

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

Larry W. Lee [CSB No. 228175]
lwlee@diversitylaw.com
Kristen M. Agnew [CSB No. 247656]
agnew@diversitylaw.com
Nicholas Rosenthal [CSB No. 268297]
nrosenthal@diversitylaw.com
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
Tel: (213) 488-6555 | Fax: (213) 488-6554

Attorneys for Plaintiffs, on a representative basis and on behalf of all others similarly situated
[Additional Plaintiffs' Counsel on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN

JODIE BLANTON JR., YAZMIN CORTES,
and GABRIELA ESCRIBA, individually, on
a representative basis, and on behalf of all
others similarly situated;

Plaintiffs,

vs.

COMMUNICATIONS TEST DESIGN, INC.,
a Pennsylvania Corporation; and DOES 1
through 20, inclusive;

Defendants.

Case No.: STK-CV-UOE-2021-0005136
*[Assigned to the Hon. Robert T. Waters, Dept.
11B, 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 23, 2023

Time: 9:00 a.m.

Dept.: 11B

1 William L. Marder, Esq. [CSB No. 170131]
2 Polaris Law Group
3 501 San Benito Street, Suite 200
4 Hollister, CA 95023
5 Tel: (831) 531-4214 | Fax: (831) 634-0333

6 David G. Spivak [CSB No. 179684]
7 *david@spivaklaw.com*
8 THE SPIVAK LAW FIRM
9 8605 Santa Monica Blvd, PMB 42554
10 West Hollywood CA 90069
11 Tel: (213) 725-9094 | Fax: (213) 634-2485

12 Louis M. Benowitz [CSB 262300]
13 *louis@benowitzlaw.com*
14 BENOWITZ LAW CORPORATION
15 8605 Santa Monica Boulevard, PMB 97638
16 West Hollywood CA 90069
17 Tel: (818) 839-9610 | Fax: (818) 839-9610

18 Benjamin J. Smith [CSB 266712]
19 *Benjy@thesmithlawcorp.com*
20 SMITH LAW
21 4515 Van Nuys Blvd., Ste 302
22 Sherman Oaks CA 91403-5799
23 Tel: (818) 839-9607 | Fax: (818) 839-9700

24 Attorneys for Plaintiffs, on a representative basis and on behalf of all others similarly situated
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1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on August 23, 2023, at 9:00 a.m., or as soon thereafter as
3 this matter may be heard by the Honorable Robert T. Waters in Department 11B of the San
4 Joaquin County Superior Court, located at 180 E. Weber Avenue, 2nd Floor, Stockton, CA
5 95202, Plaintiffs Jodie Blanton, Jr., Yazmin Cortes and Gabriela Escriba, individually and on
6 behalf of all others similarly situated, will move this Court for an Order granting final approval
7 of the class action settlement between Plaintiffs and Defendant, which was preliminarily
8 approved by the Court on February 22, 2023. This Motion seeks final approval and entry of
9 judgment of a \$2,000,000 settlement on behalf of the Class Members, and is unopposed by
10 Defendant Communications Test Design, Inc. (“Defendant”).

11 Specifically, Plaintiffs will and hereby do move the Court to grant final approval of the
12 Class and Representative Action Settlement Agreement and Release of Claims (“Settlement
13 Agreement”), and enter the proposed order and final judgment filed concurrently herewith:

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

16 2. Finally appointing Plaintiffs as the Class Representatives for purposes of
17 settlement;

18 3. Finally appointing Brian Mankin, Misty Lauby, Larry Lee, Nicholas Rosenthal,
19 Kristen Agnew, David Spivak and Louis Benowitz as Class Counsel for purposes of settlement;

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

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

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

26 7. Retaining jurisdiction to enforce the Settlement Agreement.

27 This Motion will be based upon this notice; the attached memorandum of points and
28 authorities; the Declarations of the Settlement Administrator (Karen Hernandez of ILYM

1 Group), Class Counsel (Brian Mankin, Nickolas Rosenthal, Kristen Agnew, David Spivak and
2 Louis Benowitz) and Plaintiffs (Jodie Blanton, Jr., Yazmin Cortes and Gabriela Escriba) filed
3 concurrently herewith; the records and files in this action; and any other further evidence or
4 argument that the Court may receive at or before the hearing.

5 Dated: August 1, 2023

LAUBY, MANKIN & LAUBY LLP

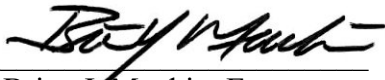
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7 BY: 
8 Brian J. Mankin, Esq.
9 Attorneys for Plaintiffs and the Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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

3 Pursuant to California Rules of Court, Rule 3.769(d) and (e), Plaintiffs Jodie Blanton, Jr.,
4 Yazmin Cortes and Gabriela Escriba respectfully request that this Court grant final approval of
5 the Class and Representative Action Settlement Agreement and Release of Claims (“Settlement
6 Agreement”), and enter the proposed order and final judgment in this matter. This Motion is
7 supported and unopposed by Defendant Communications Test Design, Inc. (“Defendant”).

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 \$2,000,000 settlement with the
11 assistance of Mark Rudy, who is one of the most experienced and reputable class action
12 mediators in California, that is tailored to a limited release of the claims alleged on behalf of
13 Class Members;

14 • The Class Members were deemed to participate in the Settlement, and were not
15 required to submit a Claim Form to receive funds;

16 • There is no reversion to Defendant;

17 • There were zero objections and zero opt-outs to the Settlement thus far, meaning
18 100% of the Class is currently participating in the Settlement.¹

19 In accordance with the analysis and law set forth herein as well the preliminary approval
20 motion, the Settlement should be approved and judgment entered based on the determination that
21 the Settlement is fair, reasonable, adequate, and in the best interests of the Class. (Declaration of
22 Class Counsel, Brian J. Mankin; ¶¶ 13, 29 (“Mankin Decl.”).)

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

24 Plaintiffs and the Class Members include all current and former non-exempt employees
25 who worked at a CTDI Facility in California at any time during the Class Period of June 19,
26 2019, through August 7, 2022, including Direct Hires of CTDI and Temporary Employees. The

27
28 ¹ Because the deadline for the Class Members to submit objections or opt-outs (i.e., the “Response Deadline”) occurs on August 4th (three days after the deadline to file this motion), the Parties will submit a supplemental declaration from the Administrator by August 9, 2023 with the final accounting and responses from the Class Members.

primary claims, which Defendant disputes, involved allegations that the Class Members did not receive all minimum, regular and overtime wages owed, did not receive accurate itemized wage statements, were denied meal and rest breaks, as well as claims for waiting time penalties, PAGA penalties and other claims as set forth in the operative complaint and releases.

The Settlement includes 7,638 Participating Class Members. The following is a breakdown reflecting how the funds are allocated under the Settlement Agreement (See Declaration of Administrator, Karen Hernandez (“Hernandez Decl.”), ¶ 16):

<i>Gross Settlement Amount</i>	\$ 2,000,000.00
Attorneys’ Fees (35%)	\$ 700,000.00
Litigation Costs	\$ 23,765.56
Administrator Costs	\$ 71,350.00
PAGA Penalties	\$ 200,000.00
Class Representative Service Awards	\$ 45,000.00
<i>Net Settlement Amount</i>	\$ 959,884.44

In terms of the payments, all Class Members were deemed to participate and did not need to submit a Claim Form to receive payment. (Settlement Agreement or “S.A.” ¶ 28). Each Participating Class Member will receive a pro rata share of the Net Settlement Amount according to the percentage of Workweeks worked during the Class Period, such that the amount actually distributed to Participating Class Members will equal 100% of the Net Settlement Amount. (Settlement Agreement ¶ 53(c)).

One-third (33.33%) of each Individual Settlement Payment shall constitute wages (for which each Participating Class Member will be issued an IRS Form W-2 for such payment), and the remaining two-thirds (66.67%) shall constitute interest and penalties (each for which each participating Class Member will be issued an IRS Form 1099). (S.A. ¶ 53(d)). The Settlement Agreement provides that Defendant shall deposit the Gross Settlement Amount within 45 days after the “Effective Date” (S.A. ¶ 79), which will be the date that the Final Order is entered assuming there are no objections or motions to intervene filed. Additionally, Defendant will separately fund its share of payroll taxes. Within 10 days of receipt, the Settlement Administrator shall issue payments to cover all court-approved payments. (S.A. ¶ 80).

1 Class Members will have 180 days to cash the settlement check. If a Class Member fails
2 to cash a check by the deadline, the Settlement Administrator shall issue unclaimed funds to the
3 California State Controller in the name of the Class Member. (S.A. ¶ 81).

4 The Administrator will also send all unclaimed funds of Horizon Temps to a cy pres –
5 CASA Youth Center (www.casaforchildren.org).

6 **III. THE NOTICE PROCESS**

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

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

12 After the Court granted preliminary approval and in preparation for transmitting the Class
13 Data to the Administrator, Defendant discovered that it could not ascertain addresses or social
14 security numbers for temporary employees who were assigned to work at a CTDI Facility
15 located in Lincoln, California, by Horizon Personnel Services (the “Horizon Temps”), a
16 temporary staffing company that went out of business. Since it was not possible for the
17 Administrator to mail the Class Notice to the Horizon Temps, the Parties determined that the
18 next best method of giving notice of the settlement to the Horizon Temps was by way of a
19 newspaper publication. The Parties agreed to utilize a large local newspaper, the Lincoln
20 Messenger, to place 4 weekly ads. The newspaper ad directed Horizon Temps to call the
21 Administrator to verify their status as a Class Member and provide their address and other
22 necessary things. For those Horizon Temps who ultimately did not call the Administrator to
23 verify their status, it would not be possible to send a check to them or even transmit their funds
24 to the State Controller because the Parties did not have their social security number, and
25 therefore any uncashed check from a Horizon Temps would be transmitted to a cy pres. The
26 Parties submitted the proposed notice plan for the Horizon Temps, and the Court approved the
27 stipulation and entered an order approving the notice process for the Horizon Temps on May 22,
28 2023.

1 Shortly thereafter and prior to the mailing, the Settlement Administrator performed a
2 National Change of Address search on all Class Members to determine if any had moved.
3 (Hernandez Decl., ¶ 6). On June 20, 2023, the Class Notice was sent via first-class mail to the
4 Class Members and the newspaper ad was simultaneously placed in the Lincoln News
5 Messenger newspaper. (Hernandez Decl., ¶ 7-8; Exhibits A & B thereto). Ultimately, only 57
6 Class Notices were determined to be undeliverable, resulting in a 99.3% success rate in mailing
7 the Class Notices. (Hernandez Decl., ¶ 10-12).

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

17 **B. There are Zero Objections and Zero Opt-Outs Thus Far, Resulting In An**
18 **Impressive 100% of the Class Participating in the Settlement**

19 California law makes clear that the percentage of objectors and opt-outs is an important
20 factor in the Court's consideration of a proposed class action settlement. (See *Dunk v. Ford*
21 *Motor Co.* (1186) 48 Cal.App.4th 1794 at 1802.) Indeed, the Ninth Circuit and other federal
22 courts recognize that in the final fairness analysis, the number or percentage of class members
23 who object to the settlement is a significant factor. (See *Mandujano v. Basic Vegetable Prods.,*
24 *Inc.*, (9th Cir. 1976) 541 F.2d 672, 677; *In re American Bank Note Holographics, Inc.* (SDNY
25 2001) 127 F.Supp.2d 418, 425 ["[i]t is well settled that the reaction of the class to the settlement
26 is perhaps the most significant factor to be weighed in considering its adequacy."])

27 As noted above, there are zero objections and opt-outs to the Settlement thus far --
28 meaning that 100% of the Class Members are currently participating in the Settlement.

(Hernandez Decl., ¶ 13-15). Because the Response Deadline occurs on August 4th (three days after the deadline to file this motion), the Parties will submit a supplemental declaration from the Administrator by August 9, 2023 with the final accounting and responses from the Class Members.

V. EVALUATION OF THE SETTLEMENT

It is axiomatic that California law strongly favors and encourages settlements. (See *Stambaugh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236.) This presumption in favor of settlement applies with particular force in the context of class actions. (See *Ferguson v. Lieff, Cabraser, Heimann & Bernstein* (2003) 30 Cal.4th 1037 [“[p]ublic policy favoring settlement is especially weighty for class actions”]; *Bell v. Am. Title Ins. Co.* (1991) 226 Cal.App.3d 1589, 1607-1608 [affirming the trial court’s approval of a class settlement and implicitly endorsing its citation of federal precedent for the notion that there is a “strong public policy in favor of settlement of class actions”]; see also *Franklin v. Kaypro Corp.* (9th Cir. 11869) 884 F.2d 1222, 1229, quoting *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950 [“it hardly seems necessary to point out that there is an overriding public interest in settling and quieting litigation. This is particularly true in class action suits”].)

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

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

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

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

8 Here, Plaintiffs 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 Class.

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

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

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

1 **C. Class Counsel Are Experienced in Similar Litigation and Endorse the**
2 **Settlement**

3 Class Counsel are experienced in this type of litigation, and they have represented (and
4 hereby do represent) that this Settlement is fair and reasonable. (Mankin Decl., ¶¶ 13, 29; see 7-
5 *Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152
6 [Final approval of settlement affirmed where counsel were all experienced litigators with class-
7 action experience and had recommended settlement based on the negotiated terms].)

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

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

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

1 Of course, Defendant denies that any damages should be assessed and denies all of the
2 value assessed by Plaintiffs. Notwithstanding these arguments, the Settlement commits
3 Defendant to pay \$2,000,000 to settle the litigation.

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

5 For their efforts in creating a common fund for the benefit of the Class, the Settlement
6 Agreement provided that Class Counsel– which includes numerous attorneys from six different
7 law firms who have joined forces to represent the Class – may recover attorneys fees of
8 \$700,000. This amount is reasonable, given the facts and circumstances of the case and well
9 within the range approved by courts in California. *See, e.g., Laffitte v. Robert Half Int'l Inc.*
10 (2016) 1 Cal.5th. 480 (approving a fee percentage in the amount of \$6.33 million when class
11 action litigation establishes a monetary fund for the benefit of the class members, the trial court
12 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
13 created). This amount will be paid from the settlement amount, as provided by the Settlement
14 Agreement. These fees are warranted under the law and within the range of fees commonly
15 awarded in similar cases.

16 Further, the amount of fees and costs requested are commensurate with (1) the risk Class
17 Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the
18 case, (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel
19 achieved, (5) the value of the Class Counsel achieved for the class, and (6) the other cases Class
20 Counsel turned down to devote time to this matter. Class Counsel interviewed and obtained
21 information from putative class members, met and conferred with Defendant's counsel on
22 numerous occasions, reviewed and analyzed hundreds of pages of data and documents provided
23 by Defendant and obtained through other sources, researched applicable law, and provided
24 estimates of "damages" for purposes of settlement discussions, among other tasks.

25 Moreover, Class Counsel have borne all the risks and costs of litigation and will receive
26 no compensation until recovery is obtained. Class Counsel are well-experienced in wage-and-
27 hour class action litigation and used that experience to obtain a fair result for the Class.
28 Considering the amount of the attorney fees requested, the work performed, and the risks

1 incurred, the requested fees and costs are reasonable and should be approved for these reasons
2 and those below.

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

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

18 **B. Class Counsel's Request for Fees Is Reasonable and Properly Calculated as**
19 **a Percentage of the Common Fund**

20 Under the "common fund" doctrine, the request for attorneys' fees in the amount of 35%
21 of the common fund is reasonable and appropriate, because (1) it is within the approved range
22 for percentages awarded as attorneys' fees in similar cases; (2) it is supported by the high quality
23 of Class Counsel's work on this case and the results obtained for the Class; (3) the Class had
24 sufficient notice of the fee request; and (4) it is supported by the fact that this case was handled
25 on a contingency basis and was undertaken despite various risks and expenses.
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1 **1. *The Attorneys’ Fees Requested Here Fall Within the Reasonable***
2 ***Range Awarded in Similar Cases Under the Well-established***
3 ***Common Fund Method***

4 The California Supreme Court has approved trial courts’ usage of the common fund
5 method of awarding attorneys’ fees in wage and hour class actions, like this one, upholding a fee
6 based on a percentage of the total settlement amount obtained for the class. *See Laffitte*, 1 Cal.5th
7 at 506). Specifically, in *Laffitte*, the Court wrote: “[w]e join the overwhelming majority of
8 federal and state courts in holding that when class action litigation establishes a monetary fund
9 for the benefit of the class members, and the trial court in its equitable powers awards class
10 counsel a fee out of that fund, the court may determine the amount of a reasonable fee by
11 choosing an appropriate percentage of the fund created”). *Id.* at 506. The California Supreme
12 Court also noted that trial courts have the discretion to award fees as a percentage of the common
13 fund without the necessity to conduct a lodestar cross-check. *Id.* (“...[Courts] ... retain the
14 discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a
15 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 Id.* at 475-6, 480-1 (the SCOTUS held that attorneys for a successful class
25 may recover a fee based on the fund created for the class, even if some class members make no
26 claims against the fund, so that money remains in it that will be returned to the defendant,
27 explaining: “[t]heir [class members’] right to share the harvest of the lawsuit upon proof of their
28 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 \$2,000,000 non-reversionary common fund settlement, the fairness of the requested fee award is supported by the high quality of work performed by Class Counsel and the positive result obtained for the Class. This great result occurred because Class Counsel diligently, efficiently, and creatively pursued this case and reached a successful settlement for the benefit of the entire Class. Moreover, the fact that the settlement was embraced and supported by the Class demonstrates that Class Counsel obtained a favorable result for the Class.

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

Rule 3.769 of the California Rules of Court requires that the Class Members be given notice of any agreement regarding an application for attorneys’ fees. Here, the Notice preliminarily approved by the Court and distributed to the Class Members apprised them of the requested attorneys fees, which was consistent with the Notice.

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

1 **4. *The Contingent Nature of Class Counsel's Representation of***
2 ***Plaintiffs and the Class Further Supports the Fee Award at 35% of***
3 ***the Common Fund***

4 An additional factor militating in favor of the granting of the requested fee award is the
5 fact that this case was both legally and financially risky for Class Counsel. (*See Vizcaino v.*
6 *Microsoft Corp* (9th Cir. 2002) 290 F.3d 1043, 1048-49.) Class Counsel have been representing
7 the Class in this matter on a strictly contingency basis, and as such, incurred the risk of non-
8 recovery after a substantial investment of time, money, and resources, and have done so since the
9 inception of this case without any payment or compensation. Specifically, there was the prospect
10 of enormous cost inherent in class action litigation, as well as a battle with a well-funded
11 corporation who was represented by an experienced law firm; the risk that Defendant could
12 prevail on their argument that the class should not be certified; and the risk that Defendant could
13 prevail on the merits of some or all of the claims.

14 If Plaintiffs had lost this case, Class Counsel would have recovered nothing, and would
15 have lost its out-of-pocket costs. This is not an easy burden for Plaintiffs' Counsel, which are
16 small firms. If, despite these hardships and risks, the best Plaintiffs' Counsel could hope for is
17 merely to be paid its customary hourly rate multiplied by the number of hours worked on all
18 cases (including cases like this where the lodestar is far greater than the potential fee award),
19 then Class Counsel would not be compensated for the hardships and serious risks they faced
20 litigating this contingency case, and would not be incentivized to take on similar cases in the
21 future. (*Id.*)

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

26 The market value of the services provided by plaintiffs' counsel in
27 a case of this magnitude must take into consideration that any
28 compensation has been deferred for up to four years from the time
 an hourly fee attorney would begin collecting fees from his or her
 client; that the demands of the present case substantially precluded

1 other work during that extended period, which makes the ultimate
2 risk of not obtaining fees all the greater (since the attorneys must
3 use savings or incur debt to keep their offices afloat and their
4 families fed during the years-long litigation); and that a failure to
5 fully compensate for the enormous risk in bringing even a wholly
6 meritorious case would effectively immunize large or politically
7 powerful defendants from being held to answer for constitutional
8 deprivations, resulting in harm to the public.”

9 *Id.* at 399-400.

10 Indeed, as Class Counsel can attest, not all class/PAGA cases are successful. Many cases
11 end with no fees or a greatly reduced fee that is far less than lodestar, often due to no fault of
12 counsel (i.e., bankruptcy, change in the law, consolidation/coordination/preemption, being top
13 filed, etc.). According to Mayer Brown LLP’s study entitled, *An Empirical Analysis of Class*
14 *Actions*, cited in *Laguna v. Coverall North America, Inc.*, No. 12-55479 (9th Circuit 2014), found
15 that only one-third of class actions are successful, compared to two-thirds that are defeated and
16 result in no payment to the class members.² Thus, the contingent nature of this case supports a
17 fee as a percentage of the common fund.

18 For all of the foregoing reasons, the attorneys’ fees request of \$700,000 is fair and
19 reasonable and should be approved.

20 **VII. THE REQUESTED COSTS AND SERVICE AWARDS ARE REASONABLE**

21 **A. The Requested Costs Are Reasonable and Merit Approval**

22 The Settlement Agreement authorized litigation expenses up to \$30,000. (Settlement
23 Agreement ¶ 53(f)). However, Class Counsel’s actual combined costs through the final
24 approval hearing are estimated to be \$23,765.56, including \$10,887.97 by Lauby Mankin
25 Lauby LLP, \$5,895.85 to the Diversity Law Group and \$6,981.74 to Spivak Law. (Mankin
26 Decl. ¶ 23; Rosenthal Decl. ¶ 6; Spivak Decl. ¶ 17.) Since Class Counsel’s actual costs were
27 less than the amount allocated, the saving will be placed in the Net Settlement Amount. These
28 costs include mediation fees, filing fees, CourtCall charges, and court filing fees, and process
server fees.

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

1 **B. The Requested Service Awards are Reasonable and Merit Approval**

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

12 Under the Settlement, Defendant agreed to pay Service Awards in the amount of
13 \$15,000 each to Jodie Blanton, Jr., Yazmin Cortes and Gabriela Escriba in recognition of their
14 contribution as the Class Representatives and the fact that they agreed to a general release of
15 all claims. In addition, Plaintiffs also undertook significant risks, including the risk of being
16 blackballed in the industry and the risk that they could have been liable for Defendant’s costs if
17 they lost. This factor is a significant one for a wage earner, and the potential risk is very real.
18 (*See Whiteway v. FedEx Kinkos Office & Print Svcs., Inc.* (N.D. Cal. Dec. 17, 2007) No. C 05-
19 2320 SBA, 2007 WL 4531783, at *3 (“the few courts to consider this ‘class representatives’
20 dilemma’ have not found it inequitable to assess costs upon the lead or named plaintiff in a
21 class action.”).)

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

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

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

5 **A. Settlement Administration Costs**

6 The parties agreed that the Administrator, ILYM Group, would be compensated for
7 services performed. The Administrator's flat fee is \$71,350.00, which included considerable
8 work performed by the administrator in resolving the data issues and paying for the newspaper
9 ad. (Hernandez Decl., ¶ 17; Exhibit B thereto.)

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

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

14 **C. Uncashed Checks**

15 The Settlement Agreement provides that unclaimed funds will be submitted to the
16 California State Controller's Unclaimed Property Fund in the name of the Class Member
17 thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil
18 Procedure Section 384, subd. (b). (S.A. ¶ 81.) However, as to Horizon Temps who did not
19 verify their status as a Class Member, their unclaimed funds will be sent to the designated cy
20 pres within 30 days after the 180-day check cashing period, pursuant to the Court's May 22,
21 2023 order.

22 **D. Final Report**

23 Defendant's payment is due 45 days after the Effective Date, which will occur the date
24 that the Final Order is entered if there are no objections or motions to intervene. The
25 Administrator then has 10 days thereafter process the funds and issue checks to the Class
26 Members, who will then have 180 days to cash their checks. Accordingly, the Parties project
27 that the check cashing deadline will occur on approximately April 14, 2024. The Parties
28 propose that the Administrator issue the unclaimed funds for the Horizon Temps within 30

1 days after the check cashing deadline (estimated to be May 15, 2024). Then on approximately
2 May 30, 2024, the Parties will be prepared to submit a declaration from the Administrator
3 attesting to its disbursement of all payments required under the Settlement Agreement.

4 Thus, the Parties propose submitting a final report in the form of a declaration from the
5 Administrator on approximately May 30, 2024.

6 **E. Submission to the LWDA**

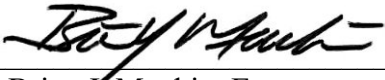
7 As set forth in the Mankin Declaration at ¶ 25, the Settlement Agreement and this
8 motion are concurrently being submitted to the LWDA in accordance with Labor Code §
9 2699(1)(2). The LWDA has not commented on the Settlement to date.

10 **IX. CONCLUSION**

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

13 Dated: August 1, 2023

LAUBY, MANKIN & LAUBY LLP

14
15 BY: 
16 Brian J. Mankin, Esq.
17 Attorneys for Plaintiffs and the Class
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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 August 1, 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.

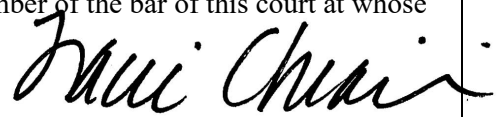
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service 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 August 1, 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

SERVICE LIST

James E. Hart, Esq.
jhart@littler.com
Leah E. Peterson, Esq.
lwhitehead@littler.com
John S. Keeney, Esq.
jkeeney@littler.com
LITTLER MENDELSON P.C.
18565 Jamboree Road, #800
Irvine, California 92612
Tel: (949) 705-3000
Fax: (949) 724-1201
Attorneys for Defendant Communications Test Design, Inc.