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

BOBBY MOODY, individually, on a  
representative basis, and on behalf of all  
others similarly situated;

Plaintiff,

vs.

DURA TECHNOLOGIES, INC, a Wyoming  
Corporation; HAWKEYE INDUSTRIES  
INC., a Georgia Corporation; REVCHEM  
COMPOSITES, INC., a California  
Corporation; and DOES 1 through 20,  
inclusive;

Defendants.

Case No.: CIVDS2008887  
*[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: August 4, 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 August 4, 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,  
Plaintiff Bobby Moody will respectfully move this Court for an Order granting final approval of  
the class action settlement between Plaintiff and Defendants Dura Technologies, Inc., Hawkeye  
Industries Inc., and Revchem Composites, Inc., which was preliminarily approved by the Court

1 on March 23, 2021. This Motion, which is supported and unopposed by Defendants, seeks final  
2 approval and entry of judgment of a \$350,000 settlement on behalf of the Class Members.

3 Specifically, Plaintiff will and hereby does 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 Plaintiff as Class Representative for purposes of settlement;

9 3. Finally appointing Brian Mankin of Lauby Mankin Lauby LLP as Class Counsel  
10 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;

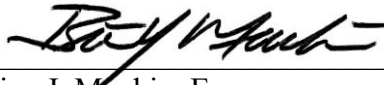
15 6. Binding participating Class Members to the terms of the Settlement Agreement,  
16 including the Release specified therein; and

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 (Elizabeth Kruckenberg of  
20 Phoenix), Class Counsel (Brian Mankin) and Plaintiff filed concurrently herewith; the records  
21 and files in this action; and any other further evidence or argument that the Court may receive at  
22 or before the hearing.

23 Dated: July 12, 2021

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), Plaintiff 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 Dura Technologies, Inc., Hawkeye Industries Inc., and Revchem  
7 Composites, Inc. (collectively, “Defendants”), and enter the proposed order and final judgment  
8 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 \$350,000 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 zero opt-outs to the Settlement, meaning that 100%  
17 of the Class 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, 32).

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

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

1 The Settlement includes 169 Participating Class Members (which is slightly more than  
2 the 150 that Parties projected at preliminary approval, which was based on data from a mediation  
3 that occurred in November 2020). The following is a breakdown reflecting how the funds are  
4 allocated under the Settlement Agreement (Declaration of Administrator, Elizabeth Kruckenberg  
5 (“Kruckenberg Decl.”), ¶ 11):

|                                      | <b>Total Amount</b> |
|--------------------------------------|---------------------|
| <i>Gross Settlement Amount</i>       | \$350,000           |
| Attorneys’ Fees (1/3)                | \$116,666.66        |
| Litigation Costs                     | \$13,401.51         |
| Administrator Costs                  | \$7,000             |
| PAGA Award                           | \$25,000            |
| Class Representative’s Service Award | \$7,500             |
| <b><i>Net Settlement Amount</i></b>  | <b>\$180,431.83</b> |

13 The Class Members were deemed to participate and did not need to submit a Claim Form  
14 to receive payment. Assuming a revised class size of 169 employees, and assuming all of the  
15 amounts are approved by the Court, the highest payment to Participating Class Members is  
16 estimated at \$3,674.72, the lowest payment will be approximately \$14.82 for short term  
17 employees, and the average payment is \$1,067.64. Moreover, there are a total of 12,177 Weeks  
18 Worked by all Class Members, so the payment per Week Worked is approximately \$14.82.  
19 (Kruckenberg Decl. ¶ 12). In accordance with the settlement, 100% of the Net Settlement  
20 Amount will be distributed to the Class with no reversion to Defendant.

21 Additionally, the Settlement Agreement provides that the 25% PAGA allocation will be  
22 allocated only to Aggrieved Employees (i.e., “PAGA Group Members”), rather than to all Class  
23 Members. In this case, 100 Aggrieved Employees will share in the \$6,250 award on a pro rata  
24 basis. The average payment to the Aggrieved Employees is \$62.50, and the per pay period value  
25 is \$1.45 based on the Aggrieved Employees collectively working 4,304 pay periods during the  
26 PAGA period. (Kruckenberg Decl. ¶ 13).

27 The Parties agree that twenty percent (20%) of each Individual Settlement Amount shall  
28 constitute wages (for which each Participating Class Member will be issued an IRS Form W-2

for such payment), and the remaining eighty percent (80%), as well as the PAGA payment made to Aggrieved Employees, shall constitute interest and penalties for which each Participating Class Member will be issued an IRS Form 1099 for the interest and penalty allocation). (S.A. ¶ 50(d)). Defendants will separately pay its share of payroll taxes and withholdings. Within fifteen (15) days after the Effective Date (which will be the date of Final Approval), Defendants are required to deposit the Settlement Amount with the Settlement Administrator.

### **III. THE NOTICE PROCESS**

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

Pursuant to the Court's Order and the Settlement Agreement, the Parties directed the Settlement Administrator to review and update the Class Members' addresses, mail the Court-approved Notice Packet, and process their responses. (Kruckenberg Decl. ¶ 2).

Prior to mailing the Notice Packet, the Settlement Administrator performed a National Change of Address search on all Class Members to determine if any had moved. (*Id.* ¶ 4). Then, on April 29, 2021, the Notice Packet was sent via first-class mail to 169 Class Members to advise each about the suit and settlement. (*Id.* ¶ 5). For any Notice Packet that was returned by the USPS as undeliverable and without a forwarding address, the Settlement Administrator performed an advanced address search (i.e. skip trace) using TransUnion TLOxp. (*Id.* ¶ 6). The Settlement Administrator used the advanced address search to locate updated addresses and promptly mailed the Notice Packets to those updated addresses. Ultimately, there were 0 Notice Packets that were undeliverable. (*Id.* ¶ 7). In sum, these figures evidence that there was a **100%** success rate in mailing the Notice Packets.

In accordance with California Rules of Court, Rules 3.766(d) and 3.769(f), the Notice Packet, which was provided in English and Spanish, provided Class Members with (1) a brief explanation of the case; (2) an explanation of each Settlement Class Member's right to opt out of the settlement class; (3) an explanation of the process (and relevant deadlines) through which a Settlement Class Member could opt out of the settlement class; (4) notice about the binding nature of the Judgment for Class Members who do not opt out; (5) an explanation of each 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 Kruckenberg 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 (Kruckenberg Decl. ¶¶ 8-9). Thus, the  
17 Class 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, Plaintiff 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.       PLAINTIFF’S 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, Plaintiff 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           Plaintiff’s 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

1 Greenwell misunderstands Kullar, apparently interpreting it to  
2 require the record in all cases to contain evidence in the form of an  
3 explicit statement of the maximum amount the plaintiff class could  
4 recover if it prevailed on all its claims – a number which appears  
5 nowhere in the record of the case. But Kullar does not, as  
6 Greenwell claims, require any such explicit statement of value; it  
7 requires a record which allows “an understanding of the amount  
8 that is in controversy and the realistic range of outcomes of the  
9 litigation.”

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

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

25 **V. THE REQUESTED ATTORNEYS’ FEES ARE FAIR AND REASONABLE**

26 For their efforts in creating a common fund for the benefit of the class, the Stipulation  
27 provided that Class Counsel seek reasonable fees of \$116,666.66 (one-third of the Settlement  
28 Amount), which is the common fund. This amount will be paid from the Settlement Amount, as  
provided by the Settlement Agreement. These fees are warranted under the law and within the  
range of fees commonly awarded in similar cases.

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

10 **A. PLAINTIFF IS ENTITLED TO RECOVER REASONABLE ATTORNEYS' FEES UNDER**  
11 **THE LABOR CODE**

12 Plaintiff and the Class are entitled to recover reasonable attorneys' fees, expenses and  
13 costs under section 218.5 of the California Labor Code, which provides that, "[i]n any action  
14 brought for the nonpayment of wages ... the Court shall award reasonable attorneys' fees and  
15 costs to the prevailing party." In addition, Plaintiff and the Class are entitled to recover  
16 reasonable attorneys' fees pursuant to section 1194.2 of the Labor Code, which provides that,  
17 "... any employee receiving less than the legal minimum wage ... applicable to the employee is  
18 entitled to recover in a civil action the unpaid balance of the full amount of this minimum  
19 wage... including ... reasonable attorney's fees, and costs of suit." Plaintiff and the Class are  
20 also entitled to fees and costs under section 226(e) of the Labor Code (employee who prevails on  
21 claim for itemized wage statement violation "is entitled to an award of costs and reasonable  
22 attorneys' fees"), under PAGA (Labor Code § 2699(g), which provides "Any employee who  
23 prevails in any action shall be entitled to an award of reasonable attorney's fees and costs,  
24 including any filing fee paid"), and, potentially, section 1021.5 of the California Code of Civil  
25 Procedure.

26 ///

27 ///

28 ///

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

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

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

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

26           The California Supreme Court’s recent *Laffitte* decision was consistent with its prior  
27 rulings recognizing that “when a number of persons are entitled in common to a specific fund,  
28 and an action brought by ... plaintiffs for the benefit of all results in the creation or preservation

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

15 **2. The High Quality of Work and Excellent Result Obtained Support the**  
16 **Award**

17 In addition to the fact that a Class benefit was created with a \$350,000 non-reversionary  
18 common fund settlement, the fairness of the requested fee award of 1/3 of the Settlement  
19 Amount is supported by the high quality of work performed by Class Counsel and the positive  
20 result obtained for the Class. This result occurred because Class Counsel diligently, efficiently,  
21 and creatively pursued this case and reached a settlement for the benefit of the entire Class. The  
22 fact that the settlement was embraced and supported by the Class, as evidenced by a 100%  
23 participation rate, demonstrates that Class Counsel obtained a favorable result for the Class.

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

25 Rule 3.769 of the California Rules of Court requires that the Class Members be given  
26 notice of any agreement regarding an application for attorneys' fees. Here, the Notice  
27 preliminarily approved by the Court and distributed to the Class Members apprised them that  
28 "Class Counsel will ask for fees of one-third (\$116,666.66) of the common fund Settlement

1 Amount as reasonable compensation for the work Class Counsel performed and will continue to  
2 perform in this Lawsuit through finalization of the Settlement...” (Kruckenberg Decl., Exh. A.)

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

11 **4. The Contingent Nature of Class Counsel’s Representation of Plaintiffs**  
12 **and the Class Further Supports the Fee Award at 1/3 of the Common**  
13 **Fund**

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

20 Indeed, as Plaintiff’s Counsel can attest, not all class/PAGA cases are successful. Many  
21 cases end with no fees or a greatly reduced fee that is far less than lodestar, often due to no fault  
22 of counsel (i.e., bankruptcy, change in the law, consolidation/coordination/preemption, being top  
23 filed, etc.). According to Mayer Brown LLP’s study entitled, An Empirical Analysis of Class  
24 Actions, cited in *Laguna v. Coverall North America, Inc.* (9th Cir. 2014) 753 F.3d 918, found  
25 that only one-third of class actions are successful, compared to two-thirds that are defeated and  
26 result in no payment to the class members.<sup>1</sup>

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

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<sup>1</sup> [www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf](http://www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf)

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

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

13           The actual aggregated lodestar between the attorneys that worked on this case is  
14 approximately \$105,167. This results in a multiplier of only 1.1, which clearly demonstrates that  
15 the requested fee is justified, reasonable and appropriate. The aggregated lodestar is summarized  
16 in the following table, and in the submitted declaration of Plaintiff’s counsel:

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<sup>2</sup> In practice, the lodestar method is difficult to apply, time-consuming to administer, inconsistent in result, and  
28 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.

| Attorney/Timekeeper                                             | Rate         | Hours                 | Fee              |
|-----------------------------------------------------------------|--------------|-----------------------|------------------|
| <b>Brian J. Mankin</b><br><i>Trial Counsel</i><br>(20 years)    | <b>\$695</b> | <b>73<sup>3</sup></b> | <b>\$50,735</b>  |
| <b>Peter J. Carlson</b><br><i>Senior Associate</i><br>(7 years) | <b>\$540</b> | <b>100.8</b>          | <b>\$54,432</b>  |
| <b>Grand Total for All Attorneys</b>                            |              |                       | <b>\$105,167</b> |

(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 Laffrey Matrix at [www.laffreymatrix.com](http://www.laffreymatrix.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,

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<sup>3</sup> 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.)<sup>4</sup>. (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 Plaintiff's Counsel's lodestar, all of which confirms that the fee  
10 request is fair and reasonable.

11 Class Counsel have also been routinely awarded their requested rates in Riverside and  
12 San Bernardino), including the following non-exhaustive list of cases: *Hill v. Amazon.com LLC*,  
13 et al., Riverside Superior Court, Case No. RIC1614641 (Sept. 17, 2018); *Cuevas v. FHI, LLC*,  
14 Riverside Superior Court, Case No. RIC1713814 (Nov. 15, 2018); *Mitchell v. American*  
15 *Residential Services*, Riverside Superior Court, Case No. RIC1709360 (Feb. 14, 2018); *Wetzlich*  
16 *v. SharkNinja Management Company*, San Bernardino Superior Court, Case No. CIVDS1700491  
17 (July 31, 2018); and *Bass v. Southern Refrigerated Transport*, San Bernardino Superior Court,  
18 Case No. CIVDS 1705054 (Aug. 6, 2018).

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

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27 <sup>4</sup> 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 **VI. THE REQUESTED COSTS AND SERVICE AWARDS ARE REASONABLE**

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

3 The Settlement Agreement authorized litigation costs of up to \$15,000. (S.A. ¶ 64(b)).  
4 Class Counsel's actual costs through the final approval hearing were \$13,401.51, so this is the  
5 amount requested. The saving will be placed in the Net Settlement Amount for payment to the  
6 Class Members. (Mankin Decl. ¶ 26). These costs include mediation fees, filing fees, online  
7 research, travel/parking charges, CourtCall charges, and process server fees.

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

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

19 Under the Settlement, Defendants agreed to pay a Service Award of \$7,500 to Plaintiff  
20 in recognition of his contribution as a Class Representative.

21 Plaintiff came forward and undertook significant risks, including the risk of being  
22 blackballed in the industry and the risk that he could have been liable for Defendants' costs if  
23 he lost. This factor is a significant one for a wage earner, and the potential risk is very real.  
24 *See Whiteway v. FedEx Kinkos Office & Print Svcs., Inc.* (N.D. Cal. Dec. 17, 2007) 2007 WL  
25 4531783, at \*3 ("the few courts to consider this 'class representatives' dilemma' have not  
26 found it inequitable to assess costs upon the lead or named plaintiff in a class action.").

27 Plaintiff also committed a significant number of hours to assist with the  
28 litigation/settlement processes of this case and entered into a general release of all claims

1 against Defendants, whereas the Class Members only released the claims alleged. The  
2 requested Service Awards are reasonable, particularly in light of the substantial benefits  
3 Plaintiff generated for the Class Members, and the risks he undertook. (See Plaintiff's Decl. ¶  
4 4-7).

5 The Notice sent to each Class Member detailed the proposed service award. No Class  
6 Member objected to the proposed payment to Plaintiff. Thus, Plaintiff's request that the Court  
7 approve the awards because it is both reasonable and appropriate.

## 8 **VII. OTHER MATTERS FOR FINAL APPROVAL**

### 9 **A. SETTLEMENT ADMINISTRATION COSTS**

10 The Administrator, Phoenix, agreed to administer the settlement for a flat-fee of  
11 \$7,000. (Kruckenberg Decl. ¶ 14). As such, the Parties request that the Administrator's fee be  
12 approved.

### 13 **B. UNCASHED CHECKS**

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

### 16 **C. FINAL REPORT**

17 Defendants are required to fund the Settlement Amount with 20 days of the Effective  
18 Date, which will be the date of Final Approval in light of the lack of objections and requests to  
19 intervene. The Settlement Administrator will have 10 days after receipt of payment to issue  
20 checks to the Class Members, who will then have 180 days to cash their checks. However, the  
21 process of submitting funds to the State Controller can take an additional year after the check  
22 cashing deadline, so the Parties propose submitting a final report in the form of a declaration  
23 from the Administrator (setting forth the money that was actually paid to the class members  
24 and potentially the State Controller) approximately 8-10 months after the check cashing  
25 deadline.

### 26 **D. SUBMISSION TO THE LWDA**

27 As set forth in the Mankin Declaration at ¶ 28, the settlement and this motion are  
28 concurrently being submitted to the LWDA in accordance with Labor Code § 2699(1)(2).

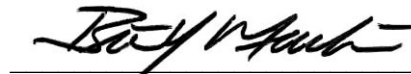
1 **VIII. CONCLUSION**

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

4 Dated: July 12, 2021

LAUBY, MANKIN & LAUBY LLP

5  
6 BY:



7 Brian J. Mankin, Esq.  
8 Attorneys for Plaintiff 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 July 12, 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](mailto: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 July 12, 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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