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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

BLAIR WOODS and KENNETH JACKSON,
individually, on a representative basis, and on
behalf of all others similarly situated;

Plaintiff,

vs.

JUST IN TIME CARGO INC., a California
Corporation; and DOES 1 through 10,
inclusive;

Defendants.

Case No.: CIVDS 2000750
*[Assigned to Hon. Judge David Cohn, Dept
S26 for all purposes]*

**NOTICE OF MOTION AND MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT;
DECLARATIONS IN SUPPORT
THEREOF; AND [PROPOSED] FINAL
ORDER AND JUDGMENT**

Hearing

Date: June 9, 2022

Time: 10:00 a.m.

Dept: S26

Complaint filed: January 10, 2020

TO THE COURT AND PARTIES OF RECORD:

PLEASE TAKE NOTICE THAT on June 9, 2022, at 10:00 a.m., or as soon thereafter as
this matter may be heard by the Honorable David Cohn in Department S26 of the San
Bernardino County Superior Court, located at 247 West Third Street San Bernardino CA 92415,
Plaintiffs Blair Woods and Kenneth Jackson will respectfully move this Court for an Order
granting final approval of the class action settlement between Plaintiffs and Defendants Just In
Time Cargo, Inc. and its owner Tache Gabriel Georgescu (collectively, "Defendants" or "JITC"),
which was preliminarily approved by the Court on December 22, 2021. This Motion, which is

1 supported and unopposed by Defendants, seeks final approval and entry of judgment of a
2 \$450,000 settlement on behalf of the Class Members.

3 Specifically, Plaintiffs will and hereby do move the Court to grant final approval of the
4 Class Action Settlement Agreement (the "Settlement Agreement"), and enter the proposed order
5 and final judgment filed concurrently herewith:

6 1. Finally certifying the Class, as defined in the Settlement Agreement and the
7 Court's Order Granting Preliminary Approval of the Settlement;

8 2. Finally appointing Plaintiffs as Class Representatives for purposes of settlement;

9 3. Finally appointing Brian Mankin and Peter Carlson of Lauby Mankin Lauby LLP
10 as Class Counsel for purposes of settlement;

11 4. Finding that the Class Notice was properly provided to the Class in accordance
12 with the Court's Order granting Preliminary Approval;

13 5. Finally approving the settlement as fair, adequate, and reasonable, based upon the
14 terms set forth in the Settlement Agreement;

15 6. Binding participating Class Members to the terms of the Settlement Agreement,
16 including the Release specified therein; and

17 7. Retaining jurisdiction to enforce the Settlement Agreement.

18 This Motion will be based upon this notice; the attached memorandum of points and
19 authorities; the Declarations of the Settlement Administrator (Christina Fowler of Simpluris),
20 Class Counsel (Brian Mankin and Peter Carlson) and Plaintiffs filed concurrently herewith; the
21 records and files in this action; and any other further evidence or argument that the Court may
22 receive at or before the hearing.

23 Dated: May 13, 2022

LAUBY, MANKIN & LAUBY LLP

24
25 BY:



26 Brian J. Mankin, Esq.
27 Attorneys for Plaintiff and the Class
28

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF ARGUMENT AND ESSENTIAL POINTS**

3 Pursuant to California Rules of Court, Rule 3.769 (d) and (e), Plaintiffs respectfully
4 requests that this Court grant final approval of the Class Action Settlement Agreement (the
5 “Settlement Agreement” or “S.A.”) already on file in this action, which is supported and
6 unopposed by Defendants Just In Time Cargo, Inc. and its owner Tache Gabriel Georgescu
7 (collectively, “Defendants” or “JITC”), and enter the proposed order and final judgment in this
8 matter.

9 There are several essential reasons why this settlement should be approved, and judgment
10 entered accordingly, as follows:

- 11 • After extensive work, the Parties reached a \$450,000 settlement tailored to a
12 limited release of the claims alleged on behalf of the Class Members;
- 13 • The Class Members were deemed to participate in the Settlement, and were not
14 required to submit a Claim Form to receive funds;
- 15 • No reversion to Defendants; and
- 16 • There are zero objections and only two opt-outs, meaning that 99.6% of the Class
17 elected to participate in the Settlement;

18 In accordance with the analysis and law set forth herein, the Settlement should be
19 approved, and judgment entered based on the determination that the Settlement is fair,
20 reasonable, adequate, and in the best interests of the Class. (Declaration of Class Counsel Brian
21 J. Mankin [“Mankin Decl.”] ¶¶ 13, 33).

22 **II. PERTINENT BACKGROUND AND SETTLEMENT TERMS**

23 JITC is a trucking and shipping company that uses the services of independent contractor
24 truck drivers to fulfill its contracts. Plaintiffs and the Class Members are truck drivers who
25 performed services for Defendants in California and who were classified as independent
26 contractors (the “Class” or “Class Members”) at any time during the period of January 10, 2016,
27 through December 22, 2021 (the “Class Period”). The primary claims involved allegations that
28 Defendants misclassified the drivers as independent contractors rather than as employees, and

further alleged a variety of claims that were dependent on the misclassification claim (*i.e.*, no other claims could proceed if the Class was properly classified), such as the failure to pay all required minimum wages under JITC’s “per-trip” pay policy, unlawful deductions from the drivers’ wages, the failure to reimburse business expenses, the failure to timely pay all wages upon separation of employment, and failure to provide compliant wage statements.

The Settlement includes 538 Participating Class Members. The following is a breakdown reflecting how the funds are allocated under the Settlement Agreement (Declaration of Administrator, Christina Fowler (“Fowler Decl.”), ¶ 10):

	Total Amount
<i>Gross Settlement Amount</i>	\$ 450,000
Attorneys’ Fees (1/3)	\$ 150,000
Litigation Costs	\$ 11,676.82
Administrator Costs	\$ 8,500
PAGA Penalties	\$ 20,000
Class Representatives’ Service Award	\$ 20,000
<i>Net Settlement Amount</i>	\$ 239,823.18

The Class Members were deemed to participate and did not need to submit a Claim Form to receive payment. Based on a participating class size of 538 workers, and assuming all of the amounts are approved by the Court, the highest payment to Participating Class Members is estimated at \$3,222.93, and the average payment is \$444.12. This is slightly less than the estimated average payment of \$511 that was estimated at Preliminary Approval. As the Court is aware, the Parties originally agreed that using a “Weeks Worked” metric would be the fairest way of disbursing the Net Settlement Amount on a pro rata basis, but while Defendants were gathering data, they determined that would be impractical because Defendants classified the workers as independent contractors and did not have a comprehensive means of determining weeks worked. Instead, Defendants proposed disbursing the funds based on the number of trips that the drivers made during the Class Period. The Parties submitted a stipulation modifying the Settlement Agreement and Class Notice from “Weeks Worked” to “Trips Driven,” and the Court signed the stipulation and order on April 6, 2022. The Settlement Administrator

1 reports that the Drivers collectively drove 13,022 Trips during the Class Period, for an average
2 payment of \$18.42 per Trip. (Fowler Decl. ¶ 10). In accordance with the settlement, 100% of
3 the Net Settlement Amount will be distributed to the Class with no reversion to Defendants.

4 Additionally, the Settlement Agreement provides that the 25% PAGA allocation will be
5 allocated only to Aggrieved Employees, rather than to all Class Members. In this case, 384
6 Aggrieved Employees will share in the \$5,000 award on a pro rata basis. (Fowler Decl. ¶ 10).

7 Because the Class Members performed contract services for Defendants as independent
8 contractors, rather than as employees, and because Defendants fully dispute the allegations
9 alleged herein, the Parties agree that the Individual Settlement Payments will be allocated and
10 paid to the Participating Class Members as contract compensation, interest, and penalties from
11 which no state or federal taxes will be withheld or deducted. (S.A. ¶ 47(d)). Defendants are
12 required to deposit the Settlement Amount with the Settlement Administrator within 15 calendar
13 days after the Effective Date.

14 **III. THE NOTICE PROCESS**

15 **A. NOTICE TO THE CLASS MEMBERS**

16 Pursuant to the Court's Order and the Settlement Agreement, the Parties directed the
17 Settlement Administrator to review and update the Class Members' addresses, mail the Court-
18 approved Notice Packet, and process their responses. (Fowler Decl. ¶ 3).

19 As a result of the Parties converted the pro rata distribution from Weeks Worked to Trips
20 Driven, the mailing process was pushed back a few months, which the Court authorized in its
21 April 6, 2022 order. Prior to mailing the Notice Packet, the Settlement Administrator performed
22 a National Change of Address search on all Class Members to determine if any had moved. (*Id.*
23 ¶ 7). Then, on April 7, 2022, the Notice Packet was sent via first-class mail to 540 Class
24 Members to advise each about the suit and settlement. (*Id.* ¶ 8). For any Notice Packet that was
25 returned by the USPS as undeliverable and without a forwarding address, the Settlement
26 Administrator performed an advanced address search (i.e. skip trace). (*Id.* ¶ 9). The Settlement
27 Administrator used the advanced address search to locate updated addresses and promptly mailed
28 the Notice Packets to those updated addresses. Ultimately, there were 19 Notice Packets that

1 were undeliverable. (*Id.* ¶ 9). In sum, these figures evidence that there was a **96.5%** success rate
2 in mailing the Notice Packets.

3 In accordance with California Rules of Court, Rules 3.766(d) and 3.769(f), the Notice
4 Packet, which was provided in English and Spanish, provided Class Members with (1) a brief
5 explanation of the case; (2) an explanation of each Settlement Class Member’s right to opt out of
6 the settlement class; (3) an explanation of the process (and relevant deadlines) through which a
7 Settlement Class Member could opt out of the settlement class; (4) notice about the binding
8 nature of the Judgment for Class Members who do not opt out; (5) an explanation of each
9 Settlement Class Member’s right to appear through counsel; (6) an explanation of each
10 Settlement Class Member’s right to appear at the fairness hearing and express views on the
11 settlement, i.e., object or otherwise respond; and (7) an explanation of each Settlement Class
12 Member’s right to participate in the Settlement and receive payment accordingly. (*See Exhibit*
13 *A to the Fowler Decl.*).

14 **B. THERE ARE ZERO OBJECTIONS AND TWO OPT-OUTS, RESULTING IN AN**
15 **IMPRESSIVE 99.6% CLASS PARTICIPATION IN THE SETTLEMENT**

16 California law makes clear that the percentage of objectors and opt-outs is an important
17 factor in the Court’s consideration of a proposed class action settlement. *See Dunk, supra*, 48
18 Cal.App.4th at 1802. Indeed, the Ninth Circuit and other federal courts recognize that in the
19 final fairness analysis, the number or percentage of class members who object to the settlement is
20 a significant factor. *See Mandujano v. Basic Vegetable Prods., Inc.* (9th Cir. 1976) 541 F.2d
21 672, 677; *In re American Bank Note Holographics, Inc.* (SDNY 2001) 127 F.Supp.2d 418, 425
22 (“[i]t is well settled that the reaction of the class to the settlement is perhaps the most significant
23 factor to be weighed in considering its adequacy.”).

24 Here, there are zero objections and two opt-outs to the Settlement, meaning that 99.6% of
25 the Class Members will receive a share of the Settlement (Fowler Decl. ¶¶ 11-14). Thus, the
26 Class overwhelmingly viewed this as a fair and reasonable settlement.

27 ///

28 ///

1 **IV. EVALUATION OF THE SETTLEMENT**

2 It is axiomatic that California law strongly favors and encourages settlements. *See*
3 *Stambaugh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236. This presumption in favor of
4 settlement applies with particular force in the context of class actions. *See Ferguson v. Lieff,*
5 *Cabraser, Heimann & Bernstein* (2003) 30 Cal.4th 1037 (Kennard, J., concurring and dissenting)
6 (“[p]ublic policy favoring settlement is especially weighty for class actions”); *Bell v. Am. Title*
7 *Ins. Co.* (1991) 226 Cal.App.3d 1589, 1607-1608 (affirming approval of a class settlement and
8 implicitly endorsing its citation of federal precedent for the notion that there is a “strong public
9 policy in favor of settlement of class actions”); *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976)
10 529 F.2d 943, 950 (“it hardly seems necessary to point out that there is an overriding public
11 interest in settling and quieting litigation. This is particularly true in class action suits”).

12 When entertaining a request for final approval of a class action settlement, a court’s
13 fundamental consideration is whether the settlement is fair, adequate and reasonable. *See Dunk,*
14 *supra*, 48 Cal.App.4th at 1801, fn. 7 (noting that state courts look to federal authority concerning
15 the approval of class settlements); California Rules of Court, Rule 3.769 (g).

16 Fairness is presumed when: (1) the settlement is reached through arm’s-length
17 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
18 intelligently; (3) counsel is experienced in similar litigation; (4) the percentage of objectors and
19 opt outs is small, and (5) the range of reasonableness of the settlement fund to a possible
20 recovery in light of all attendant risks of litigation.” *Dunk, supra*, 48 Cal.App.4th at 1802. All
21 five of these factors are discussed in detail below.

22 **A. THE SETTLEMENT WAS REACHED THROUGH INFORMED ARMS-LENGTH**
23 **NEGOTIATION**

24 Courts presume the absence of fraud or collusion in the negotiation of a settlement,
25 unless evidence to the contrary is offered. Thus, there is a presumption here that the negotiations
26 were conducted in good faith. *See 3 Alba Conte & Newberg, supra*, at § 11.51. The proposed
27 settlement here was the product of arm’s-length negotiation before a highly experienced and
28 reputable class action mediator to reach a settlement.

1 Here, Plaintiffs and Class Counsel have diligently investigated the claims raised in this
2 litigation and, after taking into account the disputed factual and legal issues involved in this
3 action, the risks attending further prosecution, and the benefits to be received pursuant to the
4 compromise and settlement of the action as set forth in the Settlement, concluded that the
5 settlement terms are fair, reasonable, and in the best interest of the Settlement Class.

6 As the Settlement Agreement itself reveals, there is no preferential treatment for any
7 segment of the class, as the Settlement is designed to fairly and adequately compensate all Class
8 Members. And, pursuant to California Rules of Court Rule 3.769 (b), the parties have disclosed
9 the agreed upon and proposed attorney fee award, which is well within the range of
10 reasonableness for matters of this nature.

11 **B. PLAINTIFFS' INVESTIGATION WAS SUFFICIENT**

12 As set forth at the time of preliminary approval, Class Counsel's investigation into the
13 facts and merits of the wage and hour claims alleged included analyzing substantial amounts of
14 information, correspondence, documents, pay data, policies and procedures, and evidence
15 relating to the class size and the commonality of the claims. During this process, Plaintiffs and
16 Class Counsel conducted investigations into the potential claims of the similarly situated
17 employees, as well as researching and investigating Defendants' defenses. Finally, Class
18 Counsel synthesized and analyzed information provided by Defendants as to the total Class
19 Members, the number of current and former employees, the number of employees who worked
20 during various time periods, and prepared comprehensive damages calculations regarding the
21 claims at issue.

22 **C. CLASS COUNSEL ARE EXPERIENCED IN SIMILAR LITIGATION AND ENDORSE THE**
23 **SETTLEMENT**

24 Class Counsel are experienced in this type of litigation, and they have (and hereby do)
25 represent that this Settlement is fair and reasonable. (Mankin Decl. ¶¶ 13, 33); *see 7-Eleven*
26 *Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152 (Final
27 approval of settlement affirmed where counsel were all experienced litigators with class-action
28 experience and had recommended settlement based on the negotiated terms).

1 **D. REASONABLE ESTIMATE OF THE NATURE AND AMOUNT OF RECOVERY**

2 Plaintiffs’ Motion for Preliminary Approval contained a comprehensive *Kullar* analysis
3 which sufficiently provided the Court with “basic information about the nature and magnitude
4 of the claims in question and the basis for concluding that the consideration being paid for the
5 release of those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail,*
6 *Inc.* (2008) 168 Cal.App.4th 116, 133. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*
7 (2010) 186 Cal.App.4th 399, later clarified *Kullar* by noting that an explicit statement of the
8 maximum theoretical amount that the class could recover was not part of the “basic
9 information” that counsel was required to produce:

10 Greenwell misunderstands *Kullar*, apparently interpreting it to require
11 the record in all cases to contain evidence in the form of an explicit
12 statement of the maximum amount the plaintiff class could recover if it
13 prevailed on all its claims – a number which appears nowhere in the
14 record of the case. But *Kullar* does not, as Greenwell claims, require any
 such explicit statement of value; it requires a record which allows “an
 understanding of the amount that is in controversy and the realistic range
 of outcomes of the litigation.

15 Of course, a settlement is not judged against what might have been recovered had a
16 plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought
17 to be fair and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 246, 250
18 (“Compromise is inherent and necessary in the settlement process ... even if the relief afforded
19 by the proposed settlement is substantially narrower than it would be if the suits were to be
20 successfully litigated, this is no bar to a class settlement because the public interest may indeed
21 be served by a voluntary settlement in which each side gives ground in the interest of avoiding
22 litigation”).

23 In light of the uncertainties of protracted litigation, this negotiated settlement reflects the
24 best practicable recovery for the Class. While the total settlement amount is, of course, a
25 compromise figure, the potential risks and opportunities of both parties were effectively weighed
26 and considered by the parties, resulting in a fair and equitable settlement. Based upon detailed
27 data obtained through discovery and information exchanges, and factoring in claim certification
28 probabilities and liability probabilities, Class Counsel formulated detailed damages models to

1 evaluate the claims for mediation in order to reach a realistic and reasonable resolution.

2 **V. THE REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE**

3 For their efforts in creating a common fund for the benefit of the class, the Settlement
4 Agreement provided that Class Counsel seek reasonable fees of \$150,000 (one-third of the
5 Settlement Amount), which is the common fund. This amount will be paid from the Settlement
6 Amount, as provided by the Settlement Agreement. These fees are warranted under the law and
7 within the range of fees commonly awarded in similar cases.

8 As shown herein, the requested percentage of one-third of the settlement fund as payment
9 for attorneys' fees should be granted for several reasons. First, one-third is the standard
10 benchmark in California for class action settlements. *See, e.g., Chavez v. Netflix, Inc.* (2008) 162
11 Cal.App.4th 43, 66 n. 11 ("Empirical studies show that, regardless whether the percentage
12 method or the lodestar method is used, fee awards in class actions average around one-third of
13 the recovery"). Second, the California Supreme Court recently held that the percentage of the
14 fund method survives in California class action cases. *See Laffitte v. Robert Half International,*
15 *Inc.* (2016) 1 Cal.5th 480. Third, the requested amount is eminently reasonable through the
16 prism of a lodestar cross-check. Accordingly, this request should receive final approval.

17 **A. PLAINTIFFS ARE ENTITLED TO RECOVER REASONABLE ATTORNEYS' FEES**
18 **UNDER THE LABOR CODE**

19 Plaintiffs and the Class are entitled to recover reasonable attorneys' fees, expenses and
20 costs under section 218.5 of the California Labor Code, which provides that, "[i]n any action
21 brought for the nonpayment of wages ... the Court shall award reasonable attorneys' fees and
22 costs to the prevailing party." In addition, Plaintiffs and the Class are entitled to recover
23 reasonable attorneys' fees pursuant to section 1194.2 of the Labor Code, which provides that,
24 "... any employee receiving less than the legal minimum wage ... applicable to the employee is
25 entitled to recover in a civil action the unpaid balance of the full amount of this minimum
26 wage... including ... reasonable attorney's fees, and costs of suit." Plaintiffs and the Class are
27 also entitled to fees and costs under section 226(e) of the Labor Code (employee who prevails on
28 claim for itemized wage statement violation "is entitled to an award of costs and reasonable

attorneys' fees"), under PAGA (Labor Code § 2699(g), which provides "Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee paid"), and, potentially, section 1021.5 of the California Code of Civil Procedure.

**B. CLASS COUNSEL'S REQUEST FOR FEES IS REASONABLE AND PROPERLY
CALCULATED AS A PERCENTAGE OF THE COMMON FUND**

Under the "common fund" doctrine, the request for attorneys' fees in the amount of 1/3 of the common fund is reasonable and appropriate, because (1) it is within the approved range for percentages awarded as attorneys' fees in similar cases; (2) it is supported by the high quality of Class Counsel's work on this case and the results obtained for the Class; (3) the Class had sufficient notice of the fee request; (4) it is supported by the fact that this case was handled on a contingency basis and was undertaken despite various risks and expenses; and (5) the lodestar cross-check supports the fee request.

***1. The Attorneys' Fees Requested Here Fall Within the Reasonable Range
Awarded in Similar Cases Under the Well-established Common Fund
Method***

The California Supreme Court approved trial courts' usage of the common fund method of awarding attorneys' fees in wage and hour class actions, like this one, and upheld a fee awarded of 1/3 of the total settlement amount obtained for the class. *See Laffitte, supra*, 1 Cal.5th at 506; *see also*, 4 Newberg on Class Actions, § 14:6 at 552 ("fee awards in class actions average around one-third of the recovery"). Specifically, in *Laffitte*, the Court wrote: "[w]e join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created"). *Id.* at 506. The California Supreme Court also noted that trial courts have the discretion to award fees as a percentage of the common fund, with or without the necessity to conduct a lodestar cross-check. *Id.* ("...[Courts] ... retain the discretion to forgo a lodestar cross-check and use other means to

1 evaluate the reasonableness of a requested percentage fee.”).

2 The California Supreme Court’s recent *Laffitte* decision was consistent with its prior
3 rulings recognizing that “when a number of persons are entitled in common to a specific fund,
4 and an action brought by ... plaintiffs for the benefit of all results in the creation or preservation
5 of that fund, such ... plaintiffs may be awarded attorneys’ fees out of the fund.” *Serrano III v.*
6 *Priest* (1977) 20 Cal.3d 25, 34; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 (“[A]
7 lawyer who recovers a common fund . . . is entitled to reasonable attorneys’ fees from the fund
8 as a whole”). Notably, when fees are calculated as a percentage of the common fund, they should
9 be calculated based on the amount that was available to be claimed, rather than as a percentage
10 of the actual amount claimed. *See Boeing Co.*, 444 U.S. at 475-6, 480-1 (the SCOTUS held that
11 attorneys for a successful class may recover a fee based on the fund created for the class, even if
12 some class members make no claims against the fund, so that money remains in it that will be
13 returned to the Defendants, explaining: “[t]heir [class members’] right to share the harvest of the
14 lawsuit upon proof of their identity, whether or not they exercise it, is a benefit in the fund
15 created by the efforts of the class representatives and their counsel.” *See also Williams v. MGM-*
16 *Pathe Communs. Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 (trial court “abused its discretion by
17 basing the fee on the class members’ claims against the fund rather than on a percentage of the
18 entire fund or on the lodestar”).

19 **2. The High Quality of Work and Excellent Result Obtained Support the**
20 **Award**

21 In addition to the fact that a Class benefit was created with a \$450,000 non-reversionary
22 common fund settlement, the fairness of the requested fee award of 1/3 of the Settlement
23 Amount is supported by the high quality of work performed by Class Counsel and the positive
24 result obtained for the Class. This result occurred because Class Counsel diligently, efficiently,
25 and creatively pursued this case and reached a settlement for the benefit of the entire Class. The
26 fact that the settlement was embraced and supported by the Class, as evidenced by a 99.6%
27 participation rate, demonstrates that Class Counsel obtained a favorable result for the Class.

28 ///

1 **3. Class Members Had Sufficient Notice of the Requested Fees**

2 Rule 3.769 of the California Rules of Court requires that the Class Members be given
3 notice of any agreement regarding an application for attorneys' fees. Here, the Notice
4 preliminarily approved by the Court and distributed to the Class Members apprised them that
5 "Class Counsel will ask for fees of one-third (\$150,000) of the common fund Settlement Amount
6 as reasonable compensation for the work Class Counsel performed and will continue to perform
7 in this Lawsuit through finalization of the Settlement..." (Fowler Decl., Exh. A.)

8 The Class Notice also advised the class members of the procedures for objecting to the
9 proposed settlement and appearing at the settlement hearing, where they could present their
10 objections to any aspect of the settlement, including the amount of attorneys' fees to be awarded
11 to class counsel. *Litwin v. iRenew Bio Energy Solutions, LLC* (2014) 226 Cal.App.4th 877, 883
12 ("Procedural due process requires that affected parties be provided with 'the right to be heard at a
13 meaningful time and in a meaningful manner'"). In accordance with the foregoing, it is
14 respectfully submitted that the instant notice complied with Rule 3.769 and, as a result, the Class
15 Members' due process rights were fulfilled.

16 **4. The Contingent Nature of Class Counsel's Representation of Plaintiffs**
17 **and the Class Further Supports the Fee Award at 1/3 of the Common**
18 **Fund**

19 An additional factor militating in favor of the granting of the requested fee award is the
20 fact that this case was both legally and financially risky for Class Counsel. *See Vizcaino v.*
21 *Microsoft Corp* (9th Cir. 2002) 290 F.3d 1043, 1048-49. Class Counsel have been representing
22 the Class in this matter on a strictly contingency basis, and as such, incurred the risk of non-
23 recovery after a substantial investment of time, money, and resources, and have done so since the
24 inception of this case without any payment or compensation.

25 Indeed, as Class Counsel can attest, not all class/PAGA cases are successful. Many cases
26 end with no fees or a greatly reduced fee that is far less than lodestar, often due to no fault of
27 counsel (i.e., bankruptcy, change in the law, consolidation/coordination/preemption, being top
28 filed, etc.). According to Mayer Brown LLP's study entitled, *An Empirical Analysis of Class*

Actions, cited in *Laguna v. Coverall North America, Inc.* (9th Cir. 2014) 753 F.3d 918, found that only one-third of class actions are successful, compared to two-thirds that are defeated and result in no payment to the class members.¹

Thus, the contingent nature of this case supports a fee of one-third of the common fund.

5. *A Lodestar Cross-Check Confirms the Reasonableness of the Fee Award*

Despite recognized limitations of the so-called lodestar method, some California and federal courts acknowledge the utility of a lodestar “cross-check.”² (*Lealao, supra*, 82 Cal.App.4th at 46-47.) Under the “lodestar multiplier” method of cross-checking the reasonableness of attorneys’ fees in class actions, the court ascertains Class counsel’s total “lodestar” amount by multiplying the number of hours reasonably expended by each attorney or legal staff member by their hourly rates, and then enhances or reduces this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty or difficulty of the case, its contingent nature, and the degree of success achieved. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-96; *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322; *Lealao, supra*, 82 Cal.App.4th at 43 [court has discretion to use a multiplier to ensure that the “fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation”].) The actual aggregated lodestar between attorneys that worked on this case is approximately \$145,697.50, as shown in the following table and declarations of counsel.

Attorney/Timekeeper	Rate	Hours	Fee
Brian J. Mankin <i>Trial Counsel / Partner</i> (21 Years)	\$775	98³	\$75,950.00
Peter J. Carlson <i>Senior Associate</i> (8 Years)	\$575	121.3	\$69,747.50
Grand Total for All Attorneys			\$145,697.50

¹ www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

² In practice, the lodestar method is difficult to apply, time-consuming to administer, inconsistent in result, and capable of manipulation. In addition, the lodestar creates inherent incentive to prolong the litigation until sufficient hours have been expended. Herr, David F., *Manual for Complex Litigation*, § 14.121 (1988); *See also In re Activision* (N.D. Cal 1989) 723 F.Supp 1373.

³ Includes an estimated 35 hours of additional work preparing for and attending the hearing, as well as anticipated work to be performed after the final approval hearing with counsel, administrator, employees, and the court.

1 (See Mankin Decl., ¶ 25; Carlson Decl., ¶ 7.)

2 The hourly rates above are comparable to those of other attorneys with equal or similar
3 experience, if not somewhat lower (i.e., the Laffey Matrix at *www.laffeymatrix.com* indicates that
4 the benchmark rate for an 8–10-year attorney to be \$676/hour and a 11-19 year attorney at
5 \$764/hour, and a 20+ year attorney at \$919/hour). Moreover, the Wolters Kluwer 2017 Real Rate
6 Report (“Real Rate Report”) provides directly applicable information in this regard. The Real
7 Rate Report is based on an enormous and statistically significant compilation of data: 25.8
8 million billing entries and 23.9 million hours billed by over 112,100 individual timekeepers from
9 4,620 law firms, totaling \$9.02 billion in fees billed. (See Wolters Kluwer’s ELM Solutions, Inc.,
10 2017 Real Rate Report). The Real Rate Report then compiles and analyzes this data to provide
11 the hourly rates for partners and associates in major metropolitan areas. For the southern
12 California area, which is based on billing entries for 1,125 partners and 1,566 associates, the
13 Real Rate Report states that: (a) the rates for partners in Los Angeles is between \$640 and
14 \$869.75 per hour for the middle and upper quartiles, and (b) the rates for associates in Los
15 Angeles is between \$478.74 and \$638.97 for the median and upper quartiles. And, perhaps most
16 importantly, the information provided in the Real Rate Report is not based on self-reported
17 numbers, surveys, sampling, or reviews or other publications – instead, the Real Rate Report is
18 based on the actual hours and fees billed by law firms. (Mankin Decl., ¶ 22.)

19 Thus, not only are Plaintiff’s Counsel’s rates reasonable and typical, but the attorneys’
20 fees requested are in line with Plaintiff’s Counsel’s lodestar, all of which confirms that the fee
21 request is fair and reasonable.

22 Class Counsel are also highly experienced in Class/PAGA litigation, including having
23 been selected as a “Super Lawyer” in employment litigation on multiple occasions, having
24 achieved large settlements including one of the largest PAGA awards in California’s history and
25 collecting in excess of \$250 million for their clients, having prevailed at trial against two
26 separate Fortune 100 companies, including a PAGA-only action in Orange County and a Class
27 Action jury trial in Los Angeles. (Mankin Decl. ¶¶ 2-6). Indeed, Class Counsel’s rates are
28 typical of the rates charged by defense counsel with similar experience doing similar

1 employment law work in this region.

2 **VI. THE REQUESTED COSTS AND SERVICE AWARDS ARE REASONABLE**

3 **A. THE REQUESTED COSTS ARE REASONABLE AND MERIT APPROVAL**

4 The Settlement Agreement authorized litigation costs of up to \$20,000. (S.A. ¶ 47(f)).
5 Class Counsel's actual costs through the final approval hearing were \$11,676.82, so this is the
6 amount requested. The saving will be placed in the Net Settlement Amount for payment to the
7 Class Members. (Mankin Decl. ¶ 27). These costs include mediation fees, filing fees, online
8 research, travel/parking charges, CourtCall charges, and process server fees.

9 **B. THE REQUESTED SERVICE AWARD IS REASONABLE AND MERITS APPROVAL**

10 A named plaintiff is an essential ingredient of any class action and an incentive award
11 is appropriate to induce individuals to step forward and assume the burdens and obligations of
12 representing the Class. Courts regularly approve a service payment to compensate named
13 plaintiffs for their service to the class and the risks they incurred during the course of the
14 litigation. *See, e.g. Bell v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715, 726
15 (upholding "service payments" to named Plaintiff for their efforts in bringing class action);
16 *Rodriguez v. West Publishing* (9th Cir. 2009) 563 F.3d 948, 959 (stating that incentive awards
17 are "intended to compensate class representatives for work done on behalf of the class, to make
18 up for financial or reputational risk undertaken in bringing the action, and, sometimes, to
19 recognize their willingness to act as a private attorney general.").

20 Under the Settlement, Defendants agreed to pay a Service Award of \$10,000 to each
21 Plaintiff in recognition of their contribution as a Class Representative.

22 Their efforts included providing factual background for the Class and PAGA
23 complaint; providing documents and information about Defendants' compensation plan;
24 participating in phone calls to discuss litigation and settlement strategy; making themselves
25 available throughout the litigation to assist with analyzing the claims and defenses; helping
26 Class Counsel prepare for the mediation; and reviewing the settlement documents. The Class
27 Representatives also assumed significant risk in bringing this litigation – namely, had they lost,
28 they could have been ordered to pay Defendants' costs. This factor is a significant one for a

1 wage earner, and the potential risk is very real. *See Whiteway v. FedEx Kinkos Office & Print*
2 *Svcs., Inc.* (N.D. Cal. Dec. 17, 2007) 2007 WL 4531783, at *3 (“the few courts to consider this
3 ‘class representatives’ dilemma’ have not found it inequitable to assess costs upon the lead or
4 named plaintiff in a class action.”)

5 Plaintiffs also committed a significant number of hours to assist with the
6 litigation/settlement processes of this case and entered into a general release of all claims
7 against Defendants, whereas the Class Members only released the claims alleged. The
8 requested Service Awards are reasonable, particularly in light of the substantial benefits
9 Plaintiffs generated for the Class Members, the risks they undertook, and the general release
10 each gave in order to benefit the class. (*See Woods Decl.* ¶¶ 3-10; *Jackson Decl.* ¶¶ 4-9).

11 The Notice sent to each Class Member detailed the proposed service award. No Class
12 Member objected to the proposed payment to Plaintiffs. Thus, Plaintiffs request that the Court
13 approve the awards because it is both reasonable and appropriate.

14 **VII. OTHER MATTERS FOR FINAL APPROVAL**

15 **A. SETTLEMENT ADMINISTRATION COSTS**

16 The Administrator, Simpluris, agreed to administer the settlement for a flat-fee of
17 \$8,500. (*Fowler Decl.* ¶ 15). As such, the Parties request that the Administrator’s fee be
18 approved.

19 **B. UNCASHED CHECKS**

20 The Settlement Agreement and Final Order provides that uncashed checks will be
21 issued to the California State Controller in the name of the Class Member.

22 **C. FINAL REPORT**

23 Defendants are required to deposit the Settlement Amount within 15 calendar days after
24 the Effective Date. The Effective Date will be the date of Final Approval in light of the lack of
25 objections and requests to intervene. The Settlement Administrator will have 10 days after
26 receipt of payment to issue checks to the Class Members, who will then have 180 days to cash
27 their checks. However, the process of submitting funds to the State Controller can take an
28 additional year after the check cashing deadline, so the Parties propose submitting a final

1 report in the form of a declaration from the Administrator (setting forth the money that was
2 actually paid to the class members and potentially the State Controller) approximately 16
3 months after the check cashing deadline.

4 **D. SUBMISSION TO THE LWDA**

5 As set forth in the Mankin Declaration at ¶ 29, the settlement and this motion are
6 concurrently being submitted to the LWDA in accordance with Labor Code § 2699(1)(2).

7 **VIII. CONCLUSION**

8 Plaintiffs respectfully submits that the Settlement is fair, adequate, and reasonable, and
9 merits approval. This motion is unopposed by Defendants.

10 Dated: May 13, 2022

LAUBY, MANKIN & LAUBY LLP

11
12 BY:



13 Brian J. Mankin, Esq.
14 Attorneys for Plaintiffs and the Class
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PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 4590 Allstate Drive, Riverside, California 92501.

On May 13, 2022, I caused to be served the foregoing document(s) described as follows:

**NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT; DECLARATIONS IN SUPPORT THEREOF; AND [PROPOSED] FINAL
ORDER AND JUDGMENT**

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

☐ **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

☐ **By Overnight Service** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

☐ **By Certified Mail-Return Receipt Requested** I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California.

☐ **By Personal Service** I caused said document(s) to be personally served by hand on the parties listed on the attached service list.

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 13, 2022, Riverside, California.

☐ **Federal** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



Tracie Chiarito, Declarant

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