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

KARINA MORALES, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

VPET USA, LLC, a Delaware Limited
Liability Company; WORKFORCE
PERSONNEL, INC., a California
Corporation; and DOES 1 through 20,
inclusive.

Defendants.

Case No.: CIVSB2108161
[Assigned to Hon. Judge David Cohn, Dept
S26, for all purposes]

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

Hearing

Date: November 10, 2022

Time: 10:00 a.m.

Dept: S26

Complaint filed: March 10, 2021

TO THE COURT AND PARTIES OF RECORD:

PLEASE TAKE NOTICE THAT on November 10, 2022, at 10:00 a.m., or as soon
thereafter as this matter may be heard by the Honorable David Cohn in Department S26 of the
San Bernardino County Superior Court, located at 247 West Third Street San Bernardino CA
92415, Plaintiff Karina Morales will respectfully move this Court for an Order granting final
approval of the class action settlement between Plaintiff and Defendant VPET USA, LLC, which
was preliminarily approved by the Court on July 29, 2022. This Motion, which is supported and
unopposed by Defendant, seeks final approval and entry of judgment of a settlement on behalf of

1 the Class Members.

2 Specifically, Plaintiff will and hereby does move the Court to grant final approval of the
3 Class Action Settlement Agreement and Release of Claims¹ and the Addendum thereto²
4 (collectively, the “Settlement Agreement”), and enter the proposed order and final judgment filed
5 concurrently herewith:

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

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

9 3. Finally appointing Brian Mankin and Misty Lauby of Lauby Mankin Lauby LLP
10 as Class Counsel for purposes of settlement;

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

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

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

17 7. Retaining jurisdiction to enforce the Settlement Agreement.

18 This Motion will be based upon this notice; the attached memorandum of points and
19 authorities; the Declarations of the Settlement Administrator (Makenna Snow of ILYM Group,
20 the Class Action Administrator), Class Counsel (Brian Mankin and Misty Lauby) and Plaintiff
21 filed concurrently herewith; the records and files in this action; and any other further evidence or
22 argument that the Court may receive at or before the hearing.

23 Dated: October 19, 2022

LAUBY, MANKIN & LAUBY LLP

24
25 BY:



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

¹ See Exhibit A to the Declaration of Brian Mankin in Support of Final Approval of the Class Action Settlement

² See Exhibit B to the Declaration of Brian Mankin in Support of Final Approval of the Class Action Settlement

TABLE OF CONTENTS

I.	SUMMARY OF ARGUMENT AND ESSENTIAL POINTS	1
II.	PERTINENT BACKGROUND AND SETTLEMENT TERMS.....	2
III.	THE NOTICE PROCESS.....	4
A.	Notice to the Class Members	4
B.	There are Zero Objections and Zero Opt-Outs, Resulting in an Impressive 100% Class Participation in the Settlement	5
IV.	EVALUATION OF THE SETTLEMENT	6
A.	The Settlement was Reached through Informed Arms-Length Negotiation	6
B.	Plaintiff's Investigation was Sufficient.....	7
C.	Class Counsel are Experienced in Similar Litigation and Endorse the Settlement	7
D.	Reasonable Estimate of the Nature and Amount of Recovery	8
V.	THE REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE.....	9
A.	Plaintiff is Entitled to Recover Reasonable Attorneys' Fees Under the Labor Code	9
B.	Class Counsel's Request for Fees is Reasonable and Properly Calculated as a Percentage of the Common Fund.....	10
1.	The Attorneys' Fees Requested Here Fall Within the Reasonable Range Awarded in Similar Cases Under the Well-established Common Fund Method	10
2.	The High Quality of Work and Excellent Result Obtained Support the Award... ..	11
3.	Class Members Had Sufficient Notice of the Requested Fees	12
4.	The Contingent Nature of Class Counsel's Representation of Plaintiff and the Class Further Supports the Fee Award at 1/3 of the Common Fund.....	12
5.	A Lodestar Cross-Check Confirms the Reasonableness of the Fee Award.....	13
VI.	THE REQUESTED COSTS AND SERVICE AWARDS ARE REASONABLE.....	15
A.	The Requested Costs are Reasonable and Merit Approval.....	15
B.	The Requested Service Award is Reasonable and Merits Approval	15
VII.	OTHER MATTERS FOR FINAL APPROVAL	16
A.	Settlement Administration Costs	16
B.	Uncashed Checks	17
C.	Final Report	17
D.	Submission to the LWDA.....	17
VIII.	CONCLUSION.....	17

TABLE OF AUTHORITIES

Cases

7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135 6

Bell v. Am. Title Ins. Co. (1991) 226 Cal.App.3d 1589 4

Bell v. Farmers Insurance Exchange (2004) 115 Cal.App.4th 715..... 15

Boeing Co. v. Van Gemert, 444 U.S. 472 10

Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43 8

Ferguson v. Lieff, Cabraser, Heimann & Bernstein (2003) 30 Cal.4th 1037..... 4

Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116..... 6

Laffitte v. Robert Half International, Inc. (2016) 1 Cal.5th 480..... 8, 9

Litwin v. iRenew Bio Energy Solutions, LLC (2014) 226 Cal.App.4th 877 11

Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles (2010) 186 Cal.App.4th 399 6

PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084..... 12

Press v. Lucky Stores, Inc. (1983) 34 Cal.3d 311 12

Serrano III v. Priest (1977) 20 Cal.3d 25 10

Wershba v. Apple Computers, Inc. (2001) 91 Cal.App.4th 246 7

Williams v. MGM-Pathe Communs. Co. (9th Cir. 1997) 129 F.3d 1026..... 10

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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

3 Pursuant to California Rules of Court, Rule 3.769 (d) and (e), Plaintiff respectfully
4 requests that this Court grant final approval of the Class Action Settlement Agreement and the
5 Addendum thereto (the “Settlement Agreement” or “S.A.”), which is supported and unopposed
6 by Defendant VPET USA, LLC, and enter the proposed order and final judgment in this matter.

7 First and foremost, we must address the Addendum to the Settlement Agreement³, and
8 why it came about after the Court granted preliminary approval. Prior to preliminary approval
9 and for the purposes of preparing for mediation, Defendant represented that there were
10 approximately 150 Class Members⁴. We assumed that this number might increase a bit because
11 it took a while to get a preliminary approval hearing date. But after preliminary approval was
12 granted, Defendant’s personal analyzed the records and performed an exact employee count,
13 discovering that there were actually 234 Class Members who worked during the Class Period.
14 Defendant uploaded the Class Data to the Settlement Administrator only, who then proceeded to
15 mail the Class Notice to all 234 Class Members. There were no opt-outs or objections.

16 As final approval approached and the Settlement Administrator circulated a draft
17 declaration, Class Counsel discovered that the class size increased to 234 employees. The
18 increase. In terms of average payments, the Class Notice that was mailed to the Class Members
19 resulted in a Net Settlement Amount of approximately \$112,116.67 after deductions from the
20 \$250,000 settlement amount. This resulted in an average payment of \$479, although each Class
21 Member’s share was calculated based on a workweek value of \$10.65 per each week worked
22 during the Class Period. Again, no Class Members objected or opt-out based on a share of
23 \$10.65 per workweek.

24 However, the \$50,000 increase in the Maximum Settlement Amount causes the Net
25 Settlement Amount to increase to \$146,283.14, whereby each Class Member will now receive
26

27 ³ Exhibit A to the Declaration of Brian Mankin

28 ⁴ Class Members is defined as all current and former nonexempt employees employed directly by Defendant VPET
USA, LLC, and who worked at the VPET Facility (located at 12925 Marlay Avenue, Fontana, CA 92337) at any
time between September 19, 2019 and the Preliminary Approval Date (the “Class Period”).

1 more on average than set forth in the Class Notice. To be specific, the average payment now
2 increases to \$625.14 and the value per Workweek increases to \$13.73. As a result, Class
3 Members will actually receive approximately 30% more than the estimated payment that was
4 displayed on their Class Notice.

5 Of course, this is all subject to Court approval, but the Parties believe that since the Class
6 Members fully approved the settlement at \$250,000 gross that they will naturally approve a
7 settlement at \$300,000 gross, which will put 30% more money in each of their pockets than they
8 believed they were receiving. And importantly, approving the Settlement at the upcoming
9 hearing will results in checks being issued to the 234 Class Members just before the holidays on
10 December 20, 2022.

11 Additionally, there are additional reasons why this settlement should be approved, and
12 judgment entered accordingly, as follows:

- 13 • After extensive work, the Parties reached a settlement tailored to a limited release
14 of the claims alleged on behalf of the Class Members;
- 15 • The Class Members were deemed to participate in the Settlement, and were not
16 required to submit a Claim Form to receive funds;
- 17 • No reversion to Defendant; and
- 18 • There are zero objections and zero opt-outs, meaning that 100% of the Class
19 elected to participate in the Settlement;

20 In accordance with the analysis and law set forth herein, the Settlement should be
21 approved, and judgment entered based on the determination that the Settlement is fair,
22 reasonable, adequate, and in the best interests of the Class. (Declaration of Class Counsel Brian
23 J. Mankin [“Mankin Decl.”] ¶¶ 16, 37).

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

25 VPET is a manufacturer of sustainable PET products for food and beverage markets,
26 including making and distributing plastic bottles and containers. It has one facility in California
27 where Plaintiff and the Class Members worked. The primary claims involved allegations that
28 Defendant had a practice of rounding time to the nearest quarter-hour, as well as failed to

provide meal and rest breaks, failed to timely pay all wages upon separation of employment and provided inaccurate wage statements.

In addition to the Class Members in this settlement, various staffing agencies supply temporary employees to work at VPET. However, because this Settlement only covers individuals who were *directly employed* by VPET USA, LLC and performed work at the VPET Facility, the converse is that this Settlement excludes any temporary employees that were assigned to work at the VPET Facility by Staffing Agencies or other companies.⁵ Plaintiff is preparing to mediate claims against the Staffing Companies early next year in this same lawsuit.

As noted, the Settlement includes 234 Participating Class Members, and based on an increase of the Maximum Settlement Amount to \$300,000, the following is a breakdown reflecting how the funds are allocated under the Settlement Agreement (Declaration of Administrator, Makenna Snow (“Snow Decl.”), ¶ 15):

	Total Amount
<i>Gross Settlement Amount</i>	\$ 300,000
Attorneys’ Fees (1/3)	\$ 100,000
Litigation Costs	\$ 14,216.86
Administrator Costs	\$ 7,000
PAGA Penalties	\$ 25,000
Class Representative’s Service Award	\$ 7,500
<i>Net Settlement Amount</i>	\$ 146,283.14

The Class Members were deemed to participate and did not need to submit a Claim Form to receive payment. Based on a class of 234 employees, and assuming all of the amounts are approved by the Court, the highest payment to Participating Class Members is estimated at \$2,058.78, and the average payment is \$625.14. Of course, the actual payment will be calculated on a pro-rata basis according to the number of Workweeks Worked by each Class

⁵ The Released Class Claims and Released Parties specifically exclude the “Excluded Employers,” who are defined as “Workforce Personnel, Inc., VPET USA, Inc., LL Continental, Inc., and/or the individuals Henry Lee and Wenhao Wang and their officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective parent and subsidiary corporations, subsidiaries, divisions, affiliates, attorneys of VPET USA, Inc., and LL Continental, Inc., and/or the individuals Henry Lee and Wenhao Wang.” The Excluded Employer failed to produce data in preparation for mediation and, as a result, the settlement only includes direct hires of VPET USA, LLC.

1 Member. The Class collectively worked 10,658 Workweeks during the Class Period, so each
2 Workweek will have a value of approximately \$13.73/week. (Snow Decl. ¶ 5, 16).

3 For reference and comparison, the Settlement Administrator also calculated how the
4 payments would look if the settlement amount remained at \$250,000. (Snow Decl. ¶ 15).

5 Additionally, the Settlement Agreement provides that the 25% PAGA allocation will be
6 allocated only to Aggrieved Employees, rather than to all Class Members. In this case, 230
7 Aggrieved Employees (who collectively worked 9,813 work weeks) will share in the \$6,250
8 award (accounting for 25% of the total \$25,000 allocation) on a pro rata basis. (Snow Decl. ¶ 5,
9 17).

10 The Settlement Agreement provides that one-third (33.34%) of each Individual
11 Settlement Amount shall constitute wages (for which each Participating Class Member will be
12 issued an IRS Form W-2 for such payment), and the remaining two-thirds (66.66%) will be
13 allocated equally between interest (33.33%) and as penalties (33.33%) (for which each
14 Participating Class Member will be issued an IRS Form 1099 for the interest and penalty
15 allocation). (S.A. ¶ 49(d)).

16 Defendant is required to deposit the Settlement Amount, along with the employers' share
17 of payroll taxes owed, with the Settlement Administrator, within 30 calendar days after the
18 "Effective Date." (S.A. ¶ 72). Within 10 days after the receipt of payment, the Settlement
19 Administrator shall issue payments to cover all court-approved payments. (S.A. ¶ 73).

20 **III. THE NOTICE PROCESS**

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

22 Pursuant to the Court's Order and the Settlement Agreement, the Parties directed the
23 Settlement Administrator to review and update the Class Members' addresses, mail the Court-
24 approved Notice Packet, and process their responses. (Snow Decl. ¶ 3).

25 Prior to mailing the Notice Packet, the Settlement Administrator performed a National
26 Change of Address search on all Class Members to determine if any had moved. (*Id.* ¶ 6). Then,
27 on August 30, 2022, the Notice Packet was sent via first-class mail to 234 Class Members to
28 advise each about the suit and settlement. (*Id.* ¶ 7). Ultimately, only 9 Notice Packet were

determined to be undeliverable, meaning that there was a **97.2%** success rate in mailing the Notice Packets. (*Id.* ¶ 8-9).

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

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

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

Here, there are zero objections and zero opt-outs to the Settlement, meaning that 100% of the Class Members will receive a share of the Settlement (Snow Decl. ¶¶ 11-12). Thus, the Class fully viewed this as a fair and reasonable settlement even at the lower \$250,000 settlement amount.

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1 **IV. EVALUATION OF THE SETTLEMENT**

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

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

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

22 **A. THE SETTLEMENT WAS REACHED THROUGH INFORMED ARMS-LENGTH**
23 **NEGOTIATION**

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

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

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

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

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

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 (and hereby do)
25 represent that this Settlement is fair and reasonable. (Mankin Decl. ¶¶ 16, 37); *see 7-Eleven*
26 *Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152 (Final
27 approval of settlement affirmed where counsel were all experienced litigators with class-action
28 experience and had recommended settlement based on the negotiated terms).

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

2 Plaintiff’s Motion for Preliminary Approval contained a comprehensive *Kullar* analysis
3 which sufficiently provided the Court with “basic information about the nature and magnitude
4 of the claims in question and the basis for concluding that the consideration being paid for the
5 release of those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail,*
6 *Inc.* (2008) 168 Cal.App.4th 116, 133. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*
7 (2010) 186 Cal.App.4th 399, later clarified *Kullar* by noting that an explicit statement of the
8 maximum theoretical amount that the class could recover was not part of the “basic
9 information” that counsel was required to produce:

10 Greenwell misunderstands *Kullar*, apparently interpreting it to
11 require the record in all cases to contain evidence in the form of an
12 explicit statement of the maximum amount the plaintiff class could
13 recover if it prevailed on all its claims – a number which appears
14 nowhere in the record of the case. But *Kullar* does not, as
15 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.

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

24 In light of the uncertainties of protracted litigation, this negotiated settlement reflects the
25 best practicable recovery for the Class. While the total settlement amount is, of course, a
26 compromise figure, the potential risks and opportunities of both parties were effectively weighed
27 and considered by the parties, resulting in a fair and equitable settlement. Based upon detailed
28 data obtained through discovery and information exchanges, and factoring in claim certification

probabilities and liability probabilities, Class Counsel formulated detailed damages models to evaluate the claims for mediation in order to reach a realistic and reasonable resolution.

V. THE REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE

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 one-third of the Settlement Amount, which based on the increased Gross Settlement Amount will total \$100,000. This amount will be paid from the Settlement Amount, as provided by the Settlement Agreement. 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 recently held 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. PLAINTIFF IS ENTITLED TO RECOVER REASONABLE ATTORNEYS' FEES UNDER THE LABOR CODE

Plaintiff and the Class 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, Plaintiff 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." Plaintiff and the Class are

1 also entitled to fees and costs under section 226(e) of the Labor Code (employee who prevails on
2 claim for itemized wage statement violation “is entitled to an award of costs and reasonable
3 attorneys’ fees”), under PAGA (Labor Code § 2699(g), which provides “Any employee who
4 prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs,
5 including any filing fee paid”), and, potentially, section 1021.5 of the California Code of Civil
6 Procedure.

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

9 Under the “common fund” doctrine, the request for attorneys’ fees in the amount of 1/3
10 of the common fund is reasonable and appropriate, because (1) it is within the approved range
11 for percentages awarded as attorneys’ fees in similar cases; (2) it is supported by the high quality
12 of Class Counsel’s work on this case and the results obtained for the Class; (3) the Class had
13 sufficient notice of the fee request; (4) it is supported by the fact that this case was handled on a
14 contingency basis and was undertaken despite various risks and expenses; and (5) the lodestar
15 cross-check supports the fee request.

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

19 The California Supreme Court approved trial courts’ usage of the common fund method
20 of awarding attorneys’ fees in wage and hour class actions, like this one, and upheld a fee
21 awarded of 1/3 of the total settlement amount obtained for the class. *See Laffitte, supra*, 1 Cal.5th
22 at 506; *see also*, 4 Newberg on Class Actions, § 14:6 at 552 (“fee awards in class actions average
23 around one-third of the recovery”). Specifically, in *Laffitte*, the Court wrote: “[w]e join the
24 overwhelming majority of federal and state courts in holding that when class action litigation
25 establishes a monetary fund for the benefit of the class members, and the trial court in its
26 equitable powers awards class counsel a fee out of that fund, the court may determine the amount
27 of a reasonable fee by choosing an appropriate percentage of the fund created”). *Id.* at 506. The
28 California Supreme Court also noted that trial courts have the discretion to award fees as a

percentage of the common fund, with or without the necessity to conduct a lodestar cross-check. *Id.* (“...[Courts] ... retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee.”).

The California Supreme Court’s recent *Laffitte* decision was consistent with its prior rulings recognizing that “when a number of persons are entitled in common to a specific fund, and an action brought by ... plaintiff for the benefit of all results in the creation or preservation of that fund, such ... plaintiff may be awarded attorneys’ fees out of the fund.” *Serrano III v. Priest* (1977) 20 Cal.3d 25, 34; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 (“[A] lawyer who recovers a common fund . . . is entitled to reasonable attorneys’ fees from the fund as a whole”). Notably, when fees are calculated as a percentage of the common fund, they should be calculated based on the amount that was available to be claimed, rather than as a percentage of the actual amount claimed. *See Boeing Co.*, 444 U.S. at 475-6, 480-1 (the SCOTUS held that attorneys for a successful class may recover a fee based on the fund created for the class, even if some class members make no claims against the fund, so that money remains in it that will be returned to the Defendants, explaining: “[t]heir [class members’] right to share the harvest of the lawsuit upon proof of their identity, whether or not they exercise it, is a benefit in the fund created by the efforts of the class representatives and their counsel.” *See also Williams v. MGM-Pathe Communs. Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 (trial court “abused its discretion by basing the fee on the class members’ claims against the fund rather than on a percentage of the entire fund or on the lodestar”).

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

In addition to the fact that a Class benefit was created with a \$300,000 non-reversionary common fund settlement, the fairness of the requested fee award of 1/3 of the Settlement Amount is supported by the high quality of work performed by Class Counsel and the positive result obtained for the Class. This result occurred because Class Counsel diligently, efficiently, and creatively pursued this case and reached a settlement for the benefit of the entire Class. The fact that the settlement was embraced and supported by the Class, as evidenced by a 100%

1 participation rate, demonstrates that Class Counsel obtained a favorable result for the Class.

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

3 Rule 3.769 of the California Rules of Court requires that the Class Members be given
4 notice of any agreement regarding an application for attorneys' fees. Here, the Notice
5 preliminarily approved by the Court and distributed to the Class Members apprised them that:

6 Class Counsel have been prosecuting the Lawsuit on behalf of the
7 Class Members on a contingency fee basis (that is, without being
8 paid any money to date) and have been paying all litigation costs
9 and expenses. The Court will determine the actual amount awarded
10 to Class Counsel as attorneys' fees, which will be paid from the
11 Maximum Settlement Amount. Class Members are not personally
12 responsible for any of Class Counsel's attorneys' fees or costs.
13 Class Counsel will ask for fees of one-third (\$83,333.33) of the
14 common fund Maximum Settlement Amount as reasonable
15 compensation for the work Class Counsel performed and will
16 continue to perform in this Lawsuit through finalization of the
17 Settlement. Class Counsel also will ask for reimbursement of up to
18 \$15,000 for the costs Class Counsel incurred in connection with
19 the Lawsuit

20 (Snow Decl., Exh. A.)

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

29 **4. The Contingent Nature of Class Counsel's Representation of Plaintiff**
30 **and the Class Further Supports the Fee Award at 1/3 of the Common**
31 **Fund**

32 An additional factor militating in favor of the granting of the requested fee award is the
33 fact that this case was both legally and financially risky for Class Counsel. *See Vizcaino v.*

1 *Microsoft Corp* (9th Cir. 2002) 290 F.3d 1043, 1048-49. Class Counsel have been representing
2 the Class in this matter on a strictly contingency basis, and as such, incurred the risk of non-
3 recovery after a substantial investment of time, money, and resources, and have done so since the
4 inception of this case without any payment or compensation.

5 Indeed, as Class Counsel can attest, not all class/PAGA cases are successful. Many cases
6 end with no fees or a greatly reduced fee that is far less than lodestar, often due to no fault of
7 counsel (i.e., bankruptcy, change in the law, consolidation/coordination/preemption, being top
8 filed, etc.). According to Mayer Brown LLP's study entitled, *An Empirical Analysis of Class*
9 *Actions*, cited in *Laguna v. Coverall North America, Inc.* (9th Cir. 2014) 753 F.3d 918, found
10 that only one-third of class actions are successful, compared to two-thirds that are defeated and
11 result in no payment to the class members.⁶

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

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

14 Despite recognized limitations of the so-called lodestar method, some California and
15 federal courts acknowledge the utility of a lodestar "cross-check."⁷ (*Lealao, supra*, 82
16 Cal.App.4th at 46-47.) Under the "lodestar multiplier" method of cross-checking the
17 reasonableness of attorneys' fees in class actions, the court ascertains Class counsel's total
18 "lodestar" amount by multiplying the number of hours reasonably expended by each attorney or
19 legal staff member by their hourly rates, and then enhances or reduces this lodestar figure by a
20 "multiplier" to account for a range of factors, such as the novelty or difficulty of the case, its
21 contingent nature, and the degree of success achieved. *PLCM Group, Inc. v. Drexler* (2000) 22
22 Cal.4th 1084, 1095-96; *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322; *Lealao, supra*, 82
23 Cal.App.4th at 43 [court has discretion to use a multiplier to ensure that the "fee awarded is
24 within the range of fees freely negotiated in the legal marketplace in comparable litigation"].)
25 The actual aggregated lodestar between attorneys that worked on this case is approximately
26

27 ⁶ www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

28 ⁷ In practice, the lodestar method is difficult to apply, time-consuming to administer, inconsistent in result, and
capable of manipulation. In addition, the lodestar creates inherent incentive to prolong the litigation until sufficient
hours have been expended. Herr, David F., *Manual for Complex Litigation*, § 14.121 (1988); *See also In re*
Activision (N.D. Cal 1989) 723 F.Supp 1373.

\$99,265, as shown in the following table and declarations of counsel.

Attorney/Timekeeper	Rate	Hours	Fee
Brian J. Mankin <i>Trial Counsel / Partner</i> (21 Years)	\$775	63⁸	\$48,825
Misty L. Lauby <i>Partner / Handling Atty</i> (14 Years)	\$650	77.6	\$50,440
Grand Total for All Attorneys			\$99,265

(See Mankin Decl., ¶ 28; Lauby Decl., ¶ 3.)

The hourly rates above are comparable to those of other attorneys with equal or similar experience, if not somewhat lower (i.e., the Laffey Matrix at www.laffeymatrix.com indicates that the benchmark rate for an 8–10-year attorney to be \$676/hour and a 11-19 year attorney at \$764/hour, and a 20+ year attorney at \$919/hour). 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. (Mankin Decl., ¶ 27.)

⁸ Includes an estimated 25 hours of additional work preparing for and attending the hearing, as well as anticipated work to be performed after the final approval hearing with counsel, administrator, employees, and the court.

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

4 Class Counsel are also highly experienced in Class/PAGA litigation, including having
5 been selected as a "Super Lawyer" in employment litigation on multiple occasions, having
6 achieved large settlements including one of the largest PAGA awards in California's history and
7 collecting in excess of \$250 million for their clients, having prevailed at trial against two
8 separate Fortune 100 companies, including a PAGA-only action in Orange County and a Class
9 Action jury trial in Los Angeles. (Mankin Decl. ¶¶ 2-6). Indeed, Class Counsel's rates are
10 typical of the rates charged by defense counsel with similar experience doing similar
11 employment law work in this region.

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

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

14 The Settlement Agreement authorized litigation costs of up to \$15,000. (S.A. ¶ 49(f)).
15 Class Counsel's actual costs through the final approval hearing were \$14,216.86, so this is the
16 amount requested. The saving will be placed in the Net Settlement Amount for payment to the
17 Class Members. (Mankin Decl. ¶ 30). These costs include mediation fees, filing fees, expert
18 data analysis costs, CourtCall charges, and process server fees.

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

20 A named plaintiff is an essential ingredient of any class action and an incentive award
21 is appropriate to induce individuals to step forward and assume the burdens and obligations of
22 representing the Class. Courts regularly approve a service payment to compensate named
23 plaintiff for their service to the class and the risks they incurred during the course of the
24 litigation. *See, e.g. Bell v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715, 726
25 (upholding "service payments" to named Plaintiff for their efforts in bringing class action);
26 *Rodriguez v. West Publishing* (9th Cir. 2009) 563 F.3d 948, 959 (stating that incentive awards
27 are "intended to compensate class representatives for work done on behalf of the class, to make
28 up for financial or reputational risk undertaken in bringing the action, and, sometimes, to

1 recognize their willingness to act as a private attorney general.”).

2 Under the Settlement, Defendant agreed to pay a Service Award of \$7,500 to Plaintiff
3 in recognition of her contribution as a Class Representative.

4 Her efforts included providing factual background for the Class and PAGA complaint;
5 providing documents and information about Defendant’s compensation plan; participating in
6 phone calls to discuss litigation and settlement strategy; making herself available throughout
7 the litigation to assist with analyzing the claims and defenses; helping Class Counsel prepare
8 for the mediation; and reviewing the settlement documents. The Class Representative also
9 assumed significant risk in bringing this litigation – namely, had she lost, she could have been
10 ordered to pay Defendant’s costs. This factor is a significant one for a wage earner, and the
11 potential risk is very real. *See Whiteway v. FedEx Kinkos Office & Print Svcs., Inc.* (N.D. Cal.
12 Dec. 17, 2007) 2007 WL 4531783, at *3 (“the few courts to consider this ‘class
13 representatives’ dilemma’ have not found it inequitable to assess costs upon the lead or named
14 plaintiff in a class action.”)

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

21 The Notice sent to each Class Member detailed the proposed service award. No Class
22 Member objected to the proposed payment to Plaintiff. Thus, Plaintiff request that the Court
23 approve the awards because it is both reasonable and appropriate.

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

25 **A. SETTLEMENT ADMINISTRATION COSTS**

26 The Administrator, ILYM Group, agreed to administer the settlement for a flat-fee of
27 \$7,000. (Snow Decl. ¶ 17). As such, the Parties request that the Administrator’s fee be
28 approved.

1 **B. UNCASHED CHECKS**

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

4 **C. FINAL REPORT**

5 Defendant is required to deposit the Settlement Amount within 30 calendar days after
6 the “Effective Date”. The Effective Date will be the date of Final Approval in light of the lack
7 of objections and requests to intervene. The Settlement Administrator will have 10 days after
8 receipt of payment to issue checks to the Class Members (projected to be December 20th), who
9 will then have 180 days to cash their checks. Therefore, the earliest date of the check cashing
10 deadline is June 19, 2023. As such, the Parties propose submitting a final report in the form of
11 a declaration from the Administrator (setting forth the money that was actually paid to the class
12 members and will be paid to the State Controller) on approximately July 19, 2023 (30 days
13 after the check cashing deadline).

14 **D. SUBMISSION TO THE LWDA**

15 As set forth in the Mankin Declaration at ¶ 32, the settlement and this motion are
16 concurrently being submitted to the LWDA in accordance with Labor Code § 2699(1)(2).

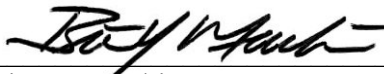
17 **VIII. CONCLUSION**

18 Plaintiff respectfully submits that the Settlement is fair, adequate, and reasonable, and
19 merits approval. This motion is unopposed by Defendant.

20 Dated: October 19, 2022

LAUBY, MANKIN & LAUBY LLP

21
22 BY:



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

PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, California 92504.

On October 19, 2022, I caused to be served the foregoing document(s) described as follows:

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

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

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

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

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

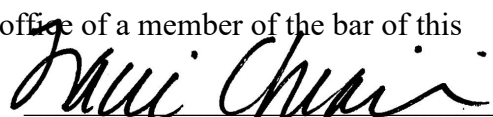
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service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

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

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

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 19, 2022, Riverside, California.

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


Tracie Chiarito, Declarant

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