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

RUDOLPH OLLARSABA and AGUSTIN
SELVA, individually, on a representative
basis, and on behalf of all others similarly
situated;

Plaintiffs,

vs.

PUMPMAN, LLC, a California Limited
Liability Company; PUMPMAN
INTERMEDIATE HOLDINGS, LLC, a
Delaware Limited Liability Company; and
DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVDS2008889
*[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: November 22, 2021

Time: 10:00 a.m.

Dept: S26

Complaint filed: May 29, 2020

TO THE COURT AND PARTIES OF RECORD:

PLEASE TAKE NOTICE THAT on November 22, 2021, 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 Rudolph Ollarsaba and Agustin Selva will respectfully move this Court for an
Order granting final approval of the class action settlement between Plaintiffs and Defendants
Pumpman, LLC and Pumpman Intermediate Holdings, LLC (“Defendants”), which was

1 preliminarily approved by the Court on August 4, 2021. This Motion, which is supported and
2 unopposed by Defendants, seeks final approval and entry of judgment of a \$395,000 settlement
3 on behalf of the Class Members.

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

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

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

10 3. Finally appointing Brian Mankin of Lauby Mankin Lauby LLP as Class Counsel
11 for purposes of settlement;

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

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

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

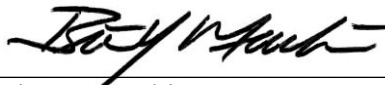
18 7. Retaining jurisdiction to enforce the Settlement Agreement.

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

24 Dated: October 28, 2021

LAUBY, MANKIN & LAUBY LLP

25
26 BY:



Brian J. Mankin, Esq.

Attorneys for Plaintiffs 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), Plaintiffs respectfully
4 request 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 Pumpman, LLC and Pumpman Intermediate Holdings, LLC
7 (“Defendants”), and enter the proposed order and final judgment in this matter.

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

- 10 • After extensive work, the Parties reached a \$395,000 settlement tailored to a
11 limited release of the claims alleged on behalf of the Class Members;
- 12 • The Class Members were deemed to participate in the Settlement, and were not
13 required to submit a Claim Form to receive funds;
- 14 • No reversion to Defendants; and
- 15 • There are zero objections and zero opt-outs to the Settlement, meaning that 100%
16 of the Class elected to participate in the Settlement;

17 In accordance with the analysis and law set forth herein, the Settlement should be
18 approved, and judgment entered based on the determination that the Settlement is fair,
19 reasonable, adequate, and in the best interests of the Class. (Declaration of Class Counsel Brian
20 J. Mankin [“Mankin Decl.”] ¶¶ 13, 32).

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

22 Plaintiffs and the Class Members are and/or were employed by Defendants as non-
23 exempt employees at its Baldwin Park location in California (the “Class” or “Class Members”) at
24 any time during the period from May 29, 2016, through August 4, 2021 (the “Class Period”).
25 The primary claims involved allegations of failure to pay correct minimum and overtime wages,
26 meal and rest break violations, inaccurate wage statements, failure to timely pay final wages to
27 former employees, and other cascading penalties, including under PAGA.

28 ///

1 The Settlement includes 57 Participating Class Members¹. The following is a breakdown
2 reflecting how the funds are allocated under the Settlement Agreement (Declaration of
3 Administrator, Madly Nava (“Nava Decl.”), ¶ 14):

	Total Amount
<i>Gross Settlement Amount</i>	\$ 395,000.00
Attorneys’ Fees (1/3)	\$ 131,666.66
Litigation Costs	\$ 7,420.46
Administrator Costs	\$ 3,000.00
PAGA Penalties	\$ 20,000.00
Class Representatives’ Service Award	\$ 20,000.00
<i>Net Settlement Amount</i>	\$ 212,912.88

11 The Class Members were deemed to participate and did not need to submit a Claim Form
12 to receive payment. Based on a class size of 57 employees, and assuming all of the amounts are
13 approved by the Court, the highest payment to Participating Class Members is estimated at
14 \$9,240.77, and the average payment is \$3,735.31. Moreover, there are a total of 6,244 Weeks
15 Worked by all Class Members, so the payment per Week Worked is approximately \$34.10.
16 (Nava Decl. ¶ 15). In accordance with the settlement, 100% of the Net Settlement Amount will
17 be distributed to the Class with no reversion to Defendants.

18 Additionally, the Settlement Agreement provides that the 25% PAGA allocation will be
19 allocated only to Aggrieved Employees, rather than to all Class Members. In this case, 42
20 Aggrieved Employees will share in the \$5,000 award on a pro rata basis. The average payment
21 to the Aggrieved Employees is \$119.05, and the per Work Week value is \$1.91 based on the
22 Aggrieved Employees collectively working 2,613 Work Weeks during the PAGA Period. (Nava
23 Decl. ¶ 16).

24 The Parties agree that one-third of each Individual Settlement Amount shall constitute
25 wages (for which each Participating Class Member will be issued an IRS Form W-2 for such
26

27 ¹ Due to pre-mediation discussions regarding the scope of the class, data for 24 employees was not included in the
28 pre-mediation exchange, but post-mediation discussions resolved this issue by including these 24 employees within
the definition of “all non-exempt employees” at the Baldwin Park location, causing the class size to increase to 57
members. The Parties believe that with an average payment of \$3,735 per employee, the Settlement continues to be
eminently fair and reasonable, and indeed, an excellent result for the class.

1 payment), and the remaining two-thirds, as well as the PAGA payment made to Aggrieved
2 Employees, shall constitute interest and penalties for which each Participating Class Member
3 will be issued an IRS Form 1099 for the interest and penalty allocation). (S.A. ¶ 47(d)).
4 Defendants will separately pay its share of payroll taxes and withholdings. Defendants are
5 required to deposit the Settlement Amount with the Settlement Administrator within 15 calendar
6 days after the Effective Date.

7 **III. THE NOTICE PROCESS**

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

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

12 Prior to mailing the Notice Packet, the Settlement Administrator performed a National
13 Change of Address search on all Class Members to determine if any had moved. (*Id.* ¶ 6). Then,
14 on September 13, 2021, the Notice Packet was sent via first-class mail to 57 Class Members to
15 advise each about the suit and settlement. (*Id.* ¶ 7). For any Notice Packet that was returned by
16 the USPS as undeliverable and without a forwarding address, the Settlement Administrator
17 performed an advanced address search (i.e. skip trace). (*Id.* ¶ 9). The Settlement Administrator
18 used the advanced address search to locate updated addresses and promptly mailed the Notice
19 Packets to those updated addresses. Ultimately, there was only 1 Notice Packet that was
20 undeliverable. (*Id.* ¶ 8). In sum, these figures evidence that there was a **98.2%** success rate in
21 mailing the Notice Packets.

22 In accordance with California Rules of Court, Rules 3.766(d) and 3.769(f), the Notice
23 Packet, which was provided in English and Spanish, provided Class Members with (1) a brief
24 explanation of the case; (2) an explanation of each Settlement Class Member's right to opt out of
25 the settlement class; (3) an explanation of the process (and relevant deadlines) through which a
26 Settlement Class Member could opt out of the settlement class; (4) notice about the binding
27 nature of the Judgment for Class Members who do not opt out; (5) an explanation of each
28 Settlement Class Member's right to appear through counsel; (6) an explanation of each

1 Settlement Class Member’s right to appear at the fairness hearing and express views on the
2 settlement, i.e., object or otherwise respond; and (7) an explanation of each Settlement Class
3 Member’s right to participate in the Settlement and receive payment accordingly. (See **Exhibit**
4 **A** to the Nava Decl.).

5 **B. THERE ARE ZERO OBJECTIONS AND ZERO OPT-OUTS, RESULTING IN AN**
6 **IMPRESSIVE 100% CLASS PARTICIPATION IN THE SETTLEMENT**

7 California law makes clear that the percentage of objectors and opt-outs is an important
8 factor in the Court’s consideration of a proposed class action settlement. *See Dunk, supra*, 48
9 Cal.App.4th at 1802. Indeed, the Ninth Circuit and other federal courts recognize that in the
10 final fairness analysis, the number or percentage of class members who object to the settlement is
11 a significant factor. *See Mandujano v. Basic Vegetable Prods., Inc.* (9th Cir. 1976) 541 F.2d
12 672, 677; *In re American Bank Note Holographics, Inc.* (SDNY 2001) 127 F.Supp.2d 418, 425
13 (“[i]t is well settled that the reaction of the class to the settlement is perhaps the most significant
14 factor to be weighed in considering its adequacy.”).

15 Here, there are zero objections and zero opt-outs to the Settlement, meaning that 100% of
16 the Class Members will receive a share of the Settlement (Nava Decl. ¶¶ 11-12). Thus, the Class
17 overwhelmingly viewed this as a fair and reasonable settlement.

18 **IV. EVALUATION OF THE SETTLEMENT**

19 It is axiomatic that California law strongly favors and encourages settlements. *See*
20 *Stambaugh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236. This presumption in favor of
21 settlement applies with particular force in the context of class actions. *See Ferguson v. Lieff,*
22 *Cabraser, Heimann & Bernstein* (2003) 30 Cal.4th 1037 (Kennard, J., concurring and dissenting)
23 (“[p]ublic policy favoring settlement is especially weighty for class actions”); *Bell v. Am. Title*
24 *Ins. Co.* (1991) 226 Cal.App.3d 1589, 1607-1608 (affirming approval of a class settlement and
25 implicitly endorsing its citation of federal precedent for the notion that there is a “strong public
26 policy in favor of settlement of class actions”); *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976)
27 529 F.2d 943, 950 (“it hardly seems necessary to point out that there is an overriding public
28 interest in settling and quieting litigation. This is particularly true in class action suits”).

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

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

11 **A. THE SETTLEMENT WAS REACHED THROUGH INFORMED ARMS-LENGTH**
12 **NEGOTIATION**

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

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

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

28 ///

1 **B. PLAINTIFFS’ INVESTIGATION WAS SUFFICIENT**

2 As set forth at the time of preliminary approval, Class Counsel’s investigation into the
3 facts and merits of the wage and hour claims alleged included analyzing substantial amounts of
4 information, correspondence, documents, pay data, policies and procedures, and evidence
5 relating to the class size and the commonality of the claims. During this process, Plaintiffs and
6 Class Counsel conducted investigations into the potential claims of the similarly situated
7 employees, as well as researching and investigating Defendants’ defenses. Finally, Class
8 Counsel synthesized and analyzed information provided by Defendants as to the total Class
9 Members, the number of current and former employees, the number of employees who worked
10 during various time periods, and prepared comprehensive damages calculations regarding the
11 claims at issue.

12 **C. CLASS COUNSEL ARE EXPERIENCED IN SIMILAR LITIGATION AND ENDORSE THE**
13 **SETTLEMENT**

14 Class Counsel are experienced in this type of litigation, and they have (and hereby do)
15 represent that this Settlement is fair and reasonable. (Mankin Decl. ¶¶ 13, 32); *see 7-Eleven*
16 *Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152 (Final
17 approval of settlement affirmed where counsel were all experienced litigators with class-action
18 experience and had recommended settlement based on the negotiated terms).

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

20 Plaintiffs’ Motion for Preliminary Approval contained a comprehensive *Kullar* analysis
21 which sufficiently provided the Court with “basic information about the nature and magnitude
22 of the claims in question and the basis for concluding that the consideration being paid for the
23 release of those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail,*
24 *Inc.* (2008) 168 Cal.App.4th 116, 133. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*
25 (2010) 186 Cal.App.4th 399, later clarified *Kullar* by noting that an explicit statement of the
26 maximum theoretical amount that the class could recover was not part of the “basic
27 information” that counsel was required to produce:

28 ///

Greenwell misunderstands Kullar, apparently interpreting it to require the record in all cases to contain evidence in the form of an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims – a number which appears nowhere in the 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.

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

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

As set forth in the Motion for Preliminary Approval, when factoring in the defenses and risks of ongoing litigation, Plaintiffs estimate the risk-adjusted class recovery as follows:

• Overtime and Waiting Time Penalty Claims	\$ 122,940
• Meal and Rest Break Claims	\$ 242,611
• Wage Statement Penalty Claims:	<u>\$ 134,160</u>
Plaintiffs’ Estimate of Total Risk-Adjusted Damages	\$ 499,711

1 The reasonableness of the settlement is apparent from the fact that the proposed
2 settlement is approximately a 20.9% discount from the risk-adjusted class damages and penalties.

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

4 For their efforts in creating a common fund for the benefit of the class, the Settlement
5 Agreement provided that Class Counsel seek reasonable fees of \$131,666.66 (one-third of the
6 Settlement Amount), which is the common fund. This amount will be paid from the Settlement
7 Amount, as provided by the Settlement Agreement. These fees are warranted under the law and
8 within the range of fees commonly awarded in similar cases.

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

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

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

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***

Recently, 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.

1 *Id.* (“...[Courts] ... retain the discretion to forgo a lodestar cross-check and use other means to
2 evaluate the reasonableness of a requested percentage fee.”).

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

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

22 In addition to the fact that a Class benefit was created with a \$395,000 non-reversionary
23 common fund settlement, the fairness of the requested fee award of 1/3 of the Settlement
24 Amount is supported by the high quality of work performed by Class Counsel and the positive
25 result obtained for the Class. This result occurred because Class Counsel diligently, efficiently,
26 and creatively pursued this case and reached a settlement for the benefit of the entire Class. The
27 fact that the settlement was embraced and supported by the Class, as evidenced by a 100%
28 participation rate, demonstrates that Class Counsel obtained a favorable result for the Class.

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 (\$131,666.66) of the common fund Settlement
6 Amount as reasonable compensation for the work Class Counsel performed and will continue to
7 perform in this Lawsuit through finalization of the Settlement..." (Nava 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

1 Actions, cited in *Laguna v. Coverall North America, Inc.* (9th Cir. 2014) 753 F.3d 918, found
2 that only one-third of class actions are successful, compared to two-thirds that are defeated and
3 result in no payment to the class members.²

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

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

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

17 The actual aggregated lodestar between the attorneys that worked on this case is
18 approximately \$110,551. This results in a multiplier of only 1.19, which clearly demonstrates
19 that the requested fee is justified, reasonable and appropriate. The aggregated lodestar is
20 summarized in the following table, and in the submitted declaration of Class counsel:

21 ///

22 ///

23 ///

24 ///

25 ² www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

26 ³ In practice, the lodestar method is difficult to apply, time-consuming to administer, inconsistent in result, and
27 capable of manipulation. In addition, the lodestar creates inherent incentive to prolong the litigation until sufficient
28 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.

Attorney/Timekeeper	Rate	Hours	Fee
Brian J. Mankin <i>Trial Counsel/Partner</i> (20 years)	\$695	83⁴	\$57,685
Peter J. Carlson <i>Senior Associate</i> (7 years)	\$540	97.9	\$52,866
Grand Total for All Attorneys			\$110,551

(See Mankin Decl., ¶ 24.) The hourly rates above are comparable to those of other attorneys with equal or similar experience, if not somewhat lower (i.e., the Laffey Matrix at www.laffeymatrix.com indicates that the benchmark rate for a 4-year attorney to be \$455/hour and a 12-year attorney at \$742/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. (*Id.*) And, perhaps most importantly,

⁴ Includes an estimated 35 hours of additional work in preparation for and attending the hearing, as well as the anticipated work to be performed after the final approval hearing with counsel, administrator, employees, and the court.

1 the information provided in the Real Rate Report is not based on self-reported numbers, surveys,
2 sampling, or reviews or other publications – instead, the Real Rate Report is based on the actual
3 hours and fees billed by law firms. (*Id.*) These numbers are not surprising given that a 4-year-old
4 article in the National Law Journal stated that in **2014** partners in Los Angeles charge an average
5 of \$665, while the average associate rate is \$401. (Sloan, \$1,000 Per Hour Isn't Rare Anymore;
6 Nominal Billing Levels Rise, But Discounts Ease Blow (2014) Nat. Law Journal.)⁵. (Mankin
7 Decl., ¶ 23.)

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

11 Class Counsel are also highly experienced in Class/PAGA litigation, including having
12 been selected as a "Super Lawyer" in employment litigation, and have achieved some of the
13 largest PAGA awards. (Mankin Decl. ¶¶ 2-6). Indeed, Class Counsel's rates are typical of the
14 rates charged by defense counsel with similar experience doing similar employment law work in
15 this region.

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

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

18 The Settlement Agreement authorized litigation costs of up to \$15,000. (S.A. ¶ 47(f)).
19 Class Counsel's actual costs through the final approval hearing were \$7,420.46, so this is the
20 amount requested. The saving will be placed in the Net Settlement Amount for payment to the
21 Class Members. (Mankin Decl. ¶ 26). These costs include mediation fees, filing fees, online
22 research, travel/parking charges, CourtCall charges, and process server fees.

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

24 A named plaintiff is an essential ingredient of any class action and an incentive award
25 is appropriate to induce individuals to step forward and assume the burdens and obligations of
26 representing the Class. Courts regularly approve a service payment to compensate named

27 ⁵ The article notes that at Irell & Manella, the average partner rate is \$890/hr; Mannatt, Phelps & Phillips is \$740/hr;
28 O'Melveny & Meyers is \$715/hr; and Jeffer Mangels Butler & Mitchell is \$690/hr. *Id.*

1 plaintiffs for their service to the class and the risks they incurred during the course of the
2 litigation. *See, e.g. Bell v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715, 726
3 (upholding “service payments” to named Plaintiff for their efforts in bringing class action);
4 *Rodriguez v. West Publishing* (9th Cir. 2009) 563 F.3d 948, 959 (stating that incentive awards
5 are “intended to compensate class representatives for work done on behalf of the class, to make
6 up for financial or reputational risk undertaken in bringing the action, and, sometimes, to
7 recognize their willingness to act as a private attorney general.”).

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

10 Plaintiffs came forward and undertook significant risks, including the risk of being
11 blackballed in the industry and the risk that they could have been liable for Defendants’ costs if
12 they lost. This factor is a significant one for a wage earner, and the potential risk is very real.
13 *See Whiteway v. FedEx Kinkos Office & Print Svcs., Inc.* (N.D. Cal. Dec. 17, 2007) 2007 WL
14 4531783, at *3 (“the few courts to consider this ‘class representatives’ dilemma’ have not
15 found it inequitable to assess costs upon the lead or named plaintiff in a class action.”).)

16 Plaintiffs also committed a significant number of hours to assist with the
17 litigation/settlement processes of this case and entered into a general release of all claims
18 against Defendants, whereas the Class Members only released the claims alleged. The
19 requested Service Awards are reasonable, particularly in light of the substantial benefits
20 Plaintiffs generated for the Class Members, and the risks she undertook. (*See* Plaintiffs’ Decl.
21 ¶ 4-7).

22 The requested service award falls within the range of incentive payments typically
23 awarded to Class Representatives in similar class actions. *See e.g. Bond v. Ferguson*
24 *Enterprises, Inc.* (E.D. Cal. June 30, 2011) No. 1:09–cv–1662 OWW MJS, 2011 WL 2648879
25 (approving \$11,250 service award to each of the two class representatives in a trucker meal
26 break class action; *Ross v. US Bank National Association* (N.D. Cal. Sept. 29, 2010) No. C 07-
27 02951 SI, 2010 WL 3833922, at *2 (approving \$20,000 enhancement award to Class
28 Representative in California wage-and-hour class action settlement); *Vasquez v. Coast Valley*

1 *Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 4150, 493 (approving service awards in the amount
2 of \$15,000 each from a \$300,000 settlement fund in a wage/hour class action); *West v. Circle*
3 *K Stores, Inc.* (E.D. Cal. Oct. 19, 2006) NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist.
4 LEXIS 76558, at *28 (“the court finds Plaintiff’s enhancement payments of \$ 15,000 each to
5 be reasonable.”); *Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 26, 2007) No. C-06-4068 MMC,
6 2007 U.S. Dist. LEXIS 8476, at *52 (finding “requested payment of \$ 25,000 to each of the
7 named Plaintiff is appropriate” in wage and hour settlement); *Louie v. Kaiser Found. Health*
8 *Plan, Inc.* (S.D. Cal. Oct. 6, 2008) Case No. 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS
9 78314, at *18 (approving “\$25,000 incentive award for each Class Representative” in wage an
10 hour settlement).

11 Finally, the Notice sent to each Class Member detailed the proposed service award. No
12 Class Member objected to the proposed payment to Plaintiffs. Thus, Plaintiffs’ request that the
13 Court 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, ILYM Group, agreed to administer the settlement for a flat-fee of
17 \$3,000. (Nava Decl. ¶ 17). 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 ¶ 28, 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 submit that the Settlement is fair, adequate, and reasonable, and
9 merits approval. This motion is unopposed by Defendants.

10 Dated: October 28, 2021

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 October 28, 2021, 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 October 28, 2021, 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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