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

JOSEPH GREENDALE, individually, on a  
representative basis, and on behalf of all  
others similarly situated;

Plaintiff,

vs.

ANDERSEN DISTRIBUTION, INC., a  
Delaware Corporation; ANDERSEN  
LOGISTICS SACRAMENTO LLC, a  
Minnesota Limited Liability Company;  
ANDERSEN WINDOWS, INC., a Minnesota  
Corporation; RENEWAL BY ANDERSEN,  
LLC, a Minnesota Limited Liability  
Company; and DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVDS2016569  
*[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: July 11, 2023  
Time: 9:00 a.m.  
Dept: S26

Complaint filed: August 3, 2020

TO THE COURT AND PARTIES OF RECORD:

PLEASE TAKE NOTICE THAT on July 11, 2023, 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 Joseph Greendale will respectfully move this Court for an Order granting final approval  
of the class action settlement between Plaintiff and Defendants Andersen Distribution, Inc.,

1 Andersen Logistics Sacramento LLC, Andersen Windows, Inc., and Renewal By Andersen, LLC  
2 (“Defendants”), which was preliminarily approved by the Court on February 24, 2023. This  
3 Motion, which is supported and unopposed by Defendants, seeks final approval and entry of  
4 judgment of a \$900,000 settlement on behalf of the Class Members.

5 Specifically, Plaintiff will and hereby does move the Court to grant final approval of the  
6 Class Action Settlement Agreement and Release of Claims (the “Settlement Agreement”), and  
7 enter the proposed order and final judgment filed concurrently herewith:

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

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

25 Dated: June 15, 2023

LAUBY, MANKIN & LAUBY LLP

26  
27 BY:

  
28 Brian J. Mankin, Esq.  
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 and  
5 Release of Claims (the “Settlement Agreement” or “S.A.”) already on file in this action, which is  
6 supported and unopposed by Defendants Andersen Distribution, Inc., Andersen Logistics  
7 Sacramento LLC, Andersen Windows, Inc., and Renewal By Andersen, LLC (“Defendants”),  
8 and enter the proposed order and final judgment in this matter.

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

- 11           •       After extensive work, the Parties reached a \$900,000 settlement tailored to a  
12 limited release of the claims alleged on behalf of the Class Members;
- 13           •       The Class Members were deemed to participate in the Settlement, and were not  
14 required to submit a claim form to receive funds;
- 15           •       No reversion to Defendants; and
- 16           •       There are zero objections and only one opt-out, meaning that 99.8% of the Class  
17 elected to participate in the Settlement;

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

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

23           The Andersen companies specialize in manufacturing, distributing, and installing  
24 windows for commercial and residential structures. For settlement purposes, Plaintiff and the  
25 Class Members include all current and former non-exempt employees employed by Defendants  
26 in California at any time during the Class Period of August 3, 2016, through November 27, 2022  
27 (the “Class Members”).<sup>1</sup>

28 \_\_\_\_\_  
<sup>1</sup> The Class Period for employees of Renewal by Andersen, LLC is 1/1/2019 through 11/27/22. See S.A. at ¶ 7.

Plaintiff and the putative class alleged claims for: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to pay vested vacation, (6) failure to timely pay final wages, (7) failure to provide accurate itemized wage statements, (8) unfair and unlawful competition pursuant to Business and Professions Code §17200 *et seq.*, and (9) related claims under PAGA.

The Settlement includes 552 Participating Class Members. The following is a breakdown reflecting how the funds are allocated under the Settlement Agreement (Declaration of Administrator, Jarrod Salinas (“Salinas Decl.”), ¶ 11-12):

|                                            | Total Amount         |
|--------------------------------------------|----------------------|
| <i>Gross Settlement Amount</i>             | \$ 900,000.00        |
| Attorneys’ Fees (1/3)                      | \$ 300,000.00        |
| Litigation Costs                           | \$ 13,068.74         |
| Administrator Costs - Revised <sup>2</sup> | \$ 11,876.62         |
| PAGA Penalties                             | \$ 60,000.00         |
| Class Representative’s Service Award       | \$ 5,000.00          |
| <i>Net Settlement Amount</i>               | <b>\$ 510,054.64</b> |

The Class Members were deemed to participate and did not need to submit a Claim Form to receive payment. Assuming all of the amounts are approved by the Court, the highest payment to Participating Class Members is estimated at \$4,468.43, and the average payment is \$924.01. Of course, the actual payments will be calculated on a pro-rata basis according to the number of Weeks Worked by each Class Member. The Participating Class collectively worked 37,440 Weeks during the Class Period, so each week will have a value of approximately \$13.62. (Salinas Decl. ¶ 11-13).

Additionally, 25% of the PAGA Penalties will be allocated to the Aggrieved Employees. In this case, 469 Aggrieved Employees collectively worked 19,737 Workweeks, and will share in the \$15,000 award (accounting for 25% of the total \$60,000 allocation), resulting in an average

<sup>2</sup> Plaintiff’s motion for preliminary approval contained a flat-fee proposal from Phoenix to administer the settlement for \$9,876.62. However, after receiving the file and Class Data, the Administrator reported that its bid would increase by \$2,000 because there are 4 Defendants (and thus 4 tax filings) instead of the 1 tax filing it originally bid, which will cost an additional \$750 per filing. The Parties submitted a stipulation to the Court to increase the Administrators costs to \$11,876.62, and the Court signed the order on March 22, 2023 approving the increased cost.

1 individual PAGA payment of \$13.98.<sup>3</sup> (Salinas Decl. ¶ 14).

2 The Settlement Agreement provides that 20% of each Individual Class Payment shall  
3 constitute wages (for which each Participating Class Member will be issued an IRS Form W-2  
4 for such payment), and the remaining 80% shall constitute interest and penalties (with IRS Form  
5 1099 reporting). (S.A. ¶ 50(d)). Additionally, the PAGA Penalties payable to the Aggrieved  
6 Employees will be classified entirely as civil penalties and shall be reported as required on an  
7 IRS Form 1099. (S.A. ¶ 50(h)). Defendants will separately pay their share of employer payroll  
8 taxes on the sum allocated to wages. (S.A. ¶ 50(a)).

9 Defendants are required to deposit the Settlement Amount, along with the employers'  
10 share of payroll taxes owed, within 30 calendar days after the "Effective Date." (S.A. ¶ 73).  
11 Within 10 days after the receipt of payment, the Settlement Administrator shall issue payments  
12 to cover all court-approved payments. (S.A. ¶ 74).

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

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

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

18 Prior to mailing the Notice, the Settlement Administrator performed a National Change  
19 of Address search on all Class Members to determine if any had moved. (*Id.* ¶ 4). Then, on  
20 March 13, 2023, the Notice was sent via first-class mail to 553 Class Members to advise each  
21 about the suit and settlement. (*Id.* ¶ 5). Ultimately, it was determined that only one Notice was  
22 undeliverable, meaning that there was a 99.8% success rate in mailing the Notices. (*Id.* ¶ 6-7).

23 In accordance with California Rules of Court, Rules 3.766(d) and 3.769(f), the Notice  
24 provided Class Members with (1) a brief explanation of the case; (2) an explanation of each  
25 Class Member's right to opt out of the settlement class; (3) an explanation of the process (and  
26 relevant deadlines) through which a Class Member could opt out of the settlement class; (4)

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27  
28 <sup>3</sup> For PAGA payments for Aggrieved Employees employed by Renewal by Andersen, LLC, the Workweeks during the time period of August 3, 2019 through June 15, 2021 are assigned twenty-five percent (25%) of their actual value. *See* S.A. at ¶ 53(h).

1 notice about the binding nature of the Judgment for Class Members who do not opt out; (5) an  
2 explanation of each Class Member's right to appear through counsel; (6) an explanation of each  
3 Class Member's right to appear at the fairness hearing and express views on the settlement, i.e.,  
4 object or otherwise respond; and (7) an explanation of each Class Member's right to participate  
5 in the Settlement and receive payment accordingly. (See **Exhibit A** to the Salinas Decl.).

6 **B. THERE ARE ZERO OBJECTIONS AND ONE OPT-OUT, RESULTING IN AN**  
7 **IMPRESSIVE 99.8% CLASS PARTICIPATION IN THE SETTLEMENT**

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

16 Here, there are zero objections and one opt-out to the Settlement, meaning that 99.8% of  
17 the Class Members will receive a share of the Settlement (Salinas Decl. ¶¶ 8-9). Thus, the Class  
18 fully viewed this as a fair and reasonable settlement.

19 **IV. EVALUATION OF THE SETTLEMENT**

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

1 interest in settling and quieting litigation. This is particularly true in class action suits”).

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

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

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

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

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

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

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, 33); *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       ///

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 99% 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.

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

In this hotly contested matter that included substantial amounts of discovery and appellate work, Class Counsel did an exceptional job, including defeating Defendants’ motion to compel arbitration and then opposing Defendants’ efforts to overturn the trial court decision in the Court of Appeal before causing Defendants to settle prior to fully briefing the matter or receiving an appellate decision. For their efforts, the Settlement Agreement provided that Class Counsel may seek reasonable fees of \$300,000 (one-third of the Gross Settlement Amount).

1 This amount will be paid from the Gross Settlement Amount, as provided by the Settlement  
2 Agreement. These fees are warranted under the law and within the range of fees commonly  
3 awarded in similar cases.

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

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

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

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           The California Supreme Court approved trial courts’ usage of the common fund method  
14 of awarding attorneys’ fees in wage and hour class actions, like this one, and upheld a fee  
15 awarded of 1/3 of the total settlement amount obtained for the class. *See Laffitte, supra*, 1 Cal.5th  
16 at 506; *see also*, 4 Newberg on Class Actions, § 14:6 at 552 (“fee awards in class actions average  
17 around one-third of the recovery”). Specifically, in *Laffitte*, the Court wrote: “[w]e join the  
18 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 ... plaintiff for the benefit of all results in the creation or preservation

1 of that fund, such ... plaintiff 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 under the common fund settlement,  
18 the fairness of the requested fee award of 1/3 of the Settlement Amount is supported by the high  
19 quality of work performed by Class Counsel and the positive result obtained for the Class. This  
20 result occurred because Class Counsel diligently, efficiently, and creatively pursued this case and  
21 reached a settlement for the benefit of the entire Class. The fact that the settlement was embraced  
22 and supported by the Class, as evidenced by a 99.8% participation rate, demonstrates that Class  
23 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 (\$300,000) of the common fund Settlement Amount

1 as reasonable compensation for the work Class Counsel performed and will continue to perform  
2 in this Lawsuit through finalization of the Settlement...” (Salinas 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 Plaintiff**  
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 Class Counsel can attest, not all class/PAGA cases are successful. Many cases  
21 end with no fees or a greatly reduced fee that is far less than lodestar, often due to no fault of  
22 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>4</sup>

27 ///

28  

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<sup>4</sup> [www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf](http://www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf)

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

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

Despite recognized limitations of the so-called lodestar method, some California and federal courts acknowledge the utility of a lodestar “cross-check.”<sup>5</sup> (*Lealao, supra*, 82 Cal.App.4th at 46-47.) Under the “lodestar multiplier” method of cross-checking the reasonableness of attorneys’ fees in class actions, the court ascertains Class counsel’s total “lodestar” amount by multiplying the number of hours reasonably expended by each attorney or legal staff member by their hourly rates, and then enhances or reduces this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty or difficulty of the case, its contingent nature, and the degree of success achieved. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 4695-96; *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322; *Lealao, supra*, 82 Cal.App.4th at 43 [court has discretion to use a multiplier to ensure that the “fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation”].) The actual aggregated lodestar between attorneys that worked on this case is approximately \$266,105, resulting in a small 1.13 multiplier, as shown in the following table and declarations of counsel.

| Attorney/Timekeeper                                                    | Rate         | Hours                  | Fee              |
|------------------------------------------------------------------------|--------------|------------------------|------------------|
| <b>Brian J. Mankin</b><br><i>Trial Counsel / Partner</i><br>(22 Years) | <b>\$775</b> | <b>142<sup>6</sup></b> | <b>\$110,050</b> |
| <b>Peter Carlson</b><br><i>Senior Associate</i><br>(9 Years)           | <b>\$575</b> | <b>271.4</b>           | <b>\$156,055</b> |
| <b>Grand Total for All Attorneys</b>                                   |              |                        | <b>\$266,105</b> |

(See Mankin Decl., ¶ 25; Carlson Decl., ¶ 8-9.)

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](http://www.laffeymatrix.com) indicates that

<sup>5</sup> In practice, the lodestar method is difficult to apply, time-consuming to administer, inconsistent in result, and capable of manipulation. In addition, the lodestar creates inherent incentive to prolong the litigation until sufficient hours have been expended. Herr, David F., *Manual for Complex Litigation*, § 14.121 (1988); *See also In re Activision* (N.D. Cal 1989) 723 F.Supp 1373.

<sup>6</sup> Includes an estimated 35 hours of additional work preparing for and attending the hearing, as well as anticipated work to be performed after the final approval hearing with counsel, administrator, employees, and the court.

1 the benchmark rate for an 8–10-year attorney to be \$676/hour and a 11-19 year attorney at  
2 \$764/hour, and a 20+ year attorney at \$919/hour). Moreover, the Wolters Kluwer 2017 Real Rate  
3 Report (“Real Rate Report”) provides directly applicable information in this regard. The Real  
4 Rate Report is based on an enormous and statistically significant compilation of data: 25.8  
5 million billing entries and 23.9 million hours billed by over 112,100 individual timekeepers from  
6 4,620 law firms, totaling \$9.02 billion in fees billed. (See Wolters Kluwer’s ELM Solutions, Inc.,  
7 2017 Real Rate Report). The Real Rate Report then compiles and analyzes this data to provide  
8 the hourly rates for partners and associates in major metropolitan areas. For the southern  
9 California area, which is based on billing entries for 1,125 partners and 1,566 associates, the  
10 Real Rate Report states that: (a) the rates for partners in Los Angeles is between \$640 and  
11 \$869.75 per hour for the middle and upper quartiles, and (b) the rates for associates in Los  
12 Angeles is between \$478.74 and \$638.97 for the median and upper quartiles. And, perhaps most  
13 importantly, the information provided in the Real Rate Report is not based on self-reported  
14 numbers, surveys, sampling, or reviews or other publications – instead, the Real Rate Report is  
15 based on the actual hours and fees billed by law firms. (Mankin Decl., ¶ 24.)

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

19 Class Counsel are also highly experienced in Class/PAGA litigation, including having  
20 been named by the LA Times as one of “Southern California Leading Lawyers” in the May 2023  
21 issue of Consumer Attorneys of Southern California (a recognition given to only 17  
22 employment/labor attorneys), plus having been selected as a “Super Lawyer” in employment  
23 litigation over the last five consecutive years, having achieved large settlements including one of  
24 the largest PAGA awards in California’s history and collecting in excess of \$250 million for  
25 their clients, having prevailed at trial against two separate Fortune 100 companies, including a  
26 PAGA-only action in Orange County and a Class Action jury trial in Los Angeles. (Mankin  
27 Decl. ¶¶ 2-6). Indeed, Class Counsel’s rates are typical of the rates charged by defense counsel  
28 with similar experience doing similar employment law work in this region.

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 \$20,000. (S.A. ¶ 50(f)).  
4 However, Class Counsel's actual costs through the final approval hearing were \$13,068.74, so  
5 this is the amount requested. The saving will be placed in the Net Settlement Amount for  
6 payment to the Class Members. (Mankin Decl. ¶ 27). These costs include mediation fees,  
7 filing fees, expert data analysis costs, 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 plaintiff 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 \$5,000 to Plaintiff  
20 in recognition of his contribution as a Class Representative.

21 His efforts included providing factual background for the Class and PAGA complaint;  
22 providing documents and information about Defendants' compensation plans; participating in  
23 phone calls to discuss litigation and settlement strategy; making himself available throughout  
24 the litigation to assist with analyzing the claims and defenses; helping Class Counsel prepare  
25 for the mediation; and reviewing the settlement documents. The Class Representative also  
26 assumed significant risk in bringing this litigation – namely, had he lost, he could have been  
27 ordered to pay Defendants' costs. This factor is a significant one for a wage earner, and the  
28 potential risk is very real. *See Whiteway v. FedEx Kinkos Office & Print Svcs., Inc.* (N.D. Cal.

1 Dec. 17, 2007) 2007 WL 4531783, at \*3 (“the few courts to consider this ‘class  
2 representatives’ dilemma’ have not found it inequitable to assess costs upon the lead or named  
3 plaintiff in a class action.”)

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

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

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

14 **A. SETTLEMENT ADMINISTRATION COSTS**

15 The Settlement Administrator agreed to administer the settlement for a flat fee of  
16 \$11,876.62. (Salinas Decl. ¶ 16). As noted above, the Parties submitted a stipulation to the  
17 Court to increase the Settlement Administrator’s costs to \$11,876.62, and the Court signed the  
18 order on March 22, 2023, preliminarily approving the increased cost. As such, the Parties  
19 request that the Settlement Administration Costs be approved.

20 **B. UNCASHED CHECKS**

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

23 **C. FINAL REPORT**

24 Defendants are required to deposit the Settlement Amount within 30 calendar days after  
25 the “Effective Date.” The Effective Date will occur 61 days after the Order/Judgment is  
26 entered if there are no appeals filed. The Settlement Administrator will have 10 days after  
27 receipt of payment to issue checks to the Class Members, who will then have 180 days to cash  
28 their checks. Therefore, the earliest date of the check cashing deadline is April 16, 2024. As

1 such, the Parties propose submitting a final report in the form of a declaration from the  
2 Administrator (setting forth the money that was actually paid to the class members and will be  
3 paid to the State Controller) on approximately May 15, 2024.

4 **D. SUBMISSION TO THE LWDA**

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

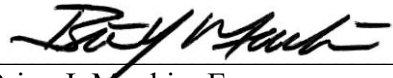
7 **VIII. CONCLUSION**

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

10 Dated: June 15, 2023

LAUBY, MANKIN & LAUBY LLP

11  
12 BY:

  
\_\_\_\_\_  
13 Brian J. Mankin, Esq.  
14 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 5198 Arlington Avenue, PMB 513, Riverside, California 92504.

On June 15, 2023, 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.

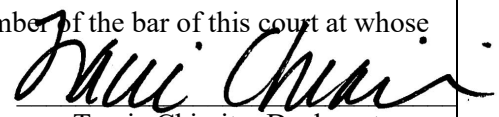
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address [tracie@lmlfirm.com](mailto:tracie@lmlfirm.com) to the persons at the electronic notification 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 June 15, 2023, 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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