

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Misty M. Lauby, Esq. [CSB No. 243009]
misty@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel.: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiff Andrew Zubia, and on behalf of others similarly situated

[Additional Counsel on following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ANDREW ZUBIA, DANA MARIE GANAL,
CHRISTIAN HERNANDEZ, and MICHAEL
WOODS individually, on a representative
basis, and on behalf of all others similarly
situated;

Plaintiffs,

vs.

PROCTER & GAMBLE COMPANY, an
Ohio Corporation; PROCTER & GAMBLE
DISTRIBUTING LLC, and Ohio Company;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: 20STCV44506

*[Assigned to Hon. Lawrence P. Riff, Dept. 7,
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: January 17, 2024

Time: 10:00 a.m.

Dept.: 7

Complaint Filed: November 18, 2020

1 Kane Moon, Esq. (SBN 249834)
2 *kane.moon@moonlawgroup.com*
3 Allen Feghali, Esq. (SBN 301080)
4 *allen.feghali@moonlawgroup.com*
5 Charlotte Mikat-Stevens, Esq. (SBN 327047)
6 *cmikat-stevens@moonlawgroup.com*
7 MOON LAW GROUP, PC
8 1055 W Seventh Street, Suite 1880
9 Los Angeles, CA 90017
10 Tel: (213) 232-3128 | Fax: (213) 232-3125
11

12 Attorneys for Plaintiff Dana Marie Ganal, on behalf of others similarly situated

13 Joseph Lavi, Esq. (SBN 209776)
14 *jlavi@lelawfirm.com*
15 Vincent C. Granberry, Esq. (SBN 276483)
16 *vgranberry@lelawfirm.com*
17 Kevin Joseph Farnan, Esq. (SBN 327524)
18 *kfarnan@lelawfirm.com*
19 LAVI & EBRAHIMIAN, LLP
20 8889 W. Olympic Blvd., Suite 200
21 Beverly Hills, CA 90211
22 Tel: (310) 432-0000 | Fax: (310) 432-0001
23

24 Attorneys for Plaintiff, Christian Hernandez, on behalf of others similarly situated

25 Carolyn H. Cottrell (SBN 166977)
26 *ccottrell@schneiderwallace.com*
27 Ori Edelstein (SBN 268145)
28 *oedelstein@schneiderwallace.com*
Andrew D. Weaver (SBN 318935)
aweaver@schneiderwallace.com
SCHNEIDER WALLACE COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, CA 94608
Tel: (415) 421-7100 | Fax: (415) 421-7105

Attorneys for Plaintiff, Michael Woods, on behalf of others similarly situated

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on January 17, 2024, at 10:00 a.m., or as soon thereafter
3 as this matter may be heard by the Honorable Lawrence P. Riff in Department 7 of the Los
4 Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012,
5 Plaintiffs Andrew Zubia, Dana Marie Ganal, Christian Hernandez and Michael Woods,
6 individually and on behalf of all others similarly situated, will move this Court for an Order
7 granting final approval of the class action settlement between Plaintiffs and Defendant The
8 Procter & Gamble Distributing LLC (“Defendant” or “P&G”), which was preliminarily approved
9 by the Court on May 26, 2023. This Motion seeks final approval and entry of judgment of a
10 \$4,090,388.51 settlement on behalf of the Class Members, and is unopposed by Defendant.

11 Specifically, Plaintiffs will and hereby do move the Court to grant final approval of the
12 Class Action and PAGA Settlement Agreement (“Settlement Agreement”), and enter the
13 proposed order and 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 Plaintiffs as the Class Representatives for purposes of
17 settlement;

18 3. Finally appointing the following attorneys as Class Counsel for purposes of
19 settlement: Brian Mankin and Misty Lauby of Lauby Mankin Lauby LLP (“LML”); Kane Moon,
20 Allen Feghali, and Charlotte Mikat-Stevens of Moon Law Group (“MLG”); Carolyn Cottrell, Ori
21 Edelstein and Andrew Weaver of Schneider Wallace Cottrell Konecky LLP (“SWCK”); and
22 Joseph Lavi and Vincent Granberry of Lavi & Ebrahimian, LLP (“LE”);

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

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

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

7. Retaining jurisdiction to enforce the Settlement Agreement.

This Motion will be based upon this notice; the attached memorandum of points and authorities; the Declarations of the Settlement Administrator (Lluvia Islas of Phoenix Settlement Administrators), Class Counsel (Brian Mankin, Misty Lauby, Kane Moon, Antonia McKee, and Carolyn Cottrell) and Plaintiffs (Zubia, Ganal, Hernandez and Woods) filed concurrently herewith; the records and files in this action; and any other further evidence or argument that the Court may receive at or before the hearing.

Dated: December 21, 2023

LAUBY, MANKIN & LAUBY LLP

BY: Brian J. Mankin
 Brian J. Mankin, Esq.
 Attorneys for Plaintiffs and the Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF ARGUMENT AND ESSENTIAL POINTS**

3 Pursuant to California Rules of Court, Rule 3.769(d) and (e), Plaintiffs Andrew Zubia,
4 Dana Marie Ganal, Christian Hernandez and Michael Woods respectfully request that this Court
5 grant final approval of the Class Action and PAGA Settlement Agreement (“Settlement
6 Agreement”), and enter the proposed order and final judgment in this matter. This Motion is
7 supported and unopposed by Defendant The Procter & Gamble Distributing LLC (“Defendant”
8 or “P&G”).

9 After considerable work and the Court’s consolidation/joining of four separate cases into
10 this action, the Parties reached a \$3,750,000 settlement on behalf of the Class Members and
11 Aggrieved Employees (the “Gross Settlement Amount”), subject to an Escalator Clause that
12 Class Counsel negotiated on behalf of the Class that would increase the Gross Settlement
13 Amount if the total weeks worked by the Class exceeded a cap of 81,400 workweeks. The Court
14 granted preliminary approval on May 26, 2023, and after the initial mailing to 837 Class
15 Members, Defendant discovered that 424 individuals were inadvertently omitted from the Class
16 Data. All Parties stipulated to add the 424 individuals to the settlement, adjust the settlement
17 amount upwards to account for the additional workweeks worked pursuant to the Escalator
18 Clause, and re-mail the Notice to all 1,327 Class Members. The Parties promptly submitted a
19 stipulation and proposed order to Court, and the Court entered an Order on October 6, 2023, that
20 authorized the remailing to all 1,327 Class Members and modified the timeline.

21 The Class Members collectively worked a total of 88,117 workweeks, which exceeded
22 the negotiated cap of 81,400 workweek and triggered the Escalator Clause. Consequently,
23 Escalator Clause resulted in an upward adjustment of \$340,388.51 to the settlement amount,
24 bringing the new Gross Settlement Amount to \$4,090,388.51 (plus Defendant will separately pay
25 its share of payroll taxes on the wage portion of the Individual Class Payments). (See
26 Declaration of Administrator, Lluvia Islas (“Islas Decl.”), ¶ 13-14).

Accordingly, there are several reasons why this settlement should be approved, and judgment entered, as follows:

- The \$4,090,388.51 settlement was reached with the assistance of the Hon. Carl West (Ret.), and contains a release that is limited to the claims alleged;
- The Class Members were deemed to participate in the Settlement, and were not required to submit a Claim Form to receive funds;
- There is no reversion to Defendant;
- There were zero objections and only one opt-out to the Settlement, meaning 99.92% of the Class is participating in the Settlement;
- The Class Members will receive \$1,851.61 on average, although each Class Member's Individual Class Payment will be allocated pro rata based on the percentage of weeks worked, whereby each Class Member will receive approximately \$27.89 for each week worked during the Class Period.

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

II. PERTINENT BACKGROUND AND SETTLEMENT TERMS

Plaintiffs and the Class Members include all current and former hourly, non-exempt employees, who were directly hired and employed by P&G and worked at the P&G Facility in Moreno Valley, California at any time during the Class Period of May 1, 2019 to May 29, 2022¹. The primary claims, which Defendant disputes, involved allegations that the Class Members did not receive all minimum, regular and overtime wages owed, did not receive accurate itemized wage statements, were denied meal and rest breaks, as well as claims for waiting time penalties and PAGA penalties.

¹ The Class Period starting date was shortened to May 1, 2019 because that is when P&G began operating the P&G Facility in Moreno Valley.

The Settlement includes 1,326 Participating Class Members (excluding the one opt-out). The following is a breakdown reflecting how the funds are allocated under the Settlement Agreement (Declaration of Administrator, Lluvia Islas (“Islas Decl.”), ¶ 14):

<i>Gross Settlement Amount</i>	\$ 4,090,388.51
Attorneys’ Fees (1/3 of the GSA)	\$ 1,363,462.84
Litigation Costs	\$ 23,838.07
Administrator Costs	\$ 16,000.00
PAGA Penalties	\$ 200,000.00
Class Representative Service Awards	\$ 30,000.00
<i>Net Settlement Amount</i>	\$ 2,457,087.60

The Participating Class Members were deemed to participate and did not need to submit a Claim Form to receive payment. (Settlement Agreement or “S.A.” ¶ 1.37). Each Participating Class Member will receive a pro rata share of the Net Settlement Amount according to the percentage of Workweeks worked during the Class Period, such that the amount actually distributed to Participating Class Members will equal 100% of the Net Settlement Amount. (S.A. ¶ 3.2.4).

Assuming all of the amounts in the Settlement are approved by the Court, the *average* Individual Class Payment is estimated to be \$1,851.61 and the *highest* individual settlement payment is approximately \$4,490.61 and the lowest payment is approximately \$27.89 for a short term employee who worked one week during the Class Period. (Islas Decl. ¶ 15). The Participating Class Members collectively worked 88,117 Workweeks during the Class Period, resulting in a Workweek value of approximately \$27.89/week.

In addition, 1,260 Aggrieved Employees, who collectively worked 73,965 Workweeks during the PAGA Period, will each receive an Individual PAGA Payment based on their share of the \$50,000 in PAGA Penalties (25% of the total \$200,000 PAGA allocation), calculated pro-rata based on the number of Weeks Worked during the PAGA Period. (S.A. ¶ 3.2.5). The average payment to the Aggrieved Employees is \$39.68. (Islas Decl. ¶ 16).

The Parties agree that one-third (33.3%) will be allocated as wages subject to withholding of all applicable local, state and federal taxes; and two-thirds (66.7%) will be allocated for interest and penalties (pursuant to, e.g., California Labor Code sections 203, 210, 226, etc.) from

1 which no taxes will be withheld. (S.A. ¶ 3.2.4.1). Additionally, the PAGA Penalties payable to
2 the Aggrieved Employees will be classified entirely as civil penalties and shall be reported as
3 required on an IRS Form 1099. (S.A. ¶¶ 3.2.5.1 and 3.2.5.2). Defendant will separately pay its
4 share of employer payroll taxes on the sum allocated to wages. (S.A. ¶¶ 3.1).

5 The Settlement Agreement provides that Defendant shall deposit the Settlement Amount
6 within 45 days after the “Effective Date” (S.A. ¶ 4.3), which will be the day that the Court enters
7 the Final Order/Judgment since there were no objections. Within 10 days of receipt, the
8 Settlement Administrator shall issue payments to cover all court-approved payments. (S.A. ¶
9 4.4).

10 Class Members and Aggrieved Employee will have 180 days to cash the settlement
11 check. If a Class Member and/or Aggrieved Employee fails to cash a check by the deadline, the
12 Settlement Administrator shall issue unclaimed funds to the California State Controller in the
13 name of the individual. (S.A. ¶ 4.4.3).

14 **III. THE NOTICE PROCESS**

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

16 Pursuant to the Court’s Order and the Settlement Agreement, the Parties directed the
17 Settlement Administrator to review and update the Class Members’ addresses, mail the Court-
18 approved Notice Packet, and process their responses. The Administrator also posted the relevant
19 documents on its website for the Class Members to access.

20 Prior to mailing the Class Notice, the Settlement Administrator performed a National
21 Change of Address search on all Class Members to determine if any had moved. (Islas Decl., ¶
22 4). On June 15, 2023, the Class Notice was initially sent via first-class mail to 837 Class
23 Members. (Islas Decl., ¶ 5). On September 25, 2023, the Settlement Administrator received an
24 additional data file from Defense Counsel that contained an additional 424 Class Members who
25 were inadvertently excluded from the data initially provided. The updated mailing list contained
26 one thousand three hundred twenty-seven (1,327) individuals identified as Class Members.
27 (Islas Decl., ¶ 6). On October 17, 2023, the Settlement Administrator mailed the updated Notice
28 via U.S. first class mail, in English and Spanish, to all 1,327 Class Members. (Islas Decl., ¶ 7).

1 Ultimately, only 2 Class Notices were determined to be undeliverable, resulting in a 99.8%
2 success rate in mailing the Notice Packet. (Islas Decl., ¶ 8-9).

3 In accordance with California Rules of Court, rules 3.766 (d) and 3.769 (f), the Notice
4 provided Class Members with (1) a brief explanation of the case; (2) an explanation of each
5 Class Member's right to opt out of the settlement class; (3) an explanation of the process (and
6 relevant deadlines) through which a Class Member could opt out of the settlement class; (4)
7 notice about the binding nature of the Judgment for Class Members who do not opt out; (5) an
8 explanation of each Class Member's right to appear through counsel; (6) an explanation of each
9 Class Member's right to appear at the fairness hearing and express views on the settlement, i.e.,
10 object or otherwise respond; and (7) an explanation of each Class Member's right to participate
11 in the Settlement and receive payment accordingly. (See **Exhibit A** to the Islas Decl.)

12 **B. There are Zero Objections and One Opt-Out, Resulting In An Impressive**
13 **99.92% of the Class Participating in the Settlement**

14 California law makes clear that the percentage of objectors and opt-outs is an important
15 factor in the Court's consideration of a proposed class action settlement. (See *Dunk v. Ford*
16 *Motor Co.* (1186) 48 Cal.App.4th 1794 at 1802.) Indeed, the Ninth Circuit and other federal
17 courts recognize that in the final fairness analysis, the number or percentage of class members
18 who object to the settlement is a significant factor. (See *Mandujano v. Basic Vegetable Prods.,*
19 *Inc.*, (9th Cir. 1976) 541 F.2d 672, 677; *In re American Bank Note Holographics, Inc.* (SDNY
20 2001) 127 F.Supp.2d 418, 425 ["[i]t is well settled that the reaction of the class to the settlement
21 is perhaps the most significant factor to be weighed in considering its adequacy."])

22 In this case, there were zero objections and one opt-out -- meaning that 99.88% of the
23 Class Members are participating in the Settlement. (Islas Decl., ¶ 10-12).

24 **V. EVALUATION OF THE SETTLEMENT**

25 It is axiomatic that California law strongly favors and encourages settlements. (See
26 *Stambaugh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236.) This presumption in favor of
27 settlement applies with particular force in the context of class actions. (See *Ferguson v. Lieff,*
28 *Cabraser, Heimann & Bernstein* (2003) 30 Cal.4th 1037 ["[p]ublic policy favoring settlement is

1 especially weighty for class actions”]; *Bell v. Am. Title Ins. Co.* (1991) 226 Cal.App.3d 1589,
2 1607-1608 [affirming the trial court’s approval of a class settlement and implicitly endorsing its
3 citation of federal precedent for the notion that there is a “strong public policy in favor of
4 settlement of class actions”]; see also *Franklin v. Kaypro Corp.* (9th Cir. 11869) 884 F.2d 1222,
5 1229, quoting *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950 [“it hardly
6 seems necessary to point out that there is an overriding public interest in settling and quieting
7 litigation. This is particularly true in class action suits”].)

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

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

18 **A. The Settlement Was Reached Through Informed Arms-Length Negotiation**

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

25 Here, Plaintiffs and Class Counsel have diligently investigated the claims raised in this
26 litigation and, after taking into account the disputed factual and legal issues involved in this
27 action, the risks attending further prosecution, and the benefits to be received pursuant to the
28 compromise and settlement of the action as set forth in the Settlement, concluded that the

1 settlement terms are fair, reasonable, and in the best interest of the Class.

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

7 **B. Plaintiffs' Investigation Was Sufficient**

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

18 Furthermore, almost one year passed between the individual mediation with Judge West
19 and the signing of the MOU. During this time, substantial amounts of investigation and expert
20 analysis were conducted, along with extensive ongoing negotiations with Judge West. Indeed,
21 the process with vigorously worked by both sides for nearly a year after mediation.

22 **C. Class Counsel Are Experienced in Similar Litigation and Endorse the**
23 **Settlement**

24 Class Counsel are experienced in this type of litigation, and they have represented (and
25 hereby do represent) that this Settlement is fair and reasonable. (Mankin Decl., ¶¶ 13, 35; Moon
26 Decl., ¶¶ 7, 43; McKee Decl., ¶ 26; see *7-Eleven Owners for Fair Franchising v. Southland*
27 *Corp.* (2000) 85 Cal.App.4th 1135, 1152 [Final approval of settlement affirmed where counsel
28 were all experienced litigators with class-action experience and had recommended settlement

1 based on the negotiated terms].)

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

3 Plaintiffs' Motion for Preliminary Approval contained a comprehensive *Kullar* analysis
4 (which sufficiently provided the Court with "basic information about the nature and magnitude
5 of the claims in question and the basis for concluding that the consideration being paid for the
6 release of those claims represents a reasonable compromise." (*Kullar v. Foot Locker Retail,*
7 *Inc.* (2008) 168 Cal.App.4th 116, 133.) Of course, a settlement is not judged against what
8 might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to
9 provide 100% of the damages sought to be fair and reasonable. (*Wershba v. Apple Computers,*
10 *Inc.* (2001) 91 Cal.App.4th 246, 250.) ("Compromise is inherent and necessary in the settlement
11 process ... even if the relief afforded by the proposed settlement is substantially narrower than it
12 would be if the suits were to be successfully litigated, this is no bar to a class settlement because
13 the public interest may indeed be served by a voluntary settlement in which each side gives
14 ground in the interest of avoiding litigation.")

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

23 Of course, Defendant denies that any damages should be assessed and denies all of the
24 value assessed by Plaintiffs. Notwithstanding these arguments, the Settlement commits
25 Defendant to pay \$4,090,388.51 to settle the litigation.

26 **VI. THE REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE**

27 For their efforts in creating a common fund for the benefit of the Class, the Settlement
28 Agreement provided that Class Counsel – which includes multiple attorneys and four law firms -

1 may seek reasonable fees of \$1,363,462.84 (one-third of the updated Gross Settlement Amount).
2 This amount will be paid from the settlement amount, as provided by the Settlement Agreement.
3 These fees are warranted under the law and within the range of fees commonly awarded in
4 similar cases.

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

14 **A. Plaintiffs are Entitled to Recover Reasonable Attorney's Fees Under the**
15 **Labor Code**

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

1 **B. Class Counsel’s Request for Fees Is Reasonable and Properly Calculated as**
2 **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***
11 ***Range Awarded in Similar Cases Under the Well-established***
12 ***Common Fund Method***

13 The California Supreme Court has approved trial courts’ usage of the common fund
14 method of awarding attorneys’ fees in wage and hour class actions, like this one, upholding a fee
15 awarded of 1/3 of the total settlement amount obtained for the class. *See Laffitte*, 1 Cal.5th at
16 506; *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 *Laffitte* decision was consistent with its prior rulings
27 recognizing that “when a number of persons are entitled in common to a specific fund, and an
28 action brought by ... plaintiffs for the benefit of all results in the creation or preservation of that

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

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

17 In addition to the fact that a Class benefit was created with a \$4,090,388.51 non-
18 reversionary common fund settlement, the fairness of the requested fee award of 1/3 of the
19 Settlement Amount is supported by the high quality of work performed by Class Counsel and the
20 positive result obtained for the Class. This great result occurred because Class Counsel
21 diligently, efficiently, and creatively pursued this case and reached a successful settlement for
22 the benefit of the entire Class. ***In fact, some Class Member will receive almost \$4,500 each,***
23 ***which is an excellent result, especially considering the shortened Class Period.*** Moreover, the
24 fact that the settlement was embraced and supported by the Class, as evidenced by a 99.92%
25 participation rate, demonstrates that Class Counsel obtained a favorable result for the Class.

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

27 Rule 3.769 of the California Rules of Court requires that the Class Members be given
28 notice of any agreement regarding an application for attorneys' fees. Here, the Notice

1 preliminarily approved by the Court and distributed to the Class Members apprised them of the
2 requested attorneys fees, which was consistent with the Notice.

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 ["[p]rocedural due process requires that affected parties be provided with 'the right to be heard at
8 a 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**
12 ***Plaintiffs and the Class Further Supports the Fee Award at 1/3 of***
13 ***the Common 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. Specifically, there was the prospect
20 of enormous cost inherent in class action litigation, as well as a battle with a well-funded
21 corporation who was represented by an experienced law firm; the risk that Defendant could
22 prevail on its argument that the class should not be certified; and the risk that Defendant could
23 prevail on the merits of some or all of the claims.

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

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

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

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

21 *Id.* at 399-400.

22 Indeed, as Class Counsel can attest, not all class/PAGA cases are successful. Many cases
23 end with no fees or a greatly reduced fee that is far less than lodestar, often due to no fault of
24 counsel (i.e., bankruptcy, change in the law, consolidation/coordination/preemption, being top
25 filed, etc.). According to Mayer Brown LLP's study entitled, An Empirical Analysis of Class
26 Actions, cited in *Laguna v. Coverall North America, Inc.*, No. 12-55479 (9th Circuit 2014), found
27 that only one-third of class actions are successful, compared to two-thirds that are defeated and
28 result in no payment to the class members.²

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

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² 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.”³ (*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*, for
19 instance, the Court of Appeal remanded for a lodestar enhancement of “**two, three, four or**
20 **otherwise.**” *Id.* at 76; *see also Wershba*, 91 Cal.App.4th at 255 (“**Multipliers can range from 2**
21 **to 4 or even higher**”); *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78, 83
22 **(affirming 2.34 multiplier)**; *Coalition for Los Angeles County Planning in the Pub. Interest v.*
23 *Board of Supervisors*, 76 Cal.App.3d 241, 251 **(affirming multiplier of approximately 2)**;
24 *Craft v. County of Los Angeles*, 2008 U.S. Dist. LEXIS 27526 (C.D. Cal. Apr. 1, 2008)
25 **(applying 5.2 multiplier)**; *See also Steinder v. Am. Broadcasting Co., Inc.* (9th Cir. 2007) 248

26 _____
27 ³ 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.

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.

The actual aggregated lodestar between the Plaintiffs' attorneys that worked on this case is approximately \$511,610.75. This results in a fair and reasonable 2.6 multiplier, as summarized in the following table, and in the submitted declarations of Plaintiffs' counsel:

Attorney/Timekeeper	Years Experience	Rate	Hours	Fee
Brian J. Mankin (Partner - LML)	22	\$775	177⁴	\$137,175
Misty Lauby (Partner - LML)	17	\$650	188.1	\$145,777.50
Schneider Wallace Cottrell (Various Attys)	See Cottrell Decl	See Decl	130.45	\$92,570.75
Kane Moon (Partner - MLG)	16	\$775	48.1	\$34,872.50
Allen Feghali (Partner - MLG)	8	\$650	54.6	\$35,490
Edwin Kamarzarian (Associate - MLG)	3	\$425	25.5	\$10,837.50
Charlotte Mikat-Stevens (Associate - MLG)	3	\$375	8.5	\$ 3,187.50

⁴ Includes an estimated 35 hours of future work that will be expended, including 15 hours from preparing this declaration through the final approval hearing (inclusive of finalizing and filing the motion, appearing at the hearing, addressing the Court's questions/concerns, submitting revised documents, responding to class members who are anxious to receive their check, and so on) and 20 hours after the final approval hearing (which includes up to 1.5 years of case management relating to ensuring timely payment from Defendants, reviewing the calculations, checks are timely mailed, responding to class members questions about the timing of checks/missing checks/lost checks and remailings, working with the administrator regarding uncashed checks and remailings, assisting with the Administrator's declarations regarding payments and uncashed checks, potentially filing an amended judgment, appearing at the final disbursement hearing and/or submitting paperwork related thereto).

Joseph Lavi (Partner – LE)	22	\$925	20	\$ 18,500
Vincent Granberry (Associate – LE)	12	\$650	38	\$ 24,700
Antonia McKee	1	\$500	17	\$8,500
TOTALS			687.25	\$511,610.75

(See Mankin Decl., ¶ 25; Lauby Decl. ¶ 8; Moon Decl. ¶ 35; McKee Decl. ¶ 24; Cottrell Decl. ¶ 16).

Class Counsel’s requested rates 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 and Mr. Gaines) is \$914, while the rate for attorneys with 8-10 years of experience (such as Mr. Carlson) 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 and analyzes this data to provide the hourly rates for partners and associates in major metropolitan areas. For the southern California area, which is based on billing entries for 1,125 partners and 1,566 associates, the Real Rate Report states that: (a) the rates for partners in Los Angeles is between \$640 and \$869.75 per hour for the middle and upper quartiles, and (b) the rates for associates in Los Angeles is between \$478.74 and \$638.97 for the median and upper quartiles. And, perhaps most importantly, the information provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, or reviews or other publications – instead, the Real Rate Report is based on the actual hours and fees billed by law firms. These numbers are not surprising given that a 4-year-old article in the National Law Journal stated that in **2014** partners in Los Angeles charge an average of \$665, while the average associate rate is \$401. (Sloan, \$1,000 Per Hour

Isn't Rare Anymore; Nominal Billing Levels Rise, But Discounts Ease Blow (2014) Nat. Law Journal.)⁵. (Mankin Decl., ¶ 24.)

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

Class Counsel are also highly experienced in Class/PAGA litigation, including having been selected as a "Super Lawyer" in employment litigation on multiple occasions, having achieved large settlements, and having prevailed at class/PAGA trials, as reflected in their attached declarations. (Mankin Decl. ¶¶ 2-6; Moon Decl., ¶¶ 14-32; McKee Decl., ¶¶ 11-16; Cottrell Decl. ¶ 4-6). Indeed, Class Counsel's rates are typical of the rates charged by defense counsel with similar experience doing similar employment law work in this region.

VII. THE REQUESTED COSTS AND SERVICE AWARDS ARE REASONABLE

A. The Requested Costs Are Reasonable and Merit Approval

The Settlement Agreement authorized litigation expenses up to \$30,000. (Settlement Agreement ¶ 3.2.2). However, Class Counsel's actual combined costs through the final approval hearing are estimated to be \$23,838.07, which were incurred by each firm as shown in the following table:

Firm	Costs
Lauby Mankin Lauby LLP	\$13,180.71
Moon Law Group, APC	\$5,446.77
Lavi & Ebrahimian LLP	\$4,314.67
Schneider Wallace Cottrell Konecky LLP	\$895.92
TOTAL	\$23,838.07

(Mankin Decl. ¶ 27; Moon Decl., ¶ 41; McKee Decl., ¶ 28; Cottrell Decl. ¶ 18).

⁵ 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 Since Class Counsel's actual costs were less than the amount allocated, the saving will
2 be placed in the Net Settlement Amount.

3 **B. The Requested Service Awards are Reasonable and Merit 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 service payments 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, Defendant agreed to pay Service Awards in the amount of \$7,500
15 each to the named Plaintiffs in recognition of their contribution as the Class Representatives
16 and the fact that they agreed to a general release of all claims. In addition, Plaintiffs also
17 undertook significant risks, including the risk of being blackballed in the industry and the risk
18 that they could have been liable for Defendant's costs if they lost. This factor is a significant
19 one for a wage earner, and the potential risk is very real. (*See Whiteway v. FedEx Kinkos*
20 *Office & Print Svcs., Inc.* (N.D. Cal. Dec. 17, 2007) No. C 05-2320 SBA, 2007 WL 4531783,
21 at *3 ("the few courts to consider this 'class representatives' dilemma' have not found it
22 inequitable to assess costs upon the lead or named plaintiff in a class action.").)

23 Plaintiffs also committed a significant number of hours to assist with the
24 litigation/settlement processes of this case. Finally, they entered into a general release of all
25 claims against Defendant, whereas the Class Members only released the claims alleged. The
26 requested Service Payment is reasonable, particularly in light of the substantial benefits
27 Plaintiffs generated for the Class Members, the risks they undertook, and in exchange for
28 executing a general release against Defendant. (See Plaintiffs declarations for supporting

1 information.)

2 The Notice sent to each Class Member detailed the proposed service award. No Class
3 Member has objected to the proposed payment to Plaintiffs. Thus, Plaintiffs request that the
4 Court approve the award because it is both reasonable and appropriate.

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

6 **A. Settlement Administration Costs**

7 The parties agreed that the Administrator, Phoenix Settlement Administrators, would be
8 compensated for services performed. The Administrator's flat fee is \$16,000.00. (Islas Decl.,
9 ¶ 17; Exhibit D thereto.)

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

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

14 **C. Uncashed Checks**

15 The Settlement Agreement provides that unclaimed funds will be submitted to the
16 California State Controller's Unclaimed Property Fund in the name of the Class Member
17 thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil
18 Procedure Section 384, subd. (b). (S.A. ¶ 4.4.3.)

19 **D. Final Report**

20 Defendant's payment is due 45 days after the Effective Date, which will on the date that
21 the final order is entered. The Administrator then has 10 days thereafter process the funds and
22 issue checks to the Class Members, who will then have 180 days to cash their checks.
23 Accordingly, if Final Approval is granted on January 17, 2024, the Parties project that the
24 check cashing deadline will occur on approximately September 8, 2024. Approximately 30
25 days after the check cashing deadline, the Parties will be prepared to submit a declaration from
26 the Administrator attesting to its disbursement of all payments required under the Settlement
27 Agreement.
28

1 Thus, the Parties propose submitting a final report in the form of a declaration from the
2 Administrator approximately October 8, 2024 and then holding a disbursement hearing
3 thereafter at the Court's convenience.

4 **E. Submission to the LWDA**

5 As set forth in the Mankin Declaration at ¶ 29, the Settlement Agreement and this
6 motion are concurrently being submitted to the LWDA in accordance with Labor Code §
7 2699(1)(2). The LWDA has not commented on the Settlement to date.

8 **IX. CONCLUSION**

9 Plaintiffs respectfully submits that the Settlement is fair, adequate, and reasonable, and
10 merits final approval.

11 Dated: December 21, 2023

LAUBY, MANKIN & LAUBY LLP

12
13 BY:



14 Brian J. Mankin, Esq.
15 Attorneys for Plaintiffs and the Class
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I, Tracie Chiarito, declare I am a citizen of the United States of America and am employed in Riverside, California; I am over the age of 18 years and am not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, California 92504. On December 21, 2023, I served the within **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; DECLARATIONS IN SUPPORT THEREOF; AND [PROPOSED] FINAL ORDER AND JUDGMENT** in said action by electronic filing service Case Home Page website to the parties on the service list maintained on the Case Home Page website for this case pursuant to the Court Order establishing the case website and authorizing service of documents.

Executed on December 21, 2023, at Riverside, California.

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SERVICE LIST

Kane Moon, Esq.
kane.moon@moonyanglaw.com
Allen Feghali, Esq.
allen.feghali@moonyanglaw.com
Edwin Kamazarian, Esq.
edwin.kamazarian@moonyanglaw.com
MOON LAW GROUP, PC
1055 W Seventh Street, Suite 1880
Los Angeles, CA 90017
Tel: (213) 232-3128 | Fax: (213) 232-3125
Attorneys for Plaintiff Dana Marie Ganal, on behalf of others similarly situated

Joseph Lavi, Esq.
jlavi@lelawfirm.com
Vincent C. Granberry, Esq.
vgranberry@lelawfirm.com
Kevin Joseph Farnan, Esq.
kfarnan@lelawfirm.com
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Blvd., Suite 200
Beverly Hills, CA 90211
Tel: (310) 432-0000 | Fax: (310) 432-0001
Attorneys for Plaintiff, Christian Hernandez, on behalf of others similarly situated

Carolyn H. Cottrell, Esq.
ccottrell@schneiderwallace.com
Ori Edelstein, Esq.
oedelstein@schneiderwallace.com
Andrew D. Weaver, Esq.
aweaver@schneiderwallace.com
SCHNEIDER WALLACE COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, CA 94608
Tel: (415) 421-7100 | Fax: (415) 421-7105
Attorneys for Plaintiff, Michael Woods, on behalf of others similarly situated

James P. Carter, Esq.
James.Carter@jacksonlewis.com
Jina Lee, Esq.
Jina.Lee@jacksonlewis.com
JACKSON LEWIS P.C.
200 Spectrum Center Drive, Suite 500
Irvine, CA 92618
Tel: (949) 885-1360 | Fax: (949) 885-1380
Attorneys for Defendant Procter & Gamble Distributing LLC