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**SUPERIOR COURT OF STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

GLORIA RAMOS, individually, and on behalf of all other similarly situated employees,	)	Case No.: 21STCP00903
Plaintiffs,	)	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT
vs.	)	
TAGTIME, INC., a California corporation, and DOES 1 through 50, inclusive,	)	Action Filed: March 19, 2021
Defendant.	)	Hearing Date: February 21, 2023 Time: 11:00 AM Dept.: 10
	)	
	)	[FILED CONCURRENTLY WITH MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF ARMOND M. JACKSON; DECLARATION OF CLAIMS ADMINISTRATOR; DECLARATION OF GLORIA RAMOS; AND PROPOSED ORDER]

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

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, Plaintiff respectfully requests that the Court conduct a final review of the Settlement,
6 and approve the Settlement as fair, reasonable and adequate.

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

10 Pursuant to the terms of the Settlement Agreement, Defendant Tagtime, Inc.¹. (referred
11 to herein as "Defendant") shall pay \$265,000.00 to establish a non-reversionary Maximum
12 Settlement Amount claims to a class of 62 Participating Class Members current and former
13 nonexempt; attorneys' fees not to exceed 33.33 percent of the Maximum Settlement Amount;
14 litigation costs not to exceed \$88,324.50; the cost of the claims administrator to administer the
15 settlement not to exceed \$6,750; a payment to the named plaintiff Gloria Ramos of \$5,000.00;
16 and payment of penalties under the Private Attorneys General Act of \$10,000.00.

17 The notice process was simple and effective, and the adequacy of the Settlement is
18 reflected in the very positive reaction from the Class Members as no Class Member objected to
19 this Settlement. The deadline to submit claims or opt-out was December 16, 2022.

20 For the foregoing reasons and the others detailed below, the Settlement meets the
21 standards for final approval, and it should therefore be approved. Notice was also provided to the
22 California Labor and Workforce Development Agency of this February 21, 2023 hearing and the
23 proposed settlement agreement to be finally approved. (Declaration of Armond M. Jackson in
24 Support of Final Approval of Class Action Settlement, "Jackson Decl." ¶ 46, Ex. B.)

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¹ Hereinafter, "Defendant." Plaintiffs and Defendant are collectively referred to herein as the "Parties."

1 **II. FACTS AND PROCEDURE**

2 **A. Defendants Manufacturing Company Employed California Non-Exempt**
3 **Employees**

4 Defendant is a label manufacturing company. The Class Representatives worked for
5 Defendant as non-exempt hourly workers.

6 The released claims include wage and hour claims, misclassification claims, rights, demands,
7 liabilities, penalties, interest and causes of action, arising from or related to the claims pled in Plaintiff's
8 Class Action Complaint ("Complaint") or that could have been pled in the Complaint based on the factual
9 allegations pled in the Complaint, including: Failure to Pay Overtime Wages; Failure to Pay Minimum
10 Wages; Failure to Provide Meal Periods; Failure to Provide Rest Periods; Failure to Provide Accurate
11 Wage Statements; Failure to Pay Due Wages at Separation; Violation of Business and Professions Code §
12 17200, et seq. (Unfair or Unlawful Business Practices) based on the alleged Labor Code violations; Civil
13 Penalties Pursuant to Labor Code § 2699 (Private Attorneys General Act) based on the alleged Labor
14 Code violations; claims for injunctive relief, liquidated damages, penalties, interest, and fees and costs."

15 (Jackson Decl. ¶ 12, Ex. A, Settlement Agreement, p. 5, Provision 19)

16 The claims being released pursuant to the Settlement are limited to those claims which
17 are based on the facts alleged or could have been alleged.

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

19 Plaintiff's counsel has thoroughly investigated and researched the claims in controversy,
20 the defenses, the potential of success and recovery if successful at trial, and the developing body
21 of law. (Jackson Decl. ¶¶ 3-17.) Plaintiff's counsel's investigation entailed the exchange of
22 thousands of excel cells, documents, months of analysis, damages analysis based upon the Class
23 Members' working schedules, payroll records and timesheets. (*Id.*) The investigation involved an
24 in-depth evaluation of payroll records, payroll data, timesheets, and working schedules of the
25 Plaintiffs and the Class Members. (*Id.*)

26 Following Defendant's production of payroll records, payroll data, timesheets, and
27 working schedules for the Plaintiff and Class Members, Class Counsel expended considerable
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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. ¶¶ 3-17.) 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 Plaintiff's suitability as putative class representatives through interviews questioning Defendants purported labor code violations; (2) evaluating plaintiff's 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 Plaintiff's and Class Members' payroll records and a representative sampling of Defendant's payroll records; (5) examined Plaintiff's and Class Members' timesheet records; (6) examined the Defendant's payroll records to ascertain the number of employees in the Settlement Class Period; (7) conducted a detailed damages analysis for purposes of generating a maximum number for the amount of wages Defendants could be liable for; (8) conducted a detailed damages analysis for purposes of generating a maximum number for the amount of interest owed the Class Members which Defendants could be liable for; (9) conducted a detailed damages analysis for purposes of generating a maximum number for the amount of penalties that could be accessed against the Defendant; and (10) researching settlements in similar cases. (Jackson Decl. ¶¶ 3-17.) The extensive document and data exchanges allowed Plaintiff's Counsel to appreciate the strengths and weaknesses of the claims against Defendants and the benefits of the proposed Settlement. (*Id.*).

C. Preliminary Settlement Approval

On July 22, 2022, the Court conditionally granted certification and preliminary approval of the settlement.

D. Proper Notice to Class Members

After this Court conditionally granted certification and preliminary approval of the

Settlement Class Notice was sent pursuant to the terms of the Settlement Agreement and direction of the Court. (Declaration of Jarrod Salinas (“Salinas Decl.”) ¶¶ 4-5, Ex. A.) No Class members submitted objections. Salinas Decl. ¶ 9)

III. THE SETTLEMENT

The following summarizes the Settlement’s key terms.

A. Settlement Class

The “Class” is defined as:

Plaintiff and all current and former non-exempt employees employed by Defendant in California during the period of March 19, 2017 to preliminary approval of class action settlement or March 14, 2022, whichever occurs first. (“Settlement Class” or “Settlement Class Members”)

(Jackson Decl. ¶ 12, Ex. A, p. 3, Provision 8.)

B. Benefits to the Class

1. The Settlement Fund

Pursuant to the terms of the Settlement, Defendants will pay \$265,000.00 to the Claims Administrator to be used for: (a) providing cash payments in the amount of no less than \$144,954.90 minus any applicable taxes; (b) payment of attorneys' fees not to exceed \$88,324.50; (c) litigation costs not to exceed \$10,000.00; (d) a class representative enhancement payment to the named Plaintiff Gloria Ramos not to exceed \$5,000.00; (e) all settlement administration fees and costs, including those of the Claims Administrator projected to be no more than \$6,750; and (f) payment of all penalties under the California Private Attorneys General Act of 2004 (“PAGA”) in the amount of \$10,000.00 (“PAGA Payment”). (Salinas Decl. ¶ 12.)

The average estimated Individual Settlement Share is \$2,337.98. (Salinas Decl. ¶ 13.)

2. Payments to Class Members

Pursuant to the Settlement Agreement, the Claims Administrator shall make Individual Settlement Payments to Participating Class Members within 67 days after the effective date. (Jackson Decl. ¶ 12, Ex. A, pp. 6, 11, Provisions 24 and 42.)

1 Individual Settlement Payments will be calculated and apportioned from the Net
2 Settlement Amount based on the number of workweeks worked during the relevant time period.
3 (Jackson Decl. ¶ 12, Ex. A, Settlement Agreement p. 8, Provision 29)

4 **3. The Claim Process**

5 On September 26, 2022, Defendant's counsel provided the Claims Administrator with the
6 names, most recent mailing addresses, Social Security numbers, and pertinent information for the
7 Class Period for the Class Members. (Salinas Decl. ¶ 3.) This list provided information for 62
8 Class Members. (Salinas Decl. ¶ 5.) 62 Class Members were verified and mailed approved
9 Notice Packets via First-Class U.S. Mail. (*Id.*)

10 On November 1, 2022 the Claims Administrator sent by first class mail the Notice
11 Packets to the Class Members whose names were provided by Defendant, a Notice Packet. (*Id.*)
12 There were additional mailings to Class Members whose envelopes were returned, to the expired
13 forwarding address attached, or for whom an additional address had been obtained through
14 searches made for the Class Members. (Salinas Decl. ¶¶ 5-7.)

15 The deadline for Class Members to postmark Challenges, Objections or Exclusion
16 Requests was December 16, 2022. (Salinas Decl. ¶ 8.) No exclusions were received and no
17 objections. (Salinas Decl. ¶¶ 9-11.)

18 The Notice stated that the Court has scheduled a Final Fairness Hearing for February 21,
19 2023, at 11:00 a.m. in Department 10 of the Superior Court of California, for the County of Los
20 Angeles, located at 312 N. Spring Street, Los Angeles, CA 90012. (Salinas Decl. ¶ 5, Ex. A.)

21 **4. Distribution of Funds**

22 In accordance with the Stipulation of Settlement, within 67 days of the effective date, the
23 Net Settlement Fund in its' entirety shall be divided among the Class Members. (Jackson Decl. ¶
24 12, Ex. A, pp. 6, 11, Provisions 24 and 42.) The average estimated Individual Settlement Share is
25 \$2,337.98. (Salinas Decl. ¶ 13.)

1 **5. Opt-out and Objection Procedures**

2 The deadline for Class Members to postmark Challenges, Objections or Exclusion was
3 December 16, 2022. (Salinas Decl. ¶¶ 5, 9-11, Ex. A.)

4 The Class Notice instructed Class Members who wished to object to the proposed
5 Settlement to either send a written objection to the claims administrator or appear at the Final
6 Approval Hearing. (Salinas Decl. ¶¶ 5, 9-11, Ex. A.) The claims administrator had received no
7 objections to the settlement terms, nor challenges nor Comments. (Salinas Decl. ¶¶ 5, 9-11, Ex.
8 A.)

9 **IV. FINAL SETTLEMENT APPROVAL IS APPROPRIATE**

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

18 **A. This Court Preliminarily Found This Settlement To Be Fair, Reasonable And**
19 **Adequate And Nothing Has Changed To Disturb That.**

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

7 1. The Settlement Resulted From Non-Collusive, Arms-Length Negotiations

8 There certainly is no collusion between the parties. The involvement of a neutral third-
9 party mediator is a factor that favors approval and evidences the presumptive fairness of the
10 arms-length negotiations. (Jackson Decl. ¶¶ 3-16.) Indeed, courts should give considerable
11 weight to the competency and integrity of counsel and the involvement of a neutral mediator in
12 assuring themselves that a settlement agreement represents an arms-length transaction entered
13 without self-dealing or other potential misconduct. *Kullar v. Foot Locker, supra*, 168 Cal. App.
14 4th at 129. Here, after extensive discovery, discussions, exchange of information and review of
15 records, on January 12, 2022, the parties conducted a full-day mediation session with a well-
16 respected and highly knowledgeable mediator Marc Feder, Esq. (Jackson Decl. ¶ 12.)

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

18 As discussed in the preliminary approval papers, supporting declaration and herein, Class
19 Counsel analyzed a significant amount of information that Defendant produced in response to
20 formal and informal discovery requests in preparation for mediation. (Jackson Decl. ¶¶ 3-17, 22-
21 44.) The parties have conducted significant investigation of the facts and law during the
22 prosecution of the Action, including formal discovery efforts. (*Id.*) Class Counsel's research
23 enabled them to pinpoint the relevant issues and claims and to assess potential liability and
24 damages. (*Id.*) These efforts resulted in the parties having a clear view of the strengths and
25 weaknesses of their respective cases and achieving a resolution on favorable terms, as was
26 evidenced during mediation and subsequent negotiations leading to Settlement. (*Id.*)

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

2 The endorsement of qualified and well-informed counsel of the settlement as fair is
3 entitled to significant weight. *See Dunk, supra*, 48 Cal.App.4th at 1802. As discussed in the
4 preliminary approval papers and set forth in the Declaration of Class Counsel, Class Counsel has
5 represented, mediated and settled over 45 other employee class actions or representative actions
6 in wage and hour litigation and have knowledge of the strengths and weaknesses of the claims
7 against Defendant and the benefits of the proposed settlement under the circumstances of the
8 case. (Jackson Decl. ¶¶ 18-21.) Class Counsel contends that the Settlement is fair, adequate,
9 reasonable, and in the best interests of the Class as a whole. (*Id.*)

10 **D. Class Members’ Positive Reaction to the Settlement Favors Final Approval**

11 Finally, courts look at the reaction of class members to determine if a settlement that
12 directly affects their interests should be approved as fair, adequate, and reasonable. As already
13 discussed herein, out of 62 class members, there are no objectors. Further, a court may
14 appropriately infer that a class action settlement is fair, adequate, and reasonable even when class
15 members object to it. Indeed, a court may approve a class action settlement as fair, adequate,
16 and reasonable even over the objections of a significant percentage of class members. *See Boyd*
17 *v. Betchel Corp.*, (D.C. Cal 1976) 485 F. Supp. 610, 624. *Reed v. General Motors* (5th Cir. 1983)
18 703 F.2d 170, 174; *In re Wash. Pub. Power Supply System Sec. Litig.* (D. Ariz. 1989) 720 F.
19 Supp. 1379, 1394.

20 **V. CLASS REPRESENTATIVE ENHANCEMENT IS REASONABLE**

21 The settlement provides for an enhancement award to be paid to the Class Representative.
22 The purpose is to provide an additional incentive payment, taking into consideration the risks,
23 time and effort in coming forward to fulfill all the duties associated with being a class
24 representative. Awarding incentive awards to compensate named plaintiffs in class actions has
25 been specifically recognized. See, e.g. *Clark v. American Residential Services, LLC*, (2009) 175
26 Cal App 4th 785, 804 (incentive awards to named plaintiff appropriate for participation in class
27 action); *Bell v Farmers Ins. Exchange*, (2004) 115 Cal App 4th 715, 726 (upholding “service
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1 payments” to named plaintiffs for their efforts in bringing class case). As stated by the Court of
2 Appeal in the *Cellphone Termination Fee Cases*: incentive awards are "intended to compensate
3 class representatives for work done on behalf of the class, to make up for financial or
4 reputational risk undertaken in bringing the action, and, sometimes, to recognize their
5 willingness to act as a private attorney general." *Cellphone Termination Fee Cases*, (2010) 186
6 Cal. App. 4th 1380, 1394 (approving an incentive award of \$10,000). The class representative
7 enhancement payment is intended to compensate named Plaintiff Gloria Ramos as the class
8 representatives for their willingness to accept the responsibility of representing the interests of all
9 class members. The purpose is to provide an incentive payment, taking into consideration the
10 risks, time and effort expended by him in coming forward to provide invaluable information and
11 litigate this matter on behalf of all Class Members. Plaintiff also risked potential judgment
12 against her if this case had been unsuccessful. In class action losses, class representatives are
13 deemed the losing party that is liable for the prevailing party’s costs. *Earley v. Superior Court*,
14 (2000) 79 Cal.App.4th 1420, 1433-1434. Finally, Plaintiff also risked this lawsuit having a
15 negative impact on future employment opportunities, as prospective employers may be less
16 inclined to hire an employee who has served as a class representative. See, e.g. *Staton v. Boeing*,
17 327 F.3d 938, 977 (9th Cir. 2003) As such, Plaintiff respectfully requests that this Court approve
18 the Class Representatives enhancement payment in the amount of \$5,000.00 for named Plaintiff
19 Gloria Ramos.

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

22 **1. Attorneys’ Fees Are Justified**

23 **a. Lodestar Analysis**

24 “Courts recognize two methods of calculating attorney fees in civil class action; the
25 lodestar/multiplier method and the percentage of recovery method.” (*Wershba v. Apple*
26 *Computer, Inc.* 91 Cal. App. 4th 224, 254 (2001).) “[T]he lodestar is calculated by multiplying
27 the reasonable hours expended by a reasonable hourly rate. The court may then enhance the
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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
Reasonable attorney’s fees incurred in procuring the underlying award applying the Lodestar method for calculating attorney’s fees in Labor Code cases (\$91,027 *no multiplier).	\$88,324.50
TOTAL	\$88,324.50

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.

1 The evidence submitted by Class Counsel in support of this motion reflect that Class
2 Counsel reasonably expended the following number of hours in the prosecution of this case.
3 (Jackson Decl. ¶¶ 46, Ex. D) Jackson Law filed this class action claim on March 19, 2021, more
4 than 18 months prior to this hearing. A reasonable amount of work was performed pre-litigation,
5 including conducting an extensive intake process requiring the compiling documents and
6 information related to Plaintiffs' pay stubs, wage payments and thousands of time records.
7 (Jackson Decl. ¶¶ 3-18, 22-44, 46 Ex. D) Discovery was conducted by Class Counsel regarding
8 both the circumstances of the Plaintiff's employment, hours worked during her employment,
9 meal breaks, wage statements, and rest periods taken during his employment and Defendants'
10 policies in general regarding the employment of individuals with respect to payment of wages,
11 working conditions, meal breaks and rest periods. (Jackson Decl. ¶¶ 3-18, 22-44, 46 Ex. D)

12
13 The time expended during the discovery phase was also reasonably incurred. (*Id.*) Class
14 Counsel spent a significant amount of time in the discovery phase evaluating thousands of excel
15 spreadsheets and voluminous documents concerning Defendant's duties under the Labor Code.
16 (*Id.*) Thereafter, numerous hours were spent by Class Counsel in performing detailed
17 calculations of over one hundred class members regarding their entitlement to wages for missed
18 meal breaks, rest periods, alleged wage claims, pay upon determination and interest owed. (*Id.*)

19 The time expended to achieve preliminarily and final approval was also reasonably
20 incurred. (*Id.*) Class Counsel conducted extensive legal research on the procedures and issues
21 involved in achieving class certification preliminary approval and final approval. (*Id.*) Class
22 Counsel ensured that the claims notice procedures were being implemented according to the
23 Court's instructions and the Settlement Agreement. (*Id.*) Armond M. Jackson appeared for
24 court hearings on several occasions preparing and arguing the motion and addressing any
25 concerns of the Court. (*Id.*) These hours were reasonably spent to achieve preliminary approval
26 and final approval of this Class Action Settlement. (*Id.*)
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1 As set forth in the declarations submitted herewith, the total number of hours spent on
2 this matter by Class Counsel is reasonable in light of the work required to achieve the result. (*Id.*)
3 Thus, the Court shall conclude that all of the time spent on this case was reasonable and
4 necessary to achieve this result and Class Counsel is entitled to compensation for all the attorney
5 hours worked in this case. (*Id.*)

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

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

15 The Jackson Declaration lays the proper foundation for why the hourly rates charged for
16 each attorney working on this case is reasonable and customary for those rates charged by
17 attorneys with similar experience. (Jackson Decl. ¶¶ 3-18-44, 46 Ex. D)

18 Mr. Jackson's hourly rate on this matter was \$640, Andrea Fernandez's hourly rate
19 charged was \$440, and legal staff hourly rate charged was \$125 is consistent with the Laffey
20 Matrix. ((Jackson Decl. ¶¶ 3-44, 46-48 Ex. D, E) Mr. Jackson is a senior attorney who has been
21 litigating for approximately 10 years. (*Id.*) Ms. Fernandez is a senior attorney who has been
22 litigating for 7 years. (Jackson Decl. ¶ 47) Mr. Jackson has handled over a hundred of
23 employment matters on behalf of the plaintiff in his career. (Jackson Decl. ¶¶ 18-22, 46, Ex. D)
24 Mr. Jackson has argued before the Ninth Circuit and responsible for a published opinion. (*Id.*)
25 Based on his and experience, and based on his own research for purposes of keeping his law firm
26 competitive and profitable, he has knowledge of the hourly rates other plaintiff's attorneys with
27 similar experience charge in employment cases. (*Id.*) Based on this foundation, Mr. Jackson
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believes that his regular hourly rate of \$640 per hour is reasonable and similar to what attorneys with his tenure, experience and expertise and Ms. Fernandez's regular hourly rate of \$440 per hour is reasonable and similar to what attorneys with her tenure, experience and expertise is. (*Id.*) Based on this foundation, legal staff's regular hourly rate of \$125 is reasonable.

This evidence therefore supports the reasonableness of the fees charged in this case.

"Our Supreme Court has explained that the reasonable hourly rate used for the lodestar calculation 'is that prevailing in the community *for similar work*.'" *Syers Properties III, Inc. v. Rankin*, 226 Cal.App.4th 691, 702, (2014). Reasonable hourly rates are determined by the formula "'reasonable market value'" and reached by evaluating the "'comparable salaries earned by private attorneys with similar experience and expertise in equivalent litigation'" and the "'hourly amount to which attorneys of like skill in the area would typically be entitled.'" (*Serrano v. Unruh*, 32 Cal. 3d 621, 640, fn. 31 (1982).)

As explained in the declaration of Armond Jackson, the current prevailing billing or "market" rates for attorneys in the Orange County area range from \$200 to over \$600 per hour. (*See, e.g., Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal. App. 4th 976, 1004-1005 (upholding an attorney's fee award in an action brought under the FEHA based on an hourly rate of \$450 over ten years ago) (overruled on other grounds in *Lakin v. Watkins Assoc. Indus.* (1993) 6 Cal.4th 644, 664.)) Given the skill and experience of the attorneys who represented plaintiff, an hourly rate of \$640 for Armond M. Jackson is reasonable. Jackson Decl. ¶¶ 18-22, 46, Ex. D, ¶, 48, Ex. E)

d. Laffey Matrix Rates

The Laffey Matrix is one well-established objective source setting rates for attorneys based upon years of experience for attorneys practicing in the District of Columbia. See <https://www.justice.gov/usao-dc/file/796471/download> (citing *Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*. 746 F.2d 4 (D.C.Cir. 1984). Thus, the rate for Armond M. Jackson's as a ten-year attorney is \$676.00.

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 **b. Lodestar Multiplier**

4 Calculating this number is straightforward. The lodestar number is \$91,027 for the work
5 reflected on the invoices submitted (i.e., hourly rates multiplied by hours worked). (Jackson
6 Decl. ¶¶ 18-22, 46, Ex. D, ¶, 48, Ex. E) When determining the "lodestar" number, the court may
7 consider the following factors: (i) the quality of the representation, (ii) the novelty and
8 complexity of the issues, (iii) the results obtained, and (iv) the contingent risk presented.
9 (*Thayer, supra*, 92 Cal.App.4th at p. 833.)

10 California courts may also consider the contingency fee risk as a factor to enhance the
11 lodestar amount where deemed appropriate to attract attorney's to cases of significant public
12 interest and to compensate for the risk of loss and delay in payment inherent in contingency fee
13 cases. (*Horsford, supra*, 132 Cal.App.4th at p. 395.) Courts may also consider a lodestar
14 enhancement to reflect a law firm's role in the success of the litigation. (*Serrano, supra*, 20
15 Cal.3d at p. 49.) Finally, courts may enhance the lodestar amount for long delay in payment in
16 employment cases that span years before the attorney can collect fees. (*Downey Cares v.*
17 *Downey Comm. Develop. Comm'n* (1987) 196 Cal.App.3d 983, 997.)

18 The California Supreme Court in *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th
19 553, dealt with a trial court judgment that included a 2.25 multiplier to the lodestar amount. The
20 trial court based the enhancement on "the contingency nature [of the litigation], the delay in
21 payment and the quality of the result." *Graham, supra*, 34 Cal.4th at p. 578-579.

22 Several recent cases have upheld applying a multiplier of 2.0 to the lodestar analysis.
23 (*See Estrada v. FedEx Ground Package System* (2007) 154 Cal.App.4th 1, 17—multiplier based
24 on the risk inherent in a contingent fee, the financial burden associated with prosecuting a
25 contingency case, and protracted litigation involving the enforcement of an important right; *See*
26 *also Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1133—applying a 2.0 multiplier.)

1 Finally, one court has upheld a multiplier of 1.65 (*Amaral v. Cintas Corp.* (2008) 163
2 Cal.App.4th 1157, 1174) and several cases have upheld a multiplier of 1.5. (*See Downey Cares*
3 *v. Downey Community Development Com.* (1987) 196 Cal.App.3d 983, 993-994; *Beasley v.*
4 *Wells Fargo Bank* (1991) 235 Cal.App.3d 1407, 1419; *Edgerton v. State Personnel Bd.* (2000)
5 83 Cal.App.4th 1350, 1363.)

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

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

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

10 As discussed above, counsel achieved a favorable result for the Class Members as there
11 were no objectors or challenges.

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

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

17 “‘A contingent fee must be higher than the fee for the same legal services as they
18 are performed. The contingent fee compensates the lawyer not only for the legal
19 services he renders but for the loan of those services. The implicit interest rate
20 on such a loan is higher because the risk of default (the loss of the case, which
21 cancels the debt of the client to the lawyer) is much higher than that of
22 conventional loans.’ (Posner, *Economic Analysis of Law* (4th ed. 1992) pp. 534,
23 567.) ‘A lawyer who both bears the risk of not being paid and provides legal
24 services is not receiving the fair market value of his work if he is paid only for
25 the second of these functions. If he is paid no more, competent counsel will be
26 reluctant to accept fee award cases.’”

27 (Emphasis added.)

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

“Under our precedents, the unadorned lodestar reflects the general local hourly
rate for a *fee-bearing case*; it does *not* include any compensation for contingent
risk, extraordinary skill, or any other factors a trial court may consider under
Serrano III. The adjustment to the lodestar figure, e.g., to provide a fee

1 enhancement reflecting the risk that the attorney will not receive payment if the
2 suit does not succeed, constitutes earned compensation; unlike a windfall, it is
3 neither unexpected nor fortuitous. Rather, it is intended to approximate market-
4 level compensation for such services, which typically includes a premium for
the risk of nonpayment or delay in payment of attorney fees.”
(*Ketchum, supra*, 24 Cal.4th at p. 1138, italics in original.)

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

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

16 Plaintiffs’ counsel advanced 100% of the costs on this matter. (Jackson Decl. ¶ 47.)
17 This means that money used to pay costs was unavailable to the firm and is tied up in any given
18 legal matter until a recovery on the other end. Additionally, because that money is tied up until
19 the matter is resolved, it is unavailable to the firm to use for overhead, operating capital, or on
20 other matters my firm is prosecuting on a contingency basis. This presented an opportunity lost,
21 and must factor into the lodestar analysis. (*See Harman v. City and County of San Francisco*
22 (2007) 158 Cal.App.4th 407, 417-18—the preclusion of other employment by the attorney due to
23 the acceptance of the case a factor to be considered.)

24 The firm advanced the costs and attorney’s time with the prospect that it would recover
25 nothing. Most important, the law with respect to the lodestar method is designed to incentivize
26 strong attorneys to take on cases like this has proper representation. The fact that plaintiff’s
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28

counsel achieved what they set out to achieve should not overshadow the risk they took to get there.

4. There Are No Objectors

“From the class members’ perspective, review of the reasonableness of the fee award is a safeguard against the possibility of collusion.” *In Re Cellphone Termination Cases*, 180 Cal.App. 4th 1110, 1119 (2009). Here, there is no evidence of collusion. (Jackson Decl. ¶¶ 3-44) The material terms of the settlement agreement were reached before negotiating a fee for class counsel. (*Id.*) Class Counsel did not seek a larger award in exchange for a smaller class recovery. (*Id.*) Also, the substantive settlement was not linked to the fee award in a way that might have prejudice the members of the class. (*Id.*) Class Counsel has provided extensive documentation and evidence supporting this fee request. (Jackson Decl. ¶¶ 3-44) The Class Members were all notified of the amount of fees requested and their rights to object. In light of the due process notice afforded to all Class Members, no objections were filed. The fact that no objection has been made to this class action settlement further demonstrates the reasonableness of this attorney fee request justifying final approval of this class action.

e. Percentage of the Recovery Analysis

Alternatively, “in cases which the value of the class recovery can be monetized with a reasonable degree of certainty and it is not otherwise inappropriate, a trial court has discretion to adjust the basic lodestar through the application of a positive or 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.” (*Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th, 19, 50 (2000).) “Courts use the percentage of recovery method in common fund cases on the theory that the class would be unjustly enriched if it did not compensate the counsel responsible for generating the valuable fund bestowed upon the class.” *In re General Motors Corp. Pick-Up Truck Fuel Products Litigation*, 55 F. 3d 768 (1995). Courts have “evaluate[d] the lodestar as a percentage of the recovery and adjust[ed] it accordingly if it can be determined that the lodestar is significantly different from the range of percentage fees freely negotiated in comparable

litigation.” (*Id.*) Under these circumstances where it will take over 2 years to bring this matter to conclusion for \$265,000.00, the percentage of the fee analysis would support a percentage of the fee of at least 33.33 percent equating to \$88,324.50. This attorney fee request for \$88,324.50 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, the requested lodestar is zero as counsel is requesting fees in the amount of \$88,324.50 which is 33.33 percent of the settlement which is the usual and customary fee award benchmark for this type of case and under the amount of work performed on this 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, the attorney fee of \$88,324.50 shall be deemed reasonable.

VII. CLASS COUNSEL’S REQUEST FOR COSTS IS REASONABLE

The Settlement provides for reasonable actual costs of up to \$10,000.00. 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 \$9,970.60. (Jackson Decl. ¶ 47, Ex. C.)

VIII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court enter an Order

1 granting final approval of the Settlement.

2
3 Dated: January 30, 2023

Respectfully Submitted,
JACKSON APC

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