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Attorneys for Plaintiff Gina Robertson and on behalf of the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

GINA ROBERTSON, individually, on behalf
of all similarly situated current and former
employees, and on behalf of the State of
California and all Aggrieved Employees;

Plaintiff,

vs.

ALL CARE HOME HEALTH PROVIDER, a
California Corporation; ALL CARE HOME
HEALTH OF SAN GABRIEL, a California
Corporation; ALL CARE HOSPICE, a
California Corporation; ALL CARE
PROVIDER SERVICES, INC., a California
Corporation; COMCARE HOME HEALTH,
INC., a California Corporation; ANDREW J.
PAGSISIHAN, an individual; LILIA
PAGSISIHAN, an individual; APOLONIO
PAGSISIHAN, an individual; and DOES 1
through 10, inclusive;

Defendants.

Case No.: 20STCV18318
*[Assigned to the Hon. Judge Daniel J.
Buckley, Dept. 1]*

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

Hearing:
Date: March 16, 2022
Time: 10:30 a.m.
Dept.: 1

Complaint Filed: May 14, 2020

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on March 16, 2022, at 10:30 a.m., or as soon thereafter as
3 this matter may be heard by the Honorable Daniel J. Buckley in Department 1 of the above-
4 captioned court, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff
5 Gina Robertson, individually and on behalf of all others similarly situated, will respectfully
6 move this Court for an Order granting final approval of the class action settlement between
7 Plaintiff and Defendants, which was preliminarily approved by the Court on November 1, 2021.
8 This Motion, which is supported and unopposed by Defendants All Care Home Health Provider,
9 All Care Home Health of San Gabriel, All Care Hospice, All Care Provider Services, Inc., and/or
10 ComCare Home Health, Inc., seeks final approval and entry of judgment of a \$1,400,000
11 settlement on behalf of the Class Members.

12 Specifically, Plaintiff will and hereby does move the Court to grant final approval of the
13 Amended Class Action Settlement Agreement (“Settlement Agreement”), and enter the proposed
14 order and final judgment filed concurrently herewith:

- 15 1. Finally certifying the Class, for settlement purposes, as defined in the Settlement
16 Agreement and the Court’s Order Granting Preliminary Approval of the Settlement;
- 17 2. Finally appointing Plaintiff as the Class Representative for purposes of settlement;
- 18 3. Finally appointing Brian Mankin and Misty Lauby as Class Counsel for purposes
19 of settlement;
- 20 4. Finding that the Class Notice was properly provided to the Class in accordance
21 with the Court’s Order granting Preliminary Approval;
- 22 5. Finally approving the settlement as fair, adequate, and reasonable, based upon the
23 terms set forth in the Settlement Agreement;
- 24 6. Binding participating Class Members to the terms of the Settlement Agreement,
25 including the Release specified therein;
- 26 7. Entering final judgment in the form of the [Proposed] Order Granting Final
27 Approval, and Entry of Final Judgment; and
- 28 8. Retaining jurisdiction to enforce the Settlement Agreement.

1 This Motion will be based upon this notice; the attached memorandum of points and
2 authorities; the Declarations of the Settlement Administrator (Laura Singh of CPT Group) and
3 Class Counsel (Brian Mankin and Misty Lauby) and Plaintiff filed concurrently herewith; the
4 records and files in this action; and any other further evidence or argument that the Court may
5 receive at or before the hearing.

6 Dated: February 17, 2022

LAUBY, MANKIN & LAUBY LLP

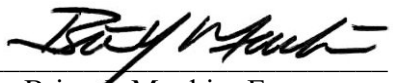
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8 BY: 
9 Brian J. Mankin, Esq.
10 Attorneys for Plaintiff and the Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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

3 Pursuant to California Rules of Court, Rule 3.769(d) and (e), Plaintiff respectfully
4 requests that this Court grant final approval of the Amended Class Action Settlement Agreement
5 (“Settlement Agreement”) already on file in this action, which is supported and unopposed by
6 Defendants All Care Home Health Provider, All Care Home Health of San Gabriel, All Care
7 Hospice, All Care Provider Services, Inc., and/or ComCare Home Health, Inc., (collectively,
8 “Defendants” or “All Care”), and enter the proposed order and final judgment in this 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 \$1,400,000 settlement with the
12 assistance of Mark Rudy, who is one of the most experienced and reputable class action
13 mediators in California, that is tailored to a limited release of the claims alleged on behalf of 912
14 Class Members (which is less than the estimate of 950 employees provided at the preliminary
15 approval stage);
- 16 • The Class Members were deemed to participate in the Settlement, and were not
17 required to submit a Claim Form to receive funds;
- 18 • No reversion to Defendants;
- 19 • There are zero objections and zero opt-outs to the Settlement, meaning 100% of
20 the Class will participate in the Settlement.

21 In accordance with the analysis and law set forth herein as well the preliminary approval
22 motion, the Settlement should be approved and judgment entered based on the determination that
23 the Settlement is fair, reasonable, adequate, and in the best interests of the Class. (Declaration of
24 Class Counsel, Brian J. Mankin; ¶¶ 13, 35 (“Mankin Decl.”).)

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

26 Plaintiff and the Class Members are non-exempt employees who performed nursing
27 duties for Defendants in California (the “Class” or “Class Members”) at any time during the
28 period from May 14, 2016 and May 24, 2021 (the “Class Period”). The primary claims involved

allegations that the Class Members were not paid all wages owed (including drive time, pre-post shift work, work performed during meal periods, as well as paying overtime at the incorrect rate), were not provided compliant meal and rest breaks, as well as claims for unreimbursed expenses, wage statement violations, waiting time penalties and PAGA penalties.

The following is a breakdown reflecting how the funds are allocated under the Settlement Agreement (Declaration of Administrator, Laura Singh (“Singh Decl.”), ¶ 16):

	Total Amount
<i>Settlement Amount</i>	\$1,400,000
Attorneys’ Fees (1/3)	\$466,666.66
Litigation Costs	\$15,000
Administrator Costs	\$15,000
PAGA payment to LWDA (75% of \$50k award)	\$37,500
PAGA payment to PAGA Group Members (25%)	\$12,500
Class Representative’s Service Award	\$10,000
<i>Net Settlement Amount</i>	\$843,333.34

The 912 Participating Class Members were deemed to participate and did not need to submit a claim form or take any action to receive payment. Each Participating Class Member will receive a pro rata share of the Net Settlement Amount according to the percentage of Weeks he/she worked during the Class Period, such that the amount actually distributed to Participating Class Members will equal 100% of the Net Settlement Amount. (Settlement Agreement ¶ 48(c).)

Assuming all of the amounts in the Settlement are approved by the Court, the *average* individual settlement payment is estimated to be \$924.69 and the *highest* individual settlement payment is approximately \$3,552.19. There are a total of 62,201 work weeks in the Class Period, resulting in a per work week value of \$13.56. (Singh Decl. ¶ 17).

In regards to the tax allocation, one-third (33.34%) of each Individual Settlement Amount shall constitute wages (with IRS Form W-2 reporting for this payment), and the remaining two-thirds shall constitute interest and penalties (allocated as one-third each for which each participating Class Member will be issued an IRS Form 1099 for the interest and penalty allocation). (S.A. ¶ 48(d)). The Settlement Agreement provides that Defendants shall deposit the Settlement Amount within 15 days of the Effective Date (S.A. ¶ 71), and shall also fund their

1 share of payroll taxes, as directed by the Settlement Administrator. Within 10 days of receipt,
2 the Settlement Administrator shall issue payments to cover all court-approved payments. (S.A. ¶
3 72).

4 **III. THE NOTICE PROCESS**

5 **A. Notice to the Class Members**

6 Pursuant to the Court's Order and the Settlement Agreement, the Parties directed the
7 Settlement Administrator to review and update the Class Members' addresses, mail the Court-
8 approved Notice Packet, and process their responses.

9 Prior to mailing the Class Notice, the Settlement Administrator performed a National
10 Change of Address search on all Class Members to determine if any had moved. (Singh Decl., ¶
11 6.) On November 24, 2021, the Class Notice was sent via first-class mail to the Class Members.
12 (Singh Decl., ¶ 7). Thereafter, 34 packets were returned as undeliverable. The Administrator
13 was able to locate updated addresses for 27 individuals using a skip trace or other means.
14 Ultimately, only 7 Class Notices were determined to be undeliverable. (Singh Decl., ¶ 9-10).
15 Accordingly, there was a 99% success rate in mailing the Class Notice.

16 In accordance with California Rules of Court, rules 3.766 (d) and 3.769 (f), the Notice
17 Packet provided Class Members with (1) a brief explanation of the case; (2) an explanation of
18 each Settlement Class Member's right to opt out of the settlement class; (3) an explanation of the
19 process (and relevant deadlines) through which a Settlement Class Member could opt out of the
20 settlement class; (4) notice about the binding nature of the Judgment for Class Members who do
21 not opt out; (5) an explanation of each Settlement Class Member's right to appear through
22 counsel; (6) an explanation of each Settlement Class Member's right to appear at the fairness
23 hearing and express views on the settlement, i.e., object or otherwise respond; and (7) an
24 explanation of each Settlement Class Member's right to participate in the Settlement and receive
25 payment accordingly. (See **Exhibit A** to the Singh Decl.)

26 ///

27 ///

28 ///

1 **B. There are Zero Objections and Opt-Outs Resulting In An Impressive 100%**
2 **of the Class Participating in the Settlement**

3 California law makes clear that the percentage of objectors and opt-outs is an important
4 factor in the Court’s consideration of a proposed class action settlement. (See *Dunk v. Ford*
5 *Motor Co. (1996) 48 Cal.App.4th 1794* at 1802.) Indeed, the Ninth Circuit and other federal
6 courts recognize that in the final fairness analysis, the number or percentage of class members
7 who object to the settlement is a significant factor. (See *Mandujano v. Basic Vegetable Prods.,*
8 *Inc., (9th Cir. 1976) 541 F.2d 672, 677; In re American Bank Note Holographics, Inc. (SDNY*
9 *2001) 127 F.Supp.2d 418, 425* [“[i]t is well settled that the reaction of the class to the settlement
10 is perhaps the most significant factor to be weighed in considering its adequacy.”])

11 In this case, as noted above, there are zero objections and opt-outs to the Settlement --
12 meaning that 100% of the Class Members are participating in the Settlement and will receive a
13 settlement payment after final approval. (Singh Decl., ¶ 12-14). Thus, it is clear that the Class
14 viewed this as a fair and reasonable settlement.

15 **V. EVALUATION OF THE SETTLEMENT**

16 It is axiomatic that California law strongly favors and encourages settlements. (See
17 *Stambaugh v. Super. Ct. (1976) 62 Cal.App.3d 231, 236.*) This presumption in favor of
18 settlement applies with particular force in the context of class actions. (See *Ferguson v. Lieff,*
19 *Cabraser, Heimann & Bernstein (2003) 30 Cal.4th 1037* [“[p]ublic policy favoring settlement is
20 especially weighty for class actions”]; *Bell v. Am. Title Ins. Co. (1991) 226 Cal.App.3d 1589,*
21 *1607-1608* [affirming the trial court’s approval of a class settlement and implicitly endorsing its
22 citation of federal precedent for the notion that there is a “strong public policy in favor of
23 settlement of class actions”]; see also *Franklin v. Kaypro Corp. (9th Cir. 1989) 884 F.2d 1222,*
24 *1229,* quoting *Van Bronkhorst v. Safeco Corp. (9th Cir. 1976) 529 F.2d 943, 950* [“it hardly
25 seems necessary to point out that there is an overriding public interest in settling and quieting
26 litigation. This is particularly true in class action suits”].)

27 When entertaining a request for final approval of a class action settlement, a court’s
28 fundamental consideration is whether the settlement is fair, adequate and reasonable. (See *Dunk,*

1 *supra*, 48 Cal.App.4th at 1801, fn. 7 [noting that state courts look to federal authority concerning
2 the approval of class settlements]; California Rules of Court, rule 3.769(g).)

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

9 **A. The Settlement Was Reached Through Informed Arms-Length Negotiation**

10 Courts presume the absence of fraud or collusion in the negotiation of a settlement,
11 unless evidence to the contrary is offered. Thus, there is a presumption here that the negotiations
12 were conducted in good faith. (See, 3 Alba Conte & Newberg, *supra*, at § 11.51.) The proposed
13 settlement here was the product of arm's-length negotiation before a highly experienced and
14 reputable class action mediator to reach a settlement, which was finally consummated several
15 months after the initial mediation.

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

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

26 **B. Plaintiff's Investigation Was Sufficient**

27 As set forth at the time of preliminary approval, Class Counsel's investigation into the
28 facts and merits of the wage and hour claims alleged included substantial informal discovery,

analyzing substantial amounts of information, correspondence, documents, policies and procedures, pay data and timekeeping records, and evidence relating to the class size and the commonality of the claims. During this process, Plaintiff and Class Counsel conducted investigations into the potential claims of the similarly situated employees, as well as researching and investigating Defendant's defenses. Finally, Class Counsel synthesized and analyzed information provided by Defendant as to the total Class Members including over 8,000 pages of documents, the number of current and former employees, the number of employees who worked during various time periods. This robust sampling enabled both parties and their experts to take a deep dive into the claims, and prepare comprehensive damages calculations regarding the claims at issue.

C. Class Counsel Are Experienced in Similar Litigation and Endorse the Settlement

Class Counsel are experienced in this type of litigation, and they have (and hereby do) represent that this Settlement is fair and reasonable. (Mankin Decl., ¶¶ 13, 35, see *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152 [Final approval of settlement affirmed where counsel were all experienced litigators with class-action experience and had recommended settlement based on the negotiated terms].)

D. Reasonable Estimate of the Nature and Amount of Recovery

Plaintiff's Motion for Preliminary Approval contained a comprehensive *Kullar* analysis (which sufficiently provided the Court with "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) Of course, a settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 246, 250.) ("Compromise is inherent and necessary in the settlement process ... even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because

1 the public interest may indeed be served by a voluntary settlement in which each side gives
2 ground in the interest of avoiding litigation.”)

3 In light of the uncertainties of protracted litigation, this negotiated settlement reflects the
4 best practicable recovery for the Class. While the total settlement amount is, of course, a
5 compromise figure, the potential risks and opportunities of both parties were effectively weighed
6 and considered by the parties, resulting in a fair and equitable settlement. Based upon detailed
7 data obtained through discovery and information exchanges, and factoring in claim certification
8 probabilities and liability probabilities, Class counsel formulated detailed damages models to
9 evaluate the claims in preparation for mediation and in order to reach a realistic and reasonable
10 resolution.

11 Of course, Defendants deny that any damages should be assessed and denies all of the
12 value assessed by Plaintiff. Notwithstanding these arguments, the Settlement commits
13 Defendant to pay \$1,400,000 to settle the litigation.

14 **VI. THE REQUESTED ATTORNEYS’ FEES ARE FAIR AND REASONABLE**

15 For their efforts in creating a common fund for the benefit of the Class, the Settlement
16 Agreement provided that Class Counsel may seek reasonable fees of \$466,666.66 (one-third of
17 the Settlement Amount). This amount will be paid from the settlement amount, as provided by
18 the Settlement Agreement. These fees are warranted under the law and within the range of fees
19 commonly awarded in similar cases.

20 As shown herein, the requested percentage of one-third of the settlement fund as payment
21 for attorneys’ fees should be granted for several reasons, including one-third is the standard
22 bench mark in California for class action settlements (see e.g., *Chavez v. Netflix, Inc.* (2008) 162
23 Cal.App.4th 43, 66 n. 11 (“Empirical studies show that, regardless whether the percentage
24 method or the lodestar method is used, fee awards in class actions average around one-third of
25 the recovery”), that the California Supreme Court recently held that the percentage of the fund
26 method survives in California class action cases (*Laffitte v. Robert Half International, Inc.*
27 (2016) 1 Cal.5th 480, and through the prism of a lodestar cross-check. Accordingly, this request
28 should receive final approval.

1 **A. Plaintiff is Entitled to Recover Reasonable Attorney’s Fees Under the**
2 **Labor Code**

3 Plaintiff and the Class in this action are entitled to recover reasonable attorneys’ fees,
4 expenses and costs under section 218.5 of the California Labor Code, which provides that, “[i]n
5 any action brought for the nonpayment of wages ... the Court shall award reasonable attorneys’
6 fees and costs to the prevailing party.” In addition, Plaintiff and the Class are entitled to recover
7 reasonable attorneys’ fees pursuant to section 1194.2 of the Labor Code, which provides that,
8 “... any employee receiving less than the legal minimum wage ... applicable to the employee is
9 entitled to recover in a civil action the unpaid balance of the full amount of this minimum
10 wage... including ... reasonable attorney’s fees, and costs of suit.” Plaintiff is also entitled to
11 fees and costs under section 226(e) of the Labor Code (employee who prevails on claim for
12 itemized wage statement violation “is entitled to an award of costs and reasonable attorneys’
13 fees”); under PAGA (Labor Code § 2699(g), which provides “Any employee who prevails in any
14 action shall be entitled to an award of reasonable attorney’s fees and costs, including any filing
15 fee paid”); and, potentially, section 1021.5 of the California Code of Civil Procedure.

16 **B. Class Counsel’s Request for Fees Is Reasonable and Properly Calculated as**
17 **a Percentage of the Common Fund**

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

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

28 The California Supreme Court has directly approved trial courts’ usage of the common
fund method of awarding attorneys’ fees in wage and hour class actions, like this one, and upheld

1 a fee awarded of 1/3 of the total settlement amount obtained for the class. *See Laffitte v. Robert*
2 *Half Int'l Inc.* (2016) 1 Cal. 5th 480, 506 (“when class action litigation establishes a monetary
3 fund for the benefit of the class members, and the trial court in its equitable powers awards class
4 counsel a fee out of that fund, the court may determine the amount of a reasonable fee by
5 choosing an appropriate percentage of the fund created”); *see also*, 4 Newberg on Class Actions,
6 § 14:6 at 552 (“fee awards in class actions average around one-third of the recovery”).

7 **2. *The High Quality of Work and Excellent Result Obtained Support***
8 ***the Award***

9 In addition to the fact that a Class benefit was created with a \$1,400,000 non-reversionary
10 common fund settlement, the fairness of the requested fee award of 1/3 of the Settlement
11 Amount is supported by the high quality of work performed by Class Counsel and the positive
12 result obtained for the Class. This great result occurred because Class Counsel diligently,
13 efficiently, and creatively pursued this case and reached a successful settlement for the benefit of
14 the entire Class. In fact, those Class Member who worked longer periods of time will receive
15 more than \$3,500 each, which is a very good result. Moreover, the fact that the settlement was
16 embraced and supported by the Class, as evidenced by a 100% participation rate, demonstrates
17 that Class Counsel obtained a favorable result for the Class.

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

19 Rule 3.769 of the California Rules of Court requires that the Class Members be given
20 notice of any agreement regarding an application for attorneys fees. Here, the Notice
21 preliminarily approved by the Court and distributed to the Class Members apprised them that
22 “Class Counsel will ask for fees of one-third (\$466,666.66) of the Settlement Amount as
23 reasonable compensation for the work Class Counsel performed and will continue to perform in
24 this lawsuit through Settlement finalization...” (Singh Decl., Exh. A.)

25 The Class Notice also advised the class members of the procedures for objecting to the
26 proposed settlement and appearing at the settlement hearing, where they could present their
27 objections to any aspect of the settlement, including the amount of attorneys’ fees to be awarded
28 to class counsel. (*Litwin v. iRenew Bio Energy Solutions, LLC* (2014) 226 Cal.App.4th 877, 883

1 “[p]rocedural due process requires that affected parties be provided with ‘the right to be heard at
2 a meaningful time and in a meaningful manner’”].) In accordance with the foregoing, it is
3 respectfully submitted that the instant notice Complied with Rule 3.769 and, as a result, the Class
4 Members’ due process rights were fulfilled.

5 **4. The Contingent Nature of Class Counsel’s Representation of**
6 **Plaintiff and the Class Further Supports the Fee Award at 1/3 of the**
7 **Common Fund**

8 An additional factor militating in favor of the granting of the requested fee award is the
9 fact that this case was both legally and financially risky for Class Counsel. (*See Vizcaino v.*
10 *Microsoft Corp* (9th Cir. 2002) 290 F.3d 1043, 1048-49.) Class Counsel have been representing
11 the Class in this matter on a strictly contingency basis, and as such, incurred the risk of non-
12 recovery after a substantial investment of time, money, and resources, and have done so since the
13 inception of this case without any payment or compensation. Specifically, there was the prospect
14 of enormous cost inherent in class action litigation, as well as a battle with a well-funded
15 corporation who was represented by an experienced law firm; the risk that Defendant could
16 prevail on its argument that the class should not be certified; and the risk that Defendant could
17 prevail on the merits of some or all of the claims.

18 If Plaintiff had lost this case, Class Counsel would have recovered nothing, and would
19 have lost its out-of-pocket costs. This is not an easy burden for Plaintiff’s Counsel, which is a
20 small firm. (Mankin Decl. ¶ 19). If, despite these hardships and risks, the best Plaintiff’s
21 Counsel could hope for is merely to be paid its customary hourly rate multiplied by the number
22 of hours worked on all cases (including cases like this where the lodestar is far greater than the
23 potential fee award), then Class Counsel would not be compensated for the hardships and serious
24 risks they faced litigating this contingency case, and would not be incentivized to take on similar
25 cases in the future. (*Id.*)

26 The court in *Horsford v. Board of Trustees of California State University*, 132
27 Cal.App.4th 359 (2005) analyzed this issue and held that, when determining the market-level
28 compensation to award to contingent fee attorneys, the analysis must take into account the large

1 risk inherent in such situations:

2 The market value of the services provided by plaintiffs' counsel in
3 a case of this magnitude must take into consideration that any
4 compensation has been deferred for up to four years from the time
5 an hourly fee attorney would begin collecting fees from his or her
6 client; that the demands of the present case substantially precluded
7 other work during that extended period, which makes the ultimate
8 risk of not obtaining fees all the greater (since the attorneys must
9 use savings or incur debt to keep their offices afloat and their
10 families fed during the years-long litigation); and that a failure to
11 fully compensate for the enormous risk in bringing even a wholly
12 meritorious case would effectively immunize large or politically
13 powerful defendants from being held to answer for constitutional
14 deprivations, resulting in harm to the public."

15 *Id.* at 399-400.

16 Indeed, as Class Counsel can attest, not all class/PAGA cases are successful. Many cases
17 end with no fees or a greatly reduced fee that is far less than lodestar, often due to no fault of
18 counsel (i.e., bankruptcy, change in the law, consolidation/coordination/preemption, being top
19 filed, etc.). According to Mayer Brown LLP's study entitled, *An Empirical Analysis of Class*
20 *Actions*, cited in *Laguna v. Coverall North America, Inc.*, No. 12-55479 (9th Circuit 2014), found
21 that only one-third of class actions are successful, compared to two-thirds that are defeated and
22 result in no payment to the class members.¹

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

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

26 Despite recognized limitations of the so-called lodestar method, some California and
27 federal courts acknowledge the utility of a lodestar "cross-check."² (*Lealao, supra*, 82
28 Cal.App.4th at 46-47.) Under the "lodestar multiplier" method of cross-checking the
29 reasonableness of attorneys' fees in class actions, the court ascertains Class counsel's total

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

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

1 “lodestar” amount by multiplying the number of hours reasonably expended by each attorney or
2 legal staff member by their hourly rates, and then enhances or reduces this lodestar figure by a
3 “multiplier” to account for a range of factors, such as the novelty or difficulty of the case, its
4 contingent nature, and the degree of success achieved. *PLCM Group, Inc. v. Drexler* (2000) 22
5 Cal.4th 1084, 1095-96; *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322; *Lealao, supra*, 82
6 Cal.App.4th at 43 [court has discretion to use a multiplier to ensure that the “fee awarded is
7 within the range of fees freely negotiated in the legal marketplace in comparable litigation”].)

8 Historically, California courts have approved multipliers of 1.5 to 4. *See Coalition for*
9 *Los Angeles County Planning v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 251
10 **(multiplier of 2+ approved)**; *Sternwest Corp v. Ash* (1986) 183 Cal.App.3d 74, 75. The
11 multiplier requested by Class Counsel below is within the range of multipliers found to be
12 appropriate by various federal and state courts in California. In *Sternwest Corp. v. Ash* (1986)
13 183 Cal.App.3d 74, for instance, the Court of Appeal remanded for a lodestar enhancement of
14 **“two, three, four or otherwise.”** *Id.* At 76; *see also Wershba*, 91 Cal.App.4th at 255
15 **(“Multipliers can range from 2 to 4 or even higher”)**; *City of Oakland v. Oakland Raiders*
16 (1988) 203 Cal.App.3d 78, 83 **(affirming 2.34 multiplier)**; *Coalition for Los Angeles County*
17 *Planning in the Pub. Interest v. Board of Supervisors*, 76 Cal.App.3d 241, 251 **(affirming**
18 **multiplier of approximately 2)**; *Craft v. County of San Bernardino*, 2008 U.S. Dist. LEXIS
19 27526 (C.D. Cal. Apr. 1, 2008) **(applying 5.2 multiplier)**; *See also Steinder v. Am. Broadcasting*
20 *Co., Inc.* (9th Cir. 2007) 248 Fed. Appx. 780, 783 **(approving multiplier of 6.85** and citing cases
21 **with comparable or higher multipliers)**; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d
22 1043, 1051 (finding no abuse of discretion in **awarding a multiplier of 3.65**). In *Torchia v. WW*
23 *Grainger, Inc.* (E.D. Cal. 2014) 304 F.R.D. 256, 275-278, a federal magistrate in Fresno
24 approved attorneys’ fees of \$550,000 **constituting a 3.57 multiplier** on class counsel’s total
25 lodestar of \$153,856, in a wage and hour class action where class counsel expended 457.85 hours
26 on the case, engaged in limited formal discovery, and where the case settled for \$2,750,000
27 within one year from filing the Complaint with 909 class members claiming \$1,305,200 and the
28 remainder, except for the attorneys’ fees and costs, reverting to the company.

As set forth in the declarations of Class Counsel submitted herewith, the actual aggregated lodestar between the attorneys that have worked on this case is approximately \$243,820, resulting in a multiplier of only 1.91, which is summarized in the following table, and in the declaration of Class Counsel:

Attorney	Experience	Hourly Rate	Hours	Total Lodestar
Brian Mankin	21 years	\$775	155 ³	\$120,125
Misty Lauby	14 years	\$650	190.3	\$123,695
Total Lodestar				\$243,820

(See Mankin Decl., ¶ 26; Lauby Decl., ¶ 10.)

The hourly rates above are comparable to those of other attorneys with equal or similar experience, if not somewhat lower (i.e., the Laffrey Matrix at www.laffreymatrix.com indicates that the benchmark rate for a 4-7 year attorney to be \$468/hour and a 11-19 year attorney at \$764/hour, and a 20+ year attorney at \$919/hour). Moreover, the Wolters Kluwer 2017 Real Rate Report (“Real Rate Report”) provides directly applicable information in this regard. The Real Rate Report is based on an enormous and statistically significant compilation of data: 25.8 million billing entries and 23.9 million hours billed by over 112,100 individual timekeepers from 4,620 law firms, totaling \$9.02 billion in fees billed. (See Wolters Kluwer’s ELM Solutions, Inc., 2017 Real Rate Report). The Real Rate Report then compiles and analyzes this data to provide the hourly rates for partners and associates in major metropolitan areas. For the southern California area, which is based on billing entries for 1,125 partners and 1,566 associates, the Real Rate Report states that: (a) the rates for partners in Los Angeles is between \$640 and \$869.75 per hour for the middle and upper quartiles, and (b) the rates for associates in Los Angeles is between \$478.74 and \$638.97 for the median and upper quartiles. And, perhaps most importantly, the information provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, or reviews or other publications – instead, the Real Rate Report is based on the actual hours and fees billed by law firms. (Mankin Decl., ¶ 24-26.)

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³ Includes an estimated 35 hours of work finalizing this motion, attending final approval, working with Defense Counsel and the Administrator finalizing this matter, submitting a declaration of disbursement and other matters.

1 Thus, not only are Plaintiff's Counsel's rates reasonable and typical, but the attorneys'
2 fees requested are in line with Plaintiff's Counsel's lodestar, all of which confirms that the fee
3 request is fair and reasonable.

4 Class Counsel are also highly experienced in Class/PAGA litigation, including having
5 been selected as a "Super Lawyer" in employment litigation on multiple occasions, having
6 achieved large settlements including one of the largest PAGA awards in California's history and
7 collecting in excess of \$250 million for their clients, having prevailed at trial against two
8 separate Fortune 100 companies, including a PAGA-only action in Orange County and a Class
9 Action jury trial in Los Angeles. (Mankin Decl. ¶¶ 2-6). Indeed, Class Counsel's rates are
10 typical of the rates charged by defense counsel with similar experience doing similar
11 employment law work in this region.

12 **VII. THE REQUESTED COSTS AND SERVICE AWARDS ARE REASONABLE**

13 **A. The Requested Costs Are Reasonable and Merit Approval**

14 The Settlement Agreement authorized litigation costs of up to \$15,000 (Settlement
15 Agreement ¶ 48(f)). Class Counsel's actual combined costs through the final approval hearing
16 are estimated to be \$15,367.11. (Mankin Decl. ¶ 29.) Since Class Counsel's actual costs
17 exceeded the maximum authorized costs, Class Counsel will only be seeking the \$15,000 in
18 authorized costs. These costs include mediation fees, filing fees, travel/parking charges,
19 CourtCall charges, and court filing fees, and process server fees.

20 **B. The Requested Service Award is Reasonable and Merits Approval**

21 A named plaintiff is an essential ingredient of any class action and an incentive award
22 is appropriate to induce individuals to step forward and assume the burdens and obligations of
23 representing the Class. Courts regularly approve service payments to compensate named
24 Plaintiffs for their service to the class and the risks they incurred during the course of the
25 litigation. (See, e.g. *Bell v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715, 726
26 (upholding "service payments" to named Plaintiff for their efforts in bringing class action);
27 *Rodriguez v. West Publishing* (9th Cir. 2009) 563 F.3d 948, 959 (stating that incentive awards
28 are "intended to compensate class representatives for work done on behalf of the class, to make

up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.”).

Under the Settlement, Defendant agreed to pay a Service Award in the amount of \$10,000 to Ms. Robertson in recognition of her contributions as the Class Representative. Ms. Robertson came forward and undertook significant risk, including the risk of being blackballed in the industry and the risk that she could have been liable for Defendant’s costs if she lost. This factor is a significant one for a wage earner, and the potential risk is very real. (*See Whiteway v. FedEx Kinkos Office & Print Svcs., Inc.* (N.D. Cal. Dec. 17, 2007) No. C 05-2320 SBA, 2007 WL 4531783, at *3 (“the few courts to consider this ‘class representatives’ dilemma’ have not found it inequitable to assess costs upon the lead or named plaintiff in a class action.”).)

She also committed a significant number of hours to assist with the litigation/settlement processes of this case. Finally, she entered into a general release of all claims against Defendant, whereas the Class Members only released the claims alleged. The requested Service Payment is reasonable, particularly in light of the substantial benefits Plaintiff generated for the Class Members, the risks she undertook, and in exchange for executing a general release against Defendant while giving up the right to pursue separate individual claims. (See Plaintiff’s Declaration ¶¶ 4-8.)

The Notice sent to each Class Member detailed the proposed service award. No Class Member objected to the proposed payment to Plaintiff. Thus, Plaintiff requests that the Court approve the award because it is both reasonable and appropriate.

VIII. OTHERS MATTERS RE: FINAL APPROVAL

A. Settlement Administration Costs

The parties agreed that the Administrator, CPT Group, would be compensated for services performed. The Administrator’s flat fee is \$15,000, which included considerable work performed by the administrator in resolving the data issues. (Singh Decl., ¶ 18.)

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B. Notice of Final Judgment to the Class

The Proposed Final Approval Order that directs the Settlement Administrator to give notice of entry of judgment by including a postcard to the Class Members at the same time the checks are mailed.

C. Uncashed Checks

The Settlement Agreement provides that unclaimed funds will be submitted to the California State Controller's Office in the name of the Class Member. (S.A. ¶ 73.)

D. Final Report

Defendant's payment is due 15 days after the Final Order is entered. The Administrator then has 10 days thereafter process the funds and issue checks to the Class Members, who will then have 180 days to cash their checks. As such, the Parties propose submitting a final report in the form of a declaration from the Administrator (setting forth the money that was actually paid to the class members and potentially the unclaimed funds) approximately 12 months after the Final Approval hearing date (i.e., March 2023).

E. Submission to the LWDA

As set forth in the Mankin Declaration at ¶ 31, the Settlement Agreement and this motion are concurrently being submitted to the LWDA in accordance with Labor Code § 2699(1)(2), as they were at the time of preliminary approval. The LWDA has not commented on the Settlement to date.

IX. CONCLUSION

Plaintiff respectfully submits that the Settlement is fair, adequate, and reasonable, and merits approval. This motion is unopposed by Defendant.

Dated: February 17, 2022

LAUBY, MANKIN & LAUBY LLP

BY: 
 Brian J. Mankin, Esq.
 Attorneys for Plaintiff and the Class

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I, Tracie Chiarito, declare I am a citizen of the United States of America and am employed in Riverside, California; I am over the age of 18 years and am not a party to the within action; my business address is 4590 Allstate Drive, Riverside, California 92501-1702. On February 17, 2022, I served the within **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; DECLARATIONS IN SUPPORT THEREOF; AND [PROPOSED] FINAL ORDER AND JUDGMENT** in said action by electronic filing service Case Home Page website to the parties on the service list maintained on the Case Home Page website for this case pursuant to the Court Order establishing the case website and authorizing service of documents.

Executed on October February 17, 2022, at Riverside, California.

Tracie Chiarito
Tracie Chiarito, Declarant

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