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

MARIA DE JESUS ROMERO, as an
individual, and on behalf of other similarly
situated employees,

Plaintiff,

vs.

MARUCHAN, INC., a California corporation,
EMPLOYBRIDGE, LLC, a California
corporation, REAL TIME STAFFING
SERVICES, LLC, a California corporation and
DOES 1-50, inclusive,

Defendant.

Case No.: 30-2020-01155487-CU-OE-CXC

Assigned for all purposes to:
Hon. Melissa McCormick
Dept. CX 104

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

Date: January 25, 2024
Time: 2:00 pm
Place: Department CX104

Action Filed: August 17, 2020
Trial Date: None

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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, Plaintiff Maria De Jesus Romero ("Plaintiff") respectfully requests that the Court
6 conduct a final review of the Settlement, and approve the Settlement as fair, reasonable and
7 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 Maruchan, Inc.,
12 Employbridge, LLC and Real Time Staffing Services LLC (collectively referred to throughout
13 herein as "Defendants") shall pay \$459,375.00 to establish a non-reversionary Maximum
14 Settlement Amount claims to a class of 441 Participating Class Members current and former
15 nonexempt; attorneys' fees not to exceed 33.33 percent of the Maximum Settlement Amount;
16 litigation costs not to exceed \$20,000; the cost of the claims administrator to administer the
17 settlement \$7,500.00; a payment to the named plaintiff Maria De Jesus Romero of \$5,000.00; a
18 payment to the named plaintiff Maria De Jesus Romero in the amount of \$5,000; and payment of
19 penalties to the California Labor Commissioner under the Private Attorneys General Act of
20 \$37,500.00.

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 November 11, 2023. (Declaration of Mary Butler
24 Regarding Notice and Settlement Administration. ("Butler Decl."), ¶ 11)

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 January 25, 2024 hearing and the proposed settlement agreement to be finally approved. (Jackson Decl. ¶ 35, Ex. D.)

II. FACTS AND PROCEDURE

A. Defendants Employed California Non-Exempt Employees

Defendants Employbridge, LLC and Real Time Staffing Services LLC deployed hourly workers to work at Maruchan, Inc.'s facility, throughout California, including Orange County, California. The Class Representative worked for Defendants as non-exempt hourly worker. 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. ¶¶ 5-25.) 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 Plaintiff 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 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

1 Plaintiff's and Class Members' payroll records and a representative sampling of Defendants'
2 payroll records; (5) examined Plaintiff's 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. ¶¶ 3-25.) 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 August 1, 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. (Butler Decl. ¶¶ 5, 8
19 Ex. A) No Class members submitted objections. (Butler Decl. ¶ 11-14)

20 **III. THE SETTLEMENT**

21 The following summarizes the Settlement's key terms.

22 **A. Settlement Class**

23 The "Class" or "Class Members" is defined as:

24
25 All current and former non-exempt or hourly employees deployed by Real Time to
26 work at Maruchan's Deere Facility at any time during the Class Period of August 17,
27 2016 through April 30, 2022 who did not sign an arbitration agreement.
28

Accordingly, solely for purposes of this settlement only, the PAGA Group Members are defined as follows:

All current and former non-exempt or hourly employees deployed by Real Time to work at Maruchan's Deere Facility at any time during the PAGA Period of September 16, 2019 to April 30, 2022.

B. Benefits to the Class

1. The Settlement Fund

Pursuant to the terms of the Settlement, Defendants will pay \$459,375.00 to the Claims Administrator to be used for: (a) providing cash payments in the amount of no less than \$223,750.00 minus any applicable taxes; (b) payment of attorneys' fees not to exceed \$153,125.00; (c) litigation costs not to exceed \$20,000; (d) a class representative enhancement payment to the Named Plaintiff Maria De Jesus Romero 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 \$7,500.00; and (f) payment of all penalties under the California Private Attorneys General Act of 2004 ("PAGA") in the amount of \$37,500.00 ("PAGA Payment"). (Butler Decl. Decl. ¶ 15.)

The average estimated Individual Settlement Share is \$507.37. (Butler Decl. ¶ 15.)

2. Payments to Class Members

The Claims Administrator shall make Individual Settlement Payments to Participating Class Members pursuant to the terms of the settlement agreement.

3. The Claim Process

On August 22, 2023, Defendants' counsel provided the Claims Administrator with the names, most recent mailing addresses, Social Security numbers, and pertinent information for the Class Period for the Class Members. (Butler Decl. ¶ 6.) This list provided information for 441 Class Members. (*Id.*). 441 Class Members were verified and mailed approved Notice Packets via First-Class U.S. Mail. (Butler Decl. ¶¶ 7-8.)

1 On August 22, 2023 the Claims Administrator sent by first class mail the Notice Packets
2 to the Class Members whose names were provided by Defendants, a Notice Packet. (Butler Decl.
3 ¶¶ 5-8, Ex. A.) If a Class Member’s Notice Packet was returned by the USPS as undeliverable
4 and without a forwarding address, Simpluris performed an address search (i.e., skip trace) on all
5 of these addresses. (Butler Dec. ¶¶ 5-9.) To date, no exclusions or objections were received.
6 (Butler Decl. ¶¶ 5-9.)

7 **4. Distribution of Funds**

8 In accordance with the Stipulation of Settlement, the Net Settlement Fund in its entirety
9 shall be divided among the Class Members. The average estimated Individual Settlement Share
10 is \$507.37. (Butler Decl. ¶ 15.)

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

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

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

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

23 **A. This Court Preliminarily Found This Settlement to Be Fair, Reasonable And** 24 **Adequate And Nothing Has Changed to Disturb That.**

25 Before granting preliminary approval of a class action settlement, courts must determine
26 that the proposed settlement is fair, reasonable, and adequate — and not a product of fraud,
27 overreaching, or collusion. Cal. R. Ct. 3.769 (g); Cal. Civ. Pro. Code § 382; *Dunk v. Ford Motor*
28

Co., supra, 48 Cal.App.4th at 1801. Courts must presume that a settlement is fair, reasonable, and adequate, and thus appropriate for preliminary approval when the following three factors are satisfied: (1) the parties reached settlement after arms-length negotiations; (2) counsel conducted sufficient investigation and discovery to allow themselves and the court to act intelligently; and (3) counsel is experienced in similar litigation Id. at 1802. See also *7-Eleven Owners for Fair Franchising v. Southland Corp.*, (2000) 85 Cal. App. 4th 1135, 1146. Further, as discussed below, although not determinative, courts consider the percentage of objectors in determining whether a presumption of fairness exists. *Id.* The parties conducted sufficient amount of discovery and participated in a private mediation and numerous conferences of counsel that ultimately led to an arms-length settlement that provides for substantial recovery. Moreover, there are no objectors. (Butler Decl. ¶ 11-14.)

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

There certainly is no collusion between the parties. The involvement of a neutral third-party mediator is a factor that favors approval and evidences the presumptive fairness of the arms-length negotiations. (Jackson Decl. ¶ 27.) Indeed, courts should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring themselves that a settlement agreement represents an arms-length transaction entered without self-dealing or other potential misconduct. *Kullar v. Foot Locker, supra*, 168 Cal. App. 4th at 129. Here, after extensive discovery, discussions, exchange of information and review of records, on February 1, 2022, the parties conducted a full-day mediation session with a well-respected and highly knowledgeable mediator Jeffrey A Ross, Esq. (Jackson Decl. ¶ 27.)

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

As discussed in the preliminary approval papers, supporting declaration and herein, Class Counsel analyzed a significant amount of information that Defendants produced in response to formal and informal discovery requests in preparation for mediation. (Jackson Decl. ¶¶ 3-24.) The parties have conducted significant investigation of the facts and law during the prosecution of the Action, including formal discovery efforts. (*Id.*) Class Counsel's research enabled them to

1 pinpoint the relevant issues and claims and to assess potential liability and damages. (*Id.*) These
2 efforts resulted in the parties having a clear view of the strengths and weaknesses of their
3 respective cases and achieving a resolution on favorable terms, as was evidenced during
4 mediation and subsequent negotiations leading to Settlement. (*Id.*)

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

6 The endorsement of qualified and well-informed counsel of the settlement as fair is
7 entitled to significant weight. *See Dunk, supra*, 48 Cal.App.4th at 1802. As discussed in the
8 preliminary approval papers and set forth in the Declaration of Class Counsel, Class Counsel has
9 represented, mediated and settled dozens of other employee class actions or representative
10 actions in wage and hour litigation and have knowledge of the strengths and weaknesses of the
11 claims against Defendants and the benefits of the proposed settlement under the circumstances of
12 the case. (Jackson Decl. ¶¶ 28-29. 34) Class Counsel contends that the Settlement is fair,
13 adequate, reasonable, and in the best interests of the Class as a whole. (*Id.*)

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

15 Finally, courts look at the reaction of class members to determine if a settlement that
16 directly affects their interests should be approved as fair, adequate, and reasonable. As already
17 discussed herein, there are no objectors. (Butler Decl. ¶¶ 11-14.) Further, a court may
18 appropriately infer that a class action settlement is fair, adequate, and reasonable even when class
19 members object to it. Indeed, a court may approve a class action settlement as fair, adequate,
20 and reasonable even over the objections of a significant percentage of class members. *See Boyd*
21 *v. Betchel Corp.*, (D.C. Cal 1976) 485 F. Supp. 610, 624. *Reed v. General Motors* (5th Cir. 1983)
22 703 F.2d 170, 174; *In re Wash. Pub. Power Supply System Sec. Litig.* (D. Ariz. 1989) 720 F.
23 Supp. 1379, 1394.

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

25 The settlement provides for an enhancement award to be paid to the Class
26 Representatives. The purpose is to provide an additional incentive payment, taking into
27 consideration the risks, time and effort in coming forward to fulfill all the duties associated with
28

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

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

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

4 **a. Lodestar Analysis**

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

11 In calculating attorney’s fees under the Labor Code, the court should follow the lodestar
12 approach adopted by the California Supreme Court in *Ketchum v. Moses* (2001) 24 Cal. 4th 1122,
13 1134. See also *Chavez v. City of Los Angeles* (2010) 47 Cal. 4th 970, 985. The “lodestar” method
14 is clearly defined in recent case law. It involves a five-step process. *In Re: Vitamin Cases* (2003)
15 110 Cal. App. 4th 1041, 1052. To determine the “lodestar number” – steps one through three of
16 the process – the court multiplies the number of hours reasonably worked by a reasonable hourly
17 rate. (*Id.*) Step four requires the Court to determine what, if any, multiplier should be applied to
18 the lodestar number. Step five determines the amount of the attorney fee award by applying the
19 multiplier to the lodestar number. (*Id.*)

20 For the Court’s ease of reference, the following chart summarizes the attorney’s fees
21 Class Counsel seeks:
22

23

Item Description	Amount
Attorney Hours (Armond M. Jackson (11 Year Attorney: Rate: \$725; Andrea-Fernandez-Jackson (9 Year Attorney: Rate: \$515;	241.9 Hours

28

Anthony S. Filer Rate (2 Year Attorney: Rate: \$250; Yesenia Villalba (5 Year Paralegal: Rate: \$125)	
TOTAL LODESTAR	\$158,154
PRELIMINARY APPROVED AMOUNT WITHOUT CLASS MEMBER OBJECTION	\$153,125.00 (no lodestar 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. ¶ 36, Ex. F,) Jackson APC filed this class action claim in August 17, 2020, approximately 40 months prior to this hearing. A reasonable amount of work was performed pre-litigation, including conducting an extensive intake process requiring the compiling documents and information related to Plaintiff's pay stubs, wage payments and thousands of time records contained and the database of produced payroll records. (Jackson Decl. ¶¶ 5-27, 36, Ex. F) Discovery was conducted by Class Counsel regarding both the circumstances of the Plaintiff's employment, hours worked during employment, meal breaks, wage statements, and rest periods taken during their employment and Defendants' policies in general regarding the employment of individuals with respect to payment of wages, working conditions, meal breaks and rest periods. (Jackson Decl. ¶¶ 5-27, 36, Ex. F)

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

9 The time expended to achieve preliminarily and final approval was also reasonably
10 incurred. (*Id.*) Class Counsel conducted extensive legal research on the procedures and issues
11 involved in achieving class certification preliminary approval and final approval. (*Id.*) Class
12 Counsel ensured that the claims notice procedures were being implemented according to the
13 Court's instructions and the Settlement Agreement. (*Id.*) Plaintiff's counsels prepared for court
14 hearings, discovery motions and class certification. (*Id.*) These hours were reasonably spent to
15 achieve preliminary approval and final approval of this Class Action Settlement. (*Id.*)

16 As set forth in the declarations submitted herewith, the total number of hours spent on
17 this matter by Class Counsel is reasonable in light of the work required to achieve the result. (*Id.*)
18 Thus, the Court shall conclude that all of the time spent on this case was reasonable and
19 necessary to achieve this result and Class Counsel is entitled to compensation for all the attorney
20 hours worked in this case. (*Id.*)

21
22 **c. The Hourly Rate Charged for the Services of Plaintiff's Counsel is Reasonable.**

23 When determining a reasonable hourly rate for the attorney's services, courts consider the
24 following factors: (i) the prevailing rate charged by attorneys of similar skill and experience for
25 comparable legal services in the community, (ii) the nature of the work performed, and (iii) the
26 attorney's customary billing rates. *Serrano v. Unruh* (1982) 32 Cal.3d 631, 643; *See also Bihun*
27 *v. AT&T Information Systems, Inc.* (1993) 13 Cal.App.4th 976, 997 *disapproved on other*
28

1 grounds *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 664. The hourly rate is
2 determined at the time of the prevailing party's fee application rather than rates charged at the
3 time the litigation began. (*Gates v. Deukmejian* (9th Cir. 1992) 987 F.2d 1392, 1406.)

4 The Jackson Declaration lays the proper foundation for why the hourly rates charged for
5 each attorney working on this case is reasonable and customary for those rates charged by
6 attorneys with similar experience. (Jackson Decl. ¶¶ 28-29, 34, 36, Ex. F-G) Mr. Jackson's
7 hourly rate on this matter was \$725. (*Id.*) Mr. Jackson is a senior attorney who has been
8 litigating for approximately 12.5 years. (*Id.*) Mr. Jackson has handled over a hundred of
9 employment matters on behalf of the plaintiff in his career. (Jackson Decl. *Id.*) Mr. Jackson has
10 argued before the Ninth Circuit and responsible for a published opinion. (*Id.*) Based on his and
11 experience, and based on his own research for purposes of keeping his law firm competitive and
12 profitable, he has knowledge of the hourly rates other plaintiff's attorneys with similar
13 experience charge in employment cases. (*Id.*) Based on this foundation, Mr. Jackson believes
14 that his regular hourly rate of \$725 per hour (Laffey Matrix \$829 for 11-19 year attorneys) is
15 reasonable and similar to what attorneys with his tenure, experience and expertise. (Jackson
16 Decl. ¶ 37, Ex. G) The other attorneys and staff whom worked on this matter are comprised of
17 Andrea Fernandez- Jackson whom is an 8-year California licensed attorney whom has also
18 argued before the Ninth Circuit with a billable rate of \$515 per hour (Laffey Matrix \$733 for 9-
19 10 year attorneys) which should be considered reasonable. Another attorney at my office
20 Anthony Filer Jr. also worked on this matter whom is a 1.5-year California licensed attorney
21 with a billable rate of \$250 per hour (Laffey Matrix \$413 for 1-3 year attorneys) which should be
22 considered reasonable. (*Id.*) Yesenia Villalba whom is a paralegal with over five years of legal
23 experience with a billable rate of \$145 per hour (Laffey Matrix \$225 for Paralegals) which
24 should be considered reasonable. (*Id.*) This evidence therefore supports the reasonableness of
25 the fees charged in this case. "Our Supreme Court has explained that the reasonable hourly rate
26 used for the lodestar calculation 'is that prevailing in the community *for similar work*.'" *Syers*
27 *Properties III, Inc. v. Rankin*, 226 Cal.App.4th 691, 702, (2014). Reasonable hourly rates are
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1 determined by the formula “reasonable market value” and reached by evaluating the
2 “comparable salaries earned by private attorneys with similar experience and expertise in
3 equivalent litigation” and the “hourly amount to which attorneys of like skill in the area would
4 typically be entitled.” (*Serrano v. Unruh*, 32 Cal. 3d 621, 640, fn. 31 (1982).)

5 As explained in the declaration of Armond Jackson, the current billing rates for attorneys
6 and staff on this case are below the prevailing billing "market" rates established by the Laffey
7 Matrix. (Jackson Decl. ¶¶ 28-29, 34, 36-37 Exs. F-G)

8 **d. Laffey Matrix Rates**

9 The Laffey Matrix is one well-established objective source setting rates for attorneys
10 based upon years of experience for attorneys practicing in the District of Columbia. See
11 <https://www.justice.gov/usao-dc/file/796471/download> (citing *Laffey v. Northwest Airlines, Inc.*,
12 572 F.Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*. 746 F.2d 4
13 (D.C.Cir. 1984). Thus, the rate for Armond M. Jackson's as an eleven-year attorney is \$725.00.
14 All other attorney rates are also consistent with the Laffey Matrix. (Jackson Decl. ¶¶ 28-29, 34,
15 36-37 Exs. F-G)

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

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

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

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

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

24 **3. Plaintiff's Counsel Assumed a Delayed Contingent Risk That Could Have Netted 25 (and might still net) A Zero Recovery and a Loss of Valuable Firm Operating 26 Capital.**

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

3 “A contingent fee must be higher than the fee for the same legal services as they
4 are performed. The contingent fee compensates the lawyer not only for the legal
5 services he renders but for the loan of those services. The implicit interest rate
6 on such a loan is higher because the risk of default (the loss of the case, which
7 cancels the debt of the client to the lawyer) is much higher than that of
8 conventional loans.’ (Posner, *Economic Analysis of Law* (4th ed. 1992) pp. 534,
9 567.) ‘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.)

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

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

18
19 The increased multiplier in this case is warranted under several factors.

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

3 Plaintiffs counsel advanced 100% of the costs on this matter which was over twelve
4 thousand dollars. (Jackson Decl. ¶ 36, Ex. E) This means that money used to pay costs was tied
5 up until a recovery on the other end. Additionally, because that money is tied up until the matter
6 is resolved, it is not usable to the firm for overhead, operating capital, or on other matters my
7 firm is prosecuting on a contingency basis. This presented an opportunity lost, and must factor
8 into the lodestar analysis. (*See Harman v. City and County of San Francisco* (2007) 158
9 Cal.App.4th 407, 417-18—the preclusion of other employment by the attorney due to the
10 acceptance of the case a factor to be considered.)

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

16 **4. There Are No Objectors**

17 “From the class members’ perspective, review of the reasonableness of the fee award is a
18 safeguard against the possibility of collusion.” *In Re Cellphone Termination Cases*, 180 Cal.App.
19 4th 1110, 1119 (2009). Here, there is no evidence of collusion. (Jackson Decl. ¶¶ 5-27) The
20 material terms of the settlement agreement were reached before negotiating a fee for class
21 counsel. (*Id.*) Class Counsel did not seek a larger award in exchange for a smaller class
22 recovery. (*Id.*) Also, the substantive settlement was not linked to the fee award in a way that
23 might have prejudice the members of the class. (*Id.*) Class Counsel has provided documentation
24 and evidence supporting this fee request. (Jackson Decl. ¶¶ 5-29, 34, 36-37 Exs. F-G)) The Class
25 Members were all notified of the amount of fees requested and their rights to object. (Butler
26 Decl. ¶5, Ex. A) In light of the due process notice afforded to all Class Members, no objections
27 were filed. (Butler Decl. ¶¶ 11-14) The fact that no objection has been made to this class action
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1 settlement further demonstrates the reasonableness of this attorney fee request justifying final
2 approval of this class action.

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

4 Alternatively, “in cases which the value of the class recovery can be monetized with a
5 reasonable degree of certainty and it is not otherwise inappropriate, a trial court has discretion to
6 adjust the basic lodestar through the application of a positive or negative multiplier where
7 necessary to ensure that the fee awarded is within the range of fees freely negotiated in the legal
8 marketplace in comparable litigation.” (*Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th,
9 19, 50 (2000).) “Courts use the percentage of recovery method in common fund cases on the
10 theory that the class would be unjustly enriched if it did not compensate the counsel responsible
11 for generating the valuable fund bestowed upon the class.” *In re General Motors Corp. Pick-Up*
12 *Truck Fuel Products Litigation*, 55 F. 3d 768 (1995). Courts have “evaluate[d] the lodestar as a
13 percentage of the recovery and adjust[ed] it accordingly if it can be determined that the lodestar
14 is significantly different from the range of percentage fees freely negotiated in comparable
15 litigation.” (*Id.*) Under these circumstances where it will take approximately 3 years to bring this
16 matter to conclusion for \$459,375.00, the percentage of the fee analysis would support a
17 percentage of the fee of at least 33.33 percent equating to \$153,125.00. This attorney fee request
18 for \$153,125.00 shall be deemed reasonable as it is within the percentage of the fee analysis
19 supported by authority.

20 **f. Cross-Check Analysis**

21 “[A] proposed percentage fee can (and, for the reasons hereafter explained, should) be
22 compared against the fee that lead counsel would have been awarded on a lodestar basis. If the
23 multiplier implied by that comparison is reasonable, then the percentage-based fee request is
24 reasonable as well, if the implied multiplier is unreasonably high, then so is the proposed
25 percentage fee award.” (*In re HLP Technologies, Inc. Securities Litigation*, 366 F.Supp. 2d 912,
26 915 (2005) citing *In re General Motors Corp. Pick-Up Truck Fuel Products Litigation*, 55 F. 3d
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1 768 820-21 (1995). Here, no lodestar multiplier is being requested. Under these circumstances,
2 the attorney fee request of \$153,125.00 shall be deemed reasonable.

3 **VII. CLASS COUNSEL’S REQUEST FOR COSTS IS REASONABLE**

4 The Settlement provides for reasonable actual costs of up to \$20,000.00. Class Counsel
5 incurred litigation costs in bringing this matter to a resolution before trial. Here, the actual costs
6 expended are less than the maximum allotted under the settlement agreement. To date the total
7 amount of costs incurred by Class Counsel in this litigation is \$13,988.55. (Jackson Decl. ¶ 36,
8 Ex. F.)

9 **VIII. CONCLUSION**

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

12
13 Dated: January 2, 2024

Respectfully Submitted,
JACKSON APC

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15 By: /s/ Armond M. Jackson
Armond M. Jackson
16 Attorney for Plaintiff
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