

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@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 Joe Guzman and on behalf of all others similarly situated

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

JOE GUZMAN, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

DECKERS OUTDOOR CORPORATION, a
Delaware Corporation; and DOES 1 through
20, inclusive;

Defendants.

Case No.: CVRI2100707
*[Assigned to Hon. Judge Craig Riemer, 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: September 6, 2022
Time: 8:30 a.m.
Dept: 1

Complaint Filed: February 10, 2021

TO THE COURT AND PARTIES OF RECORD:

PLEASE TAKE NOTICE THAT on September 6, 2022, at 8:30 a.m., or as soon
thereafter as this matter may be heard by the Honorable Craig Riemer in Department 1 of the
Riverside County Superior Court located at 4050 Main Street, Riverside, CA 92501, Plaintiff Joe
Guzman will respectfully move this Court for an Order granting final approval of the class action
settlement between Plaintiff and Defendant Deckers Outdoor Corporation, which was
preliminarily approved by the Court on May 10, 2022. This Motion, which is supported and

unopposed by Defendant, seeks final approval and entry of judgment of a \$950,000 settlement on behalf of 529 Participating Class Members.

Specifically, Plaintiff will and hereby does move the Court to grant final approval of the 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 Plaintiff as Class Representative for purposes of settlement;
3. Finally appointing Brian Mankin and Peter Carlson 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 to the terms of the Settlement Agreement, 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 (Taylor Mitzner of Phoenix Administration), Class Counsel (Brian Mankin and Peter Carlson) and Plaintiff 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: August 12, 2022

LAUBY, MANKIN & LAUBY LLP

BY:



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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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

3 Pursuant to California Rules of Court, Rule 3.769 (d) and (e), Plaintiff respectfully
4 requests that this Court grant final approval of the Second Amended Class Action Settlement
5 Agreement and Release of Claims (the “Settlement Agreement” or “S.A.”) on file in this action,
6 which is supported and unopposed by Defendant Deckers Outdoor Corporation, and enter the
7 proposed order and final judgment in this matter.

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

- 10 • After extensive work, the Parties reached a \$950,000 settlement tailored to a
11 limited release of the claims alleged on behalf of Class Members;
- 12 • The Class Members were deemed to participate in the Settlement, and were not
13 required to submit a Claim Form to receive funds;
- 14 • No reversion to Defendant;
- 15 • There were no objections;
- 16 • There was 1 opt-out out, meaning that **99.8%** of the Class elected to participate in
17 the settlement.

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

22 **II. SUMMARY OF THE SETTLEMENT**

23 Deckers is a publicly traded footwear designer and distributor that operates warehouses in
24 California. Plaintiff and the Class Members (the “Settlement Class”) worked for Defendant
25 during the Class Period of February 10, 2017 to November 23, 2021. The Class is limited to two
26 subclasses of employees in light of a previously filed (and settled) class action entitled *Foster, et*
27 *al. v. Deckers Outdoor Corporation, et al.*, Santa Barbara County Superior Court, Case No.
28 20CV03699 (the “*Foster Case*”), which has now received final approval, including a release of

class and PAGA claims for unpaid wages, meal and rest breaks, and failure to timely pay wages each pay period and upon separation of employment (the “Foster Settled Claims”). As a result, Plaintiff’s second amended complaint merely alleged claims for wage statement violations under Labor Code § 226, failure to pay vested vacation at the proper rate under Labor Code § 227.3, failure to pay mandated sick pay at the proper rate under Labor Code § 246, and related PAGA claims, with each Class defined as follows:

Wage Statement Class: all current and former nonexempt (i.e., eligible for overtime pay) employees (excluding retail employees) employed by Defendant in California at any time during the period of February 10, 2020, through November 23, 2021 (the “Wage Statement Class Period”).

Vacation Pay Class: all nonexempt (i.e., eligible for overtime pay) employees (excluding retail employees) who separated from employment with Defendant in California at any time during the period of February 10, 2017, through November 23, 2021 and who had accrued but unused vacation upon their separation of employment (the “Vacation Pay Class Period”).

The Settlement includes 529 Participating Class Members, and the following is a breakdown of how the funds are allocated under the Settlement Agreement (Declaration of Administrator, Taylor Mitzner (“Mitzner Decl.”), ¶ 12-15):

	Total Amount
<i>Gross Settlement Amount</i>	\$950,000.00
Attorneys’ Fees (1/3)	\$316,666.66
Litigation Costs	\$10,729.47
Administrator Costs	\$8,500
PAGA payment to LWDA (75% of \$100k award)	\$75,000
PAGA payment to Aggrieved Employees (25%)	\$25,000
Class Representative’s Service Award	\$0
<i>Net Settlement Amount</i>	\$514,103.86

The Participating Class Members were deemed to participate and did not need to submit a Claim Form to receive payment. (S.A. ¶ 25). Each Participating Class Member will receive an Individual Settlement Amount which will be calculated and apportioned from the Net Settlement Amount based on their participation in the Vacation Pay Class and Weeks Worked in the

1 Wage Statement Class, as set forth in the Settlement Agreement. (S.A. ¶ 53(c)).

2 Assuming all of the amounts in the Settlement are approved by the Court, the highest
3 payment to Participating Class Members is estimated to be approximately \$1,820.65, and the
4 average payment is estimated to be \$1,041.47. (Mitzner Decl. ¶ 14).

5 In addition, the Aggrieved Employees will share in the \$25,000 PAGA Payment, and will
6 receive \$51.98 on average. (Mitzner Decl. ¶ 15).

7 The Parties agree that the Individual Settlement Amounts paid to the Wage Statement
8 Class will be treated 100% as penalties and interest reportable on IRS form 1099 for the Wage
9 Statement Class Members. The Individual Settlement Amounts paid to the Vacation Pay Class
10 will be treated as one-third (33.333%) to wages subject to withholding of all applicable local,
11 state and federal taxes; and two-thirds (66.667%) paid as interest and as penalties from which no
12 taxes will be withheld (IRS 1099 reporting). (S.A. ¶ 53(d)).

13 The Settlement Agreement provides that Defendant shall fund the Settlement Amount
14 within 30 days of the Effective Date, which is anticipated to be the date the Court enters an order
15 granting Final Approval. The Settlement Administrator is then required to issue payments within
16 10 calendar days of receipt of the payment. (S.A. ¶ 76-77).

17 **III. THE NOTICE PROCESS**

18 **A. NOTICE TO THE CLASS MEMBERS**

19 Pursuant to the Court's Order and the Settlement Agreement, the Parties directed the
20 Settlement Administrator to review and update the Class Members' addresses, mail the Court-
21 approved Notice Packet, and process their responses. (Mitzner Decl. ¶ 2).

22 Prior to mailing the Notice Packet, the Settlement Administrator performed a National
23 Change of Address search on all Class Members to determine if any had moved. (*Id.* at ¶ 4).
24 Then, on May 31, 2022, the Notice Packet was sent via first-class mail to the Class Members to
25 advise each about the suit and settlement. There were 8 undeliverable or returned notices, so the
26 Administrator conducted additional address verification measures and remailed 3 Notice Packets
27 to an updated address, resulting in only 5 undeliverable Packets out of 530 - a **99%** success rate
28 in mailing the Notice Packets. (*Id.* at ¶ 5-7).

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

11 **B. THERE WERE NO OBJECTIONS AND ONLY 1 OPT-OUT, RESULTING IN AN**
12 **IMPRESSIVE 99.8% CLASS PARTICIPATION IN THE SETTLEMENT**

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

21 Here, no objections were submitted and only 1 opt-out, meaning that 99.8% of the Class
22 Members elected to participate and receive a share of the Settlement. (Mitzner Decl. ¶¶ 8-9,
23 Exhibit "B"). There was one dispute form submitted, but deemed to be invalid by the
24 Administrator: "Class Member did not provide an alternative number of work weeks or attach
25 documentation supporting their dispute, and therefore it was considered to be invalid." (Mitzner
26 Decl. ¶¶ 10, Exhibit "C")

27 In light of this positive reaction to the Settlement and its overall terms, it is clear that the
28 Settlement, which was the product of arm's-length negotiations, is fair and reasonable and the

1 Parties therefore respectfully request that the Court grant final approval and enter the proposed
2 judgment as requested. *See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-1802
3 (class action settlements should be approved if they are fair and reasonable, and a low percentage
4 of objectors and opt-outs is evidence of an agreement’s fairness).

5 **IV. EVALUATION OF THE SETTLEMENT**

6 It is axiomatic that California law strongly favors and encourages settlements. *See*
7 *Stambaugh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236. This presumption in favor of
8 settlement applies with particular force in the context of class actions. *See Ferguson v. Lieff,*
9 *Cabraser, Heimann & Bernstein* (2003) 30 Cal.4th 1037 (Kennard, J., concurring and dissenting)
10 (“[p]ublic policy favoring settlement is especially weighty for class actions”); *Bell v. Am. Title*
11 *Ins. Co.* (1991) 226 Cal.App.3d 1589, 1607-1608 (affirming approval of a class settlement and
12 implicitly endorsing its citation of federal precedent for the notion that there is a “strong public
13 policy in favor of settlement of class actions”); *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976)
14 529 F.2d 943, 950 (“it hardly seems necessary to point out that there is an overriding public
15 interest in settling and quieting litigation. This is particularly true in class action suits”).

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

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

26 ///

27 ///

28 ///

1 **A. THE SETTLEMENT WAS REACHED THROUGH INFORMED ARMS-LENGTH**
2 **NEGOTIATION**

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

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

13 As the Settlement Agreement itself reveals, the Settlement is designed to fairly and
14 adequately compensate all Class Members. And, pursuant to California Rules of Court Rule
15 3.769 (b), the parties have disclosed the agreed upon and proposed attorney fee award, which is
16 well within the range of reasonableness for matters of this nature.

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

18 This was not an easy case to manage in light of the Foster case, which refused to "play
19 nice" and insisted on keeping the door closed on us at mediation. However, Class Counsel
20 successfully managed to have Foster carve out claims that it did not allege so that those claims
21 could be pursued in this case. Class Counsel then developed a process with Defense Counsel by
22 which it could investigate the facts and merits of the remaining wage and hour claims. This
23 included analyzing substantial amounts of information, correspondence, documents, pay data,
24 policies and procedures, and evidence relating to the class size and the commonality of the
25 claims. During this process, Class Counsel and an expert conducted investigations into the
26 potential claims of the similarly situated employees, as well as researching and investigating
27 Defendant's defenses. Finally, Class Counsel synthesized and analyzed information provided by
28 Defendant as to the total Class Members, the number of current and former employees, the

number of employees who worked during various time periods, and prepared comprehensive damages calculations with their expert regarding the claims at issue.

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

As noted in the section above, it took considerable skill and experience to navigate this case in light of the Foster case, and despite that Foster settled far broader case unpaid wage case with waiting time penalties for only a fraction more (i.e., \$1,150,000), whereas Class Counsel successfully settled a very narrow wage statement claims with limited vacation/sick pay claims (but no waiting time penalties) is a testament to the skill and experience of Class Counsel, who have (and hereby do) represent that this Settlement is fair and reasonable. (Mankin Decl. ¶¶ 13, 35); *see 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152 (Final approval of settlement affirmed where counsel were all experienced litigators with class-action experience and had recommended settlement based on the negotiated terms).

D. REASONABLE ESTIMATE OF THE NATURE AND AMOUNT OF RECOVERY

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

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

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

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

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

18 For their efforts in creating a common fund for the benefit of the class, the Settlement
19 Agreement provided that Class Counsel seek reasonable fees of \$316,666.66, which is one-third
20 of the common fund Settlement Amount and is slightly more than Class Counsel’s actual
21 lodestar, resulting in a minimal multiplier. These fees are warranted under the law and within
22 the range of fees commonly awarded in similar cases.

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

1 method survives in California class action cases. *See Laffitte v. Robert Half International, Inc.*
2 (2016) 1 Cal.5th 480. Third, the requested amount is eminently reasonable through the prism of
3 a lodestar cross-check. Accordingly, this request should receive final approval.

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

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

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

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

28 ///

1 ***1. The Attorneys' Fees Requested Here Fall Within the Reasonable Range***
2 ***Awarded in Similar Cases Under the Common Fund Method***

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

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

1 efforts of the class representatives and their counsel.” *See also Williams v. MGM-Pathe*
2 *Communs. Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 (trial court “abused its discretion by basing
3 the fee on the class members’ claims against the fund rather than on a percentage of the entire
4 fund or on the lodestar”).

5 **2. High Quality of Work and Excellent Result Obtained Support the Award**

6 Foster’s counsel initially sought to ignore Class Counsel, and ultimately, when he was
7 forced for deal with them, his next strategy was to exclude them from mediation or offer them a
8 very tiny fee. Class Counsel stood firm and rejected all offers from Foster’s counsel and merely
9 forced him to carve out claims that this case alleged, but the Foster case did not. The end result
10 is that the Foster case resulted in a meager settlement in light of the breadth of its claims that
11 included significant unpaid wage claims and waiting time penalties, whereas this case was
12 primarily left with wage statement only claims (as evidenced by the fact that only \$14,200 was
13 paid to the Vacation Pay Class and \$500,000 was paid to the Wage Statement Class).

14 It was not an easy task to navigate these choppy waters and create a non-reversionary
15 common fund settlement for the Class. Accordingly, the fairness of the requested fee award of
16 1/3 of the Settlement Amount is supported by the high quality of work performed by Class
17 Counsel and the positive result obtained for the Class in spite of the risks of ongoing litigation.
18 This result occurred because Class Counsel diligently, efficiently, and creatively pursued this
19 case and reached a settlement for the benefit of the entire Class. The fact that the settlement was
20 embraced and supported by the Class, as evidenced by a 99.8% participation rate, demonstrates
21 that Class Counsel obtained a favorable result for the Class.

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

23 Rule 3.769 of the California Rules of Court requires that the Class Members be given
24 notice of any agreement regarding an application for attorneys’ fees. Here, the Notice
25 preliminarily approved by the Court and distributed to the Class Members apprised them that
26 “Class Counsel will ask for fees of one-third (\$316,666.66) of the common fund Settlement
27 Amount as reasonable compensation for the work Class Counsel performed and will continue to
28 perform in this Lawsuit through finalization of the Settlement...” (Mitzner Decl., Exh. A.)

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 the Case Further Supports the Fee Award at**
10 **1/3 of the Common Fund**

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

20 If Plaintiff lost this case, Class Counsel would have recovered nothing, and would have
21 lost its out-of-pocket costs. Indeed, as Plaintiff's Counsel can attest, not all class/PAGA cases
22 are successful. Many cases end with no fees or a greatly reduced fee that is far less than lodestar,
23 often due to no fault of counsel (i.e., bankruptcy, change in the law, consolidation or
24 coordination or preemption, being top filed, etc.). According to Mayer Brown LLP's study
25 entitled, *An Empirical Analysis of Class Actions*, cited in *Laguna v. Coverall North America,*
26 *Inc.* (9th Cir. 2014) 753 F.3d 918, found that only one-third of class actions are successful,
27 compared to two-thirds that are defeated and result in no payment to the class members.¹

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

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

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

The “lodestar multiplier” method of cross-checking the reasonableness of attorneys’ fees also supports the fee request. While a positive multiplier is routinely approved in class actions ranging between 1.5 and 4.0, here Class Counsel are merely seeking a 1.23 multiplier. Considering that Class Counsel have two hearings in this Court one day apart and in the other case Class Counsel is seeking a fee based on a **negative 2 multiplier**, it just goes to show how the contingency method results in some cases generating a positive multiplier whereas other result in a negative. But availability of obtaining a multiplier is essential to balance out all of those situations in which the result is not successful, including the negative 2 multiplier case of *Moreno v. J.J. Kane Associates* that is scheduled for final approval to be heard one day later. (Mankin Decl. ¶ 17).

To summarize, the actual aggregated lodestar between the attorneys that have worked on this case is approximately \$257,170 through the conclusion of this matter, which is set forth in the following table, and in the declarations of Class Counsel:

Attorney/Timekeeper	Rate	Hours	Fee
Brian J. Mankin <i>Trial Counsel</i> (21 years)	\$775	185.3 ²	\$143,607.50
Peter J. Carlson Senior Associate (8 years)	\$575	197.5	\$113,562.50
Grand Total for All Attorneys		382.8	\$257,170.00

(Mankin Decl. ¶ 26; Carlson Decl. ¶¶ 9).

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² Includes an estimated 40 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 The hourly rates above are comparable to those of other attorneys with equal or similar
2 experience, if not somewhat lower (*i.e.*, the Laffey Matrix at www.laffeymatrix.com indicates that
3 the benchmark rates are: \$676/hour for an 8–10-year attorney, \$764/hour for a 11-19 year
4 attorney, and \$919/hour for a 20+ year attorney). Moreover, the Wolters Kluwer 2017 Real Rate
5 Report (“Real Rate Report”) provides directly applicable information in this regard. The Real
6 Rate Report is based on an enormous and statistically significant compilation of data: 25.8
7 million billing entries and 23.9 million hours billed by over 112,100 individual timekeepers from
8 4,620 law firms, totaling \$9.02 billion in fees billed. (*See* Wolters Kluwer’s ELM Solutions, Inc.,
9 2017 Real Rate Report). The Real Rate Report then compiles and analyzes this data to provide
10 the hourly rates for partners and associates in major metropolitan areas. For the southern
11 California area, which is based on billing entries for 1,125 partners and 1,566 associates, the
12 Real Rate Report states that: (a) the rates for partners in Los Angeles is between \$640 and
13 \$869.75 per hour for the middle and upper quartiles, and (b) the rates for associates in Los
14 Angeles is between \$478.74 and \$638.97 for the median and upper quartiles. And, perhaps most
15 importantly, the information provided in the Real Rate Report is not based on self-reported
16 numbers, surveys, sampling, or reviews or other publications – instead, the Real Rate Report is
17 based on the actual hours and fees billed by law firms. (Mankin Decl., ¶ 24.)

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

21 Class Counsel are also highly experienced in Class/PAGA litigation, including having
22 been selected as “Super Lawyers” in employment litigation on multiple occasions, having
23 achieved large settlements, having prevailed at trial in PAGA-only actions and Class Action jury
24 trials. (Mankin Decl. ¶¶ 2-6). Indeed, Class Counsel’s rates are typical of the rates charged by
25 defense counsel with similar experience doing similar employment law work in this region.

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

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

3 The Settlement Agreement authorized litigation costs of up to \$15,000. (S.A. ¶ 53(f)).
4 Class Counsel's actual costs through the final approval hearing are estimated to be \$10,729.47.
5 (Mankin Decl. ¶ 28, 33). These costs include mediation fees, filing fees, expert charges,
6 CourtCall charges, and process server fees.

7 **B. A SERVICE AWARD IS NOT REQUESTED**

8 As set forth at preliminary approval and in the settlement agreement, Plaintiff has
9 entered into a separate individual settlement agreement for Plaintiff's separate individual
10 claims that were not included in this Action (*i.e.*, the *Foster* Settled Claims, as Plaintiff opted
11 out of the *Foster* settlement), and in recognition for Plaintiff waiving a service award as part of
12 this Settlement while giving up a full release of any known and unknown claims in the separate
13 individual settlement agreement. Thus, Plaintiff is not seeking a service award, but has entered
14 into a separate settlement agreement since he opted-out of the *Foster* settlement and will not
15 receive any money for giving up those claims. (S.A. ¶ 63; see also Decl. of Joe Guzman).

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

17 **A. SETTLEMENT ADMINISTRATION COSTS**

18 The Administrator, Phoenix Administration, agreed to administer the settlement for a
19 flat-fee of \$8,500. (Mitzner Decl. ¶ 21). This amount was fully disclosed to the Class
20 Members in the Class Notice, and no Class Members objected to it. Phoenix's declaration also
21 fully complies with the CMO in regards to the fixed fee and other work to be performed.
22 (Mitzner Decl. ¶ 18-21). As such, the Parties request that the Administrator's fee request be
23 approved.

24 **B. UNCASHED CHECKS**

25 Class Members will have 180 days to cash his/her settlement check. If a Class Member
26 fails to cash his check by the deadline, then the Settlement Administrator shall issue the
27 unclaimed funds to the California State Controller in the name of the Class Member and/or
28 Aggrieved Employee. (S.A. ¶ 78).

1 **C. FINAL REPORT**

2 Defendant will issue payment to the Administrator within 30 days of the Effective Date,
3 which is expected to occur on the day that Final Approval is granted. The Administrator will
4 then have 10 days to issue payment to the Class Members, who will then have 180 days to cash
5 their checks. Thus, the Parties propose submitting a declaration from the Administrator setting
6 forth the money that was actually paid to the class members and potentially to the State
7 Controller on approximately May 15, 2023.

8 **D. SUBMISSION TO THE LWDA**

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

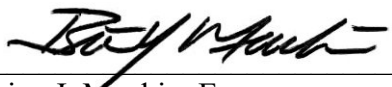
11 **VIII. CONCLUSION**

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

14 Dated: August 12, 2022

LAUBY, MANKIN & LAUBY LLP

15
16 BY:



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

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.

On August 12, 2022, I caused to be served the foregoing document(s) described as follows:

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.

[] **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

SERVICE LIST

Jeffrey A. Dinkin, Esq.
Jared A. Speier, Esq.
STRADLING YOCCA CARLSON & RAYTH, P.C.
800 Anacapa Street, #A
Santa Barbara, CA 93101
805-730-6800
805-730-6801-fax
jdinkin@stradlinglaw.com
jspeier@stradlinglaw.com
Attorneys for Defendant DECKERS OUTDOOR CORPORATION