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9 UNITED STATES DISTRICT COURT

10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 JERI CONNOLLY and RHONDA
12 ARNESON, individually and on behalf of all
others similarly situated,

Case No. 3:14-cv-01983 TEH

13 Plaintiffs,

14 v.

15 WEIGHT WATCHERS NORTH AMERICA,
16 INC.,

17 Defendant.

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR ATTORNEY'S
FEES AND COSTS; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: December 15, 2014
Time: 10:00 AM
Place: Hon. Thelton E. Henderson
(Courtroom 2, 17th Floor)

19 _____ /

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NOTICE OF MOTION AND MOTION

TO DEFENDANT WEIGHT WATCHERS NORTH AMERICA, INC. AND ITS COUNSEL OF RECORD AND ALL OTHER INTERESTED PARTIES:

PLEASE TAKE NOTICE THAT on December 15, 2014 at 10:00 a.m., in Courtroom 2 of this Court located on the 17th Floor of 450 Golden Gate Ave., San Francisco, California 94102, Plaintiffs Jeri Connolly and Rhonda Arneson (“Plaintiffs,” “Representative Plaintiffs”)and Class Counsel will move and hereby move the Court for an order granting the following relief:

(1) granting Class Counsel’s request for an award of attorney’s fees in the amount of \$421,875.00 to be paid from the Settlement Fund established by the Parties’ Settlement and on the terms set forth in the Settlement and Class Counsel’s Co-Counseling Agreement, pursuant to Fed. R. Civ. P. 23(h) and the legal standards set forth in the memorandum supporting this motion;

(2) granting Class Counsel’s request for an award of costs reimbursement in an amount to be determined, but no greater than \$15,000, to be paid from the Settlement and on the terms set forth in the Settlement, pursuant to Fed. R. Civ. P. 23(h) and the legal standards set forth in the memorandum supporting this motion; and,

(3) finding the facts and stating the legal conclusions that are necessary to support the Court’s order.

This Motion is based upon this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Joint Stipulation of Settlement and Release that has been lodged and filed with the Court, and the declaration of Steven G. Zieff filed herewith in support of this Motion, the other records, pleadings, and papers filed in this action; and upon such other documentary and oral evidence or argument as may be presented to the Court at the hearing of this Motion.

DATED: August 11, 2014

Respectfully submitted,

RUDY, EXELROD, ZIEFF & LOWE, LLP

By: /s/ Steven G. Zieff
STEVEN G. ZIEFF
Attorneys for Plaintiff

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TABLE OF CONTENTS

1

2

3 I. STATEMENT OF ISSUES TO BE DECIDED.....1

4 II. BACKGROUND.....2

5 III. ARGUMENT5

6 A. Attorney’s Fees and Costs Awards under the Common Fund

7 Doctrine.....5

8 B. Counsel are Entitled to a Common Fund Attorney’s Fee Award

9 calculated as 25% of the Settlement Fund.....6

10 1. The fee award should be calculated as a percentage of the

11 Settlement Fund.....6

12 2. A common fund award calculated as 25% of the Settlement

13 Fund meets the benchmark for reasonableness in the Ninth

14 Circuit.8

15 3. The requested fee award is fair and reasonable in view of

16 Class Counsel’s efforts, the results obtained, and other

17 relevant factors.9

18 4. The reasonableness of the requested fee award is confirmed

19 by a lodestar cross-check.....12

20 C. The Court should Grant the Requested Award for Reimbursement

21 of Expenses.....13

22 D. The Class Will Have Ample Opportunity to Review Class

23 Counsel’s Motion.14

24

25

26

27

28

IV. CONCLUSION14

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23
24
25
26
27
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TABLE OF AUTHORITIES

Page(s)

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723 F.Supp. 1373 (N.D. Cal. 1989).....7, 8

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(1984) 465 U.S. 8866

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444 U.S. 472 (1980)5

Central R.R. & Banking Co. v. Pettus,
113 U.S. 116 (1885)5

Chemi v. Champion Mortgage,
2009 WL 1470429 (D.N.J. May 26, 2009)8, 13

Class Plaintiffs v. Jaffe & Schlesinger, P.A.,
19 F.3d 1306 (9th Cir. 1994).....5

In re Continental Ill. Sec. Litig.,
962 F.2d 566 (7th Cir. 1992).....7

Gerlach v. Wells Fargo, Inc.,
2007 WL 163189 (N.D. Cal. Jan. 19, 2007)6, 8

Goldberger v. Integrated Resources, Inc.,
209 F.3d 43 (2d Cir. 2000).....7

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768 F.Supp. 725 (C.D. Cal. 1991).....8

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47 F.3d 373 (9th Cir. 1995).....8

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886 F.2d 268 (9th Cir. 1989).....6, 7, 8

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904 F.2d 1301 (9th Cir. 1990).....6, 8

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1 *Staton v. Boeing Co.*,
 2 327 F.3d 938 (9th Cir. 2003).....5

3 *Stuart v. RadioShack Corp.*,
 4 2010 WL 3155645 (N.D. Cal. Aug. 9, 2010).....8

5 *Swedish Hosp. Corp. v. Shalala*,
 6 1 F.3d 1261 (D.C. Cir. 1993)6, 7

7 *Van Vranken v. Atl. Richfield Co.*,
 8 901 F.Supp. 294 (N.D. Cal. 1995).....13

9 *Vincent v. Hughes Air West, Inc.*,
 10 557 F.2d 759 (9th Cir. 1977).....5, 13

11 *Vizcaino v. Microsoft Corp.*,
 12 290 F.3d 1043 (9th Cir. 2002).....1, 8, 12, 13

13 **Statutes, Rules and Regulations**

14 Federal Rules of Civil Procedure
 15 Rule 23(h).....1

16 **California Statutes, Rules and Regulations**

17 California Labor Code
 18 Section 226.....9

19 California’s Unfair Competition Law.....3

20 Private Attorney General Act of 2004.....9, 11

21

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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF ISSUES TO BE DECIDED

Plaintiffs hereby file their Motion for Attorney’s Fees and Costs (“Motion”) pursuant to Rule 23(h) of the Federal Rules of Civil Procedure seeking an order awarding Class Counsel¹ reasonable attorney’s fees and costs reimbursement as authorized by the Parties’ proposed settlement. The issues to be decided are (1) whether to make an award in the amount of \$421,875 to Class Counsel from the Settlement Fund of \$1,687,500 established by the proposed settlement, which is 25% of the Settlement Fund, and (2) whether to make an award to Class Counsel from the Settlement Fund for reimbursement of costs expended in the Litigation, in an amount not to exceed \$15,000. These issues should be decided in Class Counsel’s favor and the Motion granted.

Class Counsel is seeking a fee award under the familiar “common fund” doctrine. The Ninth Circuit benchmark amount for appropriate common fund fee awards in class action cases like this is 25% of the fund obtained for the class, which is the amount Class Counsel are requesting. *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). A 25% common fund fee award in this case is reasonable under the relevant legal standards, including the lodestar “cross-check” method that courts sometimes apply in order to obtain a “useful perspective on the reasonableness of a given percentage award.” *Vizcaino*, 290 F.3d at 1050. *See* Section III.B.4., *infra*.

Beyond the percentage and lodestar cross-check factors, the amount of fees requested here is reasonable in view of the particular circumstances presented. Class Counsel include highly-accomplished class action litigators with an excellent reputation in their field, who undertook the representation in this case solely on a contingency fee basis, without any guarantee that they

¹ All capitalized terms appearing in this memorandum that are defined herein shall have the meanings assigned to them in the Parties’ Joint Stipulation of Settlement and Release filed with the Court on the same date as this Motion.

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1 would ever be paid anything for their time, and who zealously, efficiently, and conscientiously
 2 prosecuted the Litigation and obtained an excellent result for the Class. Class Counsel have
 3 already expended over 308 hours working on the case and have paid nearly \$8,000 for litigation
 4 expenses out of their own pockets. Class Counsel had originally estimated that the costs
 5 advanced could be up to \$15,000; fortunately, however, it now appears likely that the costs
 6 expended by Class Counsel will be less. Any amount left over from the \$15,000 set aside for
 7 litigation costs will revert to the Settlement Fund and increase the amount ultimately distributed
 8 to Class Members. Prior to the hearing on the Motion for Attorneys' Fees and Costs, Class
 9 Counsel will provide the Court with a then-current report of Class Counsel's expenses. If Class
 10 Counsel's then-current or projected expenses are less than \$15,000 (as is anticipated at this time),
 11 Class Counsel will request that lesser amount, rather than maximum allowable costs of \$15,000.
 12 Declaration of Steve Zieff ISO Motion for Attorney's Fees ("Zieff Decl. III"), ¶ 35.

13 This action involves multiple and complex claims, including a number of challenging
 14 issues. Class Counsel's efforts have yielded a Settlement Fund payment of \$1,687,500 which is
 15 completely non-reversionary. Additionally, Weight Watchers will pay for the employer's
 16 customary share of applicable payroll taxes and for the Settlement Administrator to perform
 17 multiple functions to provide notice of the settlement to Class Members and help carry out the
 18 terms of the settlement. Class Members are not required to take any affirmative action to receive
 19 their settlement shares.

20 For the foregoing reasons, as set forth more fully below, the Court should enter an order
 21 granting Class Counsel an award of reasonable attorney's fees in the amount of \$421,875, and an
 22 award for the reimbursement of litigation expenses in an amount not to exceed \$15,000 in costs.²

23 **II. BACKGROUND**

24 Plaintiffs have provided an overview of the Litigation in their Motion for Order
 25 Certifying Settlement and Preliminarily Approving Class Action Settlement ("Preliminary

26 ² Among other things, the supplemental memorandum will provide the Court with
 27 updated hours, lodestar fees, and costs numbers, and information about the Class's response to
 28 the settlement, including a discussion of objections to the instant fees and costs application, if
 there are any.

1 Approval Motion”). By order dated July 21, 2014, this Court approved the Preliminary Approval
 2 Motion, ordered that notice be mailed to the class, and set a date for the Final Fairness hearing
 3 (Dkt. No. 17).

4 To summarize here, this case was commenced on behalf of a class of individuals who
 5 were employed as Weight Watchers meeting “Leaders”, “Receptionists”, or hourly-paid Location
 6 Coordinators in California during the period from January 9, 2011, to December 9, 2012.
 7 Plaintiffs allege a number of claims, contending that Weight Watchers failed to pay Class
 8 Members at least the minimum wage for all their hours worked, failed to pay the required
 9 minimum wage for working “split shifts,” failed to pay overtime premiums, failed to reimburse
 10 Class Members for expenses incurred in the course of their employment, failed to furnish Class
 11 Members with itemized pay statements that comply with California law, failed to maintain
 12 complete and accurate records of Class Members’ hours worked, and, predicated on its unpaid
 13 wage and expense reimbursement violations, violated California’s Unfair Competition Law. As
 14 set forth in the Preliminary Approval Motion, this class action is related to a prior class action
 15 filed by the law firm of Rudy Exelrod Zieff and Lowe, LLP against Weight Watchers, captioned
 16 *Sabatino v. Weight Watchers North America, Inc.*, Case No. 09-4926 (TEH) (N.D. Cal. 2009).
 17 The *Sabatino* case involved similar claims and facts as are at issue in the instant lawsuit.

18 Following extensive negotiations with Weight Watchers, both prior to and following the
 19 filing of the Complaint, the parties eventually reached an agreement under which the Class will
 20 settle all the claims in the Litigation in exchange for a non-reversionary settlement payment of
 21 \$1,687,500, payment by Weight Watchers of the employer’s customary share of applicable
 22 payroll taxes, and payment by Weight Watchers of all the costs and fees of the third-party
 23 Settlement Administrator (Declaration of Steven G. Zieff ISO Motion for Preliminary Approval
 24 (“Zieff Decl. I”), ¶¶ 41-49). As described in the Preliminary Approval Motion, Supplemental
 25 Brief in Support of Preliminary Approval (“Supplemental Brief”), Dkt. No. 16, and supporting
 26 declarations, the settlement was reached after Class Counsel conducted an extensive investigation
 27 into the facts and claims for relief, including review and analysis of relevant payroll data from
 28 Weight Watchers (*id.*, at ¶¶ 37-41; Supplemental Declaration of Steve Zieff ISO Motion for

1 Preliminary Approval (“Zieff Decl. II”), ¶¶ 5-7; Zieff Decl. III, ¶¶ 6-17).

2 Since Plaintiff Jeri Connolly first contacted Class Counsel in early 2013 regarding her
3 concerns about Weight Watchers’ employment and pay policies, Class Counsel has undertaken a
4 diligent investigation of the factual and legal bases of the allegations raised by Ms. Connolly and
5 by Plaintiff Rhonda Arneson (Zieff Decl. III, ¶¶ 6-7). After deciding to undertake the
6 representation of Plaintiffs in this action, Class Counsel devoted substantial resources to, among
7 other things, interviewing Plaintiffs and numerous putative class members on relevant topics such
8 as the training, job responsibilities, work activities, work hours, timekeeping and reporting,
9 supervision, compensation, and expense reimbursement of Weight Watchers Leaders,
10 Receptionists, and hourly-paid Location Coordinator workers (*id.*, ¶¶ 8, 10).

11 As described in Plaintiffs’ Supplemental Brief and the supporting Supplemental
12 Declaration of Steve Zieff, both prior to and after filing the Complaint, Counsel performed a
13 substantial amount of work to investigate and research the legal and factual issues in this case
14 (Zieff Decl. I, ¶¶ 36, 37; Zieff Decl. II, ¶¶ 4-7; Zieff Decl. III, ¶¶ 6-19). The parties exchanged
15 documents, including payroll records and detailed database records regarding the number and
16 type of workweeks at issue and the compensation paid to Class Members during the class period
17 of January 9, 2011 to December 9, 2012. Class Counsel interviewed Plaintiffs and other Class
18 Members regarding the work they performed and reviewed documents provided by Plaintiffs
19 (Zieff Decl. III, ¶¶ 7-8). Class Counsel also reviewed and relied upon the discovery, research,
20 and analysis undertaken in the prior *Sabatino* lawsuit (*id.*, ¶ 10).

21 The parties engaged in arm’s length negotiations both prior to and after the filing of the
22 complaint (Zieff Decl. III, ¶¶ 17-18). During settlement negotiations, Class Counsel worked
23 extensively with a forensic accounting firm to analyze Defendant’s payroll records and create
24 damages models, that took into account different scenarios and assumptions regarding unpaid
25 hours and unreimbursed business expenses (*id.*, at ¶ 13). These models enabled Class Counsel to
26 meaningfully estimate damages and evaluate the potential values and Weight Watcher’s
27 potential exposures on various claims (*ibid.*). Class Counsel also sought further production of
28 more detailed and refined payroll data showing pay rates, hour worked and other relevant data

1 pertaining to Leaders and Receptionists working in California during the relevant period (*id.*, at
 2 ¶ 16). In response, Weight Watchers provided detailed information — derived from payroll
 3 records kept in the normal course of its business — about the pay periods at issue in the same
 4 manner and format as provided to the plaintiffs in the *Sabatino* litigation. From this data, Class
 5 Counsel were able to verify the number of work weeks at issue and the type of work performed
 6 (Leader, Receptionist, and/or hourly location coordinator work) (*ibid.*).

7 After conducting such investigation, informal discovery, and legal and factual analysis,
 8 and following more than six months of negotiations, Class Counsel were able to vigorously and
 9 effectively negotiate a fair and reasonable settlement, resulting in a Memorandum of
 10 Understanding outlining the parties’ general points of agreement (*id.*, at ¶ 18). The parties
 11 continued to negotiate the specific terms and details of settlement, resulting in agreement and
 12 execution of the Joint Stipulation of Settlement and Release (Zieff Decl. I, Exh. A).

13 **III. ARGUMENT**

14 **A. Attorney’s Fees and Costs Awards under the Common Fund Doctrine.**

15 Courts have long recognized that when attorneys’ efforts result in the creation of a
 16 common fund that benefits plaintiffs and unnamed class members, counsel have an equitable
 17 right to be compensated from that fund as a whole for their successful efforts in creating it. *See*,
 18 *e.g.*, *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Central R.R. & Banking Co. v.*
 19 *Pettus*, 113 U.S. 116 (1885); *Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003). “The
 20 common fund doctrine provides that a private plaintiff, or his attorney, whose efforts create,
 21 discover, increase or preserve a fund to which others also have a claim is entitled to recover from
 22 the fund the costs of his litigation, including attorneys’ fees.” *Vincent v. Hughes Air West, Inc.*,
 23 557 F.2d 759, 769 (9th Cir. 1977); *see also Class Plaintiffs v. Jaffe & Schlesinger, P.A.*, 19 F.3d
 24 1306, 1308 (9th Cir. 1994); *In re Omnivision Tech., Inc.*, 559 F.Supp.2d 1036, 1046 (N.D. Cal.
 25 2008). The doctrine is founded on the understanding that attorneys should normally be paid by
 26 their clients, and that unless attorney’s fees are paid out of the common fund where the attorneys’
 27 unnamed class member “clients” have no express retainer agreement, those who benefited from
 28 the fund without contributing to those who created it would be unjustly enriched. *Boeing*, 444

1 U.S. at 478.

2 **B. Counsel are Entitled to a Common Fund Attorney’s Fee Award calculated as**
 3 **25% of the Settlement Fund.**

4 **1. The fee award should be calculated as a percentage of the Settlement**
 5 **Fund.**

6 This case has resulted in the creation of a \$1,687,500 Settlement Fund to benefit the
 7 Class. Calculating the amount of fees to be awarded for creating such a common fund is the
 8 traditional and most appropriate method for calculating the amount of the fee award in common
 9 fund cases such as this one. *See, e.g., Blum v. Stenson* (1984) 465 U.S. 886, 900 n.16 (under
 10 common fund doctrine “a reasonable fee is based on a percentage of the fund bestowed on the
 11 class”); *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir.
 12 1990); *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989); *In re*
 13 *Omnivision*, 559 F.Supp.2d at 1046 (“use of the percentage method in common fund cases
 14 appears to be dominant”) (adverting to the advantages of using the percentage method as
 15 described by other courts, finding those advantages persuasive, and adopting the percentage
 16 method); *Gerlach v. Wells Fargo, Inc.*, 2007 WL 163189, *1 (N.D. Cal. Jan. 19, 2007) (“The
 17 amount of the reasonable attorney’s fees awarded to Class Counsel should be based on the
 18 percentage of the common fund approach.”); Zieff Decl. I ¶¶ 9-17, 19-22, 24-29 (describing
 19 numerous class action cases for unpaid wages and comparable claims in which Class Counsel
 20 have been awarded common fund fee awards calculated as a percentage of the common fund).

21 The percentage method is appropriate for a number of well-recognized reasons. *See*
 22 *generally In re Omnivision.*, 559 F.Supp.2d at 1046 (N.D. Cal. 2008) (discussing the advantages
 23 of using the percentage method as “described thoroughly by other courts,” finding those
 24 advantages persuasive, and adopting the percentage method) (citing *In re Activision Sec. Litig.*,
 25 723 F.Supp. 1373, 1374-77 (N.D. Cal. 1989)). One of the most important reasons is that the
 26 percentage method accomplishes fee spreading in a manner that comports with the legal
 27 marketplace, where counsel’s success is frequently measured in terms of the results counsel has
 28 achieved. *See Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1269 (D.C. Cir. 1993) (in common
 fund cases “the monetary amount of the victory is often the true measure of [counsel’s] success”).

1 By assessing the amount of the fee in terms of the amount of the benefit conferred on the class,
2 the percentage method “more accurately reflects the economics of litigation practice” which,
3 “given the uncertainties and hazards of litigation, must necessarily be result-oriented.” *Id.*
4 (internal quotes and citation omitted).

5 Further, when clients do not pay an ongoing hourly fee to their counsel, they typically
6 negotiate an agreement in which counsel’s fee is based upon a percentage of any recovery. The
7 percentage of the fund approach mirrors this aspect of the market and, accordingly, reflects the
8 fee that would have been negotiated by the class members in advance, had such negotiations been
9 feasible, given the prospective uncertainties and anticipated risks and burdens of the litigation.
10 *See, e.g., Paul, Johnson, Alston & Hunt*, 886 F.2d at 271 (“it is well settled that the lawyer who
11 creates a common fund is allowed an extra reward, beyond that which he has arranged with his
12 client, so that he might share the wealth of those upon whom he has conferred a benefit”); *In re*
13 *Continental Ill. Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992) (in a common fund case, the object
14 “is to give the lawyer what he would have gotten in the way of a fee in an arm’s length
15 negotiation, had one been feasible”).

16 This market-based percentage approach to common fund fee awards has other benefits
17 and advantages as well. Because the percentage approach mimics the market, it helps provide
18 highly qualified attorneys the necessary incentive to bring large, complex class actions, even
19 though by definition it is impossible in such cases to negotiate a fee with the unnamed class
20 members in advance. Basing the common fund fee award on a percentage of the fund also
21 encourages counsel to spend their time efficiently and to focus on maximizing the size of the
22 class recovery, rather than their own lodestar hours. *Swedish Hospital*, 1 F.3d at 1269.

23 Finally, the percentage method preserves judicial resources because it is far easier for
24 courts to calculate than any alternative method. *Id.*; *In re Activision Sec. Litig.*, 723 F.Supp. at
25 1378. As the Second Circuit noted in *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43 (2d
26 Cir. 2000), the “primary source of dissatisfaction [with the lodestar method] was that it
27 resurrected the ghost of Ebenezer Scrooge, compelling district courts to engage in a gimlet-eyed
28 review of line-item fee audits.” 209 F.3d at 48-49.

1 In sum, the award of Class Counsel’s common fund fees here should be calculated as a
2 percentage of the \$1,687,500 Settlement Fund created for the benefit of the Class.

3 **2. A common fund award calculated as 25% of the Settlement Fund**
4 **meets the benchmark for reasonableness in the Ninth Circuit.**

5 Class Counsel seeks an award of fees in the amount of 25% of the Settlement Fund,
6 which is the benchmark for reasonableness in the Ninth Circuit.

7 In determining what constitutes a fair reasonable percentage of a settlement fund for
8 purposes of calculating common fund fees, the Ninth Circuit has stated that courts look to a
9 “benchmark” percentage of 25% of the total fund. *Vizcaino v. Microsoft, supra*, 290 F.3d at
10 1047; *Six Mexican Workers*, 904 F.2d at 1311; *Paul, Johnson, Alston & Hunt*, 886 F.2d at 272;
11 *Gerlach*, 2007 WL 163189 at *1; *Morganstein v. Esber*, 768 F.Supp. 725, 728 (C.D. Cal. 1991)
12 (“*Paul, Johnson . . . establishe[d] 25 percent as the ‘benchmark’ for such [class action common*
13 *fund percentage fee award] cases*”).

14 In fact, percentages higher than 25% are common (at least in non-“megafund” cases
15 involving settlements of more than \$50 million³). *See, e.g., Vizcaino*, 290 F.3d at 1047-50
16 (affirming 28% award); *Stuart v. RadioShack Corp.*, 2010 WL 3155645, *6 (N.D. Cal. Aug. 9,
17 2010) (in class action settlement arising from claims for unreimbursed employee expenses, fee
18 award in the amount of 33% of the settlement amount was “well within the range of percentages
19 which courts have upheld as reasonable in other class action lawsuits”); *In re Pacific Enter. Sec.*
20 *Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33% award); *In re Omnivision, Inc.*, 559
21 F.Supp.2d at 1046 (approving 28% award and noting that “in most common fund cases, the
22 award exceeds that [25%] benchmark.”); *Chemi v. Champion Mortgage*, 2009 WL 1470429, *12
23 (D.N.J. May 26, 2009) (“Attorneys’ fees of approximately 30 percent of the common fund are
24 also regularly awarded in labor and employment class actions.”) (citing cases); *In re Activision*
25 *Sec. Litig.*, 723 F.Supp. 1373, 1377 (N.D. Cal. 1989) (Patel, J.) (reviewing cases and finding that

26
27 ³ *See Vizcaino*, 290 F.3d at 1050 n.5 & Appendix.
28

1 “nearly all common fund awards range around 30%”); Zieff Decl. I, ¶¶ 9-14, 16, 17, 21, 25, 26
 2 (describing multiple cases handled by Class Counsel in which courts awarded fees using the
 3 common fund method above the 25% benchmark). *See also* Newberg on Class Actions, § 14.6,
 4 and the survey cited therein: “[e]mpirical studies show that, regardless whether the percentage
 5 method or the lodestar method is used, fee awards in class actions average around one-third of
 6 the recovery.”

7 For these reasons, the requested common fund award, \$421,875, calculated as 25% of the
 8 Settlement Fund, is presumptively reasonable.

9 **3. The requested fee award is fair and reasonable in view of Class**
 10 **Counsel’s efforts, the results obtained, and other relevant factors.**

11 The ultimate goal in determining fees is to reasonably compensate counsel for their
 12 efforts in creating the common fund. *In re Omnivision*, 559 F.Supp.2d at 1046 (citing *Paul*,
 13 *Johnson*, 886 F.2d at 271-72).

14 The Ninth Circuit has approved a number of factors which may be relevant to the
 15 district court’s determination: (1) the results achieved; (2) the risk of litigation; (3)
 16 the skill required and the quality of work; (4) the contingent nature of the fee and
 the financial burden carried by the plaintiffs; and (5) awards made in similar cases.

17 *Id.* (citing *Vizcaino*, 290 F.3d at 1048-50).

18 **Results achieved.** Class Counsel obtained an excellent result for the Class in view of the
 19 strength of and possible range of recoveries for the Class’s claims and the multiple risks the Class
 20 faces in continuing with the Litigation, including class certification risks and some particularly
 21 significant risks of non-recovery or greatly-reduced recoveries relative to what the Class has been
 22 seeking, according significant risks to Plaintiffs’ core theories of liability for unpaid minimum
 23 wages (*See* Zieff Decl. I, ¶¶ 54-58, 61-63; Preliminary Approval Motion at p. 17.)

24 The central class claim in this case turned out to be the claim for allegedly inadequate
 25 itemized wage statements under Section 226 of the California Labor Code and even that claim
 26 had substantial hurdles to overcome. The settlement achieved is very fair compensation for the
 27 viable claims, taking into consideration the various risks of continued litigation (*ibid.*). A large
 28 percentage of the Class’s theoretical recovery as estimated by Class Counsel would be for PAGA

1 penalties, 75% of which would not even go into a common fund for the Class’s benefit, but
 2 would rather be paid to the California Labor and Workforce Development Agency. And, as
 3 discussed in the Declaration of Steven G. Zieff, there were risks that had to be considered with
 4 respect to the various claims in the case (Zieff Decl. I, ¶ 61).

5 Against this backdrop, Weight Watchers will make a completely non-reversionary of
 6 settlement payment of \$1,687,500 and will pay the employer’s customary share of applicable
 7 payroll taxes on payments to Class Members, as well as the fees and costs of the Settlement
 8 Administrator. Class Members are not required to take any affirmative action to receive their
 9 settlement shares. Class Members should receive their payments in January 2015, as opposed to
 10 waiting for years to recover any compensation, assuming they recovered anything at all (*id.*, at ¶¶
 11 53, 61).

12 ***Risk of Litigation and Skill of counsel.*** Class Counsel are experienced in complex class
 13 actions, particularly in wage-and-hour claims. Class Counsel include attorneys who are highly
 14 experienced in handling class actions like this one and who have an excellent reputation. Their
 15 experience and reputation assisted them in representing the Class vigorously but without causing
 16 unnecessary delay or creating unnecessary work (Zieff Decl. III, ¶ 25). Class Counsel have
 17 shown great skill and thoroughness in investigating and developing the claims, liability theories,
 18 and estimated possible recoveries in the Litigation, and otherwise expended great effort on behalf
 19 of the Class (*id.*, at ¶¶ 23-24). As the Court noted in its Order preliminarily approving this class
 20 action settlement:

21 “[Class Counsel]entered into the Settlement only after conducting extensive
 22 informal discovery and investigation, which included interviewing the named
 23 plaintiffs and other current and former employees of Weight Watchers in
 24 California, reviewing and analyzing work and payroll data for the Class produced
 25 by Weight Watchers in the course of informal discovery conducted during the
 26 course of settlement negotiations, and estimating potential Class recoveries on a
 per week or pay period basis based thereon. Moreover, Class Counsel’s extensive
 discovery and investigation in the related *Sabatino* case provided additional
 substantial information upon which they were able to assess the strengths and risks
 of the Class’s case when they entered into the Settlement.”

27 Order Granting Preliminary Approval of Class Action Settlement, ¶ 9 (Dkt. No. 17). At the same
 28 time, Class Counsel has also litigated this matter efficiently.

1 As discussed in the Supplemental Brief and the supporting Zieff Declaration, Class
 2 Counsel are uniquely experienced in litigating Plaintiffs' employment claims against Weight
 3 Watchers, having achieved a favorable result for the class in *Sabatino*. Class Counsel
 4 nonetheless assumed significant risk in taking on the instant representation, on a contingency
 5 basis and without any assurance of payment or reimbursement for fees and costs (Zieff Decl. II,
 6 at ¶ 24). Counsel conducted substantial investigation prior to filing the Complaint, including
 7 interviewing the Representative Plaintiffs and other putative Class Members subjected to Weight
 8 Watchers' pay practices, researching the factual and legal bases for Plaintiffs' claims, and
 9 engaging in pre-filing negotiations with Defendant, all of which likely resulted in benefit to the
 10 Class. Class Counsel have invested, and will continue to invest, the necessary resources on
 11 behalf of the Class, including time and expenses.

12 As noted, Class Counsel assumed significant risk in committing to representing the
 13 Plaintiffs and the putative class, including that Defendant would litigate this case through class
 14 certification, summary judgment, and trial, requiring Class Counsel to invest significant resources
 15 over a long period of time. In addition to the fact that Weight Watchers has never conceded
 16 liability and has differed with Class Counsel over many factors in determining damages, the
 17 threat of protracted litigation of this case was particularly relevant given the short time frame at
 18 issue and the limited period of time for which any Private Attorney General Act ("PAGA")
 19 penalties could be asserted. Whereas in *Sabatino* the threat of potentially large PAGA penalties
 20 and other damages may have driven Defendant to settle, in the instant case, the potential PAGA
 21 penalties are comparatively small (Zieff Decl. I, ¶ 58).

22 Throughout the lengthy, and at times contentious, settlement discussions, the parties had
 23 very different views regarding the amount of money necessary to fairly settle this case. The
 24 parties focused their attentions on a wide variety of factors that had implications for what a
 25 reasonable settlement would be, including (1) the hours worked by Class Members, (2) the
 26 relevant rates of pay, and (3) the interpretation of the payroll data produced (Zieff Decl. II, ¶ 7).
 27 Class Counsel worked closely with their forensic accounting expert to develop damages models
 28 based on the current class period, which required analyzing the payroll records and documents

1 produced by Weight Watchers pursuant to this litigation that are applicable to the Class period of
2 January 9, 2011 to December 2012 (Zieff Decl. III, ¶¶ 13-15).

3 ***Contingent nature of the fee.*** Class Counsel have expended more than 308 hours on the
4 Litigation, with many more hours to come, and have incurred approximately \$8,000 in expenses
5 to date. These are significant outlays of resources – particularly in attorney time. Class Counsel
6 have invested their time and advanced costs without any guarantee that Class Counsel would ever
7 obtain any compensation at all, as the representation is being handled solely on a contingency fee
8 basis (*id.*, ¶¶ 24, 29, 34).

9 ***Awards in similar cases.*** As discussed above, the benchmark for awards in similar cases
10 is 25% of the common fund and that is what Class Counsel request here. Also as discussed, it is
11 common for higher percentages to be awarded. In comparable cases, courts have granted Class
12 Counsel awards calculated as 25%, 30%, and 33% of the common funds obtained (Zieff Decl. I,
13 ¶¶ 9-26).

14 The foregoing factors support the conclusion that the amount of fees requested is a
15 reasonable amount to compensate Class Counsel for their efforts on behalf of the Class.

16 **4. The reasonableness of the requested fee award is confirmed by a lodestar cross-check.**

17 A lodestar cross-check confirms that the percentage requested is reasonable. *See*
18 *Vizcaino*, 290 F.3d at 1050 (“while the primary basis of the fee award remains the percentage
19 method, the lodestar may provide a perspective on the reasonableness of a given percentage
20 award”).

21 Class Counsel has already spent approximately 308 hours on this litigation, resulting in
22 lodestar fees through the present of approximately \$192,680. Zieff Decl. III, ¶ 29. Moreover,
23 Class Counsel will continue to spend many hours on the case to obtain final settlement approval
24 and carry out the work necessary to make sure that the settlement is fully implemented and to
25 resolve any issues that may arise. Based on Class Counsel’s experience in other cases, including
26 the *Sabatino* case, it is very likely that Class Counsel will reasonably expend at least another 100
27 hours on this matter (corresponding to additional lodestar of approximately \$63,000). Zieff Decl.
28 III, ¶ 33. The requested fee award of \$421,875 represents approximately 2.2 times the amount of

1 the present lodestar fees and a considerably smaller multiplier of approximately 1.6 of what the
 2 eventually lodestar is projected to be in this matter. This multiple is well within the range of
 3 those that are frequently awarded by use of the percentage method in common fund cases.
 4 *Vizcaino*, 290 F.3d at 1051 & n.6 (multiples ranging from 1.0 to 4.0 are frequently awarded in
 5 common fund cases; affirming order awarding common fund fees where lodestar cross-check
 6 resulted in a multiplier of 3.65); *Van Vranken v. Atl. Richfield Co.*, 901 F.Supp. 294, 298 (N.D.
 7 Cal. 1995) (noting that multipliers in the 3-4 range are common in class action lodestar awards).
 8 The multiplier in this case is well within the range customarily approved by Court in other
 9 comparable wage and hour class actions.

10 In sum, a finding that the requested amount of fees here is reasonable and should be
 11 approved is further supported by the lodestar cross-check perspective.

12 **C. The Court should Grant the Requested Award for Reimbursement of Expenses.**

13 Under the common doctrine, the attorneys whose efforts helped to create the fund are
 14 entitled to recover “the costs of . . . [the] litigation” from the fund, in addition to attorney’s fees.
 15 *Vincent, supra*, 557 F.2d at 769. “In common fund cases, counsel is entitled to reimbursement of
 16 expenses that were adequately documented and reasonably and appropriately incurred in the
 17 prosecution of the case.” *Chemi*, 2009 WL 1470429 at*12 (internal quotes omitted); *see In re*
 18 *Omnivision*, 559 F.Supp.2d at 1048-49 (awarding payment for reimbursement of expenses, plus
 19 interest, .from settlement fund; discussing that attorneys may recover reasonable expenses that
 20 would typically be billed to paying clients in non-contingency matters, including expenses for
 21 photocopying, printing, postage, messenger services, legal research in electronic databases,
 22 experts and consultants, and travel costs).

23 Class Counsel have provided documentation of the amounts they have advanced for
 24 expenses in this matter, including copying costs, the fees for a consulting forensic accountant,
 25 costs of electronic legal research, postage, and other expenses (Zieff Decl. III, ¶ 34). These
 26 amounts total nearly \$8,000 through August 11, 2014, and, based on Class Counsel’s experience
 27 and the tasks remaining to be done in the case relating to finalizing and effectuating the
 28 settlement, Class Counsel estimate that Class Members will incur some additional expenses (*id.*,

1 at ¶ 35). Class Counsel will file a supplemental memorandum with the Court prior to the
2 Fairness Hearing, in which Class Counsel will state the final amount of costs incurred that for
3 which they are requesting reimbursement, which will not exceed \$15,000, at least barring any
4 unusual circumstance not reasonably foreseeable (*ibid.*).

5 Based on the foregoing, the Court should grant Class Counsel’s request for an award of
6 costs reimbursement in an amount not to exceed \$15,000.

7 **D. The Class Will Have Ample Opportunity to Review Class Counsel’s Motion.**

8 The Parties’ proposed Notice to the Class Members regarding the settlement, approved by
9 the Court, informs Class Members of the requested amount of attorney’s fees and that the instant
10 motion will be heard at the settlement Fairness Hearing, where Class Members may appear and
11 present any objections. Class Members will have the opportunity to review the instant motion
12 and supporting declaration and exhibits throughout the notice and opt-out period.

13 **IV. CONCLUSION**

14 For the foregoing reasons, Plaintiffs respectfully request that the Court grant all relief
15 requested by this Motion as set forth in the Notice of Motion. Prior to the hearing, Plaintiffs will
16 submit a proposed order.

17 DATED: August 11, 2014

Respectfully submitted,

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