

1 **MATTHEW RIGHETTI, ESQ.** {121012}  
2 **JOHN GLUGOSKI, ESQ.** {191551}  
3 **MICHAEL RIGHETTI, ESQ** {258541}  
4 **RIGHETTI · GLUGOSKI, P.C.**  
5 456 Montgomery Street, Suite 1400  
6 San Francisco, CA 94104  
7 Telephone: (415) 983-0900  
8 Facsimile: (415) 397-9005

9 Attorneys for Plaintiff

10 **THE SUPERIOR COURT OF CALIFORNIA**  
11 **COUNTY OF SAN FRANCISCO**

12 KATIE ROBATTO, an individual and on  
13 behalf of all others similarly situated,

14 Plaintiff,

15 v.

16 DRY BAR HOLDINGS LLC., and DOES 1-  
17 100, inclusive,

18 Defendant.

) **CASE NO.** CGC-14-540275  
)  
)

) **MEMORANDUM OF POINTS AND**  
) **AUTHORITIES IN SUPPORT OF**  
) **MOTION FOR ATTORNEYS' FEES**  
) **AND COSTS; REQUEST FOR CLASS**  
) **REPRESENTATIVE ENHANCEMENT**

) Date: March 11, 2016  
) Time: 9:30 a.m.  
) Dept.: 305  
)

19 \_\_\_\_\_/

TABLE OF CONTENTS

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 AUTHORITIES.....ii

I. INTRODUCTION.....2

II. THE LODESTAR METHOD.....3

    A. Counsel’s Hourly Rate.....3

    B. Counsels’ Hours Expended on the Case .....5

    C. Under the Lodestar, the Court Should Consider the Percentage-Of-the-Fund  
        Amounts Counsel Would Have Received On The Free Market.....6

        1. The fee awarded is within the range of fees freely negotiated  
            in the legal marketplace in comparable litigation.....6

        2. An enhancement based on the percentage-of-the-fund  
            is justified based on factors stated in *Lealao*.....8

            i. Contingent Risk of Litigation.....9

III. THE COURT SHOULD APPROVE THE REQUEST FOR  
REIMBURSEMENT OF COSTS, PAYMENT TO THE LWDA  
AND COSTS ADMINISTRATION .....9

IV. THE COURT SHOULD APPROVE THE REQUEST FOR  
PLAINTIFFS’ ENHANCEMENT.....10

V. CONCLUSION.....11

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 AUTHORITIES**

**FEDERAL CASES**

*New York Gaslight Club, Inc. v. Carey*  
447 U.S. 54 100 (1980) .....5

**STATE CASES**

*Flannery v. California Highway Patrol*  
61 Cal. App. 4th 629 (1998) .....4

*Ketchum v. Moses*  
24 Cal.4th 1122 (2001).....6, 7

*Lealao v. Beneficial California, Inc.*  
82 Cal. App. 4th 19 (2000) .....*passim*

*Margolin v. Regional Planning Comm'n*  
134 Cal. App. 3d 999 (1982) .....5

*PLCM Group, Inc. v. Drexler*  
22 Cal. 4th 1084 (2000).....3

*Serrano v. Priest,*  
20 Cal. 3d 25 (1977).....*passim*

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

**I. INTRODUCTION**

Plaintiff moves for an order approving an attorney’s fee award of \$433,333.33. This amount is one-third of the total settlement value of \$1,300,000.00. Plaintiff also requests reimbursement of litigation costs of \$15,000.00 to class counsel, Righetti Glugoski, P.C. This is less than the total costs incurred by Plaintiff’s counsel of \$15,897.46. Under both a percentage and a lodestar calculation, the fee request equates to the reasonable value of services performed for this litigation, including attorneys’ fees up to and including final approval of the settlement. Lastly, Plaintiff requests that the Court award her an enhancement of \$15,000.00 for her services as class representative.

In awarding fees, the case that should govern the court’s decision is *Lealao v. Beneficial California, Inc.*, (2000) 82 Cal. App. 4th 19. *Lealao* stands for the proposition that court-awarded attorney’s fees should approximate what counsel could get on the free market for the same services. (*Id.* at 50.) Specifically, *Lealao* holds that, if the court sets fees pursuant to the lodestar, the multiplier should consider what counsel would have earned on the free market. According to *Lealao*, the free market is determined by the percentage of the common fund, not the lodestar amount. (*Id.*) Accordingly, whatever method the court should use to set fees, the court should look to what the market would bear in these circumstances. Thus, if the court awards fees under the lodestar method, under *Lealao*, the lodestar fee should be adjusted by a multiplier to reflect the percentage of the fund. (*Id.* at 19, 50.)

This settlement represents a resolution of hard-fought wage and hour class action litigation. Even after deductions for attorney’s fees and costs, the settlement provides an excellent result for class members in light of the nature of the damages and wrongs suffered by them. It is likely for this

1 reason that there have been no objectors or opt outs to date (although the notice and claim period has  
2 not yet closed). Additionally, several class members have contacted class counsel about the  
3 settlement; yet, no one has expressed dissatisfaction. Indeed, each of the class members who has  
4 inquired about the settlement has reacted positively to the terms. See Decl. of Matthew Righetti, ¶4.  
5 These facts, as well as others discussed below, warrant approval of the requested fees, costs and  
6 enhancement.  
7

## 8 **II. THE LODESTAR METHOD**

9 Under the lodestar method, plaintiff calculates a base fee amount from a compilation of time  
10 reasonably spent on the case and the reasonable hourly compensation of the attorneys. The base  
11 amount is then adjusted in light of various factors. (*Serrano v. Priest*, 20 Cal. 3d 25, 48 (“*Serrano*  
12 *III*”).  
13

14 Under a strict lodestar analysis, the fees expended to date equal \$300,965.00. Righetti Decl. ¶  
15 17-19. In complex wage and hour litigation of this nature, a multiplier is typically appropriate and  
16 warranted in order to increase the value of the fees to the reasonable market rate for similar wage and  
17 hour litigation (i.e. one third of the settlement fund). Here, the settlement agreement sets the amount  
18 Plaintiff may request for attorneys’ fees at one-third of the total value of the settlement, which  
19 represents the market value of attorneys’ fees in contingency fee, class action wage and hour cases.  
20 One-third of the settlement equals \$433,333.33, thus a multiplier is appropriate pursuant to *Lealoe*  
21 and *Serrano*. To increase Plaintiff’s counsel’s lodestar of \$300,965.00 to \$433,333.33, a multiplier of  
22 approximately 1.44 should be applied.  
23  
24

### 25 **A. Counsel’s Hourly Rate**

26  
27  
28

1 Counsel requests an hourly rate of \$750 per hour for Matthew Righetti, \$400 per hour for  
2 Michael Righetti, and \$150 for paralegal work. As set forth below as well as in the Declaration of  
3 Matthew Righetti, ¶¶ 5-13, the proposed hourly rates are reasonable in the California market.

4 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and  
5 experience in the relevant community. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal. 4th 1084, 1095.)

6 The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the attorney's  
7 skill and experience, the nature of the work performed, the relevant area of expertise and the attorney's  
8 customary billing rates. (*Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.)

9  
10 One difficulty in determining the hourly rate of attorneys of similar skill and experience in the  
11 relevant community is the scarcity of hourly fee-paying clients in class action litigation. As a practical  
12 matter, few, if any, employees pay attorneys' fees on an hourly basis for such extensive litigation, and  
13 thus retainer agreements in such cases are based on a contingency fee relationship. Therefore, there is  
14 no customary billing rate, but the nature of class action work should be strongly considered by the  
15 Court. In this regard, the requested rates are fair and reasonable. Righetti Decl. ¶¶ 14-16.

16  
17 Further, similar rates have been approved by trial courts in California. For example, the  
18 Honorable Carl J. West in the *Davis v. Kohl's* case and the Honorable Ann Jones in the *Rocher v. Sav-*  
19 *On Case* approved of Righetti Glugoski's rates. Righetti Decl. ¶ 5. Class Counsel's skill and  
20 experience justify the requested rate. Class Counsel's practice is devoted to litigation focusing on  
21 representing employees in employment matters. Class Counsel has litigated numerous class actions,  
22 (*Id.*). Further Class Counsel has successfully certified and tried many wage and hour class actions  
23 under California's wage orders. Righetti Decl. ¶ 2.

24  
25 The nature of the work and counsel's experience justify the requested rate as well. The nature  
26 of the work in this case involved a class action under California's wage and hour laws. Navigating the  
27  
28

1 wage and hour laws is difficult and not within the ambit of many lawyers. Class action work requires  
2 specialized learning and the willingness to take large risks. Again, not many lawyers handle these  
3 cases with success due to these complicating factors. Righetti Decl. ¶ 14.

4 Class Counsel are attorneys who command a high rate. They have had unique success in wage  
5 and hour class actions, are held in high regard by the legal community, and their practice is an unusual  
6 *niche* area. This case was not a “fender-bender” that any lawyer could litigate, but a specialized area  
7 of employment law that required skilled and experienced attorneys. There are a relatively small  
8 number of attorneys in California with this expertise and experience. Therefore, the requested rates  
9 are reasonable.  
10

#### 11 **B. Counsels’ Hours Expended On The Case**

12 Over the course of nearly two years, Class Counsel spent 492.2 hours litigating the case and  
13 paralegals spent 152.1 hours, including this motion for attorneys’ fees. Righetti Decl. ¶ 17. Counsel  
14 will spend more time in the future preparing the Final Approval motion, attending the hearing on the  
15 motions, and attending to administrative matters subsequent to receiving the Court’s Order. A true  
16 and correct log of Righetti Glugoski’s lodestar is marked and attached to the Righetti Decl. as Exhibit  
17 5.  
18

19 The hours spent on this case are neither unreasonable nor duplicative. Righetti Decl. ¶ 19.  
20 California courts have recognized that multiple counsel is permissible when the demands of the case  
21 warrant more than one attorney. In such cases, some duplication of work is both expected and  
22 compensable. (*Margolin v. Regional Planning Comm’n* (1982) 134 Cal. App. 3d 999, 1006-1007.)  
23 Further, Plaintiff’s counsel has broken down the hours spent on this case by both Michael and  
24 Matthew Righetti because the attorneys do not have the same hourly rate.  
25  
26  
27  
28

1 Reasonable hours include, in addition to time spent during litigation, the time spent before the  
2 action is filed, including time spent interviewing the clients, investigating the facts and the law, and  
3 preparing the initial pleadings. (*New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62.)  
4 Further, the fee award should include fees incurred to establish and defend the attorneys' fee claim.  
5 (*Serrano v. Priest* (1982) 32 Cal. 3d 621, 639.)

6 The present case was a significant case with significant demands, and it warranted the work of  
7 more than one attorney. The breakdown of the attorneys' time and work performed on the matter is  
8 attached hereto as Exhibit 5 to the Righetti Declaration.  
9

10 **C. Under the Lodestar, the Court Should Consider the Percentage-Of-The-**  
11 **Fund Amounts Counsel Would Have Received On The Free Market**

12 Once the court establishes the lodestar amount, it may enhance the fee award by a multiplier in  
13 order to make an appropriate fee award. (*Serrano III*, 20 Cal. 3d at 48.) The pertinent factors include  
14 the difficulty of the questions involved and the skill in presenting them, the contingent nature of the  
15 fee award, the extent to which the litigation precluded other employment, and the percentage-of-the-  
16 fund the attorney would have received on the fair market. (*Id.*, *Lealao, supra*, 82 Cal. App. 4th at 49.)

17 However, this list is not exhaustive and the court can consider other factors it deems important in  
18 setting the multiplier. (*Id.* at 40.) A limitation in setting the multiplier is that the court cannot  
19 duplicate factors already included in the lodestar. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1139.)  
20

21 **1. The fee awarded is within the range of fees freely negotiated in the**  
22 **legal marketplace in comparable litigation.**

23 If the class members paid the fees that the market would bear, then, without doubt, they would  
24 pay a fee of one-third of any recovery. Since this is the market rate, *Lealao v. Beneficial California,*  
25 *Inc., supra*, indicates that the Court should adjust the lodestar fees to reflect what the class members  
26 would pay on the open market.  
27  
28



1  
2           *Lealao* held a trial court should award lodestar fees by examining the percentage-of-the-  
3 benefit and adjusting the lodestar calculation accordingly. (*Id.* at 49, 53.) *Lealao* indicated that this is  
4 an upward adjustment and should be akin to a contingency fee recovery; the court stated, “An  
5 adjustment reflecting the amount of the class recovery is not significantly different from an  
6 adjustment reflecting a percentage of that amount; and California courts have evaluated a lodestar as a  
7 percentage of the benefit.” (*Id.* at 46.) The *Lealao* method appears particularly appropriate because  
8 class actions generally are contingency fee cases for plaintiffs and the class action clients do not  
9 expect to pay an hourly fee.  
10

11  
12           The rationale of *Lealao* comports with the purpose of the multiplier. The multiplier is  
13 “primarily to compensate the attorney for the prevailing party at a rate reflecting the risk of  
14 nonpayment in contingency cases [.]” (*Ketchum v. Moses, supra*, 24 Cal.4th 1122, 1138.) *Lealao*  
15 reasons likewise that “the law should mimic the market”:

16           Given the unique reliance of our legal system on private litigants to enforce substantive  
17 provisions of law through class and derivative actions, attorneys providing the essential  
18 enforcement services must be provided incentives roughly comparable to those negotiated  
19 in the private bargaining that takes place in the legal marketplace, as it will otherwise be  
20 economic for defendants to increase injurious behavior. [Citations.] It has therefore been  
21 urged (most persistently by Judge Richard Posner) that in defining a ‘reasonable fee’ in  
22 such representative actions the law should ‘mimic the market.’ [Citations].

23           ‘In the class action context, that would mean attempting to award the fee that informed  
24 private bargaining, if it were truly possible, might have reached. The simplest way for the  
25 law to duplicate the bargain that informed parties would reach if agency costs were low is  
26 to look to fee award levels in actions brought by sophisticated private parties under the  
27 same or comparable statutes.’

28 (*Lealao*, 82 Cal. App. 4th at 47 - 48.) The court specifically held as follows:

[T]rial judges need the flexibility *Serrano III* provides, as it enables them to relate fee awards to the economic realities that determine the efficacy of the private enforcement contemplated by our civil justice system.

1 Accordingly, we hold that, in cases in which the value of the class recovery can be  
2 monetized with a reasonable degree of certainty and it is not otherwise inappropriate, a  
3 trial court has discretion to adjust the basic lodestar through the application of a positive or  
4 negative multiplier where necessary to ensure that the fee awarded is within the range of  
fees freely negotiated in the legal marketplace in comparable litigation.

5 (*Id.* at 49-50.)

6 In looking at similar cases, Plaintiff's requested fee follows the market. Certainly, the  
7 decisions of other Courts in awarding attorney fees in wage and hour class actions should be  
8 persuasive evidence of the fair market value of the services provided.

- 9
- 10 • In *Albrecht v. Rite Aid*, (San Diego County Superior Court Case No. 729219) the  
11 Honorable J. Richard Haden awarded a 35% attorney fee request in a wage and hour class  
12 action prosecuted by class counsel herein. (A true and correct copy of this order is marked  
and attached to the Declaration of Matthew Righetti as Exhibit 1.)
  - 13 • In *Graubard v. Goodyear*, (Los Angeles Superior Court Case No. BC 230520), the Hon.  
14 Anthony J. Mohr awarded a 33 1/3% fee request in a wage and hour class action lawsuit  
that settled before trial. (A true and correct copy of this order is marked and attached to  
the Declaration of Matthew Righetti as Exhibit 2.)
  - 15 • In *Crandall v. U-Haul*, (Los Angeles Superior Court Case No. BC 178775), the Hon.  
16 Stephen Czuleger awarded a 40% attorney fee request in a wage and hour class action  
17 lawsuit prosecuted by some of the same attorneys herein. (A true and correct copy of this  
order is marked and attached to the Declaration of Matthew Righetti as Exhibit 3.)
  - 18 • In *Collins v. Aaron Brothers*, (Los Angeles Superior Court Case No. BC 208856), the  
19 Hon. Anthony Mohr awarded a 33 1/3% fee request in a wage and hour class action  
20 lawsuit prosecuted by class counsel herein. (A true and correct copy of this order is  
marked and attached to the Declaration of Matthew Righetti as Exhibit 4.)

21 The foregoing examples demonstrate that Plaintiff's request is in line with the market rate.

22

23 **2. An enhancement based on the percentage-of-the-fund is justified  
based on factors stated in *Lealao*.**

24 *Lealao* states several factors justifying an enhancement based on the percentage-of-the-benefit,  
25 namely, no objections by class members, commendable conduct by counsel, and significant recoveries  
26 by class members. *Lealao*, 82 Cal. App. 4th at 51-53. These factors are all evident in this case as well.  
27

1 As in *Lealao*, the class was notified and to date there are no objections. Plaintiff's counsel  
2 received numerous calls from putative class members regarding the settlement. Plaintiff's counsel has  
3 actively tried to make sure that all class members were aware of the opt-out and objection filing  
4 deadlines. In addition, Class Counsel provided information to class members with various questions  
5 on how and whether to participate in the settlement . This is commendable conduct, which took time  
6 and effort.  
7

8 **i. Contingent Risk of Litigation.**  
9

10 Typically, a multiplier is appropriate in light of the contingent nature of counsel's fee recovery.  
11 In counsel's experience, the risks in taking on a class action case such as this are enormous,  
12 especially where Defendant retains one of the most reputable defense counsel (Littler Mendelson,  
13 P.C.) in California wage and hour litigation. In this case, the risk taken by Plaintiff's counsel were  
14 quite substantial, and the time, effort and money spent on this case prevented Plaintiff's counsel from  
15 taking on other work simultaneously. As mentioned above, litigating a wage and hour class action  
16 through trial can require years of work and the investment of considerable funds. Righetti Decl. ¶¶  
17 14-15 . For all of these reasons, Plaintiff respectfully requests that the Court apply a 1.44 multiplier  
18 and grant Plaintiff's request for attorneys' fees in the amount of \$433,333.33.  
19

20 **III. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT**  
21 **OF COSTS, PAYMENT TO THE LWDA AND COSTS ADMINISTRATION**

22 The request for reimbursement of costs in the amount of \$15,000.00 is also fair and  
23 reasonable. Righetti Glugoski, P.C. incurred \$ 15,897.46 in litigation costs. A true and correct  
24 itemization of Plaintiff's counsels' litigation costs is marked and attached to the Righetti Declaration  
25 as Exhibit 6. The amount requested is less than Plaintiff's counsel incurred in this litigation. Righetti  
26 Decl. All costs were reasonably and necessarily spent in furtherance of the prosecution of these  
27  
28

1 claims, and there has been no objection to this request from class members to date. Righetti Decl. ¶  
2 23. Plaintiff will further update the Court as to any objections in her Motion for Final Approval.  
3

4  
5 **IV. THE COURT SHOULD APPROVE THE REQUEST FOR PLAINTIFF'S**  
6 **ENHANCEMENT**

7 Finally, Plaintiff requests that the Court award her an enhancement of \$15,000.00 as agreed to  
8 between the parties in the Settlement Agreement. The request for enhancement of \$15,000.00 for  
9 Plaintiff's services to help the class in connection with this case is fair and reasonable. First and  
10 foremost, Plaintiff's efforts have resulted in several hundred and potentially thousands of class  
11 members receiving compensation for alleged wage and hour violations. Furthermore, the amount is  
12 reasonable based on the time and effort spent by Plaintiff on the case and the risks involved in these  
13 lawsuits. As explained in her declaration attached as Exhibit 7 to the Decl. of Matthew Righetti. Ms.  
14 Robatto spent a great deal of time working on this case. She researched the law and sought out  
15 counsel experienced in California wage and hour litigation. She provided documents to substantiate  
16 her claims, responded to discovery, and made herself available to respond to counsels' questions every  
17 step of the way. She attended two separate days of mediation, for which she had to request two days  
18 off of work and make arrangements for child care. In sum, she served a vital role in representing the  
19 best interests of the Class and earned the requested enhancement.  
20  
21

22 Moreover, Plaintiff assumed the risk, among other things, that she might be liable for costs  
23 incurred in connection with this case, including the costs incurred by Defendant. Further, she risked  
24 retaliation from Defendant and potentially being placed on a "blacklist" in regards to future  
25 employment in her industry for coming forward to address the wrongs of her employer.  
26  
27  
28

1           Lastly, to date no one has objected to Plaintiff's enhancement request. Plaintiff will provide a  
2 further update on objections and requests for exclusion when Plaintiff files her motion for final  
3 approval.  
4

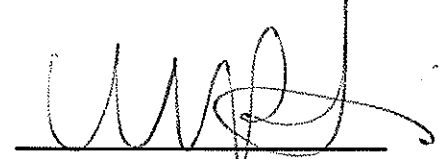
5  
6       **V.     CONCLUSION**

7           Based on the foregoing, Plaintiff respectfully requests that the Court approve the requested fee  
8 award of \$433,333.33, reimbursement of costs totaling \$15,000.00, and Plaintiff's enhancement of  
9 \$15,000.00.  
10

11  
12       Dated: January 22, 2016

Respectfully submitted,

**RIGHETTI · GLUGOSKI, P.C.**



Michael Righetti  
Attorneys for Plaintiff