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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 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 Sun Lee, Inc.¹. (referred
11 to herein as "Defendants") shall pay \$208,000.00 to establish a non-reversionary Maximum
12 Settlement Amount claims to a class of 95 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 \$8,518.65; the cost of the claims administrator to administer the
15 settlement \$5,636.00; a payment to the named plaintiff Diego Degante of \$5,000.00; and
16 payment of penalties under the Private Attorneys General Act of \$3,750.00.

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 opt-out was June 22, 2022. (Declaration of Armond M. Jackson
20 in Support of Final Approval of Class Action Settlement ("Jackson Decl."), ¶ 52, Ex. F.)

21 For the foregoing reasons and the others detailed below, the Settlement meets the
22 standards for final approval, and it should therefore be approved. Notice was also provided to the
23 California Labor and Workforce Development Agency of this July 13, 2022 hearing and the
24 proposed settlement agreement to be finally approved. (Jackson Decl. ¶ 49, Ex. B.)

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27
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¹ Hereinafter, "Defendant." Plaintiffs and Defendant are collectively referred to herein as the "Parties."

II. FACTS AND PROCEDURE

A. Defendants Employed California Non-Exempt Employees

Defendant is a company that sells food products to customers. The Class Representatives worked for Defendant 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. (Jackson Decl. ¶ 2, Ex. A, ¶¶ 36-37.)

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

Plaintiff's 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. ¶¶ 24-48.) 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 Defendant's production of payroll records, payroll data, timesheets, and working schedules 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. ¶¶ 24-48.) 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

1 Period; (7) conducted a detailed damages analysis for purposes of generating a maximum
2 number for the amount of wages Defendants could be liable for; (8) conducted a detailed
3 damages analysis for purposes of generating a maximum number for the amount of interest owed
4 the Class Members which Defendants could be liable for; (9) conducted a detailed damages
5 analysis for purposes of generating a maximum number for the amount of penalties that could be
6 accessed against the Defendant; and (10) researching settlements in similar cases. (Jackson Decl.
7 ¶¶ 24-48.) The extensive document and data exchanges allowed Plaintiff’s Counsel to appreciate
8 the strengths and weaknesses of the claims against Defendants and the benefits of the proposed
9 Settlement. (*Id.*).

10 **C. Preliminary Settlement Approval**

11 On March 10, 2022, the Court conditionally granted certification and preliminary
12 approval of the settlement.

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

14 After this Court conditionally granted certification and preliminary approval of the
15 Settlement Class Notice was sent pursuant to the terms of the Settlement. (Declaration of Evelin
16 Reyes Regarding Notice and Settlement Administration, (“Reyes Decl.”) ¶ 8, Ex. A) No Class
17 members submitted objections. (Reyes Decl. ¶ 14)

18 **III. THE SETTLEMENT**

19 The following summarizes the Settlement’s key terms.

20 **A. Settlement Class**

21 The Class is comprised of:

22 All hourly paid warehouse workers employed by Defendant in the State of California
23 from August 18, 2016 through October 13, 2021.

24 (Jackson Decl. ¶ 14, Ex. A, pp. 2-3, Provisions 5-7.)

25 **B. Benefits to the Class**

26 **1. The Settlement Fund**

27 Pursuant to the terms of the Settlement, Defendants will pay \$208,000.00 to the Claims
28 Administrator to be used for: (a) providing cash payments in the amount of no less than

1 \$114,923.60 minus any applicable taxes; (b) payment of attorneys' fees not to exceed
2 \$69,326.40; (c) litigation costs not to exceed \$8,518.65; (d) a class representative enhancement
3 payment to the Named Plaintiff Diego Degante not to exceed \$5,000.00; (e) all settlement
4 administration fees and costs, including those of the Claims Administrator projected to be no
5 more than \$5,636.00; and (f) payment of all penalties under the California Private Attorneys
6 General Act of 2004 ("PAGA") in the amount of \$3,750.00 ("PAGA Payment"). (Reyes Decl.
7 Decl. ¶ 11.)

8 The average estimated Individual Settlement Share is \$1,203.03. (Reyes Decl. ¶ 12.)

9 **2. Payments to Class Members**

10 Pursuant to the Settlement Agreement, the Claims Administrator shall make Individual
11 Settlement Payments to Participating Class Members within 14 days after Defendant provides
12 Settlement Administrator with the Total Maximum Settlement Amount. (Jackson Decl. ¶ 14, Ex.
13 A, p. 17-18 pgh., 61, Provision iii.)

14 Individual Settlement Payments will be calculated and apportioned from the Net
15 Settlement Amount based on the number of qualified pay periods worked during the relevant
16 time period. (Jackson Decl. ¶ 2, Ex. A, Settlement Agreement p. 17-18 pgh., 61, Provision iii)

17 **3. The Claim Process**

18 On March 25, 2022, Defendant's counsel provided the Claims Administrator with the
19 names, most recent mailing addresses, Social Security numbers, and pertinent information for the
20 Class Period for the Class Members. (Reyes Decl. ¶ 6.) This list provided information for 95
21 Class Members. (*Id.*) 95 Class Members were verified and mailed approved Notice Packets via
22 First-Class U.S. Mail. (Reyes Decl. ¶ 8.)

23 On April 22, 2022 the Claims Administrator sent by first class mail the Notice Packets to
24 the Class Members whose names were provided by Defendant, a Notice Packet. (Reyes Decl. ¶
25 8, Ex. A.) If a Class Member's Notice Packet was returned by the USPS as undeliverable and
26 without a forwarding address, Simpluris performed an advanced address search (i.e., skip trace)
27 on all of these addresses by using Accurint, a reputable research tool owned by Lexis-Nexis.

1 Simpluris used the Class Member's name and previous address to locate a current address.
2 Ultimately, there was one Notice Packet that was undeliverable. (Reyes Decl ¶ 9.)

3 No valid opt outs were received. (Reyes Decl. ¶ 13.)

4 **4. Distribution of Funds**

5 In accordance with the Stipulation of Settlement, within 15 days of the effective date, the
6 Net Settlement Fund in its' entirety shall be divided among the Class Members. (Jackson Decl. ¶
7 2, Ex. A, Settlement Agreement p. 17-18 pgh., 61, Provision iii) The average estimated
8 Individual Settlement Share is \$1,203.03. (Reyes Decl. ¶ 12.)

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

10 The deadline for Class Members to postmark Challenges, Objections or Exclusion
11 Requests was June 22, 2022. (Jackson Decl. ¶ 52, Ex. F.)

12 The Class Notice instructed Class Members who wished to object to the proposed
13 Settlement to either send a written objection to the claims administrator or appear at the Final
14 Approval Hearing. (Reyes Decl. ¶ 8, Ex. A.) The claims administrator had received no
15 objections to the settlement terms, nor challenges nor Comments. (Reyes Decl ¶ 9.)

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

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

25
26 **A. This Court Preliminarily Found This Settlement to Be Fair, Reasonable And**
27 **Adequate And Nothing Has Changed to Disturb That.**
28

Before granting preliminary approval of a class action settlement, courts must determine that the proposed settlement is fair, reasonable, and adequate — and not a product of fraud, overreaching, or collusion. Cal. R. Ct. 3.769 (g); Cal. Civ. Pro. Code § 382; *Dunk v. Ford Motor 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. (Reyes Decl. ¶ 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. ¶¶ 24-48.) 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 August 16, 2021, the parties conducted a full-day mediation session with a well-respected and highly knowledgeable mediator Eleanor Barr, Esq. (Jackson Decl. ¶ 24-48.)

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 Defendant produced in response to formal and informal discovery requests in preparation for mediation. (Jackson Decl. ¶¶ 24-48.) 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 pinpoint the relevant issues and claims and to assess potential liability and damages. (*Id.*) These efforts resulted in the parties having a clear view of the strengths and weaknesses of their respective cases and achieving a resolution on favorable terms, as was evidenced during mediation and subsequent negotiations leading to Settlement. (*Id.*)

C. Class Counsel is Experienced in Similar Litigation

The endorsement of qualified and well-informed counsel of the settlement as fair is entitled to significant weight. *See Dunk, supra*, 48 Cal.App.4th at 1802. As discussed in the preliminary approval papers and set forth in the Declaration of Class Counsel, Class Counsel has represented, mediated and settled over 45 other employee class actions or representative actions in wage and hour litigation and have knowledge of the strengths and weaknesses of the claims against Defendant and the benefits of the proposed settlement under the circumstances of the case. (Jackson Decl. ¶¶ 20-23.) Class Counsel contends that the Settlement is fair, adequate, reasonable, and in the best interests of the Class as a whole. (*Id.*)

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

Finally, courts look at the reaction of class members to determine if a settlement that directly affects their interests should be approved as fair, adequate, and reasonable. As already discussed herein, out of 95 class members, there are no objectors. (Reyes Decl. ¶¶ 10, 14.) Further, a court may appropriately infer that a class action settlement is fair, adequate, and reasonable even when class members object to it. Indeed, a court may approve a class action settlement as fair, adequate, and reasonable even over the objections of a significant percentage of class members. *See Boyd v. 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.*

1 *Litig.* (D. Ariz. 1989) 720 F. Supp. 1379, 1394. In this action, there are no objectors. (Reyes
2 Decl. ¶ 14.)

3 **V. CLASS REPRESENTATIVE ENHACEMENT IS REASONABLE**

4 The settlement provides for an enhancement award to be paid to the Class Representative.
5 The purpose is to provide an additional incentive payment, taking into consideration the risks,
6 time and effort in coming forward to fulfill all the duties associated with being a class
7 representative. Awarding incentive awards to compensate named plaintiffs in class actions has
8 been specifically recognized. See, e.g. *Clark v. American Residential Services, LLC*, (2009) 175
9 Cal App 4th 785, 804 (incentive awards to named plaintiff appropriate for participation in class
10 action); *Bell v Farmers Ins. Exchange*, (2004) 115 Cal App 4th 715, 726 (upholding “service
11 payments” to named plaintiffs for their efforts in bringing class case). As stated by the Court of
12 Appeal in the *Cellphone Termination Fee Cases*: incentive awards are "intended to compensate
13 class representatives for work done on behalf of the class, to make up for financial or
14 reputational risk undertaken in bringing the action, and, sometimes, to recognize their
15 willingness to act as a private attorney general." *Cellphone Termination Fee Cases*, (2010) 186
16 Cal. App. 4th 1380, 1394 (approving an incentive award of \$10,000). The class representative
17 enhancement payment is intended to compensate named Plaintiff Diego Degante as the class
18 representatives for their willingness to accept the responsibility of representing the interests of all
19 class members. The purpose is to provide an incentive payment, taking into consideration the
20 risks, time and effort expended by him in coming forward to provide invaluable information and
21 litigate this matter on behalf of all Class Members. Plaintiff also risked potential judgment
22 against him if this case had been unsuccessful. In class action losses, class representatives are
23 deemed the losing party that is liable for the prevailing party’s costs. *Earley v. Superior Court*,
24 (2000) 79 Cal.App.4th 1420, 1433-1434. Finally, Plaintiff also risked this lawsuit having a
25 negative impact on future employment opportunities, as prospective employers may be less
26 inclined to hire an employee who has served as a class representative. See, e.g. *Staton v. Boeing*,
27 327 F.3d 938, 977 (9th Cir. 2003) As such, Plaintiff respectfully requests that this Court approve
28

the Class Representatives enhancement payment in the amount of \$5,000 for Named Plaintiff Diego Degante.

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
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Reasonable attorney's fees incurred in procuring the underlying award applying the Lodestar method for calculating attorney's fees in Labor Code cases (\$83,212.65).	\$69,326.40
TOTAL	\$69,326.40

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. ¶¶ 24-48, 50 Ex. D) Jackson Law began filed this class action claim in August 2020, approximately 24 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 Plaintiffs' pay stubs, wage payments and thousands of time records. (Jackson Decl. ¶¶ 24-48, 50 Ex. D) Discovery was conducted by Class Counsel regarding both the circumstances of the Plaintiffs' employment, hours worked during her employment, meal breaks, wage statements, and rest periods taken during his 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. ¶¶ 4-19, 24-48, 50 Ex. D)

The time expended during the discovery phase was also reasonably incurred. (*Id.*) Class Counsel spent a significant amount of time in the discovery phase evaluating thousands of excel spreadsheets and voluminous documents concerning Defendant's duties under the Labor Code.

(*Id.*) Thereafter, numerous hours were spent by Class Counsel in performing detailed calculations of over one hundred class members regarding their entitlement to wages for missed meal breaks, rest periods, alleged wage claims, pay upon determination and interest owed. (*Id.*)

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

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

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

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

1 The Jackson Declaration lays the proper foundation for why the hourly rates charged for
2 each attorney working on this case is reasonable and customary for those rates charged by
3 attorneys with similar experience. (Jackson Decl. ¶¶ 20-23, 50, Ex. D)

4 Mr. Jackson's hourly rate on this matter was \$640. (Jackson Decl. ¶¶ 20-23, 50, Ex. D)
5 Mr. Jackson is a senior attorney who has been litigating for approximately 11 years. (*Id.*) Mr.
6 Jackson has handled over a hundred of employment matters on behalf of the plaintiff in his
7 career. (Jackson Decl. ¶¶ 20-23, 50, Ex. D) Mr. Jackson has argued before the Ninth Circuit and
8 responsible for a published opinion. (*Id.*) Based on his and experience, and based on his own
9 research for purposes of keeping his law firm competitive and profitable, he has knowledge of
10 the hourly rates other plaintiff's attorneys with similar experience charge in employment cases.
11 (*Id.*) Based on this foundation, Mr. Jackson believes that his regular hourly rate of \$640 per hour
12 is reasonable and similar to what attorneys with his tenure, experience and expertise. (*Id.*)

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

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

21 As explained in the declaration of Armond Jackson, the current prevailing billing or
22 "market" rates for attorneys in the Orange County area range from \$200 to over \$600 per hour.
23 (*See, e.g., Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal. App. 4th 976, 1004-1005
24 (upholding an attorney's fee award in an action brought under the FEHA based on an hourly rate
25 of \$450 over ten years ago) (overruled on other grounds in *Lakin v. Watkins Assoc. Indus.* (1993)
26 6 Cal.4th 644, 664.)) Given the skill and experience of the attorneys who represented plaintiff,
27 an hourly rate of 640 for Armond M. Jackson is reasonable. (Jackson Decl. ¶¶ 20-23, 50, Ex. D)
28

1 **d. Laffey Matrix Rates**

2 The Laffey Matrix is one well-established objective source setting rates for attorneys
3 based upon years of experience for attorneys practicing in the District of Columbia. See
4 <https://www.justice.gov/usao-dc/file/796471/download> (citing *Laffey v. Northwest Airlines, Inc.*, 572 F.Supp.
5 354 (D.D.C. 1983), aff'd in part, rev'd in part on other grounds. 746 F.2d 4 (D.C.Cir. 1984).
6 Thus, the rate for Armond M. Jackson's as a ten-year attorney is \$676.00.

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

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

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

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

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

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

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

20 “A contingent fee must be higher than the fee for the same legal services as they
21 are performed. The contingent fee compensates the lawyer not only for the legal
22 services he renders but for the loan of those services. The implicit interest rate
23 on such a loan is higher because the risk of default (the loss of the case, which
24 cancels the debt of the client to the lawyer) is much higher than that of
25 conventional loans.’ (Posner, *Economic Analysis of Law* (4th ed. 1992)pp. 534,
26 567.) ‘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.)

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

3 “Under our precedents, the unadorned lodestar reflects the general local hourly
4 rate for a *fee-bearing case*; it does *not* include any compensation for contingent
5 risk, extraordinary skill, or any other factors a trial court may consider under
6 *Serrano III*. The adjustment to the lodestar figure, e.g., to provide a fee
7 enhancement reflecting the risk that the attorney will not receive payment if the
8 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.)

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

10 As explained in the Jackson Declaration more fully, plaintiff’s counsel assumed the risk
11 that they would recover zero when they accepted this case. For example, Mr. Jackson considered
12 numerous factors when deciding whether to accept this matter: the merits of the case, the
13 credibility and demeanor of the client, the chances of success, the amount of time his firm will
14 invest in the matter compared to what he considers to be the reasonable chances of a recovery on
15 the other end that will fully compensate plaintiff’s counsel for the amount of time invested, the
16 amount of costs his firm will need to invest over the course of the litigation compared to the
17 chances of success, and how long the case will proceed before either a judgment or settlement
18 occurs. (Jackson Decl. ¶¶ 20-23, 50, Ex. D) Given the risks of certification and trial, the
19 attorneys still risk a zero recovery. The contingency risk is enormous.

20 Plaintiffs’ counsel advanced 100% of the costs on this matter. (Jackson Decl. ¶¶ 50, Ex.
21 C.) This means that money used to pay costs was unavailable to the firm and is tied up in any
22 given legal matter until a recovery on the other end. Additionally, because that money is tied up
23 until the matter is resolved, it is unavailable to the firm to use for overhead, operating capital, or
24 on other matters my firm is prosecuting on a contingency basis. This presented an opportunity
25 lost, and must factor into the lodestar analysis. (See *Harman v. City and County of San*
26 *Francisco* (2007) 158 Cal.App.4th 407, 417-18—the preclusion of other employment by the
27 attorney due to the acceptance of the case a factor to be considered.)
28

1 The firm advanced the costs and attorney's time with the prospect that it would recover
2 nothing. Most important, the law with respect to the lodestar method is designed to incentivize
3 strong attorneys to take on cases like this has proper representation. The fact that plaintiff's
4 counsel achieved what they set out to achieve should not overshadow the risk they took to get
5 there.

6 **4. There Are No Objectors**

7 "From the class members' perspective, review of the reasonableness of the fee award is a
8 safeguard against the possibility of collusion." *In Re Cellphone Termination Cases*, 180 Cal.App.
9 4th 1110, 1119 (2009). Here, there is no evidence of collusion. (Jackson Decl. ¶¶ 3-19, 24-48)
10 The material terms of the settlement agreement were reached before negotiating a fee for class
11 counsel. (*Id.*) Class Counsel did not seek a larger award in exchange for a smaller class
12 recovery. (*Id.*) Also, the substantive settlement was not linked to the fee award in a way that
13 might have prejudice the members of the class. (*Id.*) Class Counsel has provided extensive
14 documentation and evidence supporting this fee request. (Jackson Decl. 3--48, 50, Ex. D) The
15 Class Members were all notified of the amount of fees requested and their rights to object. In
16 light of the due process notice afforded to all Class Members, no objections were filed. The fact
17 that no objection has been made to this class action settlement further demonstrates the
18 reasonableness of this attorney fee request justifying final approval of this class action.

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

20 Alternatively, "in cases which the value of the class recovery can be monetized with a
21 reasonable degree of certainty and it is not otherwise inappropriate, a trial court has discretion to
22 adjust the basic lodestar through the application of a positive or negative multiplier where
23 necessary to ensure that the fee awarded is within the range of fees freely negotiated in the legal
24 marketplace in comparable litigation." (*Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th,
25 19, 50 (2000).) "Courts use the percentage of recovery method in common fund cases on the
26 theory that the class would be unjustly enriched if it did not compensate the counsel responsible
27 for generating the valuable fund bestowed upon the class." *In re General Motors Corp. Pick-Up*
28

1 *Truck Fuel Products Litigation*, 55 F. 3d 768 (1995). Courts have “evaluate[d] the lodestar as a
2 percentage of the recovery and adjust[ed] it accordingly if it can be determined that the lodestar
3 is significantly different from the range of percentage fees freely negotiated in comparable
4 litigation.” (*Id.*) Under these circumstances where it will take approximately 3 years to bring this
5 matter to conclusion for \$208,000.00, the percentage of the fee analysis would support a
6 percentage of the fee of at least 33.33 percent equating to \$69,326.40. This attorney fee request
7 for \$69,326.40 shall be deemed reasonable as it is within the percentage of the fee analysis
8 supported by authority.

9 **f. Cross-Check Analysis**

10 “[A] proposed percentage fee can (and, for the reasons hereafter explained, should) be
11 compared against the fee that lead counsel would have been awarded on a lodestar basis. If the
12 multiplier implied by that comparison is reasonable, then the percentage-based fee request is
13 reasonable as well, if the implied multiplier is unreasonably high, then so is the proposed
14 percentage fee award. (*In re HLP Technologies, Inc. Securities Litigation*, 366 F.Supp. 2d 912,
15 915 (2005) citing *In re General Motors Corp. Pick-Up Truck Fuel Products Litigation*, 55 F. 3d
16 768 820-21 (1995). Here, the requested lodestar is 1.01 as counsel is requesting fees in the
17 amount of \$69,326.40 which is 33.33 percent of the settlement which is the usual and customary
18 fee award benchmark for this type of case. (See *In Re Consumer Privacy Cases* (2009) 175
19 Cal.App.4th 545, 558, fn. 13 [“Empirical studies show that, regardless whether the percentage
20 method or the lodestar method is used, fee awards in class actions average around one-third of
21 the recovery.”].) Under these circumstances, no multiplier is being requested, the attorney fee of
22 \$69,326.40 shall be deemed reasonable.

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

24 The Settlement provides for reasonable actual costs of up to \$8,325.43. Class Counsel
25 incurred litigation costs in bringing this matter to a resolution before trial. Here, the actual costs
26 expended are less than the maximum allotted under the settlement agreement. To date the total
27
28

1 amount of costs incurred by Class Counsel in this litigation is \$8,518.65. (Jackson Decl. ¶ 50,
2 Ex. C.)

3 **VIII. CONCLUSION**

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

6
7 Dated: October 4, 2022

Respectfully Submitted,
Jackson Law, APC

8
9 By: /s/ Armond M. Jackson
Armond M. Jackson
10 Attorney for Plaintiff
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