

SPIRO MOSS LLP

1 Ira Spiro, Esq. (State Bar No. 67641)
 ira@spiromoss.com
 2 H. Scott Leviant, Esq. (State Bar No. 200834)
 scott@spiromoss.com
 3 Linh Hua, Esq. (State Bar No. 247419)
 Linh@spiromoss.com
 4 SPIRO MOSS LLP
 11377 W. Olympic Blvd., 5th Floor
 5 Los Angeles, California 90064-1683
 Telephone: (310) 235-2468
 6 Facsimile: (310) 235-2456

7 Attorneys for Plaintiff Shawn Blouin
 and the Settlement Class
 8

9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11

12 SHAWN BLOUIN, individually and on
 behalf of other persons similarly situated,

13 Plaintiff,

14 vs.

15 COMCAST CORP. and DOES 1-50,

16 Defendants.
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Case No. 3:08-CV-04787-MEJ

CLASS ACTION

**PLAINTIFF'S NOTICE OF
 MOTION AND MOTION FOR
 AWARD OF CLASS
 REPRESENTATIVE
 ENHANCEMENT, ATTORNEY'S
 FEES, AND COSTS;
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT
 THEREOF**

Date: July 14, 2011

Time: 10:00 a.m.

Place: Courtroom B

SPIRO MOSS LLP

TO THE COURT, TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

Please take notice that on July 14 2011, at 10:00 a.m., or as soon thereafter as counsel may be heard, in Courtroom B of the United States Courthouse, located at 450 Golden Gate Avenue, San Francisco, California, Plaintiff Shawn Blouin (“Plaintiff”) will and hereby does move the Court for an order awarding Class Representative Enhancement, Attorney’s Fees, and Costs.

Plaintiff seeks an Order including the following relief:


1. an award of attorneys’ fees in the amount of \$437,500 from the common fund settlement;
2. an award of attorney costs in the amount of \$25,000 from the common fund settlement; and,
3. an award of \$10,000 to Plaintiff Shawn Blouin as a Class Representative Enhancement from the common fund settlement.

Plaintiff’s motion is based on this Notice, the attached Memorandum of Points and Authorities, the Declaration of H. Scott Leviant submitted herewith, all other pleadings and papers on file in this action, and any oral argument or other matter that may be considered by the Court.

Dated: March 1, 2011

Respectfully submitted,

SPIRO MOSS LLP

By: 

Ira Spiro
H. Scott Leviant
Linh Hua

Attorneys for Plaintiff Shawn Blouin and the Settlement Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is a putative wage and hour class action on behalf all individuals
 4 employed in the position of Customer Account Executive at Comcast call centers in
 5 the State of California at any time between September 17, 2004 through August 1,
 6 2010. After several exchanges of formal discovery, the completion of three
 7 depositions, and thorough analyses of informal data for two full-day mediation
 8 sessions, Plaintiff Shawn Blouin (“Plaintiff”) and Defendant Comcast Corp.
 9 (“Defendant”) (Plaintiff and Defendants collectively referred to herein as the
 10 “Parties”) reached a proposed class action settlement with a \$1,750,000.00
 11 common fund.

12 On February 3, 2011, the Court issued an Order conditionally certifying a
 13 settlement class, preliminarily approving the proposed settlement, approving notice
 14 to the class, and setting the hearing for final approval of the proposed class action
 15 settlement. Pursuant to *In re Mercury Interactive Corp. Securities Litigation*, 618
 16 F.3d 988 (9th Cir. 2010), Plaintiff submits this Motion for an order awarding Class
 17 Representative Enhancement, Attorney’s Fees, and Costs in advance of the
 18 deadline for objection to the terms of settlement.

19 Having been preliminarily approved, the \$437,500 fee, the \$10,000
 20 enhancement award, and the \$25,000 in costs that were all negotiated in connection
 21 with the mediation that settled this case against Defendant are within the “range of
 22 reasonableness.” All of the relevant factors weigh in favor of final approval of the
 23 terms of that settlement, including those payments. On a percentage or lodestar
 24 basis, the fee award sought by this Motion is well within the range of
 25 reasonableness and comparable to other approved class action settlements in both
 26 California federal and state courts. So, too, are the other components of the
 27 settlement reasonable and worthy of final approval: a \$25,000 cost reimbursement
 28 for expenses that Class Counsel advanced throughout the litigation and a class

1 member enhancement of \$10,000 for a class representative that was deposed,
2 attended a defendant deposition, attended the mediation, and remained in frequent
3 contact with Class Counsel throughout the case.

4
5 **II. BACKGROUND**

6 Plaintiff filed the present class action on September 17, 2008 in Alameda
7 County Superior Court against Defendant. (Declaration of H. Scott Leviant in
8 Support of Plaintiff's Motion for Award of Class Representative Enhancement,
9 Attorney's Fees, and Costs ["Leviant Decl.,"] ¶ 4.) The Complaint alleged that
10 Defendant failed to pay overtime and minimum wages to hourly-paid employees in
11 Defendant's California call centers, failed to provide accurate wage statements, and
12 violated California's Unfair Competition Act due to Defendant's failure to pay
13 wages. (Leviant Decl. ¶ 5.)

14 Defendant removed the Action to the United States District Court for the
15 Northern District of California on October 17, 2008 pursuant to 28 U.S.C. §
16 1332(d), 1441, 1446, and 1453 based on jurisdiction pursuant to the Class Action
17 Fairness Act of 2005. (Leviant Decl. ¶ 6.)

18 On January 15, 2009, the Parties filed a Joint Case Management Conference
19 Statement and Stipulation Selecting ADR Process. The Parties agreed to private
20 mediation after sufficient pre-certification discovery was completed. On January
21 16, 2009, the Court issued a Case Management Order setting discovery,
22 certification, and trial related deadlines. On April 29, 2009, the Parties filed a
23 Stipulated Protective Order. (Leviant Decl. ¶ 7.)

24 Having agreed to private mediation and anticipating that the exchange of
25 informal discovery would consume time and resources, the Parties filed a
26 Stipulation and Proposed Order Modifying Deadlines on June 29, 2009 and
27 September 24, 2009. (Leviant Decl. ¶ 8.)
28

1 Prior to the first mediation session, Plaintiff served initial disclosures,
2 propounded two sets of interrogatories, propounded requests for production of
3 documents, responded to Defendant's interrogatories and requests for production of
4 documents, and received over one thousand pages of documents related to
5 Plaintiff's allegations. (Leviant Decl. ¶ 9.) Defendant served initial disclosures and
6 a set of requests for production of documents and special interrogatories.
7 Defendant also responded to Plaintiff's requests for production of documents and
8 special interrogatories. In addition, for purposes of the mediation, Defendant
9 provided a large amount of data and information about the putative class to
10 Plaintiff's counsel.

11 On December 16, 2009, the Parties participated in a private mediation with
12 the experience of the well-known mediator Mark Rudy. However, the Parties did
13 not reach a settlement. On December 28, 2009, by stipulation, the Court ordered a
14 continuance of deadlines for expert discovery and the class certification briefing
15 schedule. (Leviant Decl. ¶ 10.)

16 After the first mediation session did not result in a settlement, both Parties
17 proceeded with litigating the action. Plaintiff propounded another set of
18 interrogatories and requests for production of documents. Defendant also
19 propounded another set of requests for production of documents. On January 29,
20 2010, Defendant took the deposition of Plaintiff. In February 2010, Plaintiff took
21 the depositions of Plaintiff's supervisor while at Comcast and one of Comcast's
22 Payroll Representatives. (Leviant Decl. ¶ 11.)

23 In preparation for a second private mediation session, Plaintiff reviewed
24 policy documents related to payment of wages, overtime pay, timekeeping, and
25 instructions and guidelines regarding Defendant's different timekeeping software
26 programs. Plaintiff also reviewed his time records and pay records to extrapolate
27 on a class wide basis, time records and logs for a sample of putative class members,
28

1 average hourly pay rates for class members, the number of employees, the number
2 of shifts, and full-time-equivalents for the class period. (Leviant Decl. ¶ 12.)

3 Accordingly, the Parties were sufficiently familiar with the facts of this case
4 to warrant settlement and have agreed to an arms-length Settlement pursuant to the
5 terms set forth herein. The Parties also recognize that the issues presented in the
6 Action are likely only to be resolved with extensive and costly pretrial proceedings
7 and have taken into account the risks and uncertainties inherent in any litigation.
8 (Leviant Decl. ¶ 13.)

9 On June 8, 2010, the Parties participated in a second private mediation with
10 mediator Mark Rudy. On June 21, 2010, as a result of this second mediation and a
11 mediator's proposal, the Parties came to agreement on all material terms for the
12 settlement of class-wide claims in this action. (Leviant Decl. ¶ 14.)

13 On August 4, 2010, Plaintiff provided written notice, by certified mail, to the
14 California Labor and Workforce Development Agency ("LWDA") and Defendant,
15 through their counsel, containing facts and theories underlying the specific
16 provisions of the California Labor Code that Plaintiff alleges were in violation. By
17 letter, dated August 30, 2010, the LWDA notified Plaintiff that it did not intend to
18 investigate the alleged violations. Therefore, Plaintiff may commence a civil action
19 pursuant to section 2699. (Leviant Decl. ¶ 15.)

20 On January 20, 2011, the Parties executed the Joint Stipulation of Class
21 Action Settlement and Release ("Stipulation"). (Leviant Decl., Ex.1.)

22 On January 25, 2011, by stipulation, the Court ordered the First Amended
23 Complaint filed. Plaintiff's First Amended Complaint seeks to add claims for relief
24 under the California Labor Code Private Attorneys General Act ("PAGA"),
25 California Labor Code §§ 2698 et seq., and the Fair Labor Standards Act
26 ("FLSA"), 29 U.S.C. §§ 201 et seq. These additional claims are based on the same
27 underlying facts as those alleged in the initial complaint. (Leviant Decl. ¶ 16.)
28

1 On February 3, 2011, the Court issued an Order conditionally certifying a
2 settlement class, preliminarily approving the proposed settlement, approving notice
3 to the class, and setting the hearing for final approval of the proposed class action
4 settlement.

5
6 **III. DISCUSSION**

7 **A. The Legal Standard for Attorneys' Fee Awards**

8 As a threshold matter, it must be determined “whether state or federal law
9 controls the method of calculating an attorneys’ fee awarded” *Mangold v. Cal.*
10 *Public Util. Commission*, 67 F.3d 1470, 1478 (9th Cir. 1995). In deciding the
11 present motion, California law controls.

12 When federal courts sit in diversity and are presented with an issue about
13 which there is uncertainty as to whether it concerns “substantive” or “procedural”
14 law, the Erie Doctrine applies. *See generally, Erie R.R. v. Tompkins*, 304 U.S. 64,
15 58 S. Ct. 817 (1938) (establishing familiar axiom that federal procedural law and
16 state substantive law are to be applied in federal diversity actions). It is well-
17 established that the law concerning the assessment and approval of class action
18 attorneys’ fees is substantive law. *Mangold*, 67 F.3d. at 1479 (“The method of
19 calculating a fee is an inherent part of the substantive right to the fee itself, and a
20 state right to an attorneys’ fee reflects a substantial policy of the state”).
21 Accordingly, because the law concerning attorneys’ fees is substantive law, and
22 because California law provides the underlying rules of decision for the operative
23 allegations, California law governs this fee motion.

24 California and the Ninth Circuit, and all federal courts, for that matter, use
25 similar criteria to assess a fee request attendant to a motion for final approval,
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1 including:¹ (i) the results achieved on behalf of the class; (ii) class counsel's
 2 experience, reputation and ability; (iii) the time and labor required by the litigation;
 3 (iv) whether class counsel was precluded from other work; (v) the complexity of
 4 the litigation; and (vii) the contingent nature of the litigation. *See Serrano v.*
 5 *Priest*, 20 Cal. 3d 25, 49 (1977); *accord Vizcaino v. Microsoft Corp.*, 290 F.3d
 6 1043, 1048-50 (9th Cir. 2002) (identifying similar criteria); *see also* Herr, MANUAL
 7 FOR COMPLEX LITIGATION, FOURTH, § 21.71 at 524-27 (2008) (survey of federal
 8 criteria for approval substantially similar to California criteria).

9
 10 **B. The Fee Award Is Reasonable And Should Receive Final Approval**

11 **1. Excellent Results Were Achieved On Behalf Of The Class**

12 The benefit achieved on behalf of class members defines a primary yardstick
 13 against which any fee motion is measured. *See Serrano*, 20 Cal. 3d at 49; *accord*
 14 *Vizcaino*, 290 F.3d at 1048. While class actions provide substantial external
 15 benefits beyond the litigants, and are essentially self-financing, it is the benefit to
 16 the class members that is the starting point for evaluating a motion for final
 17 approval of attorneys' fees negotiated as part of a class action settlement.

18 One of the most straightforward measures of a settlement's success from the
 19 Plaintiff's perspective is the average amount available to each class member from
 20 the settlement fund. The settlement here provides, on average, at least \$299 for
 21 each class member. (Leviant Decl., at ¶ 23.)

22
 23 ¹ "Neither in *Serrano*[] nor in any other opinion has our Supreme Court
 24 carved the factors used in that case into concrete or barred consideration of other
 25 relevant and nonduplicative factors." *Lealao v. Beneficial California, Inc.*, 82 Cal.
 26 App. 4th 19, 39 (2000). "Moreover, two of the factors employed by the trial judge
 27 in *Serrano*[] – the fact that the plaintiffs' attorneys received public and charitable
 28 funding for the purpose of bringing such lawsuits, and the fact that the monies
 awarded would not inure to the benefit of individual attorneys but to the
 organizations that employed them [citation omitted] – would be *inapplicable* in
 most cases." *Id.* at n.9. The instant case is among that majority of cases to which
 those two exceptionally case-specific criteria don't apply. However, the remaining
Serrano factors are applicable here, and tend to be repeated throughout state and
 federal authorities.

1 How class members respond to a class action settlement is typically
 2 addressed in concert with courts' assessments of a settlement's overall benefit to
 3 class members. *See generally, Vizcaino, supra.* State and federal courts alike take
 4 the measure of a settlement's "fairness" with reference to the class members'
 5 reaction, and specifically the extent to which class members object, and through
 6 their objections imply a settlement's unfairness. *See, e.g., 7-Eleven Owners for*
 7 *Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1152-53 (2000) (only
 8 nine objectors from a class of 5454 was an "overwhelmingly positive" fact that
 9 supported approval of the settlement); *Reynolds v. National Football League*, 584
 10 F.2d 280 (8th Cir. 1978) (16 objectors out of 5400 strongest evidence of no
 11 dissatisfaction with settlement among class members); *American Eagle Ins. Co. v.*
 12 *King Resources Co.*, 556 F.2d 471, 478 (10th Cir. 1977) (only one objector "of
 13 striking significance and import"). Here, the Court will receive information about
 14 Class Member participation and exclusion rates at the time it determines whether to
 15 finally approve the settlement. This factor cannot be fully discussed by Plaintiff at
 16 the time this Motion was prepared.

17
 18 **2. The Experience, Reputation, And Ability Of Class Counsel**
 19 **Weigh In Favor Of The Fee Award**

20 California law also recognizes the "skill and experience of attorneys" as
 21 appropriate criteria for evaluating a fee motion. *Flannery v. California Highway*
 22 *Patrol*, 61 Cal. App. 4th 629, 647 (1995); *accord In re Rent-Way Sec. Litig.*, 305 F.
 23 Supp. 2d 491 (W.D. Pa. 2003) ("skill and efficiency of counsel" among fee motion
 24 criteria); *In re Heritage Bond Litig.*, 2005 U.S Dist. LEXIS 13555 at *64 (C.D. Cal.
 25 June 10, 2005) (Considering "the quality of Class Counsel's effort, experience and
 26 skill").

27 Class Counsel has had substantial experience with the causes of action here
 28 (Leviant Decl., at ¶¶ 31-34) and has regularly litigated employment law class

1 actions. Class Counsel also has experience with the process of certifying and
 2 resolving off-the-clock class actions like that settled here. (Leviant Decl., at ¶¶ 31-
 3 34.)

4 5 **3. The Time And Labor Required By The Litigation Was** 6 **Significant**

7 California and federal law also look to the time and labor required in
 8 connection with the litigation and settlement of a class action for which final
 9 approval is sought. *See Serrano*, 20 Cal. 3d at 49, *accord Vizcaino*, 290 F.3d at
 10 1048-50.

11 Through the filing of this Motion, Class Counsel has devoted well over 420
 12 hours of attorney time to this matter. (Leviant Decl. ¶¶ 35-43.) This case required
 13 substantial firm resources, including: pre-litigation investigation and research;
 14 interviewing Class Members; reading and analyzing thousands of pages of
 15 documents, including company records, caselaw, and related case pleadings;
 16 engaging in formal and informal discovery; researching the causes of action,
 17 particularly those in flux during this litigation; performing legal and factual
 18 analyses in preparation for mediation; and drafting the settlement materials and
 19 Class Notice. (Leviant Decl., at ¶¶ 35-43.) The “time and labor” criterion weighs
 20 in favor of final approval and an award of the requested fees and other payments.
 21

22 **4. Class Counsel Was Precluded From Other Employment**

23 Another of the criteria for the evaluation of a preliminarily approved fee
 24 request is whether the settled litigation resulted in Class Counsel’s foregoing other
 25 employment. *Serrano*, 20 Cal. 3d at 49; *accord In re Public Serv. Co.*, 1992 U.S.
 26 Dist. LEXIS 16326 at *9 (S. D. Cal. July 28, 1992) (the opportunity cost of being
 27 precluded from representing other clients in other cases “weighs in favor of an
 28 award of one-third of the common fund”). Here, Class Counsel was precluded

1 from other employment. (Leviant Decl., at ¶ 35.) Over the course of the case, no
 2 fewer than six attorneys at Spiro Moss litigated this matter. During the final, most
 3 heavily contested months of litigation, three attorneys, Ira Spiro, H. Scott Leviant
 4 and Linh Hua, worked on this matter to the exclusion of other potential cases.
 5 (Leviant Decl., at ¶ 35.) Class Counsel’s preclusion from other employment
 6 supports the requested fee award.

8 5. **The Litigation Involved Complex Legal and Factual Issues**

9 California law recognizes that the litigation’s general complexity and
 10 “difficulty of the questions involved, and the skill in presenting them” are properly
 11 considered. *Serrano*, 30 Cal. 3d at 49, *accord Wershba v. Apple Computer*, 91 Cal.
 12 App. 4th 224, 245 (2001).

13 Complexity was introduced to this litigation on multiple fronts. The size of
 14 the class, consisting of well over 5,000 people in several call centers across the
 15 state, created its own form of complexity. And during the class period, Comcast
 16 made several changes to its procedures and timekeeping systems, injecting
 17 additional complexity. (Leviant Decl., ¶ 45.)

18 Additionally, on top of the factual and evidentiary complexity, this case
 19 consistently entailed a legal complexity. In particular, the law concerning rounding
 20 claims is not well developed in California, requiring extensive reliance upon
 21 federal decisions interpreting similar issues under the FLSA and non-binding
 22 materials from the DLSE. As described above, the “complexity and difficulty”
 23 factor also favors final approval of the requested fees. (Leviant Decl., ¶ 46.)

25 6. **Class Counsel Assumed Significant Risk**

26 Under California law, the novelty and challenges presented by a class action,
 27 as well as the corresponding risk that the class members and class counsel will be
 28 paid no recovery or fee, is properly evaluated in connection with a fee motion. *See*

1 *Serrano*, 20 Cal. 3d at 49; accord *Vizcaino*, 290 F.3d at 1050-51 (multiplier applied
2 to lodestar cross-check reflects risk of non-recovery).²

3 Ninth Circuit and California state courts regard circumstances in which class
4 counsel's work is wholly contingent as a factor weighing in favor of approving a
5 negotiated fee award that approximates market rates:

6 A contingent fee must be higher than a fee for the same legal services
7 paid as they are performed. The contingent fee compensates the
8 lawyer not only for the legal services he renders but for the loan of
9 those services. The implicit interest rate on such a loan is higher
10 because the risk of default (the loss of the case, which cancels the debt
11 of the client to the lawyer) is much higher than that of conventional
loans. A lawyer who bears both the risk of not being paid and
provides legal services is not receiving the fair market value of his
work if he is paid only for the second of these functions. If he is paid
no more, competent counsel will be reluctant to accept fee award
cases.

12 *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132-33 (2001). And see, e.g., *Craft v.*
13 *County of San Bernardino*, 2008 U.S. Dist. LEXIS 27526 at *14 (C.D. Cal. Apr. 1,
14 2008) ("In addition to the risk of establishing liability, class certification carries
15 risks and requires experienced class counsel").

16 As discussed above, the major cause of action in this matter – for unpaid
17 "off-the-clock" labor – presented substantial risk for Class Counsel. Off-the-clock
18 claims are difficult to prove and as difficult to certify. Class Counsel nevertheless
19 faced that risk. Ultimately, an exceptional result was obtained for Class Members.

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24 ² Indeed, so pervasive is the risk criterion, comprising as it does a case's
25 basic demands and challenges, that the cross-check multiplier is referred to as the
26 "risk multiplier." *Vizcaino* at 1051. "This mirrors the established practice in the
27 private legal market of rewarding attorneys for taking the risk of nonpayment by
28 paying them a premium over their normal hourly rates for winning contingency
cases." *Id.* (quoting *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291,
1299 (9th Cir. 1994)). And see *In re Chiron Corp. Sec. Litig.*, 2007 U.S. Dist.
LEXIS 91140 at *24 (N.D. Cal. 2007) (C.D. Cal. April 1, 2008) (noting instability
in relevant law as valid consideration in percentage fee award analysis).

1 7. **The Fee Award is Reasonable Under The Common Fund**
 2 **Doctrine**

3 Courts in the Ninth Circuit and California have increasingly embraced the
 4 “percentage method” rather than the lodestar approach when awarding attorneys’
 5 fees in a common fund settlement. *See* 7 Witkin, B.E., CALIFORNIA PROCEDURE
 6 (2007 Supp.) §§ 255-261 at 236-241 (describing pre-eminence of percentage
 7 method under California law); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478
 8 (1980) (“[A] litigant or a lawyer who recovers a common fund for the benefit of
 9 persons other than himself or his client is entitled to a reasonable attorney’s fee
 10 from the fund as a whole”); *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1377-78
 11 (N.D. Cal. 1989) (Patel, J.) (endorsing percentage method). *See generally*,
 12 *Serrano*, 20 Cal. 3d at 25; *accord Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th
 13 Cir. 1998).

14 The California Supreme Court has consistently held that “when a number of
 15 persons are entitled in common to a specific fund, and an action brought by a
 16 plaintiff or plaintiffs for the benefit of all results in the creation or preservation of
 17 that fund, such plaintiff or plaintiffs may be awarded attorneys’ fees out of the
 18 fund.” *Serrano* at 34 (quoting *D’Amico v. Board of Medical Examiners*, 11 Cal. 3d
 19 1 (1974)).³ Common fund fee awards are desirable because they most accurately
 20 align incentives with outcomes. “Courts agree that because the percentage-of-the-
 21 benefit approach ‘is result-oriented rather than process-oriented, it better
 22 approximates the workings of the marketplace’ than the lodestar approach.”
 23 *Lealao*, 82 Cal. App. 4th at 48 (citations omitted).

24 Attorney’s fees paid from a common fund are based on the total recovery
 25 available, as opposed to the total amount claimed by the class. *Williams v. MGM-*
 26 _____

27 ³ The common fund doctrine has long been a part of North American
 28 jurisprudence. *See, e.g., Trustees v. Greenough*, 105 U.S. 526 (1881); *Central*
Railroad & Banking v. Pettus, 113 U.S. 116 (1885).

1 *Pathe Communications Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997). In *Williams*,
 2 class counsel contended that the district court should have calculated their fee as
 3 one-third of the entire \$4.5 million settlement fund, for a fee of about \$1.5 million,
 4 rather than calculating it as one-third of the amount actually claimed by class
 5 members. The Ninth Circuit held that the district court abused its discretion by
 6 basing the fee on the class members' claims against the fund. *Id.*

7 California law has no set fee "benchmark" with respect to its common
 8 benefit percentage analysis.⁴ Although the Ninth Circuit's 25 percent "benchmark"
 9 analysis is not applicable here as state law controls, the requested fee award is
 10 nevertheless appropriate using this standard. In awarding percentages of the class
 11 fund, courts in the Ninth Circuit frequently take into account the size of the fund.
 12 *Craft v. County of San Bernardino*, 2008 U.S. Dist. LEXIS 27526 (Apr. 1, 2008
 13 C.D. Cal.) Often, but not always, fees of less than 25 percent will be awarded in
 14 "megafund" cases (cases of \$50 million or more). *Id.* Cases settling for less than
 15 \$10 million, as here, will typically result in fees above 25 percent. *Id.*

16 California recognizes that the custom and practice in class actions is to award
 17 approximately one-third of a fund as a fee award. *See Chavez v. Netflix, Inc.*, 162
 18 Cal. App. 4th 43, 66, n.11 (2008) ("Empirical studies show that, regardless whether
 19 the percentage method or the lodestar method is used, fee awards in class actions
 20 average around *one-third* of the recovery.") (emphasis added). However, Plaintiff
 21 in this case requests *less than* the customary one-third of the fund that is often
 22 awarded in California. *See Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp.
 23 294, 297-98 (N.D. Cal. 1995) "[m]ost of the cases Class Counsel have cited in
 24 which high percentages such as 30-50 percent of the fund were awarded involved
 25 relatively smaller funds of less than \$10 million"). Plaintiff requests that 25% of
 26 the fund be award to Class Counsel for achieving these results for the Class.

27 _____
 28 ⁴ *See generally, Serrano*, 20 Cal. 3d 25; *Lealao*, 82 Cal. App. 4th 19.

1 In any event, the Maximum Settlement Amount obtained through the efforts
 2 of Plaintiff's counsel is \$1,750,000. Adhering to the benchmark established by the
 3 Ninth Circuit, Plaintiff's counsel has agreed to accept no more than \$437,500 in
 4 fees. (Leviant Decl., ¶ 37.) But perhaps most importantly, the proposed attorneys'
 5 fees were disclosed to the Class Members in the Notice issued to Class Members.
 6 (Leviant Decl., at ¶¶ 23, 37.)

7
 8 **8. A Lodestar Analysis Confirms The Reasonableness of The**
 9 **Fee Award**

10 Despite the widely recognized limitations of the so-called "lodestar" method,
 11 California and federal courts recognize the utility of a lodestar "cross-check."
 12 *Lealao*, 82 Cal. App. 4th at 46. A lodestar "cross-check" analysis typically
 13 happens in three steps. *Cundiff v. Verizon California*, 167 Cal. App. 4th 718
 14 (2008), *accord Vizcaino*, 290 F.3d at 1047.⁵

15 First, a trial court must determine a baseline guide or "lodestar" figure based
 16 on the time spent and reasonable hourly compensation for each attorney involved in
 17 the case. *Serrano* at 48. Second, the court sets a reasonable hourly fee to apply to
 18 the time expended, with reference to the prevailing rates in the geographical area in
 19 which the action is pending. *Bihun v. AT&T Information System*, 13 Cal. App. 4th
 20 976, 997 (1993) (16 years ago, affirming a \$450 per hour rate for a Southern
 21 California litigation attorney). Finally, a "multiplier" of the base lodestar is set

22
 23
 24
 25 ⁵In contrast to the use of the lodestar method as a primary tool for setting a
 26 fee award, the lodestar cross-check can be performed with a less exhaustive
 27 cataloging and review of counsel's hours. *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d
 28 294, 306 (3d Cir. 2005) ("The lodestar cross-check calculation need entail neither
 mathematical precision nor bean-counting."); *Goldberger v. Integrated Resources,
 Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) ("Of course, where [the lodestar method is]
 used as a mere cross-check, the hours documented by counsel need not be
 exhaustively scrutinized.").

1 with reference to the factors described in detail throughout this brief.⁶ Across all
 2 jurisdictions, multipliers of up to four are frequently awarded in common fund
 3 cases. NEWBERG, §14.03 at 14. Often, multipliers of greater than four are
 4 warranted.⁷

5 Here, Class Counsel has billed over 420 hours, at rates commensurate with
 6 experience and the prevailing rates among defense and plaintiffs' firms that
 7 regularly litigate wage and hour class actions. (Leviant Decl., ¶¶ 38-41.)

Attorney	Hours	Rate	Total
Ira Spiro	149	\$650	\$96,850.00
Greg Karasik	21.4	\$625	\$13,375.00
H. Scott Leviant	147.6	\$525	\$77,490.00
H. Scott Leviant (est.)	15	\$525	\$7,875.00
Linh Hua	109.5	\$400	\$43,800.00
Linh Hua (est.)	10	\$400	\$4,000.00
Rami Yomtov	8.5	\$275	\$2,337.50
		Total:	\$245,727.50

18 Multiplying the attorney hours by the respective hourly rates listed above yields the
 19 total lodestar figure of \$245,727.50. The figures for estimated ("est.") time above
 20 reflect the best estimates of Class Counsel, based on their experience and the
 21 settlement class size, for the time that will be expended by Class Counsel between
 22 the filing of this motion and the hearing of Plaintiff's Motion for Final Approval.

24 _____
 25 ⁶ Those factors include the novelty and difficulty of issues involved, and thus
 26 the risk factor; the skill displayed in presenting the issues; whether the litigation
 27 precluded other employment; and the contingent nature of the fee award. *Serrano*
 28 at 49.

⁷*Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 (Table of Percentage-Based
 Attorneys' Fee Awards in Common Fund Cases summarizing survey of lodestar
 multipliers).

1 A multiplier of only 1.78 is necessary to yield the requested fees of \$437,500.00.⁸

2 California and Federal courts alike commonly adjust basic lodestar rates to
3 reflect the fair market value of the attorney's services. *Graham v. DaimlerChrysler*
4 *Corp.*, 34 Cal. 4th 553, 579 (2004); *and see Wershba v. Apple Computer, Inc.*, 91
5 Cal. App. 4th 224, 255 (2001) (under California law, multipliers typically range
6 from 2 to 4); *accord Vizcaino* (3.65 multiplier), *but see, e.g., Steiner v. American*
7 *Broadcasting Corp., Inc.*, 2007 U.S. App. LEXIS 21061 (9th Cir. 2007) (affirming
8 6.85 multiplier); *Wilson v. Bank of Am Natl. Trust & Savs. Assn.*, No. 643872 (Cal.
9 Sup. Ct. Aug. 16, 1982) (multiplier of 10); *Glendora Comm. Redev. Agency v.*
10 *Demeter*, 155 Cal. App. 3d 456, 465 (1984) (affirming multiplier of 12, and
11 expressly rejecting argument that fee was either exorbitant or unconscionable).

12 Here, the sub-1.8 multiplier needed to align the negotiated fee award with the
13 attorney hours expended is considerably less than those higher multipliers that have
14 been approved under California law. Accordingly, the lodestar cross-check affirms
15 that the fee award that has been preliminarily approved does in fact fall within the
16 range of reasonableness.

17
18 **9. Important Public Policies Are Advanced by Awarding**
19 **Reasonable Fees to Skilled Class Counsel**

20 Wage and hours laws “concern not only the health and welfare of the
21 workers themselves, but also the public health and general welfare.” *California*
22 *Grape Etc. League v. Industrial Welfare Com.*, 268 Cal. App. 2d 692, 703 (1969).
23 California's overtime laws “are to be construed so as to promote employee
24 protection.” *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 340
25

26
27 ⁸ This multiplier does not include any amount attributable to Mr. Givens,
28 who performed an estimated 50 hours of work on this matter and billed at a rate of
\$475 per hour when he left Spiro Moss. If included in the lodestar cross check, Mr.
Givens' time would reduce the multiplier to about 1.63.

1 (2004) (*citing Ramirez v. Yosemite Water, Inc.*, 20 Cal. 4th 785, 794 (1999)).⁹
 2 Moreover, the Legislature’s decision to criminalize certain employer conduct
 3 reflects a determination that the conduct affects a broad public interest. For
 4 example, under Labor Code section 1199 it is a crime for an employer to fail to pay
 5 overtime wages. *Gould v. Maryland Sound Industries, Inc.*, 31 Cal. App. 4th 1137,
 6 1148 (1995). In short, “California’s labor statutes reflect a strong public policy in
 7 favor of full payment of wages for all hours worked.” *Armenta v. Osmose, Inc.*,
 8 135 Cal. App. 4th 314, 324 (2005); *accord, Earley v. Superior Court*, 79 Cal. App.
 9 4th 1420, 1430 (2000) (enforcement of wage laws reflects broad public interest).

10 Courts have also long acknowledged the importance of class actions as a
 11 means to prevent a failure of justice in our judicial system. *Linder v. Thrifty Oil*
 12 *Co.*, 23 Cal. 4th 429, 434-435 (2000) (citing *Daar v. Yellow Cab Co.*, 67 Cal. 2d
 13 695, 703-704 (1967)). The California Supreme Court has unwaveringly endorsed
 14 the value of private enforcement of California’s wage and hour laws through class
 15 actions:

16 Labor Code section 1194 confirms ‘a clear public policy . . . that is
 17 specifically directed at the enforcement of California’s minimum wage
 18 and overtime laws for the benefit of workers.’” [citing *Sav-On*, 34
 19 Cal. 4th at 340] Although overtime and minimum wage laws may at
 20 times be enforced by the Department of Labor Standards Enforcement
 (DLSE), it is the clear intent of the Legislature in section 1194 that
 minimum wage and overtime laws should be enforced in part by
 private action brought by aggrieved employees. [citation omitted]

21 *Gentry v. Superior Court*, 42 Cal. 4th 443, 455-56 (2007).

22 As a practical matter, therefore, privately initiated class actions are the sole
 23 mechanism for enforcement of California’s labor code derived worker protections.
 24 And, now, 5,852 current and former Comcast employees have the opportunity to
 25 receive cash payments upon the final approval of this settlement. Moreover, in the
 26

27 ⁹ Mr. Dennis Moss, a partner at Spiro Moss LLP, was responsible for the
 28 exceptional result in *Ramirez*. Mr. Moss and Mr. Spiro contributed amicus briefing
 in the *Sav-on* matter.

1 community of major telephone customer service centers, word of a settlement no
 2 doubt travels, and undocumented improvements will likely benefit employees who
 3 are neither a part of this settlement nor employed by Comcast. Those who become
 4 class members in the next class action will also benefit, so long as their case is
 5 taken on by able attorneys that, despite the risks, have a reasonable opportunity to
 6 receive incentivizing compensation for their time expended and risks taken.

7
 8 **C. The Cost Reimbursement Is Reasonable And Should Receive Final**
 9 **Approval**

10 The leading California attorneys' fee cases also confirm that class action
 11 counsel are entitled to a cost reimbursement. *Serrano*, 20 Cal. 3d at 25; *Lealao*, 82
 12 Cal. App 4th at 48.

13 Class counsel's costs and expenses for this matter exceeded \$26,500.
 14 (Leviant Decl., ¶ 48.) These are costs precisely of the sort that are reimbursable in
 15 conjunction with a fee application. *In re United Energy Corp. Sec. Litig.*, 1989
 16 U.S. Dist. LEXIS 19146 *16 (C.D. Cal. Mar. 9, 1989). Accordingly, because the
 17 total costs slightly exceed the negotiated \$25,000 cap, final approval of the cost
 18 reimbursement is requested in that maximum amount of \$25,000.

19
 20 **D. The Enhancement Payments Are Reasonable and Should Receive**
 21 **Final Approval**

22 It is customary and appropriate to provide a payment to the named Plaintiff
 23 for services to the class as Class Representative. *Van Vranken v. Atlantic Richfield*
 24 *Co.*, 901 F. Supp. 294 (N.D. Cal. 1995). Here, the Named Plaintiff and, upon
 25 preliminary approval having been granted, the Class Representative, Shawn Blouin,
 26 spent considerable time and effort in the prosecution of this action, including
 27 providing testimony at a deposition, attending a defendant deposition, traveling to
 28 the first mediation session, attending the second mediation session, assisting with

1 preparations for mediation, providing documents, analyzing data, identifying
2 witnesses, and consulting with Class Counsel. (Leviant Decl. ¶ 30.) Plaintiff has
3 served effectively throughout the duration of his role as Class Representative.
4 (Leviant Decl. ¶ 30.) As a direct result of Plaintiff’s efforts, thousands of Class
5 Members stand to benefit. (Leviant Decl., ¶¶ 18-30.) Class Counsel, therefore,
6 fully supports the negotiated service payment of \$10,000 as being fair, reasonable,
7 and appropriate. (Leviant Decl. ¶ 30.)
8


9 **IV. CONCLUSION**

10 For all the reasons set forth, Plaintiff and Class Counsel respectfully request
11 final approval of the requested attorneys’ fees, costs, class member enhancement
12 award.
13

14 Dated: March 1, 2011

Respectfully submitted,

SPIRO MOSS LLP

16
17 By: 

Ira Spiro
H. Scott Leviant
Linh Hua

Attorneys for Plaintiff Shawn Blouin and
the Settlement Class

SPIRO MOSS LLP

Diana Lee

From: ECF-CAND@cand.uscourts.gov
Sent: Thursday, March 03, 2011 5:08 PM
To: efiling@cand.uscourts.gov
Subject: Activity in Case 3:08-cv-04787-MEJ Blouin v. Comcast Corp. Motion for Attorney Fees

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Case Name: Blouin v. Comcast Corp.
Case Number: [3:08-cv-04787-MEJ](#)
Filer: Shawn Blouin
Document Number: [45](#)

Docket Text:

MOTION for Attorney Fees Class Representative Enhancement and Costs filed by Shawn Blouin. Motion Hearing set for 7/14/2011 10:00 AM in Courtroom B, 15th Floor, San Francisco before Magistrate Judge Maria-Elena James. (Attachments: # (1) Affidavit of H. Scott Leviant, Esq., # (2) Proposed Order)(Leviant, Howard) (Filed on 3/3/2011)

3:08-cv-04787-MEJ Notice has been electronically mailed to:

Daryl Steven Landy dlandy@morganlewis.com, richard.jackson@morganlewis.com

Howard Scott Leviant scott@spiromoss.com

Jennifer Ann Lockhart jlockhart@morganlewis.com, gjohnson@morganlewis.com

Linh Hua Linh@spiromoss.com, diana@spiromoss.com

Robert Ira Spiro ira@spiromoss.com, diana@spiromoss.com

Theresa C. Mak tmak@morganlewis.com, adoyle@morganlewis.com

3:08-cv-04787-MEJ Please see [General Order 45 Section IX C.2 and D](#); Notice has NOT been electronically mailed to:

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Document description:Main Document

Original filename:C:\fakepath\2011 03-01 PLD-MTN for Fees - Costs - Enhancements - Final - Comcast.pdf

Electronic document Stamp:

[STAMP CANDStamp_ID=977336130 [Date=3/3/2011] [FileNumber=7227754-0] [79bf1a1b86abca1b4ae55bf30a362e80cdbdcc37f3a5e2c19d51288aa29a858cab62a6ee58429c811b4517a7bd233ef63276bcade9c2f274d41dcf28e89f6bf5]]

Document description:Affidavit of H. Scott Leviant, Esq.

Original filename:C:\fakepath\2011 03-01 PLD-DEC of HSL re Fees - Costs - Enhancements - Complete - Comcast.pdf

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