

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
4590 Allstate Drive
Riverside, CA 92501
T: (951) 320-1444
F: (951) 320-1445

Attorneys for Plaintiff, on a representative basis, and on behalf of all others similarly situated

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

CHANDRA FINGER, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

PROFESSIONAL REGISTRY HOLDINGS,
LLC, a California Limited Liability
Company; COACHELLA VALLEY
HEALTH PERSONNEL, an Entity
Unknown; KEVIN BASS, an Individual;
GEORGE TUCKER, an Individual, KIRVIN
SATTEWHITE, an Individual; and DOES 1
through 20, inclusive;

Defendants.

Case No.: CVRI2101956
*[Assigned to the Hon. Judge Craig Rimer,
Dept 1, for all purposes]*

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

Hearing
Date: May 31, 2022
Time: 8:30 a.m.
Dept: 1

Complaint filed: April 23, 2021

TO THE COURT AND PARTIES OF RECORD:

PLEASE TAKE NOTICE THAT on May 31, 2022, at 8:30 a.m., or as soon thereafter as
this matter may be heard by the Honorable Craig Riemer in Department 1 of the Riverside
County Superior Court located at 4050 Main Street, Riverside, CA 92501, Plaintiff Chandra
Finger will respectfully move this Court for an Order granting final approval of the class action
settlement between Plaintiff and Defendants Professional Registry Holdings, LLC, Kevin Bass,

George Tucker, and Kirvin Satterwhite, which was preliminarily approved by the Court on February 9, 2022. This Motion, which is supported and unopposed by Defendants, seeks final approval and entry of judgment of a \$500,000 settlement on behalf of 264 Class Members.

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

1. Finally certifying the Class, as defined in the Settlement Agreement and the Court's Order Granting Preliminary Approval of the Settlement;
2. Finally appointing Plaintiff as Class Representative for purposes of settlement;
3. Finally appointing Brian Mankin and Peter Carlson of Lauby Mankin Lauby LLP as Class Counsel for purposes of settlement;
4. Finding that the Class Notice Packet was properly provided to the Class in accordance with the Court's Order granting Preliminary Approval;
5. Finally approving the settlement as fair, adequate, and reasonable, based upon the terms set forth in the Settlement Agreement;
6. Binding participating Class Members to the terms of the Settlement Agreement, including the Release specified therein; and
7. Retaining jurisdiction to enforce the Settlement Agreement.

This Motion will be based upon this notice; the attached memorandum of points and authorities; the Declarations of the Settlement Administrator (Evelin Reyes of Simpluris), Class Counsel (Brian Mankin) and Plaintiff filed concurrently herewith; the records and files in this action; and any other further evidence or argument that the Court may receive at or before the hearing.

Dated: May 5, 2022

LAUBY, MANKIN & LAUBY LLP

BY:



Brian J. Mankin, Esq.

Attorneys for Plaintiff and the Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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

3 Pursuant to California Rules of Court, Rule 3.769 (d) and (e), Plaintiff respectfully
4 requests that this Court grant final approval of the Class Action Settlement Agreement and
5 Release of Claims (the “Settlement Agreement” or “S.A.”) already on file in this action, which is
6 supported and unopposed by Defendants Professional Registry Holdings, LLC, Kevin Bass,
7 George Tucker, and Kirvin Satterwhite, and enter the proposed order and final judgment in this
8 matter.

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

- 11 • After extensive work, the Parties reached a \$500,000 settlement tailored to a
12 limited release of the claims alleged on behalf of Class Members;
- 13 • The Class Members were deemed to participate in the Settlement, and were not
14 required to submit a Claim Form to receive funds;
- 15 • No reversion to Defendants;
- 16 • There are no objections to date¹;
- 17 • There have been no valid Requests for Exclusion submitted to date (there is 1
18 pending deficient opt-out), meaning that 100% of the Class is currently participating in the
19 settlement.

20 Based on all indications thus far, the Class overwhelmingly supports the Settlement (of
21 course, an updated declaration will be provided from the Administrator after the Notice process
22 is completed on May 22, 2022, as discussed in footnote 1 below). Thus, in accordance with the
23 analysis and law set forth herein, the Settlement should be approved, and judgment entered based
24 on the determination that the Settlement is fair, reasonable, adequate, and in the best interests of
25 the Class. (Declaration of Class Counsel Brian J. Mankin [“Mankin Decl.”] ¶¶ 12-13, 36).

26 ¹ The Administrator was supposed to have mailed the Notice Packet on March 1, 2022, but it miscalendared the
27 mailing date, and actually mailed the Notice Packet on April 1, 2022. As a result, the updated Notice Response
28 Deadline is May 17, 2022, which is 45 days after the mailing date. The Administrator and Plaintiff’s counsel will
submit an updated declaration with the final results of the notice process on about May 24, 2022 (7 calendar days
before the hearings).

II. SUMMARY OF THE SETTLEMENT

The “Settlement Class” is defined as “all caregivers, companion aides, nursing assistants, licensed vocational nurses, registered nurses, certified nurse’s assistants, home health aides, and all other similarly situated individuals who performed services for Defendants in the State of California and who were classified by Defendants as independent contractors at any time during the Class Period,” which includes the period of April 23, 2017, through February 9, 2022 (the “Class Period”). The primary claims, which Defendants dispute, involved allegations that the Class Members were misclassified as independent contractors and not paid all wages owed (including travel time between patients), were not provided compliant meal and rest breaks, as well as claims for wage statement violations, waiting time penalties and PAGA penalties.

The Settlement includes 264 Class Members, which is slightly more than was estimated by Defendants at preliminary approval, but not enough to trigger the Escalator Clause, which provides that if the class size exceeds 275 members, then Defendant will pay a proportional increase to the Settlement Amount. (S.A. ¶ 78). However, as a result of Class Counsel’s actual litigation costs being less than the maximum allowable costs, the Class will receive more money as a whole than projected at preliminary approval. The following is a breakdown reflecting how the funds are allocated under the Settlement Agreement (Declaration of Administrator, Evelin Reyes (“Reyes Decl.”), ¶ 11):

	Total Amount
<i>Gross Settlement Amount</i>	\$500,000.00
Attorneys’ Fees (1/3)	\$166,666.66
Litigation Costs	\$9,977.42
Administrator Costs	\$5,999
PAGA Penalties	\$50,000
Class Representative’s Service Award	\$7,500
<i>Net Settlement Amount</i>	\$259,856.92

The Participating Class Members were deemed to participate and did not need to submit a Claim Form to receive payment. (S.A. ¶ 24). Each Participating Class Member will receive a

1 pro rata share of the Net Settlement Amount according to the percentage of Weeks he/she
2 worked during the Class Period, such that the amount actually distributed to Participating Class
3 Members will equal 100% of the Net Settlement Amount. (S.A. ¶ 44(c)).

4 Assuming all of the amounts in the Settlement are approved by the Court, the *average*
5 individual settlement payment is estimated to be \$984.31, the *highest* individual settlement
6 payment is approximately \$6,952.33 for an person who worked the entire Class Period, and the
7 lowest is \$26.44 for a worker who worked only one week. There are a total of 9,357 work weeks
8 in the Class Period, resulting in a per work week value of approximately \$26.44. (Reyes Decl. ¶
9 12).

10 In addition, the 120 Aggrieved Employees will share in the \$12,500 PAGA Payment on a
11 pro rata basis. (Reyes Decl. ¶ 12).

12 Because the Class Members performed contract services for Defendants as independent
13 contractors, rather than as employees, and because Defendants fully dispute the allegations
14 alleged herein, the Parties agree that the settlement funds paid to the Settlement Class will be
15 allocated and paid to the Class Members as contract compensation, interest, and penalties from
16 which no state or federal taxes will be withheld or deducted with IRS 1099 reporting. The Class
17 Members are responsible for taxes and accounting on their payments received. (S.A. ¶ 44(d)).
18 The Settlement Agreement provides that Defendants shall deposit the Settlement Amount by the
19 later or October 3, 2022, or fifteen (15) days after the Effective Date (S.A. ¶ 66). Within 10 days
20 of receipt, the Settlement Administrator shall issue payments to cover all court-approved
21 payments. (S.A. ¶ 67).

22 **III. THE NOTICE PROCESS**

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

24 Pursuant to the Court's Order and the Settlement Agreement, the Parties directed the
25 Settlement Administrator to review and update the Class Members' addresses, mail the Court-
26 approved Notice Packet, and process their responses. (Reyes Decl. ¶ 3-5).

27 The Administrator received the Class Data on February 25, 2022, and was supposed to
28 mail the Notice Packets within 10 days. (Reyes Decl. ¶ 6). Prior to mailing the Notice Packet,

1 the Settlement Administrator performed a National Change of Address search on all Class
2 Members to determine if any had moved. (*Id.* at ¶ 7). However, due to a calendaring error,
3 Simpluris failed to timely mail the Notice Packets within the time period set forth in the Court’s
4 Order. On April 1, 2022, the Notice Packets were sent via first-class mail in English and Spanish
5 to the 264 Class Members to advise each about the suit and settlement. (*Id.* at ¶ 8). For any
6 Notice Packet that was returned by the USPS as undeliverable and without a forwarding address,
7 the Settlement Administrator performed an advanced address search (i.e. skip trace). (*Id.* at ¶ 9).
8 The Settlement Administrator used the advanced address search to locate updated addresses and
9 promptly mailed the Notice Packets to those updated addresses. Ultimately, the Settlement
10 Administrator reports that only 8 Notice Packets were undeliverable, resulting in a **97%** success
11 rate in mailing the Notice Packets. (*Id.* at ¶ 9).

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

22 **B. THERE ARE NO OBJECTIONS AND/OR OPT-OUTS TO DATE**

23 California law makes clear that the percentage of objectors and opt-outs is an important
24 factor in the Court’s consideration of a proposed class action settlement. *See Dunk, supra*, 48
25 Cal.App.4th at 1802. Indeed, the Ninth Circuit and other federal courts recognize that in the
26 final fairness analysis, the number or percentage of class members who object to the settlement is
27 a significant factor. *See Mandujano v. Basic Vegetable Prods., Inc.* (9th Cir. 1976) 541 F.2d
28 672, 677; *In re American Bank Note Holographics, Inc.* (SDNY 2001) 127 F.Supp.2d 418, 425

1 (“[i]t is well settled that the reaction of the class to the settlement is perhaps the most significant
2 factor to be weighed in considering its adequacy.”).

3 Here, there have been no valid objection, opt-out and/or dispute forms submitted to date,
4 meaning that 100% of the Class Members have elected to participate and receive a share of the
5 Settlement thus far. However, Simpluris has received one Request for Exclusion which was
6 deemed by Simpluris to be invalid because the box was not checked indicating that the Class
7 Member wishes to opt-out. Also, the Class Member updated the mailing address with the opt-
8 out form, so it is possible that the Class Member used the opt-out form to update his/her address.
9 Simpluris is in the process of attempting to contact the employee to resolve the deficiency.
10 (Reyes Decl. ¶¶ 13-15, see Exhibit “B” for the invalid opt-out submission). Since the Notice
11 Response Deadline ends on May 17, 2022 (after this motion is filed), Simpluris will promptly
12 submit an updated declaration as soon as possible after May 17, 2022, with the final results of
13 the Notice Process. (Reyes Decl. ¶ 16).

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

20 **IV. EVALUATION OF THE SETTLEMENT**

21 It is axiomatic that California law strongly favors and encourages settlements. *See*
22 *Stambaugh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236. This presumption in favor of
23 settlement applies with particular force in the context of class actions. *See Ferguson v. Lieff,*
24 *Cabraser, Heimann & Bernstein* (2003) 30 Cal.4th 1037 (Kennard, J., concurring and dissenting)
25 (“[p]ublic policy favoring settlement is especially weighty for class actions”); *Bell v. Am. Title*
26 *Ins. Co.* (1991) 226 Cal.App.3d 1589, 1607-1608 (affirming approval of a class settlement and
27 implicitly endorsing its citation of federal precedent for the notion that there is a “strong public
28 policy in favor of settlement of class actions”); *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976)

1 529 F.2d 943, 950 (“it hardly seems necessary to point out that there is an overriding public
2 interest in settling and quieting litigation. This is particularly true in class action suits”).

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

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

13 **A. THE SETTLEMENT WAS REACHED THROUGH INFORMED ARMS-LENGTH**
14 **NEGOTIATION**

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

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

25 As the Settlement Agreement itself reveals, the Settlement is designed to fairly and
26 adequately compensate all Class Members. And, pursuant to California Rules of Court Rule
27 3.769 (b), the parties have disclosed the agreed upon and proposed attorney fee award, which is
28 well within the range of reasonableness for matters of this nature.

1 **B. PLAINTIFF’S INVESTIGATION WAS SUFFICIENT**

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

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

13 Class Counsel are experienced in this type of litigation, and they have (and hereby do)
14 represent that this Settlement is fair and reasonable. (Mankin Decl. ¶¶ 12-13, 36); *see 7-Eleven*
15 *Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152 (Final
16 approval of settlement affirmed where counsel were all experienced litigators with class-action
17 experience and had recommended settlement based on the negotiated terms).

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

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

27 Greenwell misunderstands *Kullar*, apparently interpreting it to
28 require the record in all cases to contain evidence in the form of an
 explicit statement of the maximum amount the plaintiff class could
 recover if it prevailed on all its claims – a number which appears

1 nowhere in the record of the case. But Kullar does not, as
2 Greenwell claims, require any such explicit statement of value; it
3 requires a record which allows “an understanding of the amount
4 that is in controversy and the realistic range of outcomes of the
5 litigation.”

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

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

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

22 For their efforts in creating a common fund for the benefit of the class, the Settlement
23 Agreement provided that Class Counsel seek reasonable fees of \$166,666.66, which is one-third
24 of the common fund Settlement Amount. These fees are warranted under the law and within the
25 range of fees commonly awarded in similar cases.

26 As shown herein, the requested percentage of one-third of the settlement fund as payment
27 for attorneys’ fees should be granted for several reasons. First, one-third is the standard
28 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

1 method or the lodestar method is used, fee awards in class actions average around one-third of
2 the recovery”). Second, the California Supreme Court has affirmed that the percentage of the
3 fund is the prevailing method in California class action cases. *See Laffitte v. Robert Half*
4 *International, Inc.* (2016) 1 Cal.5th 480. Third, the requested amount is eminently reasonable
5 through the prism of a lodestar cross-check. Accordingly, this request should receive final
6 approval.

7 **A. PLAINTIFF IS ENTITLED TO RECOVER REASONABLE ATTORNEYS’ FEES UNDER**
8 **THE LABOR CODE**

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

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

24 Under the “common fund” doctrine, the request for attorneys’ fees in the amount of 1/3
25 of the common fund is reasonable and appropriate, because (1) it is within the approved range
26 for percentages awarded as attorneys’ fees in similar cases; (2) it is supported by the high quality
27 of Class Counsel’s work on this case and the results obtained for the Class; (3) the Class had
28 sufficient notice of the fee request; (4) it is supported by the fact that this case was handled on a

1 contingency basis and was undertaken despite various risks and expenses; and (5) the lodestar
2 cross-check supports the fee request.

3 ***1. The Attorneys' Fees Requested Here Fall Within the Reasonable Range***
4 ***Awarded in Similar Cases Under the Well-established Common Fund***
5 ***Method***

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

19 The California Supreme Court's *Laffitte* decision was consistent with its prior rulings
20 recognizing that "when a number of persons are entitled in common to a specific fund, and an
21 action brought by ... plaintiffs for the benefit of all results in the creation or preservation of that
22 fund, such ... plaintiffs may be awarded attorneys' fees out of the fund." *Serrano III v. Priest*
23 (1977) 20 Cal.3d 25, 34; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 ("[A] lawyer who
24 recovers a common fund . . . is entitled to reasonable attorneys' fees from the fund as a whole").
25 Notably, when fees are calculated as a percentage of the common fund, they should be calculated
26 based on the amount that was available to be claimed, rather than as a percentage of the actual
27 amount claimed. *See Boeing Co.*, 444 U.S. at 475-6, 480-1 (the SCOTUS held that attorneys for
28 a successful class may recover a fee based on the fund created for the class, even if some class

1 members make no claims against the fund, so that money remains in it that will be returned to
2 the defendant, explaining: “[t]heir [class members’] right to share the harvest of the lawsuit upon
3 proof of their identity, whether or not they exercise it, is a benefit in the fund created by the
4 efforts of the class representatives and their counsel.” *See also Williams v. MGM-Pathe*
5 *Communs. Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 (trial court “abused its discretion by basing
6 the fee on the class members’ claims against the fund rather than on a percentage of the entire
7 fund or on the lodestar”).

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

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

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

19 Rule 3.769 of the California Rules of Court requires that the Class Members be given
20 notice of any agreement regarding an application for attorneys’ fees. Here, the Notice
21 preliminarily approved by the Court and distributed to the Class Members apprised them that
22 “Class Counsel will ask for fees of one-third (\$166,666.66) of the common fund Settlement
23 Amount as reasonable compensation for the work Class Counsel performed and will continue to
24 perform in this Lawsuit through finalization of the Settlement...” (Reyes Decl., Exh. A.)

25 The Class Notice also advised the class members of the procedures for objecting to the
26 proposed settlement and appearing at the settlement hearing, where they could present their
27 objections to any aspect of the settlement, including the amount of attorneys’ fees to be awarded
28 to class counsel. *Litwin v. iRenew Bio Energy Solutions, LLC* (2014) 226 Cal.App.4th 877, 883

1 (“Procedural due process requires that affected parties be provided with ‘the right to be heard at a
2 meaningful time and in a meaningful manner’”). In accordance with the foregoing, it is
3 respectfully submitted that the instant notice complied with Rule 3.769 and, as a result, the Class
4 Members’ due process rights were fulfilled.

5 **4. The Contingent Nature of Class Counsel’s Representation of Plaintiff**
6 **and the Class Further Supports the Fee Award at 1/3 of the Common**
7 **Fund**

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

17 If Plaintiff lost this case, Class Counsel would have recovered nothing, and would have
18 lost its out-of-pocket costs. Indeed, as Plaintiff’s Counsel can attest, not all class/PAGA cases
19 are successful. Many cases end with no fees or a greatly reduced fee that is far less than lodestar,
20 often due to no fault of counsel (i.e., bankruptcy, change in the law, consolidation or
21 coordination or preemption, being top filed, etc.). According to Mayer Brown LLP’s study
22 entitled, *An Empirical Analysis of Class Actions*, cited in *Laguna v. Coverall North America,*
23 *Inc.* (9th Cir. 2014) 753 F.3d 918, found that only one-third of class actions are successful,
24 compared to two-thirds that are defeated and result in no payment to the class members.²

25 ///

26 ///

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

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

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

3 Despite recognized limitations of the so-called lodestar method, some California and
4 federal courts acknowledge the utility of a lodestar “cross-check.”³ (*Lealao*, supra, 82
5 Cal.App.4th at 46-47.) Under the “lodestar multiplier” method of cross-checking the
6 reasonableness of attorneys’ fees in class actions, the court ascertains Class counsel’s total
7 “lodestar” amount by multiplying the number of hours reasonably expended by each attorney or
8 legal staff member by their hourly rates, and then enhances or reduces this lodestar figure by a
9 “multiplier” to account for a range of factors, such as the novelty or difficulty of the case, its
10 contingent nature, and the degree of success achieved. *PLCM Group, Inc. v. Drexler* (2000) 22
11 Cal.4th 1084, 1095-96; *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322; *Lealao*, supra, 82
12 Cal.App.4th at 43 [court has discretion to use a multiplier to ensure that the “fee awarded is
13 within the range of fees freely negotiated in the legal marketplace in comparable litigation”].)

14 As set forth in the declaration of Class Counsel submitted herewith, the actual aggregated
15 lodestar between the attorneys that have worked on this case is approximately \$152,350. This
16 results in a tiny multiplier of only 1.09, which clearly demonstrates that the requested fee is
17 justified, reasonable and appropriate. The aggregated lodestar is summarized in the following
18 table, and in the submitted declaration of Class counsel:⁴

19 ///

20 ///

21 ///

22

23 ³ In practice, the lodestar method is difficult to apply, time-consuming to administer, inconsistent in result, and
24 capable of manipulation. In addition, the lodestar creates inherent incentive to prolong the litigation until sufficient
25 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.

26 ⁴ Class Counsel all kept detailed timesheets, and the summary is based on those time records. Notably, a lodestar
27 calculation need not be supported by detailed time records but can be made based on reasonable estimates. *Wershba*,
28 *supra*, 91 Cal.App.4th at 255 (“California case law permits fee awards in the absence of detailed time sheets”).
Declarations by counsel as to time spent, even if only estimates, are enough. *Dunk*, *supra*, 48 Cal.App.4th at 1810
(lodestar calculation can be based on counsel's estimate of time spent). “An experienced trial judge is in a position to
assess the value of the professional services rendered in his or her court.” *Wershba*, *supra*.

Attorney/Timekeeper	Rate	Hours	Fee
Brian J. Mankin <i>Trial Counsel/Partner</i> (21 years)	\$775	91.3⁵	\$70,757.50
Peter J. Carlson <i>Senior Associate</i> (8 years)	\$575	141.9	\$81,592.50
Grand Total for All Attorneys			
			\$152,350.00

(Mankin Decl. ¶ 25).

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

⁵ Includes an estimated 35 hours of additional work in preparation of supplemental declarations and papers, preparing for and attending the hearing, as well as the anticipated work to be performed after the final approval hearing with counsel, administrator, employees, and the court.

1 Angeles is between \$478.74 and \$638.97 for the median and upper quartiles. And, perhaps most
2 importantly, the information provided in the Real Rate Report is not based on self-reported
3 numbers, surveys, sampling, or reviews or other publications – instead, the Real Rate Report is
4 based on the actual hours and fees billed by law firms. (Mankin Decl., ¶ 23-24.)

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

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

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

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

18 The Settlement Agreement authorized litigation costs of up to \$15,000. (S.A. ¶ 47(f)).
19 Class Counsel’s actual costs through the final approval hearing are estimated to be \$9,977.42.
20 (Mankin Decl. ¶ 27). These costs include mediation fees, filing fees, CourtCall charges, and
21 process server fees.

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

23 A named plaintiff is an essential ingredient of any class action and an incentive award
24 is appropriate to induce individuals to step forward and assume the burdens and obligations of
25 representing the Class. Courts regularly approve a service payment to compensate the named
26 plaintiff for her service to the class and the risks she incurred during the course of the
27 litigation. *See, e.g. Bell v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715, 726
28 (upholding “service payments” to named Plaintiff for their efforts in bringing class action);

1 *Rodriguez v. West Publishing* (9th Cir. 2009) 563 F.3d 948, 959 (stating that incentive awards
2 are “intended to compensate class representatives for work done on behalf of the class, to make
3 up for financial or reputational risk undertaken in bringing the action, and, sometimes, to
4 recognize their willingness to act as a private attorney general.”).

5 Under the Settlement, Defendant agreed to pay a Service Award of \$7,500 to Plaintiff
6 in recognition of her contribution as Class Representative. (*See* Plaintiff Decl. ¶ 11).
7 Moreover, Plaintiff came forward and undertook significant risks, including the risk of being
8 blackballed in the industry and the risk that she could have been liable for Defendant’s costs if
9 he lost. This factor is a significant one for a wage earner, and the potential risk is very real.
10 *See Whiteway v. FedEx Kinkos Office & Print Svcs., Inc.* (N.D. Cal. Dec. 17, 2007) 2007 WL
11 4531783, at *3 (“the few courts to consider this ‘class representatives’ dilemma’ have not
12 found it inequitable to assess costs upon the lead or named plaintiff in a class action.”).)

13 Plaintiff also committed a significant number of hours to assist with the
14 litigation/settlement processes of this case and entered into a general release of all claims
15 against Defendants, whereas the Class Members only released the claims alleged. The
16 requested Service Award is reasonable, particularly in light of the substantial benefits Plaintiff
17 generated for the Class Members, the risks she undertook, and in exchange for executing a
18 general release against Defendant while giving up the right to pursue separate individual
19 claims. (*See* Plaintiff Decl. ¶ 4-8).

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

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

24 **A. SETTLEMENT ADMINISTRATION COSTS**

25 The Administrator, Simpluris, agreed to administer the settlement for a flat-fee of
26 \$5,999. (Reyes Decl. ¶ 17). This amount was fully disclosed to the Class Members in the
27 Class Notice, and no Class Members objected to it. Simpluris’ declaration also fully complies
28 with the CMO. As such, the Parties request that the Administrator’s fee request be approved.

1 **B. UNCASHED CHECKS**

2 The Settlement Agreement provides that uncashed checks (following a 180 day check
3 cashing period) will be submitted to the to the California State Controller's Office in the name
4 of the Class Member and/or Aggrieved Employee.

5 **C. FINAL REPORT**

6 Defendants is required to issue payment to the Administrator by the later or October 3,
7 2022, or fifteen (15) days after the Effective Date (S.A. ¶ 66). The Administrator will then
8 have 10 days to issue payment to the Class Members, who will then have 180 days to cash
9 their checks. Thus, the deadline to cash checks should end in April 2023. However, the
10 Administrator is then required to hold onto the uncashed check fund for approximately one
11 year before transmitting those funds to the State Controller. Therefore, the Parties propose
12 submitting a final report in the form of a declaration from the Administrator (setting forth the
13 money that was actually paid to the class members and to the State Controller) on
14 approximately June 28, 2024.

15 **D. SUBMISSION TO THE LWDA**

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

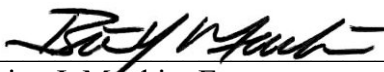
18 **VIII. CONCLUSION**

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

21 Dated: May 5, 2022

LAUBY, MANKIN & LAUBY LLP

22
23 BY:



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

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 4590 Allstate Drive, Riverside, California 92501.

On May 5, 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 May 5, 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

SERVICE LIST

Darren D. Daniels, Esq.
LAW OFFICES OF DARREN D. DANIELS
235 E. Broadway, #1140
Long Beach, CA 90802
562-983-1259
562-683-2643-fax
darrendaniels@dddlaw.com
Attorney for Defendants