Haffner

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The Honorable Thomas S. Zilly

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

KEVIN G. BOYD, an individual, on behalf
of himself and all others similarly situated,

Plaintiff,

v.

BANK OF AMERICA, N.A., and DOES 1
through 10, inclusive,

Defendant.

Case No. 2:18-cv-01207-TSZ

**[PROPOSED] ORDER GRANTING MOTION
FOR AWARD OF ATTORNEYS' FEES AND
COSTS AND AWARDED CLASS
REPRESENTATIVE SERVICE PAYMENT**

NOTE ON MOTION CALENDAR:
April 2, 2021

1 Before the Court is Class Counsel's Motion for Award of Attorneys' Fees and Costs and
2 awarding Class Representative Service Award. Defendant Bank of America, N.A. does not
3 oppose the motion and good cause appearing:

4 **IT IS HEREBY ORDERED THAT:**

- 5 1. The Court hereby finds that attorneys' fees in the amount of \$67,500.00 are fair and
6 reasonable.
- 7 2. The Court hereby finds that Plaintiff's attorney's costs in the amount of \$6,608.13 are
8 fair and reasonable.
- 9 3. The Court hereby finds that a Service Payment in the amount of \$5,000.00 to Plaintiff
10 Kevin G. Boyd is fair and reasonable considering the work performed by the Class
11 Representatives in serving in that capacity.
- 12 4. The awarded attorneys' fees and costs and the amount awarded to the Class
13 Representative shall be paid subject to the terms and conditions of the Settlement
14 Agreement filed with this Court.
- 15 5. Class Counsel is awarded attorneys' fees in the amount of \$67,500.00.
- 16 6. Class Counsel is awarded costs in the amount of \$6,608.13.
- 17 7. Class Representatives, Kevin G. Boyd is awarded \$5,000.00 as a Service Payment.

18 **IT IS SO ORDERED.**

19 DATED: _____

20 Hon. Thomas S. Zilly
United States District Judge

21
22 Presented this 14th day of January, 2021.

23 /s/ Graham G. Lambert
24 Graham G. Lambert, WSBA 55761
25 HAFFNER LAW PC
Attorneys for Plaintiff and all others
26 similarly situated