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

CESAR TORRES, individually, on a
representative basis, and on behalf of all
others similarly situated; and MARK
EURICH, individually, on a representative
basis, and on behalf of all others similarly
situated;

Plaintiff,

vs.

EPAC LOS ANGELES, LLC, a Delaware
Limited Liability Company; EPAC
NORCAL, LLC, a Delaware Limited
Liability Company; EPAC HOLDINGS,
LLC, a Delaware Limited Liability Company;
EPAC, LLC, a Delaware Limited Liability
Company; and DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVDS2017140
*[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: March 28, 2022
Time: 10:00 a.m.
Dept: S26

Complaint filed: August 24, 2020

TO THE COURT AND PARTIES OF RECORD:

PLEASE TAKE NOTICE THAT on March 28, 2022, 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 Mark Eurich will respectfully move this Court for an Order granting final approval of

1 the class action settlement between Plaintiff and Defendants ePac Los Angeles, LLC, ePac
2 Norcal, LLC, ePac Holdings, LLC and ePac, LLC (“Defendants” or “ePac”), which was
3 preliminarily approved by the Court on December 6, 2021. This Motion, which is supported and
4 unopposed by Defendants, seeks final approval and entry of judgment of a \$120,000 settlement
5 on behalf of the Class Members.

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

9 1. Finally certifying the Class, as defined in the Settlement Agreement and the
10 Court’s Order Granting Preliminary Approval of the Settlement;

11 2. Finally appointing Plaintiff as Class Representative for purposes of settlement;

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

14 4. Finding that the Class Notice was properly provided to the Class in accordance
15 with the Court’s Order granting Preliminary Approval;

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

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

20 7. Retaining jurisdiction to enforce the Settlement Agreement.

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

25 Dated: March 4, 2022

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 (the
5 “Settlement Agreement” or “S.A.”) already on file in this action, which is supported and
6 unopposed by Defendants ePac Los Angeles, LLC, ePac Norcal, LLC, ePac Holdings, LLC and
7 ePac, LLC (“Defendants” or “ePac”), and enter the proposed order and final judgment in this
8 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 \$120,000 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 non-exempt
24 employees in California (the “Class” or “Class Members”) at any time during the period from
25 August 24, 2016, through July 24, 2021 (the “Class Period”). The primary claims involved
26 allegations of failure to pay correct minimum and overtime wages, meal and rest break
27 violations, inaccurate wage statements, failure to timely pay final wages to former employees,
28 and other cascading penalties, including under PAGA.

1 The Settlement includes 69 Participating Class Members (which is slightly more than the
2 60 employees that was projected at preliminary approval). The following is a breakdown
3 reflecting how the funds are allocated under the Settlement Agreement (Declaration of
4 Administrator, Zachary Cooley (“Cooley Decl.”), ¶ 12):

	Total Amount
<i>Gross Settlement Amount</i>	\$ 120,000.00
Attorneys’ Fees (1/3)	\$ 40,000.00
Litigation Costs	\$ 10,000.00
Administrator Costs	\$ 4,000.00
PAGA Penalties	\$ 10,000.00
Class Representative’s Service Award	\$ 2,500.00
<i>Net Settlement Amount</i>	\$ 53,500

12 The Class Members were deemed to participate and did not need to submit a Claim Form
13 to receive payment. Based on a class size of 69 employees, and assuming all of the amounts are
14 approved by the Court, the highest payment to Participating Class Members is estimated at
15 \$2,430.73, and the average payment is \$775.36. Moreover, there are a total of 2,814 Weeks
16 Worked by all Class Members, so the payment per Week Worked is approximately \$19.01.
17 (Cooley Decl. ¶ 13). In accordance with the settlement, 100% of the Net Settlement Amount
18 will be distributed to the Class with no reversion to Defendants.

19 Additionally, the Settlement Agreement provides that the 25% PAGA allocation will be
20 allocated only to Aggrieved Employees, rather than to all Class Members. In this case, 66
21 Aggrieved Employees will share in the \$2,500 award on a pro rata basis. The average payment
22 to the Aggrieved Employees is \$37.88, and the Aggrieved Employees collectively worked 2,657
23 Work Weeks during the PAGA Period. (Cooley Decl. ¶ 13).

24 The Parties agree that one-third of each Individual Settlement Amount shall constitute
25 wages (for which each Participating Class Member will be issued an IRS Form W-2 for such
26 payment), and the remaining two-thirds, as well as the PAGA payment made to Aggrieved
27 Employees, shall constitute interest and penalties for which each Participating Class Member
28 will be issued an IRS Form 1099 for the interest and penalty allocation). (S.A. ¶ 47(d)).

Defendants will separately pay its share of payroll taxes and withholdings. Defendants are required to deposit the Settlement Amount with the Settlement Administrator within 15 calendar days after the Effective Date.

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.

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 December 27, 2021, the Notice Packet was sent via first-class mail to 69 Class Members to advise each about the suit and settlement. (*Id.* ¶ 6). 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). (*Id.* ¶ 7). The Settlement Administrator used the advanced address search to locate updated addresses and promptly mailed the Notice Packets to those updated addresses. Ultimately, all Notice Packets that were determined to be deliverable. (*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, 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 Settlement Class Member's right to appear at the fairness hearing and express views on the settlement, i.e., object or otherwise respond; and (7) an explanation of each Settlement Class Member's right to participate in the Settlement and receive payment accordingly. (**Exhibit A** to the Cooley Decl.).

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

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

11 Here, there are zero objections and zero opt-outs to the Settlement, meaning that 100% of
12 the Class Members will receive a share of the Settlement (Cooley Decl. ¶¶ 10-11). Thus, the
13 Class overwhelmingly viewed this as a fair and reasonable settlement.

14 **IV. EVALUATION OF THE SETTLEMENT**

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

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

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

7 **A. THE SETTLEMENT WAS REACHED THROUGH INFORMED ARMS-LENGTH**
8 **NEGOTIATION**

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

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

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

24 **B. PLAINTIFF'S INVESTIGATION WAS SUFFICIENT**

25 As set forth at the time of preliminary approval, Class Counsel's investigation into the
26 facts and merits of the wage and hour claims alleged included analyzing substantial amounts of
27 information, correspondence, documents, pay data, policies and procedures, and evidence
28 relating to the class size and the commonality of the claims. During this process, Class Counsel

1 conducted investigations into the potential claims of the similarly situated employees, as well as
2 researching and investigating Defendants' defenses. Finally, Class Counsel synthesized and
3 analyzed information provided by Defendants as to the total Class Members, the number of
4 current and former employees, the number of employees who worked during various time
5 periods, and prepared comprehensive damages calculations regarding the claims at issue.

6 **C. CLASS COUNSEL ARE EXPERIENCED IN SIMILAR LITIGATION AND ENDORSE THE**
7 **SETTLEMENT**

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

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

14 Plaintiff's Motion for Preliminary Approval contained a comprehensive *Kullar* analysis
15 which sufficiently provided the Court with "basic information about the nature and magnitude
16 of the claims in question and the basis for concluding that the consideration being paid for the
17 release of those claims represents a reasonable compromise." *Kullar v. Foot Locker Retail,*
18 *Inc.* (2008) 168 Cal.App.4th 116, 133. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*
19 (2010) 186 Cal.App.4th 399, later clarified *Kullar* by noting that an explicit statement of the
20 maximum theoretical amount that the class could recover was not part of the "basic
21 information" that counsel was required to produce:

22 Greenwell misunderstands *Kullar*, apparently interpreting it to
23 require the record in all cases to contain evidence in the form of an
24 explicit statement of the maximum amount the plaintiff class could
25 recover if it prevailed on all its claims – a number which appears
26 nowhere in the record of the case. But *Kullar* does not, as
27 Greenwell claims, require any such explicit statement of value; it
28 requires a record which allows "an understanding of the amount
 that is in controversy and the realistic range of outcomes of the
 litigation.

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

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

16 **V. 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 seek reasonable fees of \$250,000 (one-third of the
19 Settlement Amount), which is the common fund. This amount will be paid from the Settlement
20 Amount, as provided by the Settlement Agreement. These fees are warranted under the law and
21 within the range of fees 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. First, one-third is the standard
24 benchmark 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”). Second, the California Supreme Court recently held that the percentage of the
28 fund method survives in California class action cases. *See Laffitte v. Robert Half International,*

1 *Inc.* (2016) 1 Cal.5th 480. Third, the requested amount is eminently reasonable through the
2 prism of a lodestar cross-check. Accordingly, this request should receive final approval.

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

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

19 **B. CLASS COUNSEL'S REQUEST FOR FEES IS REASONABLE AND PROPERLY**
20 **CALCULATED AS A PERCENTAGE OF THE COMMON FUND**

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

28 ///

1 ***1. The Attorneys’ Fees Requested Here Fall Within the Reasonable Range***
2 ***Awarded in Similar Cases Under the Well-established Common Fund***
3 ***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, supra*, 1
7 Cal.5th at 506; *see also*, 4 Newberg on Class Actions, § 14:6 at 552 (“fee awards in class actions
8 average around one-third of the recovery”). Specifically, in *Laffitte*, the Court wrote: “[w]e join
9 the overwhelming majority of federal and state courts in holding that when class action litigation
10 establishes a monetary fund for the benefit of the class members, and the trial court in its
11 equitable powers awards class counsel a fee out of that fund, the court may determine the amount
12 of a reasonable fee by choosing an appropriate percentage of the fund created”). *Id.* at 506. The
13 California Supreme Court also noted that trial courts have the discretion to award fees as a
14 percentage of the common fund, with or without the necessity to conduct a lodestar cross-check.
15 *Id.* (“...[Courts] ... retain the discretion to forgo a lodestar cross-check and use other means to
16 evaluate the reasonableness of a requested percentage fee.”).

17 The California Supreme Court’s *Laffitte* decision was consistent with its prior rulings
18 recognizing that “when a number of persons are entitled in common to a specific fund, and an
19 action brought by ... plaintiffs for the benefit of all results in the creation or preservation of that
20 fund, such ... plaintiffs may be awarded attorneys’ fees out of the fund.” *Serrano III v. Priest*
21 (1977) 20 Cal.3d 25, 34; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 (“[A] lawyer who
22 recovers a common fund . . . is entitled to reasonable attorneys’ fees from the fund as a whole”).
23 Notably, when fees are calculated as a percentage of the common fund, they should be calculated
24 based on the amount that was available to be claimed, rather than as a percentage of the actual
25 amount claimed. *See Boeing Co.*, 444 U.S. at 475-6, 480-1 (the SCOTUS held that attorneys for
26 a successful class may recover a fee based on the fund created for the class, even if some class
27 members make no claims against the fund, so that money remains in it that will be returned to
28 the Defendants, explaining: “[t]heir [class members’] right to share the harvest of the lawsuit

1 upon proof of their identity, whether or not they exercise it, is a benefit in the fund created by the
2 efforts of the class representatives and their counsel.” *See also Williams v. MGM-Pathe*
3 *Communs. Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 (trial court “abused its discretion by basing
4 the fee on the class members’ claims against the fund rather than on a percentage of the entire
5 fund or on the lodestar”).

6 **2. The High Quality of Work and Result Obtained Support the Award**

7 In addition to the fact that a Class benefit was created with a \$120,000 non-reversionary
8 common fund settlement, the fairness of the requested fee award of 1/3 of the Settlement
9 Amount is supported by the high quality of work performed by Class Counsel and the positive
10 result obtained for the Class. This result occurred because Class Counsel diligently, efficiently,
11 and creatively pursued this case and reached a settlement for the benefit of the entire Class. The
12 fact that the settlement was embraced and supported by the Class, as evidenced by a 100%
13 participation rate, demonstrates that Class Counsel obtained a favorable result for the Class.

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

15 Rule 3.769 of the California Rules of Court requires that the Class Members be given
16 notice of any agreement regarding an application for attorneys’ fees. Here, the Notice
17 preliminarily approved by the Court and distributed to the Class Members apprised them that
18 “Class Counsel will ask for fees of one-third (\$40,000) of the common fund Settlement Amount
19 as reasonable compensation for the work Class Counsel performed and will continue to perform
20 in this Lawsuit through finalization of the Settlement...” (Cooley Decl., Exh. A.)

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

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

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

10 Indeed, as Class Counsel can attest, not all class/PAGA cases are successful. In fact, here
11 the odds were concerning after the original Plaintiff settled directly with Defendants. Plus, many
12 cases end with no fees or a greatly reduced fee that is far less than lodestar, often due to no fault
13 of counsel (i.e., bankruptcy, change in the law, consolidation/coordination/preemption, being top
14 filed, etc.). According to Mayer Brown LLP’s study entitled, An Empirical Analysis of Class
15 Actions, cited in *Laguna v. Coverall North America, Inc.* (9th Cir. 2014) 753 F.3d 918, found
16 that only one-third of class actions are successful, compared to two-thirds that are defeated and
17 result in no payment to the class members.¹

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

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

20 Despite recognized limitations of the so-called lodestar method, some California and
21 federal courts acknowledge the utility of a lodestar “cross-check.”² (*Lealao, supra*, 82
22 Cal.App.4th at 46-47.) Under the “lodestar multiplier” method of cross-checking the
23 reasonableness of attorneys’ fees in class actions, the court ascertains Class counsel’s total
24 “lodestar” amount by multiplying the number of hours reasonably expended by each attorney or

25
26 ¹ www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

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.

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

7 The actual aggregated lodestar between the attorneys that worked on this case results in a
8 ***negative multiplier***, which clearly demonstrates that the requested fee is justified, reasonable and
9 appropriate. The aggregated lodestar is summarized in the following table, and in the submitted
10 declaration of Class counsel:

Attorney/Timekeeper	Rate	Hours	Fee
Brian J. Mankin <i>Trial Counsel/Partner</i> (21 years)	\$775	85³	\$65,875
Peter J. Carlson <i>Senior Associate</i> (8 years)	\$575	87.4	\$50,255
Grand Total for All Attorneys			\$116,130

23 (See Mankin Decl., ¶ 24.) The hourly rates above are comparable to those of other attorneys
24 with equal or similar experience, if not somewhat lower (i.e., the Laffrey Matrix at
25 www.laffreymatrix.com indicates that the benchmark rate for a 8-10 year attorney to be \$676/hour
26

27 ³ Includes an estimated 35 hours of additional work in preparation for and attending the hearing, as well as the
28 anticipated work to be performed after the final approval hearing with counsel, administrator, employees, and the court.

1 and a 11-19 year attorney at \$764/hour, and a 20+ year attorney at \$919/hour). Moreover, the
2 Wolters Kluwer 2017 Real Rate Report (“Real Rate Report”) provides directly applicable
3 information in this regard. The Real Rate Report is based on an enormous and statistically
4 significant compilation of data: 25.8 million billing entries and 23.9 million hours billed by over
5 112,100 individual timekeepers from 4,620 law firms, totaling \$9.02 billion in fees billed. (*See*
6 Wolters Kluwer’s ELM Solutions, Inc., 2017 Real Rate Report). The Real Rate Report then
7 compiles and analyzes this data to provide the hourly rates for partners and associates in major
8 metropolitan areas. For the southern California area, which is based on billing entries for 1,125
9 partners and 1,566 associates, the Real Rate Report states that: (a) the rates for partners in Los
10 Angeles is between \$640 and \$869.75 per hour for the middle and upper quartiles, and (b) the
11 rates for associates in Los Angeles is between \$478.74 and \$638.97 for the median and upper
12 quartiles. And, perhaps most importantly, the information provided in the Real Rate Report is not
13 based on self-reported numbers, surveys, sampling, or reviews or other publications – instead,
14 the Real Rate Report is based on the actual hours and fees billed by law firms. (Mankin Decl., ¶
15 23.)

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 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.

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

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

26 The Settlement Agreement authorized litigation costs of up to \$10,000. (S.A. ¶ 47(f)).
27 Class Counsel’s actual costs through the final approval hearing were \$10,637.20, which is
28 more than the maximum agreed upon costs. As such, Class Counsel are merely requesting

1 \$10,000 as agreed upon. (Mankin Decl. ¶ 26). These costs include mediation fees, filing fees,
2 online research, travel/parking charges, CourtCall charges, and process server fees.

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

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

14 Under the Settlement, Defendants agreed to pay a Service Award of \$2,500 to Plaintiff
15 in recognition of his contribution as a Class Representative.

16 As the Court may recall, the original Plaintiff (Cesar Torres) sold out the Class by
17 engaging in a secret meeting with Defendants, wherein he settled his claims. Following
18 subsequent law and motion practice, the Court noted that a Plaintiff was needed for the case to
19 proceed and in this regard, Mark Eurick agreed to come forward and serve as the Class
20 Representative as part of the Parties settlement. Mr. Eurick had to put his name in the public
21 sphere by agreeing to be a Plaintiff, and had to make himself available to answer questions,
22 review documents and participate in the matter through its conclusion. For these efforts, the
23 Parties agreed to a \$2,500 service award for Mr. Eurick.

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

27 ///

28 ///

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

2 **A. SETTLEMENT ADMINISTRATION COSTS**

3 The Administrator, Simpluris, agreed to administer the settlement for a flat-fee of
4 \$4,000. (Cooley Decl. ¶ 14). As such, the Parties request that the Administrator's fee be
5 approved.

6 **B. UNCASHED CHECKS**

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

9 **C. FINAL REPORT**

10 Defendants are required to deposit the Settlement Amount within 15 calendar days after
11 the Effective Date. The Effective Date will be the date of Final Approval in light of the lack of
12 objections and requests to intervene. The Settlement Administrator will have 10 days after
13 receipt of payment to issue checks to the Class Members, who will then have 180 days to cash
14 their checks. However, the process of submitting funds to the State Controller can take an
15 additional year after the check cashing deadline, so the Parties propose submitting a final
16 report in the form of a declaration from the Administrator (setting forth the money that was
17 actually paid to the class members and potentially the State Controller) approximately 16
18 months after the check cashing deadline.

19 **D. SUBMISSION TO THE LWDA**

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

22 **VIII. CONCLUSION**

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

25 Dated: March 4, 2022

LAUBY, MANKIN & LAUBY LLP

26
27 BY:



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

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 March 4, 2022, 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 March 4, 2022, 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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