

Armond M. Jackson, SBN 281547
ajackson@jacksonapc.com
Andrea M. Fernandez-Jackson, SBN 295924
afernandez@jacksonapc.com
Anthony S. Filer, Jr., SBN 337704
afiler@jacksonapc.com
JACKSON APC
2 Venture Parkway, Suite 240
Irvine, California 92618
Phone: (949) 281-6857
Fax: (949) 777-6218

Attorneys for Plaintiff Celia Martinez,
individually, and on behalf of all other similarly situated employees

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

CELIA MARTINEZ, as an individual and on
behalf of other similarly situated employees,

Plaintiff,

vs.

RUBY BROTHERS III, a California
corporation; RUBY CORP., a California
corporation, MCRU, INC., a California
corporation, RUBY BROTHERS, a
California corporation, RUBY BROTHERS
TOO, a California corporation, E RUBY
PARTNERS, LLC, a California corporation,
and DOES 1-50, inclusive,

Defendants.

Case No.: 30-2021-01204252-CU-OE-CXC

Assigned for all purposes to:
Hon. Peter J. Wilson
Dept. CX101

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

Date: April 6, 2023
Time: 2:00 p.m.
Place: Department CX101

Action Filed: June 4, 2021
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 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, Defendants Ruby Brothers III, Ruby
11 Corp, MCRU, Inc., F. Ruby Partners, LLC, Ruby Brothers, and Ruby Brothers Too (collectively
12 referred to throughout herein as "Defendants") shall pay \$1,290,000.00 to establish a non-
13 reversionary Maximum Settlement Amount claims to a class of 1,617 Participating Class
14 Members current and former nonexempt; attorneys' fees not to exceed 33.33 percent of the
15 Maximum Settlement Amount; litigation costs not to exceed \$20,000.00; the cost of the claims
16 administrator to administer the settlement \$20,000.00; a payment to the named plaintiff Celia
17 Martinez of \$5,000.00; and payment of penalties to the California Labor Commissioner under
18 the Private Attorneys General Act of \$37,500.00.

19 The notice process was simple and effective, and the adequacy of the Settlement is
20 reflected in the very positive reaction from the Class Members as no Class Member objected to
21 this Settlement. The deadline to opt-out is March 18, 2023. (Declaration of Madely Nava ("Nava
22 Decl."), ¶ 11)

23 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 April 6, 2023 hearing and the
26 proposed settlement agreement to be finally approved. (Jackson Decl. ¶ 28, Ex. C.)
27
28

II. FACTS AND PROCEDURE

A. Defendants Employed California Non-Exempt Employees

Defendants are a series of company that provides McDonald's restaurants in Orange County California. 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.

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. ¶¶ 7-24.) Plaintiff's counsel's investigation entailed the exchange of thousands of excel cells, documents, months of analysis, damages analysis based upon the Class Members' working schedules, payroll records and timesheets. (*Id.*) The investigation involved an in-depth evaluation of payroll records, payroll data, timesheets, and working schedules of the Plaintiffs and the Class Members. (*Id.*)

Following Defendants' production of payroll records, 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. ¶¶ 7-24.) 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 Defendants' payroll records; (5) examined Plaintiff's and Class Members' timesheet records; (6) examined

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

11 **C. Preliminary Settlement Approval**

12 On December 8, 2022, the Court conditionally granted certification and preliminary
13 approval of the settlement.

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

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

18 **III. THE SETTLEMENT**

19 The following summarizes the Settlement's key terms.

20 **A. Settlement Class**

21 The Class is comprised of:

22 Nonexempt Class: All current and former non-exempt employees who or Defendants'
23 were employed by Defendants in California at any time during the class period [June
24 4, 2017, through June 17, 2022].

24 **B. Benefits to the Class**

25 **1. The Settlement Fund**

26 Pursuant to the terms of the Settlement, Defendants will pay \$1,290,000.00 to the Claims
27 Administrator to be used for: (a) providing cash payments in the amount of no less than
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1 \$777,543 minus any applicable taxes; (b) payment of attorneys' fees not to exceed \$429,957.00;
2 (c) litigation costs not to exceed \$20,000.00; (d) a class representative enhancement payment to
3 the Named Plaintiff Celia Martinez not to exceed \$5,000.00; (e) all settlement administration
4 fees and costs, including those of the Claims Administrator projected to be no more than
5 \$20,000.00; and (f) payment of all penalties under the California Private Attorneys General Act
6 of 2004 ("PAGA") in the amount of \$37,500.00 ("PAGA Payment"). (Nava Decl. Decl. ¶ 14.)

7 The average estimated Individual Settlement Share is \$480.86. (Nava Decl. ¶ 14.)

8 **2. Payments to Class Members**

9 Pursuant to the Settlement Agreement, the Claims Administrator shall make Individual
10 Settlement Payments to Participating Class Members within 15 days after Defendants provides
11 Settlement Administrator with the Total Maximum Settlement Amount. (Jackson Decl. ¶ 2, Ex.
12 A, pp. 12-13 Section 3.06.a.)

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

16 **3. The Claim Process**

17 On December 15, 2022, Defendants' counsel provided the Claims Administrator with the
18 names, most recent mailing addresses, Social Security numbers, and pertinent information for the
19 Class Period for the Class Members. (Nava. ¶ 5.) This list provided information for 1,617 Class
20 Members. (*Id.*) 1,617 Class Members were verified and mailed approved Notice Packets via
21 First-Class U.S. Mail. (Nava Decl. ¶ 6.)

22 On January 17, 2023 the Claims Administrator sent by first class mail the Notice Packets
23 to the Class Members whose names were provided by Defendants, a Notice Packet. (Nava Decl.
24 ¶ 7, Ex. A.) If a Class Member's Notice Packet was returned by the USPS as undeliverable and
25 without a forwarding address, ILYM performed an address search (i.e., skip trace) on all of these
26 addresses. (Nava Dec. ¶ 8.) To date, two requests for exclusion were received. (Nava Decl. ¶ 11.)

1 **4. Distribution of Funds**

2 In accordance with the Stipulation of Settlement, within 15 days of the funding of the
3 settlement, the Net Settlement Fund in its entirety shall be divided among the Class Members.
4 (Jackson Decl. ¶ 11, Ex. A, pp. 4-5 Section 4, Section C) The average estimated Individual
5 Settlement Share is \$480.86. (Nava Decl. ¶ 14.)

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

7 The deadline for Class Members to postmark Challenges, Objections or Exclusion
8 Requests is March 18, 2023. (Nava Decl. ¶¶ 11-12.)

9 The Class Notice instructed Class Members who wished to object to the proposed
10 Settlement to either send a written objection to the claims administrator or appear at the Final
11 Approval Hearing. (Nava Decl. ¶ 7, Ex. A.) The claims administrator had received no objections
12 to the settlement terms, nor challenges nor Comments. (Nava Dec. ¶¶ 11-12.)

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

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

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

24 Before granting preliminary approval of a class action settlement, courts must determine
25 that the proposed settlement is fair, reasonable, and adequate — and not a product of fraud,
26 overreaching, or collusion. Cal. R. Ct. 3.769 (g); Cal. Civ. Pro. Code § 382; *Dunk v. Ford Motor*
27 *Co.*, supra, 48 Cal.App.4th at 1801. Courts must presume that a settlement is fair, reasonable,
28

1 and adequate, and thus appropriate for preliminary approval when the following three factors are
2 satisfied: (1) the parties reached settlement after arms-length negotiations; (2) counsel conducted
3 sufficient investigation and discovery to allow themselves and the court to act intelligently; and
4 (3) counsel is experienced in similar litigation *Id.* at 1802. See also *7-Eleven Owners for Fair*
5 *Franchising v. Southland Corp.*, (2000) 85 Cal. App. 4th 1135, 1146. Further, as discussed
6 below, although not determinative, courts consider the percentage of objectors in determining
7 whether a presumption of fairness exists. *Id.* The parties conducted sufficient amount of
8 discovery and participated in a private mediation and numerous conferences of counsel that
9 ultimately led to an arms-length settlement that provides for substantial recovery. Moreover,
10 there are no objectors. (Nava Decl. ¶ 12.)

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

12 There certainly is no collusion between the parties. The involvement of a neutral third-
13 party mediator is a factor that favors approval and evidences the presumptive fairness of the
14 arms-length negotiations. (Jackson Decl. ¶¶ 3-24.) Indeed, courts should give considerable
15 weight to the competency and integrity of counsel and the involvement of a neutral mediator in
16 assuring themselves that a settlement agreement represents an arms-length transaction entered
17 without self-dealing or other potential misconduct. *Kullar v. Foot Locker, supra*, 168 Cal. App.
18 4th at 129. Here, after extensive discovery, discussions, exchange of information and review of
19 records, on April 18, 2022, the parties conducted a full-day mediation session with a well-
20 respected and highly knowledgeable mediator Hon. Carl J. West (Ret.) (Jackson Decl. ¶ 7.)

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

22 As discussed in the preliminary approval papers, supporting declaration and herein, Class
23 Counsel analyzed a significant amount of information that Defendants produced in response to
24 formal and informal discovery requests in preparation for mediation. (Jackson Decl. ¶¶ 3-24.)
25 The parties have conducted significant investigation of the facts and law during the prosecution
26 of the Action, including formal discovery efforts. (*Id.*) Class Counsel's research enabled them to
27 pinpoint the relevant issues and claims and to assess potential liability and damages. (*Id.*) These
28

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 Counsel, Class Counsel has
8 represented, mediated and settled dozens of 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 Defendants and the benefits of the proposed settlement under the circumstances of
11 the case. (Jackson Decl. ¶¶ 25-31.) Class Counsel contends that the Settlement is fair, adequate,
12 reasonable, and in the best interests of the Class as a whole. (*Id.*)

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

14 Finally, courts look at the reaction of class members to determine if a settlement that
15 directly affects their interests should be approved as fair, adequate, and reasonable. As already
16 discussed herein, out of 1,617 class members, there are no objectors. (Nava Decl. ¶ 11.) Further,
17 a court may appropriately infer that a class action settlement is fair, adequate, and reasonable
18 even when class members object to it. Indeed, a court may approve a class action settlement as
19 fair, adequate, and reasonable even over the objections of a significant percentage of class
20 members. *See Boyd v. Betchel Corp.*, (D.C. Cal 1976) 485 F. Supp. 610, 624. *Reed v. General*
21 *Motors* (5th Cir. 1983) 703 F.2d 170, 174; *In re Wash. Pub. Power Supply System Sec. Litig.* (D.
22 Ariz. 1989) 720 F. Supp. 1379, 1394. In this action, there are no objectors. (Nava Decl. ¶ 11.)

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

24 The settlement provides for an enhancement award to be paid to the Class Representative.
25 The purpose is to provide an additional incentive payment, taking into consideration the risks,
26 time and effort in coming forward to fulfill all the duties associated with being a class
27 representative. Awarding incentive awards to compensate named plaintiffs in class actions has
28

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

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

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

26 **a. Lodestar Analysis**

27 “Courts recognize two methods of calculating attorney fees in civil class action; the
28

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

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

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

Item Description	Amount
Attorney Hours (Armond M. Jackson (11 Year Attorney: Rate: \$640; Andrea-Fernandez-Jackson (8 Year Attorney: Rate: \$515; Anthony S. Filer Rate (1 Year Attorney: Rate: \$250; Yesenia Villalba (5 Year Paralegal: Rate: \$125)	513.8 Hours
TOTAL LODESTAR	\$312,941.50
PRELIMINARY APPRVOED AMOUNT WITHOUT CLASS MEMBER OBJECTION	\$429,957.00 (1.37 multiplier)

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

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

8 The evidence submitted by Class Counsel in support of this motion reflect that Class
9 Counsel reasonably expended the following number of hours in the prosecution of this case.
10 (Jackson Decl. ¶¶ 7-24; 33, Ex. E) Jackson APC filed this class action claim in June 4, 2021,
11 approximately 21 months prior to this hearing. A reasonable amount of work was performed
12 pre-litigation, including conducting an extensive intake process requiring the compiling
13 documents and information related to Plaintiff’s pay stubs, wage payments and thousands of time
14 records. (Jackson Decl. ¶¶ 7-24; 33, Ex. E) Discovery was conducted by Class Counsel regarding
15 both the circumstances of the Plaintiff’s employment, hours worked during her employment,
16 meal breaks, wage statements, and rest periods taken during her employment and Defendants’
17 policies in general regarding the employment of individuals with respect to payment of wages,
18 working conditions, meal breaks and rest periods. (Jackson Decl. ¶¶ 7-24; 33, Ex. E)

19 The time expended during the discovery phase was also reasonably incurred. (*Id.*) Class
20 Counsel spent a significant amount of time in the discovery phase evaluating excel spreadsheets
21 and voluminous documents concerning Defendants’ duties under the Labor Code, legal analysis,
22 discovery, litigation planning, certification analysis and investigation of claims. (*Id.*) Thereafter,
23 numerous hours were spent by Class Counsel in performing detailed calculations, analyzing
24 expert data, researching certification issues, engaging in formal and informal discovery to
25 determine class members entitlement to wages for missed meal breaks, rest periods, alleged
26 wage claims, pay upon determination and interest owed. (*Id.*)
27
28

1 The time expended to achieve preliminarily and final approval was also reasonably
2 incurred. (*Id.*) Class Counsel conducted extensive legal research on the procedures and issues
3 involved in achieving class certification preliminary approval and final approval. (*Id.*) Class
4 Counsel 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 Counsel is reasonable in light of the work required to achieve the result. (*Id.*)
10 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 Reasonable.**

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

23 The Jackson Declaration lays the proper foundation for why the hourly rates charged for
24 each attorney working on this case is reasonable and customary for those rates charged by
25 attorneys with similar experience. (Jackson Decl. ¶¶ 33-34, Exs. E-F) Mr. Jackson's hourly rate
26 on this matter was \$640. (Jackson Decl. ¶¶ 7-24; 33, Ex. E) Mr. Jackson is a senior attorney who
27 has been litigating for approximately 11 years. (*Id.*) Mr. Jackson has handled over a hundred of
28 employment matters on behalf of the plaintiff in his career. (Jackson Decl. ¶¶ 25-31) Mr. Jackson

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

23 As explained in the declaration of Armond Jackson, the current billing rates for attorneys
24 and staff on this case are below the prevailing billing "market" rates established by the Laffey
25 Matrix. (Jackson Decl. ¶¶ 33-34, Exs. E-F)

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.*,
5 572 F.Supp. 354 (D.D.C. 1983), aff'd in part, rev'd in part on other grounds. 746 F.2d 4
6 (D.C.Cir. 1984). Thus, the rate for Armond M. Jackson's as a eleven-year attorney is \$829.00.
7 All other attorney rates are also consistent with the Laffey Matrix. (Jackson Decl. ¶¶ 33-34, Exs.
8 E-F)

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

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

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

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

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

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

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

22 “A contingent fee must be higher than the fee for the same legal services as they
23 are performed. The contingent fee compensates the lawyer not only for the legal
24 services he renders but for the loan of those services. The implicit interest rate
25 on such a loan is higher because the risk of default (the loss of the case, which
26 cancels the debt of the client to the lawyer) is much higher than that of
27 conventional loans.’ (Posner, *Economic Analysis of Law* (4th ed. 1992) pp. 534,
28 567.) ‘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.’”

1 (Emphasis added.)

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

4 “Under our precedents, the unadorned lodestar reflects the general local hourly
5 rate for a *fee-bearing case*; it does *not* include any compensation for contingent
6 risk, extraordinary skill, or any other factors a trial court may consider under
7 *Serrano III*. The adjustment to the lodestar figure, e.g., to provide a fee
8 enhancement reflecting the risk that the attorney will not receive payment if the
9 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.)

10
11 The increased multiplier in this case is warranted under several factors.

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

22 Plaintiff’s counsel advanced 100% of the costs on this matter which was over twelve
23 thousand dollars. (Jackson Decl. ¶¶ 30, 32, Ex. D.) This means that money used to pay costs was
24 unavailable to the firm and is tied up in any given legal matter until a recovery on the other end.
25 Additionally, because that money is tied up until the matter is resolved, it is unavailable to the
26 firm to use for overhead, operating capital, or on other matters my firm is prosecuting on a
27 contingency basis. This presented an opportunity lost, and must factor into the lodestar analysis.
28 (See *Harman v. City and County of San Francisco* (2007) 158 Cal.App.4th 407, 417-18—the

1 preclusion of other employment by the attorney due to the acceptance of the case a factor to be
2 considered.)

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

8 **4. There Are No Objectors**

9 "From the class members' perspective, review of the reasonableness of the fee award is a
10 safeguard against the possibility of collusion." *In Re Cellphone Termination Cases*, 180 Cal.App.
11 4th 1110, 1119 (2009). Here, there is no evidence of collusion. (Jackson Decl. ¶¶ 7-24) The
12 material terms of the settlement agreement were reached before negotiating a fee for class
13 counsel. (*Id.*) Class Counsel did not seek a larger award in exchange for a smaller class
14 recovery. (*Id.*) Also, the substantive settlement was not linked to the fee award in a way that
15 might have prejudice the members of the class. (*Id.*) Class Counsel has provided documentation
16 and evidence supporting this fee request. (Jackson Decl. 25-33, Exs. D-F) The Class Members
17 were all notified of the amount of fees requested and their rights to object. In light of the due
18 process notice afforded to all Class Members, no objections were filed. The fact that no objection
19 has been made to this class action settlement further demonstrates the reasonableness of this
20 attorney fee request justifying final approval of this class action.

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

22 Alternatively, "in cases which the value of the class recovery can be monetized with a
23 reasonable degree of certainty and it is not otherwise inappropriate, a trial court has discretion to
24 adjust the basic lodestar through the application of a positive or negative multiplier where
25 necessary to ensure that the fee awarded is within the range of fees freely negotiated in the legal
26 marketplace in comparable litigation." (*Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th,
27 19, 50 (2000).) "Courts use the percentage of recovery method in common fund cases on the
28

theory that the class would be unjustly enriched if it did not compensate the counsel responsible for generating the valuable fund bestowed upon the class.” *In re General Motors Corp. Pick-Up Truck Fuel Products Litigation*, 55 F. 3d 768 (1995). Courts have “evaluate[d] the lodestar as a percentage of the recovery and adjust[ed] it accordingly if it can be determined that the lodestar is significantly different from the range of percentage fees freely negotiated in comparable litigation.” (*Id.*) Under these circumstances where it will take approximately 2 years to bring this matter to conclusion for \$1,290,000.00, the percentage of the fee analysis would support a percentage of the fee of at least 33.33 percent equating to \$429,957.00. This attorney fee request for \$429,957.00 shall be deemed reasonable as it is within the percentage of the fee analysis supported by authority.

f. Cross-Check Analysis

“[A] proposed percentage fee can (and, for the reasons hereafter explained, should) be compared against the fee that lead counsel would have been awarded on a lodestar basis. If the multiplier implied by that comparison is reasonable, then the percentage-based fee request is reasonable as well, if the implied multiplier is unreasonably high, then so is the proposed percentage fee award.” (*In re HLP Technologies, Inc. Securities Litigation*, 366 F.Supp. 2d 912, 915 (2005) citing *In re General Motors Corp. Pick-Up Truck Fuel Products Litigation*, 55 F. 3d 768 820-21 (1995). Here, a lodestar multiplier of 1.37 as counsel is requesting fees in the amount of \$429,957.00 which is 33.33 percent of the settlement which is the usual and customary fee award benchmark for this type of case. (See *In Re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, fn. 13 [“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”].) Under these circumstances, 1.37 multiplier is justified in light of the factors analyzed above identifying the risks of contingency litigation, thus the attorney fee of \$429,957.00 shall be deemed reasonable.

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

2 The Settlement provides for reasonable actual costs of up to \$20,000.00. Class Counsel
3 incurred litigation costs in bringing this matter to a resolution before trial. Here, the actual costs
4 expended are less than the maximum allotted under the settlement agreement. To date the total
5 amount of costs incurred by Class Counsel in this litigation is \$12,465.10. (Jackson Decl. ¶ 32,
6 Ex. D.)

7 **VIII. CONCLUSION**

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

10
11 Dated: March 14, 2023

Respectfully Submitted,
JACKSON APC

12
13 By: /s/ Armond M. Jackson
14 Armond M. Jackson
Attorney for Plaintiff