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SUPERIOR COURT OF STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

MANUEL VILLEGAS, as an individual and
on behalf of other similarly situated employees,

Plaintiff,

vs.

FIBER CARE BATHS, INC., a California
corporation, and DOES 1-50, inclusive,

Defendant.

Case No.: CIVSB2114736

Assigned for all purposes to:
Hon. David Cohn
Dept. S26

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

Date: May 31, 2023
Time: 10:00 a.m.
Place: Department S26

Action Filed: October 22, 2020
Trial Date: None

[FILED CONCURRENTLY WITH
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
ARMOND M. JACKSON; AND
DECLARATION OF MANUEL VILLEGAS]

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR
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TABLE OF CONTENTS

I.	<u>INTRODUCTION</u>	1
II.	<u>FACTS AND PROCEDURE</u>	2
	A. Defendants Employed Approximately One-Hundred and Forty-Four Hourly Employees Within California	2
	B. Class Counsel’s Investigation, Discovery and Settlement Negotiations	2
	C. Preliminary Settlement Approval	3
	D. Proper Notice to Class Members	3
III.	<u>THE SETTLEMENT</u>	3
	A. Settlement Class	3
	B. Benefits to the Class	4
	1. The Settlement Fund.....	4
	2. Payments to Class Members.....	4
	3. The Claim Process.....	4
	4. Opt-Out Objection Procedures.....	5
IV.	<u>FINAL SETTLEMENT APPROVAL IS APPROPRIATE</u>	5
	A. This Court Preliminarily Found This Settlement To Be Fair, Reasonable And Adequate And Nothing Has Changed To Disturb That	6
	1. The Settlement Resulted from Non-Collusive, Arms-Length Negotiations....	6
	B. The Settlement is Supported by Substantial Investigative and Discovery Efforts	7
	C. Class Counsel is Experienced in Similar Litigation	7
	D. Class Members’ Positive Reaction to the Settlement Favors Final Approval	7
V.	CLASS REPRESENTATIVE ENHACEMENT IS REASONABLE	8

TABLE OF CONTENTS

VI.	CLASS COUNSEL’S REQUEST FOR ATTORNEYS FEE AWARD AND COSTS ARE REASONABLE.....	9
1.	Attorneys’ Fees Are Justified.....	9
a.	Lodestar Analysis.....	9
b.	The Number of Hours Expended by Plaintiff’s Counsel Was Reasonable.....	10
c.	The Hourly Rate Charged for the Services of Plaintiff’s Counsel is Reasonable.....	11
d.	Laffey Matrix Rates.....	13
1.	The Quality of Plaintiff’s Representation Was Wrong.....	13
2.	Plaintiff’s Counsel Obtained an Outstanding Result in Court.....	13
3.	Plaintiff’s Counsel Assumed a Delayed Contingent Risk That Could Have Netted (and might still net) A Zero Recovery and a Loss of Valuable Firm Operating Capital.....	13
4.	There Are No Objectors.....	15
e.	Percentage of the Recovery Analysis.....	15
f.	Cross-Check Analysis.....	16
VII.	CLASS COUNSEL’S REQUEST FOR COSTS IS REASONABLE.....	16
VII.	CONCLUSION.....	17

TABLE OF AUTHORITIES

Cases

<i>Earley v. Superior Court</i> , (2000)	8
<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , (2000) 85 Cal. App. 4th 1135, 1146	6
<i>Bell v Farmers Ins. Exchange</i> , (2004) 115 Cal App 4th 715, 726l.....	8
<i>Bihun v. AT&T Information Systems, Inc.</i> (1993) 13 Cal.App.4th 976	11,12
<i>Boyd v. Betchel Corp.</i> , (D.C. Cal 1976) 485.....	7
<i>Chavez v. City of Los Angeles</i> (2010) 47 Cal. 4 th 970	9
<i>Clark v. American Residential Services, LLC</i> , (2009)	8
<i>Dunk v. Ford Motor Co.</i> , supra, 48 Cal.App.4th at 1801	5
<i>Dunk v. Ford Motor Company</i> (1996) 48 Cal. App. 4 th 1794, 1801.....	5
<i>Harman v. City and County of San Francisco</i> (2007) 158 Cal.App.4th 407.....	14
<i>In re Wash. Pub. Power Supply System Sec. Litig. (D. Ariz. 1989)</i> 720 F. Supp. 1379, 1394.....	7
<i>Ketchum v. Moses</i> (2001) 24 Cal. 4 th 1122, 1134.....	9,13,14
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal. App. 4 th 116, 129-30	5
<i>Kullar v. Foot Locker</i> , supra, 168 Cal. App. 4th at 129	6
<i>Laffey v. Northwest Airlines, Inc.</i> , 572.....	13
<i>Lakin v. Watkins Assoc. Indus.</i> (1993) 6 Cal.4th 644	11, 12
<i>Lealao v. Beneficial California, Inc.</i> , 82 Cal. App. 4th, 19, 50 (2000)	15
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> , (2010) 186 Cal. App. 4 th 399, 407-408 ...	5
<i>New York Gaslight Club, Inc. v. Carey</i> (1980) 447 U.S. 54.....	10
<i>Potter v. Pacific Coast Lumber Company</i> , (1951) 37 Cal. 2d. 592, 602-603	5
<i>Potter v. Pacific Coast Lumber Company</i> , (1951) 37 Cal. 2d. 592, 602-603; 4 NEWBERG section 11.41	5
<i>Press v. Lucky Stores, Inc.</i> , (1983) 34 Cal. 3d 311, 322	10
<i>Reed v. General Motors</i> (5th Cir. 1983) 703 F.2d 170, 174.....	7

TABLE OF CONTENTS

1	<i>Serrano v. Unruh</i> (1982) 32 Cal.3d 631	11
2	<i>Serrano v. Unruh</i> , 32 Cal. 3d 621, 640, fn. 31 (1982).....	12
3	<i>Staton v. Boeing</i> , 327 F.3d 938, 977 (9th Cir. 2003)	8
4	<i>Wershba v. Apple Computer, Inc.</i> 91 Cal. App. 4th 224, 254 (2001).....	9
5	Statutes	
6	Cal. R. Ct. 3.769.....	5
7	Cal. Civ. Pro. Code § 382	5
8	Other Authorities	
9	<i>Cellphone Termination Cases</i> , 180 Cal.App. 4th 1110, 1119 (2009).....	8, 15
10	<i>Consumer Privacy Cases</i> (2009) 175 Cal.App.4 th 545, 558, fn. 13.....	16
11	<i>Gates v. Deukmejian</i> (9th Cir. 1992) 987 F.2d 1392	11
12	<i>General Motors Corp. Pick-Up Truck Fuel Products Litigation</i> , 55 F. 3d 768 (1995).....	15
13	<i>General Motors Corp. Pick-Up Truck Fuel Products Litigation</i> , 55 F. 3d 768 820-21 (1995) ...	16
14	<i>HLP Technologies, Inc. Securities Litigation</i> , 366 F.Supp. 2d 912, 915 (2005).....	16
15	<i>Syers Properties III, Inc. v. Rankin</i> , 226 Cal.App.4th 691, 702, (2014).....	12
16	<i>In Re: Vitamin Cases</i> (2003) 110 Cal. App. 4 th 1041	9

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 Fiber Care Baths, Inc.,¹
11 (referred to herein as "Defendants") shall pay \$3,740,000.00 to establish a non-reversionary
12 Maximum Settlement Amount claims to a class of 901 Participating Class Members current and
13 former nonexempt; attorneys' fees not to exceed 33.33 percent of the Maximum Settlement
14 Amount; litigation costs not to exceed \$40,000.00; the cost of the claims administrator to
15 administrator the settlement \$25,000.00; a payment to the named plaintiff Manuel Villegas of
16 \$10,000.00; a payment to class representative Ernesto Rivera of \$10,000.00; and payment of
17 penalties to the LWDA under the Private Attorneys General Act of \$2250,000.00.

18 The notice process was simple and effective, and the adequacy of the Settlement is
19 reflected in the very positive reaction from the Class Members as no Class Member objected to
20 this Settlement. The deadline to opt-out is April 29, 2023. (Declaration of Madely Nava of ILYM
21 Group, Inc. in Support of Motion for Final Approval of Class Action Settlement ("Nava Decl."),
22 ¶¶ 10-13)

23 1. For the foregoing reasons and the others detailed below, the Settlement meets the
24 standards for final approval, and it should therefore be approved. Notice was also provided to the
25 California Labor and Workforce Development Agency of this May 31, 2023 hearing and the
26 proposed settlement agreement to be finally approved. (Jackson Decl. ¶ 27, Ex. F.) Finally,
27

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

1 according the claims administrator and the data submitted therewith, there were 907 total class
2 members and 596 total aggrieved employees. (Jackson Decl. ¶ 28.) There were a total of 70,916
3 workweeks during the class period and 33,647 pay periods during the PAGA period. (*Id.*)

4 **II. FACTS AND PROCEDURE**

5 **A. Defendants Employed California Non-Exempt Employees**

6 Defendant is a company that provides services to the entertainment industry in Los
7 Angeles, California. The Class Representatives worked for Defendant as non-exempt hourly
8 worker.

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

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

12 Plaintiff's counsel has thoroughly investigated and researched the claims in controversy,
13 the defenses, the potential of success and recovery if successful at trial, and the developing body
14 of law. (Jackson Decl. ¶¶ 6-19.) Plaintiff's counsel's investigation entailed the exchange of
15 thousands of excel cells, documents, months of analysis, damages analysis based upon the Class
16 Members' working schedules, payroll records and timesheets. (*Id.*) The investigation involved an
17 in-depth evaluation of payroll records, payroll data, timesheets, and working schedules of the
18 Plaintiffs and the Class Members. (*Id.*)

19 Following Defendant's production of payroll records, payroll data, timesheets, and
20 working schedules for the Plaintiff and Class Members, Class Counsel expended considerable
21 resources in creating a damages analysis detailing each potential Labor Code violation along
22 with calculating the damages and interest in connection to each Labor Code violation. (Jackson
23 Decl. ¶¶ 6-19.) These same violations were presumed to exist for all other Class Members.

24 Overall Class Counsel performed an extensive investigation into the claims at issue,
25 which included: (1) determining Plaintiff's suitability as putative class representatives through
26 interviews questioning Defendants purported Labor Code violations; (2) evaluating plaintiff's
27 potential claims; (3) researching wage and hour class actions similar to claims brought, the
28

1 nature of the positions, and type of industry the employer is involved in; (4) examined the
2 Plaintiff's and Class Members' payroll records and a representative sampling of Defendant's
3 payroll records; (5) examined Plaintiff's and Class Members' timesheet records; (6) examined
4 the Defendant's payroll records to ascertain the number of employees in the Settlement Class
5 Period; (7) conducted a detailed damages analysis for purposes of generating a maximum
6 number for the amount of wages Defendants could be liable for; (8) conducted a detailed
7 damages analysis for purposes of generating a maximum number for the amount of interest owed
8 the Class Members which Defendants could be liable for; (9) conducted a detailed damages
9 analysis for purposes of generating a maximum number for the amount of penalties that could be
10 accessed against the Defendant; and (10) researching settlements in similar cases. (Jackson Decl.
11 ¶¶ 6-19.) The extensive document and data exchanges allowed Plaintiff's Counsel to appreciate
12 the strengths and weaknesses of the claims against Defendants and the benefits of the proposed
13 Settlement. (*Id.*).

14 **C. Preliminary Settlement Approval**

15 On January 23, 2023, the Court conditionally granted certification and preliminary
16 approval of the settlement.

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

18 After this Court conditionally granted certification and preliminary approval of the
19 Settlement Class Notice was sent pursuant to the terms of the Settlement. ([Administrator] Decl.
20 ¶ 5, Ex. A) No Class members submitted objections. (Nava Decl. ¶ 8)

21 **III. THE SETTLEMENT**

22 The following summarizes the Settlement's key terms.

23 **A. Settlement Class**

24 The Class is comprised of:

25 **Settlement Class**- All current and former non-exempt employees of Defendant that
26 have worked for Defendant in the State of California at any time from November 19,
2016 through October 21, 2022. ("Settlement Class" or "Settlement Class Members")

27 **PAGA Group Members**- All Class Members employed by Defendant at any time
28 between March 12, 2020 through October 21, 2022 ("PAGA Group Members")

1 **B. Benefits to the Class**

2 **1. The Settlement Fund**

3 Pursuant to the terms of the Settlement, Defendant will pay \$3,740,000.00 to the Claims
4 Administrator to be used for: (a) providing cash payments in the amount of no less than
5 \$2,108,458 minus any applicable taxes; (b) payment of attorneys' fees not to exceed
6 \$1,246,542.00; (c) litigation costs not to exceed \$40,000.00; (d) a class representative
7 enhancement payment to the Named Plaintiff Manuel Villegas not to exceed \$10,000.00; (e) a
8 class representative enhancement payment to the Named Plaintiff Ernesto Rivera not to exceed
9 \$10,000.00; (f) all settlement administration fees and costs, including those of the Claims
10 Administrator projected to be no more than \$25,000.00; and (g) payment of all penalties to the
11 LWDA under the California Private Attorneys General Act of 2004 ("PAGA") in the amount of
12 \$225,000.00 ("PAGA Payment"). (Nava Decl. ¶ 14.)

13 The average estimated Individual Settlement Share is \$2,407.34. (Nava Decl. ¶ 14.)

14 **2. Payments to Class Members**

15 Pursuant to the Settlement Agreement, the Claims Administrator shall make Individual
16 Settlement Payments to Participating Class Members pursuant to the settlement agreement.

17 Individual Settlement Payments will be calculated and apportioned from the Net
18 Settlement Amount based on the number of eligible workweeks worked during the relevant time
19 period. (Nava Decl. ¶ 14.)

20 **3. The Claim Process**

21 On February 13, 2023, Defendant's counsel provided the Claims Administrator with the
22 names, most recent mailing addresses, Social Security numbers, and pertinent information for the
23 Class Period for the Class Members. (Nava Decl. ¶ 5.) This list provided information for 907
24 Class Members. (*Id.*) 907 Class Members were verified and mailed approved Notice Packets via
25 First-Class U.S. Mail. (Nava Decl. ¶ 6.)

26 On February 28, 2023 the Claims Administrator sent by first class mail the Notice
27 Packets to the Class Members whose names were provided by Defendant, a Notice Packet. (Nava
28

Decl. ¶ 7, Ex. A.) If a Class Member’s Notice Packet was returned by the USPS as undeliverable and without a forwarding address, ILYM performed an address search (i.e., skip trace) on all of these addresses. ILYM used the Class Member’s name and previous address to locate a current address. Ultimately, there were 40 Notice Packet that were undeliverable. (Nava Decl ¶ 10.)

Six valid opt outs were received. (Nava Decl. ¶ 11.)

4. Opt-out and Objection Procedures

The deadline for Class Members to postmark Challenges, Objections or Exclusion Requests is April 29, 2023. (Nava Decl. ¶¶ 11-12.)

The Class Notice instructed Class Members who wished to object to the proposed Settlement to either send a written objection to the claims administrator or appear at the Final Approval Hearing. (Nava Decl. ¶ 7, Ex. A.) The claims administrator had received no objections to the settlement terms, nor challenges nor Comments. (Nava Decl ¶ 12.)

IV. FINAL SETTLEMENT APPROVAL IS APPROPRIATE

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

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

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. (Nava Decl. ¶ 12.)

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. 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 July 21, 2022, the parties conducted a full-day mediation session with a well-respected and highly knowledgeable mediators Lynn Frank, Esq. and Marc Feder, 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. ¶¶ 6-19.) 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

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

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

5 The endorsement of qualified and well-informed counsel of the settlement as fair is
6 entitled to significant weight. *See Dunk, supra*, 48 Cal.App.4th at 1802. As discussed in the
7 preliminary approval papers and set forth in the Declaration of Class Counsels, Class Counsel
8 has represented, mediated and settled over 45 other employee class actions or representative
9 actions in wage and hour litigation and have knowledge of the strengths and weaknesses of the
10 claims against Defendant and the benefits of the proposed settlement under the circumstances of
11 the case. (Jackson Decl. ¶¶ 20-26, Declaration of Douglas Han. ¶¶ 3-20.) Class Counsels
12 contends that the Settlement is fair, adequate, reasonable, and in the best interests of the Class as
13 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, out of 907 class members, there are no objectors. (Nava Decl. ¶ 12.) Further, a
18 court may appropriately infer that a class action settlement is fair, adequate, and reasonable even
19 when class members object to it. Indeed, a court may approve a class action settlement as fair,
20 adequate, and reasonable even over the objections of a significant percentage of class members.
21 *See Boyd v. Betchel Corp.*, (D.C. Cal 1976) 485 F. Supp. 610, 624. *Reed v. General Motors* (5th
22 Cir. 1983) 703 F.2d 170, 174; *In re Wash. Pub. Power Supply System Sec. Litig.* (D. Ariz. 1989)
23 720 F. Supp. 1379, 1394. In this action, there are no objectors. (Nava Decl. ¶ 12.)

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 Plaintiffs Manuel
12 Villegas and Ernesto Rivera as the class representatives for their willingness to accept the
13 responsibility of representing the interests of all class members. The purpose is to provide an
14 incentive payment, taking into consideration the risks, time and effort expended by him in
15 coming forward to provide invaluable information and litigate this matter on behalf of all Class
16 Members. Plaintiffs also risked potential judgment against him if this case had been
17 unsuccessful. In class action losses, class representatives are deemed the losing party that is
18 liable for the prevailing party’s costs. *Earley v. Superior Court*, (2000) 79 Cal.App.4th 1420,
19 1433-1434. Finally, Plaintiffs also risked this lawsuit having a negative impact on future
20 employment opportunities, as prospective employers may be less inclined to hire an employee
21 who has served as a class representative. See, e.g. *Staton v. Boeing*, 327 F.3d 938, 977 (9th Cir.
22 2003) As such, Plaintiffs respectfully requests that this Court approve the Class Representatives
23 enhancement payment in the amount of \$10,000 for Named Plaintiff Manuel Villegas and
24 \$10,000 for Named Plaintiff Ernesto Rivera.

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

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

1 **a. Lodestar Analysis**

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

8 In calculating attorney’s fees under the Labor Code, the court should follow the lodestar
9 approach adopted by the California Supreme Court in *Ketchum v. Moses* (2001) 24 Cal. 4th 1122,
10 1134. See also *Chavez v. City of Los Angeles* (2010) 47 Cal. 4th 970, 985. The “lodestar” method
11 is clearly defined in recent case law. It involves a five-step process. *In Re: Vitamin Cases* (2003)
12 110 Cal. App. 4th 1041, 1052. To determine the “lodestar number” – steps one through three of
13 the process – the court multiplies the number of hours reasonably worked by a reasonable hourly
14 rate. (*Id.*) Step four requires the Court to determine what, if any, multiplier should be applied to
15 the lodestar number. Step five determines the amount of the attorney fee award by applying the
16 multiplier to the lodestar number. (*Id.*)

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

19

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	\$727,742.50
TOTAL	\$727,742.50

26
27
28

1
2 **b. The Number of Hours Expended by Plaintiff's Counsel Was Reasonable.**

3 "The starting point of every fee award...must be a calculation of the attorney's services
4 in terms of the time he has expended on the case." *Press v. Lucky Stores, Inc.*, (1983) 34 Cal. 3d
5 311, 322. Reasonable hours include, in addition to time spent during litigation, time spent before
6 the action is filed, including time reasonably spent interviewing the client, investigating the facts
7 and the law, and preparing the initial pleadings, as well as time spent in exhausting
8 administrative remedies. *New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62.

9 The evidence submitted by Class Counsel in support of this motion reflect that Class
10 Counsel reasonably expended the following number of hours in the prosecution of this case.
11 (Jackson Decl. ¶¶ 20-27, Exhs. G, H, I, Declaration of Douglas Han ("Han Decl." ¶¶ 7-10, Ex. 2)
12 Jackson APC began filed this class action claim in May 20, 2021, approximately 23 months prior
13 to this hearing. A reasonable amount of work was performed pre-litigation, including
14 conducting an extensive intake process requiring the compiling documents and information
15 related to Plaintiffs' claims. (Jackson Decl. ¶¶ 6-19, 20-27, Exhs. G, H, I, Han Decl. ¶¶ 3-10, Ex.
16 2.) Discovery was conducted by Class Counsel regarding both the circumstances of the
17 Plaintiffs' employment, hours worked during his employment, meal breaks, wage statements,
18 and rest periods taken during his employment and Defendants' policies in general regarding the
19 employment of individuals with respect to payment of wages, working conditions, meal breaks
20 and rest periods. (*Id.*)

21
22 The time expended during the discovery phase was also reasonably incurred. (*Id.*) Class
23 Counsel spent a significant amount of time in the discovery phase evaluating thousands of excel
24 spreadsheets and voluminous documents concerning Defendant's duties under the Labor Code.
25 (*Id.*) Thereafter, numerous hours were spent by Class Counsel in performing detailed
26 calculations of over one hundred class members regarding their entitlement to wages for missed
27 meal breaks, rest periods, alleged wage claims, pay upon determination and interest owed. (*Id.*)
28

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

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

13
14 **c. The Hourly Rate Charged for the Services of Plaintiff's Counsel is**
15 **Reasonable.**

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

24 The Jackson Declaration and Han Declaration lays the proper foundation for why the
25 hourly rates charged for each attorney working on this case is reasonable and customary for
26 those rates charged by attorneys with similar experience. (Jackson Decl. ¶¶ 6-19, 20-27, Exhs.
27 G, H, I, Han Decl. ¶¶ 3-20, Exs. 2-5)

1 Mr. Jackson's hourly rate on this matter was \$640. (Jackson Decl. ¶ 31) Mr. Jackson is a
2 senior attorney who has been litigating for approximately 11 years. (Jackson Decl. ¶¶ 20-21, 26
3 31.) Mr. Jackson has handled over a hundred of employment matters on behalf of the plaintiff in
4 his career. (*Id.*) Mr. Jackson has argued before the Ninth Circuit and responsible for a published
5 opinion. (*Id.*) Based on his and experience, and based on his own research for purposes of
6 keeping his law firm competitive and profitable, he has knowledge of the hourly rates other
7 plaintiff's attorneys with similar experience charge in employment cases. (*Id.*) Based on this
8 foundation, Mr. Jackson believes that his regular hourly rate of \$640 per hour is reasonable and
9 similar to what attorneys with his tenure, experience and expertise. (*Id.*) This evidence therefore
10 supports the reasonableness of the fees charged in this case.

11 "Our Supreme Court has explained that the reasonable hourly rate used for the lodestar
12 calculation 'is that prevailing in the community *for similar work*.'" *Syers Properties III, Inc. v.*
13 *Rankin*, 226 Cal.App.4th 691, 702, (2014). Reasonable hourly rates are determined by the
14 formula "'reasonable market value'" and reached by evaluating the "'comparable salaries earned
15 by private attorneys with similar experience and expertise in equivalent litigation'" and the
16 "'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).)

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

25 **d. Laffey Matrix Rates**

26 The Laffey Matrix is one well-established objective source setting rates for attorneys
27 based upon years of experience for attorneys practicing in the District of Columbia. See
28

1 <https://www.justice.gov/usao-dc/file/796471/download> (citing *Laffey v. Northwest Airlines, Inc.*,
2 572 F.Supp. 354 (D.D.C. 1983), aff'd in part, rev'd in part on other grounds. 746 F.2d 4
3 (D.C.Cir. 1984). Thus, the rate for the attorneys on this matter are consistent with the rates for
4 attorneys. Below are other factors considered by the Court to justify the request for attorneys fees.

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

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

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

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

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

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

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

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

25
26 “Under our precedents, the unadorned lodestar reflects the general local hourly
27 rate for a *fee-bearing case*; it does *not* include any compensation for contingent
28 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

enhancement reflecting the risk that the attorney will not receive payment if the 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.)

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

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

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

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

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. ¶¶ 6-19) 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. ¶¶ 6-19, 20-27, Exhs. G, H, I, Han Decl. ¶¶ 3-20, Exs. 2-5) 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

1 is significantly different from the range of percentage fees freely negotiated in comparable
2 litigation.” (*Id.*) Under these circumstances where it will take approximately 2 years to bring this
3 matter to conclusion for \$3,740,000.00, the percentage of the fee analysis would support a
4 percentage of the fee of at least 33.33 percent equating to \$1,246,542.00. This attorney fee
5 request for \$1,246,542.00 shall be deemed reasonable as it is within the percentage of the fee
6 analysis supported by authority.

7 **f. Cross-Check Analysis**

8 “[A] proposed percentage fee can (and, for the reasons hereafter explained, should) be
9 compared against the fee that lead counsel would have been awarded on a lodestar basis. If the
10 multiplier implied by that comparison is reasonable, then the percentage-based fee request is
11 reasonable as well, if the implied multiplier is unreasonably high, then so is the proposed
12 percentage fee award.” (*In re HLP Technologies, Inc. Securities Litigation*, 366 F.Supp. 2d 912,
13 915 (2005) citing *In re General Motors Corp. Pick-Up Truck Fuel Products Litigation*, 55 F. 3d
14 768 820-21 (1995). Here, there a lodestar multiplier 1.71 is well within the range of what is the
15 usual and customary fee award benchmark for this type of case. (See *In Re Consumer Privacy*
16 *Cases* (2009) 175 Cal.App.4th 545, 558, fn. 13 [“Empirical studies show that, regardless whether
17 the percentage method or the lodestar method is used, fee awards in class actions average around
18 one-third of the recovery.”].) Under these circumstances, a multiplier of 1.71, the attorney fee of
19 \$1,246,542.00 shall be deemed reasonable.

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

21 The Settlement provides for reasonable actual costs of up to \$40,000.00. Class Counsel
22 incurred litigation costs in bringing this matter to a resolution before trial. Here, the actual costs
23 expended are less than the maximum allotted under the settlement agreement. To date the total
24 amount of costs incurred by Class Counsel in this litigation is \$33,825.01. (Jackson Decl. ¶ 30,
25 Ex. G; Han Decl. ¶ 22, Ex. 6.)
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1 **VIII. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully requests that the Court enter an Order
3 granting final approval of the Settlement.
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7 Dated: May 8, 2023

Respectfully Submitted,
JACKSON APC

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