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**SUPERIOR COURT OF STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE—CIVIL COMPLEX CENTER**

In re WATERMARK WAGE AND HOUR
CASES

Coordination Proceedings Special Title
(C.R.C. Rule 3.550)

Included Actions:

*Daniel Carillo-Salazar v. Watermark Services
IV, LLC, et al.,
Orange County Superior Court
Case No. 30-2020-01126766-CU-OE-CXC*

*Evanina Alaniz v. Watermark Retirement
Communities LLC, et al.,
Los Angeles County Superior Court
Case No. 20STCV16386*

*Katherine Greene v. Watermark Retirement
Properties, Inc., et al.,
Monterey County Superior Court
Case No. 20CV002422*

Case No.: JCCP 5176

Assigned for all purposes to:
Hon. William Claster
Dept. CX104

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: September 8, 2023
Time: 9:00 am
Place: Department CX104

Action Filed: January 27, 2020
Trial Date: None Set

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1 **I. INTRODUCTION.**

2 The Court has preliminarily approved the proposed Settlement reached by the parties in
3 this Action, and approved the parties' proposed notice program. Notice has been disseminated
4 consistent with the instruction of the Court and the terms of the Settlement Agreement. By this
5 motion, Plaintiffs Daniel Carillo-Salazar and Evanina Alaniz ("Plaintiffs") respectfully requests
6 that the Court conduct a final review of the Settlement, and approve the Settlement as fair,
7 reasonable and adequate.

8 The Settlement is the product of extensive arms-length negotiations between the parties
9 and their experienced and informed counsel, and is fair, reasonable, and adequate given the
10 claims, the alleged liability, and the parties' respective litigation risks.

11 Pursuant to the terms of the Settlement Agreement, Defendants Watermark Services IV,
12 LLC, Watermark Retirement Communities LLC, and Watermark Retirement Properties, Inc.
13 (collectively referred to throughout herein as "Defendants") shall pay \$2,400,000.00 to establish
14 a non-reversionary Maximum Settlement Amount claims to a class of 3,407 Participating Class
15 Members current and former nonexempt; attorneys' fees not to exceed 33.33 percent of the
16 Maximum Settlement Amount; litigation costs not to exceed \$23,096.20; the cost of the claims
17 administrator to administer the settlement \$25,000.00; a payment to the named plaintiff Daniel
18 Carillo-Salazar of \$10,000.00; a payment to the named plaintiffs Daniel Carillo-Salazar in the
19 amount of \$10,000 and Evanina Alainz in the amount of \$5,000.00; and payment of penalties to
20 the California Labor Commissioner under the Private Attorneys General Act of \$24,000.00.

21 The notice process was simple and effective, and the adequacy of the Settlement is
22 reflected in the very positive reaction from the Class Members as no Class Member objected to
23 this Settlement. The deadline to opt-out is August 14, 2023. (Declaration of Stephanie Molina of
24 ILYM Group, Inc. ("Molina Decl."), ¶ 12)

25 For the foregoing reasons and the others detailed below, the Settlement meets the
26 standards for final approval, and it should therefore be approved. Notice was also provided to the
27
28

California Labor and Workforce Development Agency of this September 8, 2023 hearing and the proposed settlement agreement to be finally approved. (Jackson Decl. ¶ 46, Ex. B.)

II. FACTS AND PROCEDURE

A. Defendants Employed California Non-Exempt Employees

Defendants are a company that owns and operates a series of retirement communities and assisted living facilities throughout California, including Orange County, California. The Class Representatives worked for Defendants as non-exempt hourly workers. The claims being released pursuant to the Settlement are limited to those claims which are based on the facts alleged or could have been alleged.

B. Class Counsel's Investigation, Discovery and Settlement Negotiations

Plaintiffs' counsel has thoroughly investigated and researched the claims in controversy, the defenses, the potential of success and recovery if successful at trial, and the developing body of law. (Jackson Decl. ¶¶ 3-45.) Plaintiff's counsel's investigation entailed the exchange of thousands of excel cells, documents, months of analysis, damages analysis based upon the Class Members' working schedules, payroll records and timesheets. (*Id.*) The investigation involved an in-depth evaluation of payroll records, payroll data, timesheets, and working schedules of the Plaintiffs and the Class Members. (*Id.*)

Following Defendants' production of payroll records and payroll data for the Plaintiff and Class Members, Class Counsel expended considerable resources in creating a damages analysis detailing each potential Labor Code violation along with calculating the damages and interest in connection to each Labor Code violation. (Jackson Decl. ¶¶ 23-45.) These same violations were presumed to exist for all other Class Members.

Overall Class Counsel performed an extensive investigation into the claims at issue, which included: (1) determining Plaintiffs' suitability as putative class representatives through interviews questioning Defendants purported Labor Code violations; (2) evaluating plaintiffs' potential claims; (3) researching wage and hour class actions similar to claims brought, the nature of the positions, and type of industry the employer is involved in; (4) examined the

1 Plaintiffs' and Class Members' payroll records and a representative sampling of Defendants'
2 payroll records; (5) examined Plaintiffs' and Class Members' timesheet records; (6) examined
3 the Defendants' payroll records to ascertain the number of employees in the Settlement Class
4 Period; (7) conducted a detailed damages analysis for purposes of generating a maximum
5 number for the amount of wages Defendants could be liable for; (8) conducted a detailed
6 damages analysis for purposes of generating a maximum number for the amount of interest owed
7 the Class Members which Defendants could be liable for; (9) conducted a detailed damages
8 analysis for purposes of generating a maximum number for the amount of penalties that could be
9 accessed against the Defendants; and (10) researching settlements in similar cases. (Jackson
10 Decl. ¶¶ 3-45.) The extensive document and data exchanges allowed Plaintiff's Counsel to
11 appreciate the strengths and weaknesses of the claims against Defendants and the benefits of the
12 proposed Settlement. (*Id.*).

13 **C. Preliminary Settlement Approval**

14 On March 22, 2023, the Court conditionally granted certification and preliminary
15 approval of the settlement.

16 **D. Proper Notice to Class Members**

17 After this Court conditionally granted certification and preliminary approval of the
18 Settlement Class Notice was sent pursuant to the terms of the Settlement. Molina Decl. ¶ 7, Ex.
19 A) No Class members submitted objections. (Molina Decl. ¶ 12)

20 **III. THE SETTLEMENT**

21 The following summarizes the Settlement's key terms.

22 **A. Settlement Class**

23 The Class is comprised of:

24 Nonexempt Class: All current and former non-exempt employees who were
25 employed by Defendants in California at any time during the class period [January
26 27, 2016 through May 31, 2022].
27
28

1 **B. Benefits to the Class**

2 **1. The Settlement Fund**

3 Pursuant to the terms of the Settlement, Defendants will pay \$2,400,000.00 to the Claims
4 Administrator to be used for: (a) providing cash payments in the amount of no less than
5 \$1,506,000 minus any applicable taxes; (b) payment of attorneys' fees not to exceed
6 \$800,000.00; (c) litigation costs not to exceed \$23,096.20; (d) a class representative
7 enhancement payment to the Named Plaintiff Daniel Carillo-Salazar not to exceed \$10,000.00;
8 (e) a class representative enhancement payment to the Plaintiff Evanine Alainz not to exceed
9 \$5,000.00; (e) all settlement administration fees and costs, including those of the Claims
10 Administrator projected to be no more than \$25,000.00; and (f) payment of all penalties under
11 the California Private Attorneys General Act of 2004 ('PAGA') in the amount of \$24,000.00
12 ('PAGA Payment'). (Molina Decl. Decl. ¶ 15.)

13 The average estimated Individual Settlement Share is \$442.16. (Molina Decl. ¶ 16.)

14 **2. Payments to Class Members**

15 Individual Settlement Payments will be calculated and apportioned from the Net
16 Settlement Amount based on the number of eligible workweeks worked during the relevant time
17 period. (Molina Decl. ¶ 15.) The individual wage payment to Plaintiff Alaniz is \$72.39 and
18 payment to Plaintiff Carillo-Salazar is \$904.87. (Molina Decl. ¶ 16.) The individual PAGA
19 payment to Plaintiff Alaniz is \$.49 and PAGA payment to Plaintiff Carillo-Salazar is \$3.33. (*Id.*)

20 **3. The Claim Process**

21 On May 16, 2023, Defendants' counsel provided the Claims Administrator with the
22 names, most recent mailing addresses, Social Security numbers, and pertinent information for the
23 Class Period for the Class Members. (Molina Decl. ¶ 5.) This list provided information for 3,407
24 Class Members. (*Id.* at 6). 3,407 Class Members were verified and mailed approved Notice
25 Packets via First-Class U.S. Mail. (Molina Decl. ¶¶ 6-7.)

26 On June 15, 2023 the Claims Administrator sent by first class mail the Notice Packets to
27 the Class Members whose names were provided by Defendants, a Notice Packet. Molina Decl. ¶
28 7, Ex. A.) If a Class Member's Notice Packet was returned by the USPS as undeliverable and

without a forwarding address, ILYM performed an address search (i.e., skip trace) on all of these addresses. (Molina Decl. ¶¶ 8-10.) To date, one request for exclusion was received. Molina Decl. ¶ 11.)

4. Distribution of Funds

In accordance with the Stipulation of Settlement, within 15 days of the funding of the settlement, the Net Settlement Fund in its entirety shall be divided among the Class Members. (Jackson Decl. ¶ 11, Ex. A, pp. 4-5 Section 4, Section C) The average estimated Individual Settlement Share is \$442.16. (Molina Decl. ¶ 16.) The number of workweeks increased by 3.3% or 7,923.53 workweeks and class members increased but the increase did not trigger the escalator clause when the workweeks increased by more than 10%. (Jackson Decl. ¶ 13, Ex. A, Section 3.04, e)

5. Opt-out and Objection Procedures

The deadline for Class Members to postmark Challenges, Objections or Exclusion Requests is August 14, 2023. (Molina Decl. ¶¶ 11-12.)

The Class Notice instructed Class Members who wished to object to the proposed Settlement to either send a written objection to the claims administrator or appear at the Final Approval Hearing. (Molina Decl. ¶ 7, Ex. A.) The claims administrator had received no objections to the settlement terms. (Molina Decl. ¶ 12.)

IV. FINAL SETTLEMENT APPROVAL IS APPROPRIATE

The law favors settlement, particularly in class actions and other complex cases in which substantial resources can be conserved by avoiding time, cost and rigors of formal litigation. (*Potter v. Pacific Coast Lumber Company*, (1951) 37 Cal. 2d. 592, 602-603; 4 NEWBERG section 11.41. When faced with a motion for final approval of a class action settlement under Code of Civil Procedure section 382, a court inquires whether the settlement is fair, adequate, and reasonable.” See e.g., *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, (2010) 186 Cal. App. 4th 399, 407-408; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 129-30; *Dunk v. Ford Motor Company* (1996) 48 Cal. App. 4th 1794, 1801.)

1 **A. This Court Preliminarily Found This Settlement to Be Fair, Reasonable And**
2 **Adequate And Nothing Has Changed to Disturb That.**

3 Before granting preliminary approval of a class action settlement, courts must determine
4 that the proposed settlement is fair, reasonable, and adequate — and not a product of fraud,
5 overreaching, or collusion. Cal. R. Ct. 3.769 (g); Cal. Civ. Pro. Code § 382; *Dunk v. Ford Motor*
6 *Co.*, supra, 48 Cal.App.4th at 1801. Courts must presume that a settlement is fair, reasonable,
7 and adequate, and thus appropriate for preliminary approval when the following three factors are
8 satisfied: (1) the parties reached settlement after arms-length negotiations; (2) counsel conducted
9 sufficient investigation and discovery to allow themselves and the court to act intelligently; and
10 (3) counsel is experienced in similar litigation *Id.* at 1802. See also *7-Eleven Owners for Fair*
11 *Franchising v. Southland Corp.*, (2000) 85 Cal. App. 4th 1135, 1146. Further, as discussed
12 below, although not determinative, courts consider the percentage of objectors in determining
13 whether a presumption of fairness exists. *Id.* The parties conducted sufficient amount of
14 discovery and participated in a private mediation and numerous conferences of counsel that
15 ultimately led to an arms-length settlement that provides for substantial recovery. Moreover,
16 there are no objectors. (Molina Decl. ¶ 12.)

17 **1. The Settlement Resulted from Non-Collusive, Arms-Length Negotiations**

18 There certainly is no collusion between the parties. The involvement of a neutral third-
19 party mediator is a factor that favors approval and evidences the presumptive fairness of the
20 arms-length negotiations. (Jackson Decl. ¶ 13.) Indeed, courts should give considerable weight
21 to the competency and integrity of counsel and the involvement of a neutral mediator in assuring
22 themselves that a settlement agreement represents an arms-length transaction entered without
23 self-dealing or other potential misconduct. *Kullar v. Foot Locker*, supra, 168 Cal. App. 4th at
24 129. Here, after extensive discovery, discussions, exchange of information and review of
25 records, on January 4, 2022, the parties conducted a full-day mediation session with a well-
26 respected and highly knowledgeable mediator Steven J. Rottman, Esq. (Jackson Decl. ¶ 13.)
27
28

1 **B. The Settlement is Supported by Substantial Investigative and Discovery Efforts**

2 As discussed in the preliminary approval papers, supporting declaration and herein, Class
3 Counsel analyzed a significant amount of information that Defendants produced in response to
4 formal and informal discovery requests in preparation for mediation. (Jackson Decl. ¶¶ 3-18; 23-
5 45.) The parties have conducted significant investigation of the facts and law during the
6 prosecution of the Action, including formal discovery efforts. (*Id.*) Class Counsel's research
7 enabled them to pinpoint the relevant issues and claims and to assess potential liability and
8 damages. (*Id.*) These efforts resulted in the parties having a clear view of the strengths and
9 weaknesses of their respective cases and achieving a resolution on favorable terms, as was
10 evidenced during mediation and subsequent negotiations leading to Settlement. (*Id.*)

11 **C. Class Counsel is Experienced in Similar Litigation**

12 The endorsement of qualified and well-informed counsel of the settlement as fair is
13 entitled to significant weight. *See Dunk, supra*, 48 Cal.App.4th at 1802. As discussed in the
14 preliminary approval papers and set forth in the Declaration of Class Counsel, Class Counsel has
15 represented, mediated and settled dozens of other employee class actions or representative
16 actions in wage and hour litigation and have knowledge of the strengths and weaknesses of the
17 claims against Defendants and the benefits of the proposed settlement under the circumstances of
18 the case. (Jackson Decl. ¶¶ 19-22.) Class Counsel contends that the Settlement is fair, adequate,
19 reasonable, and in the best interests of the Class as a whole. (*Id.*)

20 **D. Class Members' Positive Reaction to the Settlement Favors Final Approval**

21 Finally, courts look at the reaction of class members to determine if a settlement that
22 directly affects their interests should be approved as fair, adequate, and reasonable. As already
23 discussed herein, there are no objectors. (Molina Decl. ¶ 12.) Further, a court may appropriately
24 infer that a class action settlement is fair, adequate, and reasonable even when class members
25 object to it. Indeed, a court may approve a class action settlement as fair, adequate, and
26 reasonable even over the objections of a significant percentage of class members. *See Boyd v.*
27 *Betchel Corp.*, (D.C. Cal 1976) 485 F. Supp. 610, 624. *Reed v. General Motors* (5th Cir. 1983)

703 F.2d 170, 174; *In re Wash. Pub. Power Supply System Sec. Litig.* (D. Ariz. 1989) 720 F. Supp. 1379, 1394.

V. CLASS REPRESENTATIVE ENHANCEMENT IS REASONABLE

The settlement provides for an enhancement award to be paid to the Class Representatives. The purpose is to provide an additional incentive payment, taking into consideration the risks, time and effort in coming forward to fulfill all the duties associated with being a class representative. Awarding incentive awards to compensate named plaintiffs in class actions has been specifically recognized. See, e.g. *Clark v. American Residential Services, LLC*, (2009) 175 Cal App 4th 785, 804 (incentive awards to named plaintiff appropriate for participation in class action); *Bell v Farmers Ins. Exchange*, (2004) 115 Cal App 4th 715, 726 (upholding “service payments” to named plaintiffs for their efforts in bringing class case). As stated by the Court of Appeal in the *Cellphone Termination Fee Cases*: incentive awards are “intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.” *Cellphone Termination Fee Cases*, (2010) 186 Cal. App. 4th 1380, 1394 (approving an incentive award of \$10,000). The class representative enhancement payment is intended to compensate named Plaintiff Daniel Carillo-Salazar and Plaintiff Evanina Alaniz as the class representatives for their willingness to accept the responsibility of representing the interests of all class members. The purpose is to provide an incentive payment, taking into consideration the risks, time and effort expended by them in coming forward to provide invaluable information and litigate this matter on behalf of all Class Members. Plaintiffs also risked potential judgment against them if this case had been unsuccessful. In class action losses, class representatives are deemed the losing party that is liable for the prevailing party’s costs. *Earley v. Superior Court*, (2000) 79 Cal.App.4th 1420, 1433-1434. Finally, Plaintiffs also risked this lawsuit having a negative impact on future employment opportunities, as prospective employers may be less inclined to hire an employee who has served as a class representative. See, e.g. *Staton v. Boeing*, 327 F.3d 938, 977 (9th Cir.

2003) As such, Plaintiffs respectfully requests that this Court approve the Class Representatives enhancement payment in the amount of \$10,000 for Named Plaintiff Daniel Carillo-Salazar and \$5,000.00 for Plaintiff Evanina Alaniz.

VI. CLASS COUNSEL’S REQUEST FOR ATTORNEYS FEE AWARD AND COSTS ARE REASONABLE

1. Attorneys’ Fees Are Justified

a. Lodestar Analysis

“Courts recognize two methods of calculating attorney fees in civil class action; the lodestar/multiplier method and the percentage of recovery method.” (*Wershba v. Apple Computer, Inc.* 91 Cal. App. 4th 224, 254 (2001).) “[T]he lodestar is calculated by multiplying the reasonable hours expended by a reasonable hourly rate. The court may then enhance the lodestar with a multiplier, if appropriate.” (*Id.*) “The lodestar multiplier can range from 2 to 4 or even higher.” (*Id.* at 255.)

In calculating attorney’s fees under the Labor Code, the court should follow the lodestar approach adopted by the California Supreme Court in *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1134. See also *Chavez v. City of Los Angeles* (2010) 47 Cal. 4th 970, 985. The “lodestar” method is clearly defined in recent case law. It involves a five-step process. *In Re: Vitamin Cases* (2003) 110 Cal. App. 4th 1041, 1052. To determine the “lodestar number” – steps one through three of the process – the court multiplies the number of hours reasonably worked by a reasonable hourly rate. (*Id.*) Step four requires the Court to determine what, if any, multiplier should be applied to the lodestar number. Step five determines the amount of the attorney fee award by applying the multiplier to the lodestar number. (*Id.*)

For the Court’s ease of reference, the following chart summarizes the attorney’s fees Class Counsel seeks:

Item Description	Amount
Attorney Hours: Armond M. Jackson, 12.5 Year Attorney: Rate: \$725; Andrea-Fernandez-Jackson, 8 Year Attorney: Rate: \$515; Anthony S. Filer Rate, 1.5 Year Attorney: Rate: \$250; Yesenia Villalba, 5 Year Paralegal: Rate: \$125, Kashif Haque Rate: 19 Year Attorney, Rate: \$875; Jessica M. Cambell Rate: 12.5 Year Attorney: Rate: \$750; Carolyn M. Bell; 6.5 Year Attorney; Rate: \$600; Krisy Connolly; 3.5 Year Attorney; Attorney Rate \$500; Alexander G.L. Davies 3.5 Year Attorney; Rate \$500)	812.3 hours
TOTAL LODESTAR	\$557,909.50
PRELIMINARY APPROVED AMOUNT WITHOUT CLASS MEMBER OBJECTION	\$800,000.00 (1.43 multiplier)

b. The Number of Hours Expended by Plaintiff's Counsel Was Reasonable.

“The starting point of every fee award...must be a calculation of the attorney's services in terms of the time he has expended on the case.” *Press v. Lucky Stores, Inc.*, (1983) 34 Cal. 3d 311, 322. Reasonable hours include, in addition to time spent during litigation, time spent before the action is filed, including time reasonably spent interviewing the client, investigating the facts and the law, and preparing the initial pleadings, as well as time spent in exhausting administrative remedies. *New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62.

The evidence submitted by Class Counsel in support of this motion reflect that Class Counsel reasonably expended the following number of hours in the prosecution of this case. (Jackson Decl. ¶¶ 3-45; 47, Ex. D, Connolly Decl. ¶¶24, 28-29, Exhs. 1-2.) Jackson APC filed this class action claim in January 27, 2020, approximately 43 months prior to this hearing. A reasonable amount of work was performed pre-litigation, including conducting an extensive

1 intake process requiring the compiling documents and information related to Plaintiff's pay
2 stubs, wage payments and thousands of time records contained and the database of produced
3 payroll records. (Jackson Decl. ¶¶ 3-18, 23-47, Ex. D; Connolly Decl. ¶¶ 24, 28-29, Exhs. 1-2)
4 Discovery was conducted by Class Counsel regarding both the circumstances of the Plaintiffs'
5 employment, hours worked during their employment, meal breaks, wage statements, and rest
6 periods taken during their employment and Defendants' policies in general regarding the
7 employment of individuals with respect to payment of wages, working conditions, meal breaks
8 and rest periods. (Jackson Decl. ¶¶ 3-18, 23-47, Ex. D; Connolly Decl. ¶¶ 24, 28-29, Exhs. 1-2)

9
10 The time expended during the discovery phase was also reasonably incurred. (*Id.*) Class
11 Counsel spent a significant amount of time in the discovery phase evaluating excel spreadsheets
12 and voluminous documents concerning Defendants' duties under the Labor Code, legal analysis,
13 discovery, litigation planning, certification analysis and investigation of claims. (*Id.*) Thereafter,
14 numerous hours were spent by Class Counsel in performing detailed calculations, analyzing
15 expert data, researching certification issues, engaging in formal and informal discovery to
16 determine class members entitlement to wages for missed meal breaks, rest periods, alleged
17 wage claims, pay upon determination and interest owed. (*Id.*)

18 The time expended to achieve preliminarily and final approval was also reasonably
19 incurred. (*Id.*) Class Counsel conducted extensive legal research on the procedures and issues
20 involved in achieving class certification preliminary approval and final approval. (*Id.*) Class
21 Counsel ensured that the claims notice procedures were being implemented according to the
22 Court's instructions and the Settlement Agreement. (*Id.*) Plaintiffs' counsels prepared for court
23 hearings, discovery motions and class certification. (*Id.*) These hours were reasonably spent to
24 achieve preliminary approval and final approval of this Class Action Settlement. (*Id.*)

25 As set forth in the declarations submitted herewith, the total number of hours spent on
26 this matter by Class Counsel is reasonable in light of the work required to achieve the result. (*Id.*)
27 Thus, the Court shall conclude that all of the time spent on this case was reasonable and
28

1 necessary to achieve this result and Class Counsel is entitled to compensation for all the attorney
2 hours worked in this case. (*Id.*)

3 **c. The Hourly Rate Charged for the Services of Plaintiff's Counsel is Reasonable.**

4 When determining a reasonable hourly rate for the attorney's services, courts consider the
5 following factors: (i) the prevailing rate charged by attorneys of similar skill and experience for
6 comparable legal services in the community, (ii) the nature of the work performed, and (iii) the
7 attorney's customary billing rates. *Serrano v. Unruh* (1982) 32 Cal.3d 631, 643; *See also Bihun*
8 *v. AT&T Information Systems, Inc.* (1993) 13 Cal.App.4th 976, 997 *disapproved on other*
9 *grounds Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 664. The hourly rate is
10 determined at the time of the prevailing party's fee application rather than rates charged at the
11 time the litigation began. (*Gates v. Deukmejian* (9th Cir. 1992) 987 F.2d 1392, 1406.)

12 The Jackson Declaration and Connolly Declaration lays the proper foundation for why
13 the hourly rates charged for each attorney working on this case is reasonable and customary for
14 those rates charged by attorneys with similar experience. (Jackson Decl. ¶¶ 19-22, 46-47, Exs.
15 E-F) Mr. Jackson's hourly rate on this matter was \$724. (Jackson Decl. ¶¶ 19-22, 46, Exs. E) Mr.
16 Jackson is a senior attorney who has been litigating for approximately 12.5 years. (*Id.*) Mr.
17 Jackson has handled over a hundred of employment matters on behalf of the plaintiff in his
18 career. (Jackson Decl. ¶¶ 19-22) Mr. Jackson has argued before the Ninth Circuit and responsible
19 for a published opinion. (*Id.*) Based on his and experience, and based on his own research for
20 purposes of keeping his law firm competitive and profitable, he has knowledge of the hourly
21 rates other plaintiff's attorneys with similar experience charge in employment cases. (*Id.*) Based
22 on this foundation, Mr. Jackson believes that his regular hourly rate of \$725 per hour (Laffey
23 Matrix \$829 for 11-19 year attorneys) is reasonable and similar to what attorneys with his tenure,
24 experience and expertise. . (Jackson Decl. ¶ 47, Ex. E) The other attorneys and staff whom
25 worked on this matter are comprised of Andrea Fernandez- Jackson whom is an 8-year
26 California licensed attorney whom has also argued before the Ninth Circuit with a billable rate of
27 \$515 per hour (Laffey Matrix \$733 for 9-10 year attorneys) which should be considered
28

1 reasonable. Another attorney at my office Anthony Filer Jr. also worked on this matter whom is a
2 1.5-year California licensed attorney with a billable rate of \$250 per hour (Laffey Matrix \$413
3 for 1-3 year attorneys) which should be considered reasonable. (*Id.*) Yesenia Villalba whom is a
4 paralegal with over five years of legal experience with a billable rate of \$145 per hour (Laffey
5 Matrix \$225 for Paralegals) which should be considered reasonable. (*Id.*) Kashif Haque, Jessica
6 L. Campbell, Carolyn Bell, Kristy R. Connolly, and Alexander Davies all ranging in experience
7 from 19-year attorneys and 3.5 year attorneys also had reasonable rates. (Connolly Decl. ¶¶24,
8 25, 28-29, Exhs. 1-2) This evidence therefore supports the reasonableness of the fees charged in
9 this case. “Our Supreme Court has explained that the reasonable hourly rate used for the lodestar
10 calculation ‘is that prevailing in the community *for similar work.*’” *Syers Properties III, Inc. v.*
11 *Rankin*, 226 Cal.App.4th 691, 702, (2014). Reasonable hourly rates are determined by the
12 formula “‘reasonable market value’” and reached by evaluating the “‘comparable salaries earned
13 by private attorneys with similar experience and expertise in equivalent litigation’” and the
14 “‘hourly amount to which attorneys of like skill in the area would typically be entitled.’”
15 (*Serrano v. Unruh*, 32 Cal. 3d 621, 640, fn. 31 (1982).)

16 As explained in the declaration of Armond Jackson, the current billing rates for attorneys
17 and staff on this case are below the prevailing billing "market" rates established by the Laffey
18 Matrix. (Jackson Decl. ¶¶ 19-22, 46-48 Exs. D-E)

19 **d. Laffey Matrix Rates**

20 The Laffey Matrix is one well-established objective source setting rates for attorneys
21 based upon years of experience for attorneys practicing in the District of Columbia. See
22 <https://www.justice.gov/usao-dc/file/796471/download> (citing *Laffey v. Northwest Airlines, Inc.*,
23 572 F.Supp. 354 (D.D.C. 1983), *aff'd* in part, *rev'd* in part on other grounds. 746 F.2d 4
24 (D.C.Cir. 1984). Thus, the rate for Armond M. Jackson’s as an eleven-year attorney is \$829.00.
25 All other attorney rates are also consistent with the Laffey Matrix. (Jackson Decl. ¶¶ 46-47, Exs.
26 D-E)
27
28

1 The product of multiplying the number of hours expended by counsel on this case and
2 each respective attorney's hourly rate yields the following sums:

3 **1. The Quality of Plaintiff's Representation Was Strong.**

4 The quality of Plaintiff's representation was strong and effective exemplified through the
5 fact there were no objections.

6 **2. Plaintiff's Counsel Obtained an Outstanding Result in Court.**

7 As discussed above, counsel achieved a favorable result for the Class Members as there
8 were no objectors.

9 **3. Plaintiff's Counsel Assumed a Delayed Contingent Risk That Could Have Netted**
10 **(and might still net) A Zero Recovery and a Loss of Valuable Firm Operating**
11 **Capital.**

12 The case of *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-33 explains the economic
13 rationale for fee enhancement in contingency cases:

14 “‘A contingent fee must be higher than the fee for the same legal services as they
15 are performed. The contingent fee compensates the lawyer not only for the legal
16 services he renders but for the loan of those services. The implicit interest rate
17 on such a loan is higher because the risk of default (the loss of the case, which
18 cancels the debt of the client to the lawyer) is much higher than that of
19 conventional loans.’ (Posner, *Economic Analysis of Law* (4th ed. 1992) pp. 534,
20 567.) ‘A lawyer who both bears 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.’”

(Emphasis added.)

21 The California Supreme Court has held that applying a multiplier in the lodestar analysis
22 is by no means a windfall:

23 “Under our precedents, the unadorned lodestar reflects the general local hourly
24 rate for a *fee-bearing case*; it does *not* include any compensation for contingent
25 risk, extraordinary skill, or any other factors a trial court may consider under
26 *Serrano III*. The adjustment to the lodestar figure, e.g., to provide a fee
27 enhancement reflecting the risk that the attorney will not receive payment if the
28 suit does not succeed, constitutes earned compensation; unlike a windfall, it is
neither unexpected nor fortuitous. Rather, it is intended to approximate market-

1 level compensation for such services, which typically includes a premium for
2 the risk of nonpayment or delay in payment of attorney fees.”
(*Ketchum*, *supra*, 24 Cal.4th at p. 1138, italics in original.)

3 The increased multiplier in this case is warranted under several factors.

4 As explained in the Jackson Declaration more fully, plaintiffs counsel assumed the risk
5 that they would recover zero when they accepted this case. For example, Mr. Jackson considered
6 numerous factors when deciding whether to accept this matter: the merits of the case, the
7 credibility and demeanor of the client, the chances of success, the amount of time his firm will
8 invest in the matter compared to what he considers to be the reasonable chances of a recovery on
9 the other end that will fully compensate plaintiffs counsel for the amount of time invested, the
10 amount of costs his firm will need to invest over the course of the litigation compared to the
11 chances of success, and how long the case will proceed before either a judgment or settlement
12 occurs. Given the risks of certification and trial, the attorneys still risk a zero recovery. The
13 contingency risk is enormous.

14 Plaintiffs counsel advanced 100% of the costs on this matter which was over twelve
15 thousand dollars. (Jackson Decl. ¶ 47, Ex. C; Connolly Decl. ¶¶24, 28-29, Exhs. 1-2) This
16 means that money used to pay costs was tied up until a recovery on the other end. Additionally,
17 because that money is tied up until the matter is resolved, it is not usable to the firm for
18 overhead, operating capital, or on other matters my firm is prosecuting on a contingency basis.
19 This presented an opportunity lost, and must factor into the lodestar analysis. (*See Harman v.*
20 *City and County of San Francisco* (2007) 158 Cal.App.4th 407, 417-18—the preclusion of other
21 employment by the attorney due to the acceptance of the case a factor to be considered.)

22 The firm advanced thousands of dollars in costs and hundreds of thousands of dollars in
23 attorney’s time with the prospect that it would recover nothing. Most important, the law with
24 respect to the lodestar method is designed to incentivize attorneys to take on cases like this has
25 proper representation. The fact that plaintiff’s counsel achieved what they set out to achieve
26 should not overshadow the risk they took to get there.

27 **4. There Are No Objectors**
28

1 “From the class members’ perspective, review of the reasonableness of the fee award is a
2 safeguard against the possibility of collusion.” *In Re Cellphone Termination Cases*, 180 Cal.App.
3 4th 1110, 1119 (2009). Here, there is no evidence of collusion. (Jackson Decl. ¶¶ 3-45) The
4 material terms of the settlement agreement were reached before negotiating a fee for class
5 counsel. (*Id.*) Class Counsel did not seek a larger award in exchange for a smaller class
6 recovery. (*Id.*) Also, the substantive settlement was not linked to the fee award in a way that
7 might have prejudice the members of the class. (*Id.*) Class Counsel has provided documentation
8 and evidence supporting this fee request. (Jackson Decl. 3-47, Exs. C-E) The Class Members
9 were all notified of the amount of fees requested and their rights to object. (Molina Decl. ¶7, Ex.
10 A) In light of the due process notice afforded to all Class Members, no objections were filed.
11 (Molina Decl. ¶12) The fact that no objection has been made to this class action settlement
12 further demonstrates the reasonableness of this attorney fee request justifying final approval of
13 this class action.

14 **e. Percentage of the Recovery Analysis**

15 Alternatively, “in cases which the value of the class recovery can be monetized with a
16 reasonable degree of certainty and it is not otherwise inappropriate, a trial court has discretion to
17 adjust the basic lodestar through the application of a positive or negative multiplier where
18 necessary to ensure that the fee awarded is within the range of fees freely negotiated in the legal
19 marketplace in comparable litigation.” (*Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th,
20 19, 50 (2000).) “Courts use the percentage of recovery method in common fund cases on the
21 theory that the class would be unjustly enriched if it did not compensate the counsel responsible
22 for generating the valuable fund bestowed upon the class.” *In re General Motors Corp. Pick-Up*
23 *Truck Fuel Products Litigation*, 55 F. 3d 768 (1995). Courts have “evaluate[d] the lodestar as a
24 percentage of the recovery and adjust[ed] it accordingly if it can be determined that the lodestar
25 is significantly different from the range of percentage fees freely negotiated in comparable
26 litigation.” (*Id.*) Under these circumstances where it will take approximately 2 years to bring this
27 matter to conclusion for \$2,400,000.00, the percentage of the fee analysis would support a
28

percentage of the fee of at least 33.33 percent equating to \$800,000.00. This attorney fee request for \$800,000.00 shall be deemed reasonable as it is within the percentage of the fee analysis supported by authority.

f. Cross-Check Analysis

“[A] proposed percentage fee can (and, for the reasons hereafter explained, should) be compared against the fee that lead counsel would have been awarded on a lodestar basis. If the multiplier implied by that comparison is reasonable, then the percentage-based fee request is reasonable as well, if the implied multiplier is unreasonably high, then so is the proposed percentage fee award.” (*In re HLP Technologies, Inc. Securities Litigation*, 366 F.Supp. 2d 912, 915 (2005) citing *In re General Motors Corp. Pick-Up Truck Fuel Products Litigation*, 55 F. 3d 768 820-21 (1995). Here, a lodestar multiplier of 1.43as counsel is requesting fees in the amount of \$800,000.00 which is 33.33 percent of the settlement which is the usual and customary fee award benchmark for this type of case. (See *In Re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, fn. 13 [“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”].) Under these circumstances, 1.43 multiplier is justified in light of the factors analyzed above identifying the risks of contingency litigation, thus the attorney fee of \$800,000.00 shall be deemed reasonable.

VII. CLASS COUNSEL’S REQUEST FOR COSTS IS REASONABLE

The Settlement provides for reasonable actual costs of up to \$23,096.20. Class Counsel incurred litigation costs in bringing this matter to a resolution before trial. Here, the actual costs expended are less than the maximum allotted under the settlement agreement. To date the total amount of costs incurred by Class Counsel in this litigation is \$23,096.20. (Jackson Decl. ¶ 47, Ex. C, Declaration of Kristy Connolly, ¶¶ 27-28, Ex. 1.)

VIII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully requests that the Court enter an Order granting final approval of the Settlement.

1
2 Dated: August 16, 2023

Respectfully Submitted,
JACKSON APC

3
4 By: /s/ Armond M. Jackson
Armond M. Jackson
Attorney for Plaintiff