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Attorneys for Plaintiff Yvonne Labra and on behalf of the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

YVONNE LABRA, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

SUTTER STREET MANUFACTURING,
INC., a California Corporation; WILLIAMS-
SONOMA, INC., a Delaware Corporation;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: 20STCV18751
[Assigned to the Hon. Ann I. Jones, Dept.
SS11]

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

Hearing:

Date: September 23, 2021
Time: 10:00 a.m.
Dept.: 11

Complaint Filed: May 15, 2020

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on September 23, 2021, at 10:00 a.m., or as soon
3 thereafter as this matter may be heard by the Honorable Ann I. Jones in Department 11 of the
4 above-captioned court, located at 312 North Spring Street, Los Angeles, California 90012,
5 Plaintiff Yvonne Labra, individually and on behalf of all others similarly situated, will
6 respectfully move this Court for an Order granting final approval of the class action settlement
7 between Plaintiff and Defendants, which was preliminarily approved by the Court on May 21,
8 2021. This Motion, which is supported by Defendants Sutter Street Manufacturing, Inc., and
9 Williams-Sonoma, Inc. (collectively, “Defendants”), seeks final approval and entry of judgment
10 of a \$1,824,000 settlement on behalf of the Class Members.

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

- 14 1. Finally certifying the Class, as defined in the Settlement Agreement and the
15 Court’s Order Granting Preliminary Approval of the Settlement;
- 16 2. Finally appointing Plaintiff as the Class Representative for purposes of settlement;
- 17 3. Finally appointing Brian Mankin, Mehrdad Bokhour and Peter Carlson as Class
18 Counsel for purposes of settlement;
- 19 4. Finding that the Class Notice was properly provided to the Class in accordance
20 with the Court’s Order granting Preliminary Approval;
- 21 5. Finally approving the settlement as fair, adequate, and reasonable, based upon the
22 terms set forth in the Settlement Agreement;
- 23 6. Binding participating Class Members to the terms of the Settlement Agreement,
24 including the Release specified therein; and
- 25 7. Retaining jurisdiction to enforce the Settlement Agreement.

26 This Motion will be based upon this notice; the attached memorandum of points and
27 authorities; the Declarations of the Settlement Administrator (Daniel La of CPT Group, Inc.),
28 Class Counsel (Brian Mankin, Peter Carlson, and Mehrdad Bokhour) and Plaintiff (Yvonne

1 Labra) filed concurrently herewith; the records and files in this action; and any other further
2 evidence or argument that the Court may receive at or before the hearing.

3 Dated: August 30, 2021

LAUBY, MANKIN & LAUBY LLP

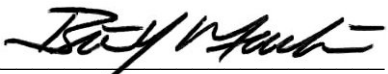
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5 BY: 
6 Brian J. Mankin, Esq.
7 Attorneys for Plaintiff and the Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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 Class Action Settlement Agreement
5 (“Settlement Agreement”) already on file in this action, which is supported and unopposed by
6 Defendants Sutter Street Manufacturing, Inc., and Williams-Sonoma, Inc., and enter the
7 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 \$1,824,000 settlement with the
11 assistance of Mark Rudy, who is one of the most experienced and reputable class action
12 mediators in California, that is tailored to a limited release of the claims alleged on behalf of 996
13 Class Members;

14 • The Class Members were deemed to participate in the Settlement, and were not
15 required to submit a Claim Form to receive funds;

16 • There is no reversion to Defendants;

17 • There are zero objections and only two opt-outs to the Settlement, meaning 99.8%
18 of the Class will participate in the Settlement.

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

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

24 Plaintiff and the Class Members are non-exempt employees employed by Defendants at
25 warehouses and/or manufacturing facilities in California (the “Class” or “Class Members”) at
26 any time during the period of May 15, 2016, through March 6, 2021 (the “Class Period”). The
27 primary claims, which Defendants dispute, involved allegations that the Class Members were not
28 paid all wages owed as a result of a non-neutral rounding policy, unpaid security checks and not

including earned bonuses into the overtime rate of pay computation. Additionally, Plaintiff alleged claims for not providing compliant meal and rest breaks, wage statement violations, waiting time penalties and PAGA penalties.

The Settlement includes 996 Class Members, which is *less* than the 1,100 estimated at preliminary approval. As a result of the decrease in class size, as well as Class Counsel's actual litigation costs being less than the maximum allowable costs, the Class will receive more money than projected at preliminary approval on average. The following is a breakdown reflecting how the funds are allocated under the Settlement Agreement (Declaration of Administrator, Daniel La ("La Decl."), ¶ 11):

	Total Amount
<i>Settlement Amount</i>	\$1,824,000
Attorneys' Fees (1/3)	\$608,000
Litigation Costs	\$14,721.14
Administrator Costs	\$10,500
PAGA payment to LWDA (75% of \$50k award)	\$37,500
Class Representative's Service Award	\$10,000
<i>Net Settlement Amount</i>	\$1,143,278.86

The 996 Participating Class Members were deemed to participate and did not need to submit a Claim Form to receive payment. (Settlement Agreement or "S.A." ¶¶ 20, 46). 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 ¶ 44(c).)

Assuming all of the amounts in the Settlement are approved by the Court, the *average* individual settlement payment is estimated to be \$1,150.18 and the *highest* individual settlement payment is approximately \$3,344.91 for an employee who worked the entire Class Period. There are a total of 85,791 work weeks in the Class Period, resulting in a per work week value of \$13.33. (La Decl. ¶ 12).

Thirty percent (30%) of each Individual Settlement Amount shall constitute wages (for which each participating Class Member will be issued an IRS Form W-2 for such payment), and

1 the remaining eighty percent (70%) shall constitute interest and penalties (allocated as one-third
2 each for which each participating Class Member will be issued an IRS Form 1099 for the interest
3 and penalty allocation). (S.A. ¶ 44(d)). The Settlement Agreement provides that Defendants
4 shall deposit the Settlement Amount within 21 days of the Effective Date (S.A. ¶ 65), which will
5 be the date of the Notice of Entry of Order regarding Final Approval of the Settlement since no
6 Class Member has objected or moved to intervene. Additionally, Defendants will separately
7 fund their share of payroll taxes. Within 14 days of receipt, the Settlement Administrator shall
8 issue payments to cover all court-approved payments. (S.A. ¶ 66).

9 **III. THE NOTICE PROCESS**

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

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

14 Prior to mailing the Class Notice, the Settlement Administrator performed a National
15 Change of Address search on all Class Members to determine if any had moved. (La Decl., ¶ 5.)
16 On June 22, 2021, the Class Notice was sent via first-class mail to the Class Members. (La
17 Decl., ¶ 6). Thereafter, 20 packets were returned as undeliverable. The Administrator was able
18 to locate updated addresses for 14 individuals using a skip trace or other means. Ultimately, only
19 7 Class Notices were determined to be undeliverable. (La Decl., ¶ 7). Accordingly, there was a
20 **99.3%** success rate in mailing the Class Notice.

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

1 explanation of each Settlement Class Member’s right to participate in the Settlement and receive
2 payment accordingly. (See **Exhibit A** to the La Decl.)

3 **B. There are Zero Objections and Only Two Opt-Outs Resulting In An**
4 **Impressive 99.8% of the Class Participating in the Settlement**

5 California law makes clear that the percentage of objectors and opt-outs is an important
6 factor in the Court’s consideration of a proposed class action settlement. (See *Dunk v. Ford*
7 *Motor Co. (1996) 48 Cal.App.4th 1794* at 1802.) Indeed, the Ninth Circuit and other federal
8 courts recognize that in the final fairness analysis, the number or percentage of class members
9 who object to the settlement is a significant factor. (See *Mandujano v. Basic Vegetable Prods.,*
10 *Inc., (9th Cir. 1976) 541 F.2d 672, 677; In re American Bank Note Holographics, Inc. (SDNY*
11 *2001) 127 F.Supp.2d 418, 425* [“[i]t is well settled that the reaction of the class to the settlement
12 is perhaps the most significant factor to be weighed in considering its adequacy.”])

13 In this case, as noted above, there are zero objections and only two opt-outs to the
14 Settlement -- meaning that 99.8% of the Class Members are participating in the Settlement and
15 will receive a settlement payment after final approval. (La Decl., ¶ 10). Thus, it is clear that the
16 Class viewed this as a fair and reasonable settlement.

17 **V. EVALUATION OF THE SETTLEMENT**

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

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

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 compensate all Class Members fairly and
25 adequately. 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 substantial written discovery,
4 analyzing substantial amounts of information, correspondence, documents, policies and
5 procedures, pay data and timekeeping records, and evidence relating to the class size and the
6 commonality of the claims. During this process, Plaintiff and Class Counsel conducted
7 investigations into the potential claims of the similarly situated employees, as well as researching
8 and investigating Defendants' defenses. Finally, Class Counsel synthesized and analyzed
9 information provided by Defendants as to the total Class Members, the number of current and
10 former employees, the number of employees who worked during various time periods, and
11 prepared comprehensive damages calculations regarding the 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 represented (and
15 hereby do represent) that this Settlement is fair and reasonable. (Mankin Decl., ¶¶ 13, 35;
16 Carlson Decl., ¶¶ 2-6, Bokhour Decl. ¶¶ 4-7, 10, see *7-Eleven Owners for Fair Franchising v.*
17 *Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152 [Final approval of settlement affirmed where
18 counsel were all experienced litigators with class-action experience and had recommended
19 settlement based on the negotiated terms].)

20 **D. Reasonable Estimate of the Nature and Amount of Recovery**

21 Plaintiff's Motion for Preliminary Approval contained a comprehensive *Kullar* analysis
22 (which sufficiently provided the Court with "basic information about the nature and magnitude
23 of the claims in question and the basis for concluding that the consideration being paid for the
24 release of those claims represents a reasonable compromise." (*Kullar v. Foot Locker Retail,*
25 *Inc.* (2008) 168 Cal.App.4th 116, 133.) Of course, a settlement is not judged against what
26 might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to
27 provide 100% of the damages sought to be fair and reasonable. (*Wershba v. Apple Computers,*
28 *Inc.* (2001) 91 Cal.App.4th 246, 250.) ("Compromise is inherent and necessary in the settlement

1 process ... even if the relief afforded by the proposed settlement is substantially narrower than it
2 would be if the suits were to be successfully litigated, this is no bar to a class settlement because
3 the public interest may indeed be served by a voluntary settlement in which each side gives
4 ground in the interest of avoiding litigation.”)

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

13 Of course, Defendants deny that any damages should be assessed and denies all of the
14 value assessed by Plaintiff. Notwithstanding these arguments, the Settlement commits
15 Defendants to pay \$1,824,000 to settle the litigation.

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

17 For their efforts in creating a common fund for the benefit of the Class, the Settlement
18 Agreement provided that Class Counsel may seek reasonable fees of \$608,000 (one-third of the
19 Settlement Amount). This amount will be paid from the settlement amount, as provided by the
20 Settlement Agreement. These fees are warranted under the law and within the range of fees
21 commonly awarded in similar cases.

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

(2016) 1 Cal.5th 480, and through the prism of a lodestar cross-check. Accordingly, this request should receive final approval.

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

Plaintiff and the Class in this action are entitled to recover reasonable attorneys’ fees, expenses and costs under section 218.5 of the California Labor Code, which provides that, “[i]n any action brought for the nonpayment of wages ... the Court shall award reasonable attorneys’ fees and costs to the prevailing party.” In addition, Plaintiff and the Class are entitled to recover reasonable attorneys’ fees pursuant to section 1194.2 of the Labor Code, which provides that, “... any employee receiving less than the legal minimum wage ... applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage... including ... reasonable attorney’s fees, and costs of suit.” Plaintiff is 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 **1. *The Attorneys' Fees Requested Here Fall Within the Reasonable***
2 ***Range Awarded in Similar Cases Under the Well-established***
3 ***Common Fund Method***

4 Recently, the California Supreme Court approved trial courts' usage of the common fund
5 method of awarding attorneys' fees in wage and hour class actions, like this one, and upheld a
6 fee awarded of 1/3 of the total settlement amount obtained for the class. *See Laffitte v. Robert*
7 *Half Int'l Inc.* (2016) 1 Cal. 5th 480, 506 ("when class action litigation establishes a monetary
8 fund for the benefit of the class members, and the trial court in its equitable powers awards class
9 counsel a fee out of that fund, the court may determine the amount of a reasonable fee by
10 choosing an appropriate percentage of the fund created"); *see also*, 4 Newberg on Class Actions,
11 § 14:6 at 552 ("fee awards in class actions average around one-third of the recovery").

12 **2. *The High Quality of Work and Excellent Result Obtained Support***
13 ***the Award***

14 In addition to the fact that a Class benefit was created with a \$1,824,000 non-reversionary
15 common fund settlement, the fairness of the requested fee award of 1/3 of the Settlement
16 Amount is supported by the high quality of work performed by Class Counsel and the positive
17 result obtained for the Class. This great result occurred because Class Counsel diligently,
18 efficiently, and creatively pursued this case and reached a successful settlement for the benefit of
19 the entire Class. In fact, some Class Member will receive more than \$3,344, which is an
20 excellent result. Moreover, the fact that the settlement was embraced and supported by the
21 Class, as evidenced by a 99.8% participation rate, demonstrates that Class Counsel obtained a
22 favorable result for the Class.

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

24 Rule 3.769 of the California Rules of Court requires that the Class Members be given
25 notice of any agreement regarding an application for attorneys' fees. Here, the Notice
26 preliminarily approved by the Court and distributed to the Class Members apprised them that
27 "Class Counsel will ask for fees of one-third (\$608,000) of the Settlement Amount as reasonable
28 compensation for the work Class Counsel performed and will continue to perform in this lawsuit

1 through Settlement finalization...” (La Decl., Exh. A.)

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

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

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

23 If Plaintiff had lost this case, Class Counsel would have recovered nothing, and would
24 have lost its out-of-pocket costs. This is not an easy burden for Plaintiff’s Counsel, which are
25 two small firms. (Mankin Decl. ¶ 20, Bokhour Decl. ¶ 18). If, despite these hardships and risks,
26 the best Plaintiff’s Counsel could hope for is merely to be paid its customary hourly rate
27 multiplied by the number of hours worked on all cases (including cases like this where the
28 lodestar is far greater than the potential fee award), then Class Counsel would not be

1 compensated for the hardships and serious risks they faced litigating this contingency case, and
2 would not be incentivized to take on similar cases in the future. (*Id.*)

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

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

20 *Id.* at 399-400.

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

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

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

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

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

14 Historically, California courts have approved multipliers of 1.5 to 4. *See Coalition for*
15 *Los Angeles County Planning v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 251
16 **(multiplier of 2+ approved)**; *Sternwest Corp v. Ash* (1986) 183 Cal.App.3d 74, 75. The
17 multiplier requested by Class Counsel below is within the range of multipliers found to be
18 appropriate by various federal and state courts in California. In *Sternwest Corp. v. Ash* (1986)
19 183 Cal.App.3d 74, for instance, the Court of Appeal remanded for a lodestar enhancement of
20 **“two, three, four or otherwise.”** *Id.* At 76; *see also Wershba*, 91 Cal.App.4th at 255
21 **(“Multipliers can range from 2 to 4 or even higher”)**; *City of Oakland v. Oakland Raiders*
22 (1988) 203 Cal.App.3d 78, 83 **(affirming 2.34 multiplier)**; *Coalition for Los Angeles County*
23 *Planning in the Pub. Interest v. Board of Supervisors*, 76 Cal.App.3d 241, 251 **(affirming**
24 **multiplier of approximately 2)**; *Craft v. County of San Bernardino*, 2008 U.S. Dist. LEXIS
25 27526 (C.D. Cal. Apr. 1, 2008) **(applying 5.2 multiplier)**; *See also Steinder v. Am. Broadcasting*

26 _____
27 ² 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.

Co., Inc. (9th Cir. 2007) 248 Fed. Appx. 780, 783 (**approving multiplier of 6.85** and citing cases with comparable or higher multipliers); *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 (finding no abuse of discretion in **awarding a multiplier of 3.65**). In *Torchia v. WW Grainger, Inc.* (E.D. Cal. 2014) 304 F.R.D. 256, 275-278, a federal magistrate in Fresno approved attorneys' fees of \$550,000 **constituting a 3.57 multiplier** on class counsel's total lodestar of \$153,856, in a wage and hour class action where class counsel expended 457.85 hours on the case, engaged in limited formal discovery, and where the case settled for \$2,750,000 within one year from filing the Complaint with 909 class members claiming \$1,305,200 and the 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 \$259,251, resulting in a multiplier of only 2.35, which is summarized in the following table, and in the declaration of Class Counsel:

Attorney	Experience	Hourly Rate	Hours	Total Lodestar
Brian Mankin	20 years	\$695	145 ³	\$100,775
Peter Carlson	7 years	\$540	151.9	\$82,026
Mehrdad Bokhour	8 years	\$550	139	\$76,450
Total Lodestar				\$259,251

(See Mankin Decl., ¶ 27; Bokhour Decl., ¶ 19, Carlson Decl. ¶ 7.)

Class Counsel's requested rates of \$695, \$540, and \$550 are reasonable under the Laffey Matrix (www.laffeymatrix.com) which indicates that the benchmark rate for an attorney with 20+ years of experience (such as Mr. Mankin) is \$914, while the rate for attorneys with 8-10 years of experience (such as Messrs. Carlson and Bokhour) is \$672. 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

³ Includes an estimated 30 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 and analyzes this data to provide the hourly rates for partners and associates in major
2 metropolitan areas. For the southern California area, which is based on billing entries for 1,125
3 partners and 1,566 associates, the Real Rate Report states that: (a) the rates for partners in Los
4 Angeles is between \$640 and \$869.75 per hour for the middle and upper quartiles, and (b) the
5 rates for associates in Los Angeles is between \$478.74 and \$638.97 for the median and upper
6 quartiles. And, perhaps most importantly, the information provided in the Real Rate Report is not
7 based on self-reported numbers, surveys, sampling, or reviews or other publications – instead,
8 the Real Rate Report is based on the actual hours and fees billed by law firms. These numbers
9 are not surprising given that a 4-year-old article in the National Law Journal stated that in **2014**
10 partners in Los Angeles charge an average of \$665, while the average associate rate is \$401.
11 (Sloan, \$1,000 Per Hour Isn't Rare Anymore; Nominal Billing Levels Rise, But Discounts Ease
12 Blow (2014) Nat. Law Journal.)⁴. (Mankin Decl., ¶ 24-26.)

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

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

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28 ⁴ The article notes that at Irell & Manella, the average partner rate is \$890/hr; Mannatt, Phelps & Phillips is \$740/hr; O'Melveny & Meyers is \$715/hr; and Jeffer Mangels Butler & Mitchell is \$690/hr. *Id.*

1 **VII. 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 \$20,000 (Settlement
4 Agreement ¶ 44(f)). However, Class Counsel's actual combined costs through the final
5 approval hearing are estimated to be \$14,721.14. (Mankin Decl. ¶ 29, reporting \$8,671.34 in
6 costs for his firm; and Bokhour Decl. ¶ 24, reporting \$6,049.80 for his firm.) Since Class
7 Counsel's actual costs were less than the amount allocated, the saving will be placed in the Net
8 Settlement Amount. These costs include mediation fees, filing fees, travel/parking charges,
9 CourtCall charges, and court filing fees, and process server fees.

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

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

21 Under the Settlement, Defendants agreed to pay a Service Award in the amount of
22 \$10,000 to Ms. Labra in recognition of her contributions as the Class Representative. Ms.
23 Labra came forward and undertook significant risk, including the risk of being blackballed in
24 the industry and the risk that she could have been liable for Defendants' costs if she lost. This
25 factor is a significant one for a wage earner, and the potential risk is very real. (*See Whiteway*
26 *v. FedEx Kinkos Office & Print Svcs., Inc.* (N.D. Cal. Dec. 17, 2007) No. C 05-2320 SBA,
27 2007 WL 4531783, at *3 ("the few courts to consider this 'class representatives' dilemma'
28 have not found it inequitable to assess costs upon the lead or named plaintiff in a class

1 action.”).)

2 Ms. Labra also committed a significant number of hours to assist with the
3 litigation/settlement processes of this case. Finally, she entered into a general release of all
4 claims against Defendants, whereas the Class Members only released the claims alleged. The
5 requested Service Payment is reasonable, particularly in light of the substantial benefits
6 Plaintiff generated for the Class Members, the risks she undertook, and in exchange for
7 executing a general release against Defendant while giving up the right to pursue separate
8 individual claims. (See Plaintiff’s Declaration ¶¶ 5-10.)

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

12 **VIII. OTHERS MATTERS RE: FINAL APPROVAL**

13 **A. Settlement Administration Costs**

14 The parties agreed that the Administrator, CPT Group, would be compensated for
15 services performed. The Administrator’s flat fee is \$10,500, which included considerable
16 work performed by the administrator in resolving the data issues. (La Decl., ¶ 13.)

17 **B. Notice of Final Judgment to the Class**

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

21 **C. Uncashed Checks**

22 The Settlement Agreement provides that unclaimed funds will be submitted to the
23 California State Controller’s Office in the name of the Class Member. (S.A. ¶ 67.)

24 **D. Final Report**

25 Defendants’ payment is due 21 days after the Final Order is entered. The Administrator
26 then has 14 days thereafter process the funds and issue checks to the Class Members, who will
27 then have 180 days to cash their checks. Accordingly, the Parties project that the check
28 cashing deadline will occur approximately 9-10 months after Final Approval. However, there

1 is currently an approximate one-year delay after the check cashing deadline before the
2 Settlement Administrator can transmit the uncashed check fund to the State Controller. As
3 such, the Parties propose submitting a final report in the form of a declaration from the
4 Administrator (setting forth the money that was actually paid to the class members and
5 potentially the unclaimed funds) approximately 22 months after the Final Approval hearing
6 date (i.e., July 2023).

7 **E. Submission to the LWDA**

8 As set forth in the Mankin Declaration at ¶ 31, the Settlement Agreement and this
9 motion are concurrently being submitted to the LWDA in accordance with Labor Code §
10 2699(1)(2), as they were at the time of preliminary approval. The LWDA has not commented
11 on the Settlement to date.

12 **IX. CONCLUSION**

13 Plaintiff respectfully submits that the Settlement is fair, adequate, and reasonable, and
14 merits final approval.

15 Dated: August 30, 2021

LAUBY, MANKIN & LAUBY LLP

16
17 BY: _____



18 Brian J. Mankin, Esq.
19 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 August 30, 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 August 30, 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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