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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

ANDREW ZUNIGA AND VIVIAN
VELASQUEZ, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiffs,

vs.

DESERT AIDS PROJECT, a California
Corporation; and DOES 1 through 10,
inclusive;

Defendants.

Case No.: RIC2003219
*[Assigned to Hon. Harold Hopp, Dept 1, for
all purposes]*

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

Hearing

Date: August 24, 2023

Time: 8:30 a.m.

Dept: 1

Complaint filed: August 18, 2020

TO THE COURT AND PARTIES OF RECORD:

PLEASE TAKE NOTICE THAT on August 24, 2023, at 8:30 a.m., or as soon thereafter
as this matter may be heard by the Honorable Harold Hopp in Department 1 of the Riverside
County Superior Court located at 4050 Main Street, Riverside, CA 92501, Plaintiffs Andrew
Zuniga and Vivian Velasquez will respectfully move this Court for an Order granting final
approval of the class action settlement between Plaintiffs and Defendant Desert Aids Project,
which was preliminarily approved by the Court on April 26, 2023. This Motion, which is

supported and unopposed by Defendant, seeks final approval and entry of judgment of a \$400,000 settlement on behalf of 423 Participating Class Members.

Specifically, Plaintiffs will and hereby do move the Court to grant final approval of the Amended Class Action Settlement Agreement and Release of Claims (the "Settlement Agreement"), and enter the proposed order and final judgment filed concurrently herewith:

1. Finally certifying the Class, as defined in the Settlement Agreement and the Court's Order Granting Preliminary Approval of the Settlement;
2. Finally appointing Plaintiffs as Class Representatives for purposes of settlement;
3. Finally appointing Brian Mankin and Misty Lauby of Lauby Mankin Lauby LLP as Class Counsel for purposes of settlement;
4. Finding that the Class Notice Packet was properly provided to the Class in accordance with the Court's Order granting Preliminary Approval;
5. Finally approving the settlement as fair, adequate, and reasonable, based upon the terms set forth in the Settlement Agreement;
6. Binding Participating Class Members, Plaintiffs and the State of California to the terms of the Settlement Agreement, including the Released Class Claims and PAGA Released Claims 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 (Nathalie Beltran of ILYM Group), Class Counsel (Brian Mankin and Misty Lauby) and Plaintiffs Andrew Zuniga and Vivian Velasquez 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: July 31, 2023

LAUBY, MANKIN & LAUBY LLP

BY:



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 respectfully
4 requests that this Court grant final approval of the Amended Class Action Settlement Agreement
5 and Release of Claims (the “Settlement Agreement” or “S.A.”) on file in this action, which is
6 supported and unopposed by Defendant Desert Aids Project, and enter the proposed order and
7 final judgment in this matter.

8 There are several essential reasons why this settlement should be approved and judgment
9 entered accordingly:

10 • After extensive work and two mediations, the Parties reached a \$400,000
11 settlement tailored to a limited release of the claims alleged on behalf of the Class Members and
12 Aggrieved Employees;

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 Defendant;

16 • There were no objections;

17 • There were 3 opt-outs, meaning that **99.3%** of the Class elected to participate in
18 the settlement.

19 In accordance with the analysis and law set forth herein, the Settlement should be
20 approved, and judgment entered based on the determination that the Settlement is fair,
21 reasonable, adequate, and in the best interests of the Class. (Declaration of Class Counsel Brian
22 J. Mankin [“Mankin Decl.”] ¶¶ 13, 34).

23 **II. SUMMARY OF THE SETTLEMENT**

24 Defendant Desert Aids Project, which currently does business as DAP Health, is a
25 company that assists people living with HIV and AIDS. Plaintiffs and the Class Members (the
26 “Settlement Class” or “Class Members”) worked for Defendant as hourly non-exempt employees
27 during the Class Period of August 18, 2016, through June 8, 2022. The primary claims (which
28 Defendant vehemently disputed) involved allegations that Defendant failed to pay the Settlement

Class all wages owed (due to an alleged rounding practice and off the clock work), failed to provide compliant meal and rest breaks, wage statement violations, waiting time penalties, and PAGA penalties arising from the same underlying conduct.

The Settlement includes 423 Participating Class Members (excluding the 3 opt-outs), and the following is a breakdown of how the funds are allocated under the Settlement Agreement (Declaration of Administrator, Nathalie Beltran (“Beltran Decl.”), ¶ 14):

	Total Amount
<i>Gross Settlement Amount</i>	\$ 400,000.00
Attorneys’ Fees (1/3)	\$ 133,333.33
Litigation Costs	\$ 11,613.42
Administrator Costs	\$ 8,895.00
PAGA Penalties	\$ 40,000.00
Class Representative Service Awards	\$ 20,000.00
<i>Net Settlement Amount</i>	\$ 186,158.25

The Participating Class Members were deemed to participate and did not need to submit a Claim Form to receive payment. (S.A. ¶ 24). Each Participating Class Member will receive an Individual Settlement Amount which will be calculated and apportioned from the Net Settlement Amount based on the number of Weeks Worked by each Class Member during the Class Period. (S.A. ¶ 47(c)).

Assuming all of the amounts in the Settlement are approved by the Court, the highest payment to Participating Class Members is estimated to be approximately \$4,595.99, the average payment is estimated to be \$436.99 and the lowest is \$3.18 for a short term employee who only worked one week during the Class Period. (Beltran Decl. ¶ 14).

In addition, the 293 Aggrieved Employees will share in the \$10,000 PAGA Payment based on Weeks Worked, who will receive \$23.47 each on average. (Beltran Decl. ¶ 15).

The Individual Settlement Payments to Participating Class Members will be allocated as 15 percent to wages subject to standard withholdings¹ and 85 percent for interest and statutory penalties (pursuant to, e.g., California Labor Code sections 203, 210, 226) from which no taxes

¹ Two of the primary claims were for direct wage statement violations under Labor Code § 226 and waiting time penalties under Labor Code § 203. These claims make up the bulk of the damages, which is why 15% is allocated to wages.

will be withheld. The Settlement Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the penalties and interest allocations. (S.A. ¶ 47(d)).

Payments to Aggrieved Employees will be treated as civil penalties and paid on a Form 1099.

The Settlement Agreement provides that Defendant shall fund the Settlement Amount within 30 days of the Effective Date, which is anticipated to be the date the Court enters an order granting Final Approval. The Settlement Administrator is then required to issue payments within 10 calendar days of receipt of the payment. (S.A. ¶ 68-69).

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. (Beltran Decl. ¶ 3).

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.* at ¶ 6). Then, on May 24, 2023, the Notice Packet was sent via first-class mail to the 426 Class Members to advise each about the suit and settlement. There were initially 28 undeliverable or returned notices, so the Administrator used updated tracking methods and remailed 16 Notice Packets. Ultimately, there were 12 undeliverable Notices, resulting in a **97.2%** success rate in mailing the Notice Packets. (*Id.* at ¶ 7-10).

In accordance with California Rules of Court, Rules 3.766(d) and 3.769(f), the Notice Packet 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

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

3 **B. THERE WERE NO OBJECTIONS AND 3 OPT-OUTS, RESULTING IN AN IMPRESSIVE**
4 **99.3% CLASS PARTICIPATION IN THE SETTLEMENT**

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

13 Here, no objections were submitted and only 3 opt-outs, meaning that 99.3% of the Class
14 Members elected to participate and receive a share of the Settlement. (Beltran Decl. ¶¶ 11-13,
15 see also Exhibit “B” for true and correct copies of the opt-outs).

16 In light of this positive reaction to the Settlement and its overall terms, it is clear that the
17 Settlement, which was the product of arm’s-length negotiations, is fair and reasonable and the
18 Parties therefore respectfully request that the Court grant final approval and enter the proposed
19 judgment as requested. *See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-1802
20 (class action settlements should be approved if they are fair and reasonable, and a low percentage
21 of objectors and opt-outs is evidence of an agreement’s fairness).

22 **IV. EVALUATION OF THE SETTLEMENT**

23 It is axiomatic that California law strongly favors and encourages settlements. *See*
24 *Stambaugh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236. This presumption in favor of
25 settlement applies with particular force in the context of class actions. *See Ferguson v. Lieff,*
26 *Cabraser, Heimann & Bernstein* (2003) 30 Cal.4th 1037 (Kennard, J., concurring and dissenting)
27 (“[p]ublic policy favoring settlement is especially weighty for class actions”); *Bell v. Am. Title*
28 *Ins. Co.* (1991) 226 Cal.App.3d 1589, 1607-1608 (affirming approval of a class settlement and

1 implicitly endorsing its citation of federal precedent for the notion that there is a “strong public
2 policy in favor of settlement of class actions”); *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976)
3 529 F.2d 943, 950 (“it hardly seems necessary to point out that there is an overriding public
4 interest in settling and quieting litigation. This is particularly true in class action suits”).

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

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

15 **A. THE SETTLEMENT WAS REACHED THROUGH INFORMED ARMS-LENGTH**
16 **NEGOTIATION**

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

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

27 As the Settlement Agreement itself reveals, the Settlement is designed to fairly and
28 adequately compensate all Class Members. And, pursuant to California Rules of Court Rule

1 3.769 (b), the parties have disclosed the agreed upon and proposed attorney fee award, which is
2 well within the range of reasonableness for matters of this nature.

3 **B. PLAINTIFFS' INVESTIGATION WAS SUFFICIENT**

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

14 **C. CLASS COUNSEL ARE EXPERIENCED IN SIMILAR LITIGATION AND ENDORSE THE**
15 **SETTLEMENT**

16 Class Counsel are experienced in this type of litigation, and they have (and hereby do)
17 represent that this Settlement is fair and reasonable. (Mankin Decl. ¶¶ 13, 34); *see 7-Eleven*
18 *Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152 (Final
19 approval of settlement affirmed where counsel were all experienced litigators with class-action
20 experience and had recommended settlement based on the negotiated terms).

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

22 Plaintiffs' Motion for Preliminary Approval contained a comprehensive *Kullar* analysis
23 which sufficiently provided the Court with "basic information about the nature and magnitude
24 of the claims in question and the basis for concluding that the consideration being paid for the
25 release of those claims represents a reasonable compromise." *Kullar v. Foot Locker Retail,*
26 *Inc.* (2008) 168 Cal.App.4th 116, 133. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*
27 (2010) 186 Cal.App.4th 399, later clarified *Kullar* by noting that an explicit statement of the
28 maximum theoretical amount that the class could recover was not part of the "basic

1 information” that counsel was required to produce:

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

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

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

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

28 For their efforts in creating a common fund for the benefit of the class, the Settlement
Agreement provided that Class Counsel seek reasonable fees of \$133,333.33, which is one-third
of the common fund Settlement Amount. These fees are warranted under the law and within the
range of fees commonly awarded in similar cases.

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

**A. PLAINTIFFS ARE ENTITLED TO RECOVER REASONABLE ATTORNEYS' FEES
UNDER THE LABOR CODE**

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

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

Under the "common fund" doctrine, the request for attorneys' fees in the amount of 1/3 of the common fund is reasonable and appropriate, because (1) it is within the approved range

1 for percentages awarded as attorneys’ fees in similar cases; (2) it is supported by the high quality
2 of Class Counsel’s work on this case and the results obtained for the Class; (3) the Class had
3 sufficient notice of the fee request; (4) it is supported by the fact that this case was handled on a
4 contingency basis and was undertaken despite various risks and expenses; and (5) the lodestar
5 cross-check supports the fee request.

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

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

22 The California Supreme Court’s *Laffitte* decision was consistent with its prior rulings
23 recognizing that “when a number of persons are entitled in common to a specific fund, and an
24 action brought by ... plaintiffs for the benefit of all results in the creation or preservation of that
25 fund, such ... plaintiffs may be awarded attorneys’ fees out of the fund.” *Serrano III v. Priest*
26 (1977) 20 Cal.3d 25, 34; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 (“[A] lawyer who
27 recovers a common fund . . . is entitled to reasonable attorneys’ fees from the fund as a whole”).
28 Notably, when fees are calculated as a percentage of the common fund, they should be calculated

1 based on the amount that was available to be claimed, rather than as a percentage of the actual
2 amount claimed. *See Boeing Co.*, 444 U.S. at 475-6, 480-1 (the SCOTUS held that attorneys for
3 a successful class may recover a fee based on the fund created for the class, even if some class
4 members make no claims against the fund, so that money remains in it that will be returned to
5 the defendant, explaining: “[t]heir [class members’] right to share the harvest of the lawsuit upon
6 proof of their identity, whether or not they exercise it, is a benefit in the fund created by the
7 efforts of the class representatives and their counsel.” *See also Williams v. MGM-Pathe*
8 *Communs. Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 (trial court “abused its discretion by basing
9 the fee on the class members’ claims against the fund rather than on a percentage of the entire
10 fund or on the lodestar”).

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

13 In addition to the fact that a Class benefit was created with a non-reversionary common
14 fund settlement, the fairness of the requested fee award of 1/3 of the Settlement Amount is
15 supported by the high quality of work performed by Class Counsel and the positive result
16 obtained for the Class in spite of the risks of ongoing litigation. This result occurred because
17 Class Counsel diligently, efficiently, and creatively pursued this case and reached a settlement
18 for the benefit of the entire Class. The fact that the settlement was embraced and supported by
19 the Class, as evidenced by a 99.3% participation rate, demonstrates that Class Counsel obtained a
20 favorable result for the Class.

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

22 Rule 3.769 of the California Rules of Court requires that the Class Members be given
23 notice of any agreement regarding an application for attorneys’ fees. Here, the Notice
24 preliminarily approved by the Court and distributed to the Class Members apprised them that
25 “Class Counsel will ask for fees of one-third (\$133,333.33) of the common fund Settlement
26 Amount as reasonable compensation for the work Class Counsel performed and will continue to
27 perform in this Lawsuit through finalization of the Settlement...” (Beltran Decl., Exh. A.)
28

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

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

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

21 If Plaintiffs lost this case, Class Counsel would have recovered nothing, and would have
22 lost its out-of-pocket costs. Indeed, as Plaintiffs' Counsel can attest, not all class/PAGA cases
23 are successful. Many cases end with no fees or a greatly reduced fee that is far less than lodestar,
24 often due to no fault of counsel (i.e., bankruptcy, change in the law, consolidation or
25 coordination or preemption, being top filed, etc.). According to Mayer Brown LLP's study
26 entitled, *An Empirical Analysis of Class Actions*, cited in *Laguna v. Coverall North America,*
27 *Inc.* (9th Cir. 2014) 753 F.3d 918, found that only one-third of class actions are successful,
28

1 compared to two-thirds that are defeated and result in no payment to the class members.²

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

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

4 The “lodestar multiplier” method of cross-checking the reasonableness of attorneys’ fees
5 also supports the fee request. While a positive multiplier is routinely approved in class actions
6 ranging between 1.5 and 4.0, here Class Counsel are seeking a *negative multiplier*, as the
7 lodestar exceeds the one-third common fund request.

8 As set forth in the declaration of Class Counsel submitted herewith, the actual aggregated
9 lodestar between the attorneys that have worked on this case is approximately \$165,350 through
10 the conclusion of this matter, resulting in a *negative multiplier*, which is summarized in the
11 following table, and in the declaration of Class Counsel:

Attorney/Role	Rate	Hours	Fee
Brian J. Mankin <i>Trial Counsel</i> (22 years)	\$775	98.2 ³	\$76,105
Misty M. Lauby <i>Partner/Handling Atty</i> (14 years)	\$650	137.3	\$89,245
Grand Total for All Attorneys		235.5	\$165,350

21 (Mankin Decl. ¶ 23-25 and Exhibit “C” thereto; Lauby Decl. ¶ 9).

22 The hourly rates above are comparable to those of other attorneys with equal or similar
23 experience, if not somewhat lower (*i.e.*, the Laffey Matrix at www.laffeymatrix.com indicates that
24 the benchmark rates are: \$676/hour for an 8–10-year attorney, \$764/hour for a 11-19 year
25 attorney, and \$919/hour for a 20+ year attorney). Moreover, the Wolters Kluwer 2017 Real Rate
26 Report (“Real Rate Report”) provides directly applicable information in this regard. The Real

27 ² www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

28 ³ Includes an estimated 30 hours that will be expended in finalizing the motion, attending the hearing, working with the parties and administrator regarding the notice and payment process, and filing any post judgment paperwork.

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

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

16 Class Counsel are also highly experienced in Class/PAGA litigation, including having
17 been named by the LA Times as one "Southern California Leading Lawyers" in the May 2023
18 issue of Consumer Attorney's of Southern California (a recognition given to 17
19 employment/labor law attorneys in 2023), having been selected as "Super Lawyer" in
20 employment litigation over the last 5 consecutive years, having achieved large settlements,
21 having prevailed at trial in PAGA-only actions and Class Action jury trials. (Mankin Decl. ¶¶ 2-
22 6). Indeed, Class Counsel's rates are typical of the rates charged by defense counsel with similar
23 experience doing similar employment law work in 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 \$15,000. (S.A. ¶ 47(f)).
27 Class Counsel's actual costs through the final approval hearing are estimated to be \$11,613.42.
28 (Mankin Decl. ¶ 26, 32, and Exhibit "D" thereto). These costs include mediation fees, filing

1 fees, expert charges, CourtCall charges, and process server fees.

2 **B. THE REQUESTED SERVICE AWARD IS REASONABLE AND MERIT APPROVAL**

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

13 Defendant agreed to pay a Service Award of \$10,000 to each Plaintiff in recognition of
14 their contribution as Class Representative. (*See* Plaintiffs’ Decl. ¶ 3-8). Moreover, Plaintiffs
15 came forward and undertook significant risks, including the risk of being blackballed in the
16 industry and the risk that they could have been liable for Defendant’s costs if they lost. This
17 factor is a significant one for a wage earner, and the potential risk is very real. *See Whiteway v.*
18 *FedEx Kinkos Office & Print Svcs., Inc.* (N.D. Cal. Dec. 17, 2007) 2007 WL 4531783, at *3
19 (“the few courts to consider this ‘class representatives’ dilemma’ have not found it inequitable
20 to assess costs upon the lead or named plaintiff in a class action.”).)

21 Plaintiffs also committed a significant number of hours to assist with the
22 litigation/settlement processes of this case. The requested Service Award is reasonable,
23 particularly in light of the substantial benefits Plaintiffs generated for the Class Members, the
24 risks they undertook and the time and effort devoted to assisting with the Class/PAGA
25 settlement. (*See* Plaintiffs’ Decl. ¶ 4-8).

26 The Notice sent to each Class Member detailed the proposed service award. No Class
27 Member objected to the proposed service award to Plaintiffs. Thus, Plaintiffs request that the
28 Court approve the award because it is both reasonable and appropriate.

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

2 **A. SETTLEMENT ADMINISTRATION COSTS**

3 The Administrator, ILYM Group, agreed to administer the settlement for a flat-fee of
4 \$8,895. (Beltran Decl. ¶ 16). This amount was fully disclosed to the Class Members in the
5 Class Notice, and no Class Members objected to it. ILYM Group's declaration also fully
6 complies with the CMO in regards to the fixed fee and other work to be performed. As such,
7 the Parties request that the Administrator's fee request be approved.

8 **B. UNCASHED CHECKS**

9 The Settlement Agreement provides that if checks are not cashed within the 180 day
10 check cashing period, then the uncashed funds will be issued to the California State Controller's
11 Office in the name of the Class Member and/or Aggrieved Employee.

12 **C. FINAL REPORT**

13 Defendant will issue payment to the Administrator within 30 days of the Effective Date,
14 which is expected to occur on the day that Final Approval is granted. The Administrator will
15 then have 10 days to issue payment to the Class Members, who will then have 180 days to cash
16 their checks. Thus, the Parties propose submitting a declaration from the Administrator setting
17 forth the money that was actually paid to the class members and potentially to the State on
18 approximately April 30, 2024.

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).

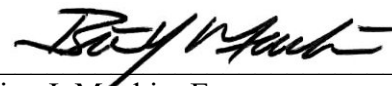
22 **VIII. CONCLUSION**

23 Plaintiffs respectfully submit that the Settlement is fair, adequate, and reasonable, and
24 merits approval. This motion is unopposed by Defendant.

25 Dated: July 31, 2023

LAUBY, MANKIN & LAUBY LLP

26
27 BY:



Brian J. Mankin, Esq.
Attorneys for Plaintiffs 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 5198 Arlington Avenue, PMB 513, Riverside, California 92504.

On July 31, 2023, I caused to be served the foregoing document(s) described as follows:

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

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

☐ **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

☐ **By Overnight Service** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

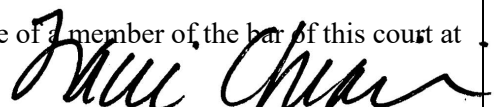
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

☐ **By Certified Mail-Return Receipt Requested** I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California

☐ **By Personal Service** I caused said document(s) to be personally served by hand on the parties listed on the attached service list.

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 31, 2023, Riverside, California.

☐ **Federal** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


Tracie Chiarito, Declarant

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