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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

LAURA BARBOZA and DAMON POTTER,
individually, on a representative basis, and on
behalf of all others similarly situated;

Plaintiffs,

v.

RUDOLPH FOODS COMPANY, INC., an
Ohio Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVSB2129090
*[Assigned to the Hon. Joseph T. Ortiz, Dept.
S17, 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: 1:30 p.m.

Dept.: S17

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on August 23, 2023, at 1:30 p.m., or as soon thereafter as
3 this matter may be heard by the Honorable Joseph T. Ortiz in Department S17 of the San
4 Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA
5 92415, Plaintiffs Laura Barboza and Damon Potter, individually and on behalf of all others
6 similarly situated, will move this Court for an Order granting final approval of the class action
7 settlement between Plaintiffs and Defendant, which was preliminarily approved by the Court on
8 April 18, 2023. This Motion seeks final approval and entry of judgment of a \$1,250,000
9 settlement on behalf of the Class Members, and is unopposed by Defendant Rudolph Foods
10 Company, Inc. ("Defendant").

11 Specifically, Plaintiffs will and hereby do move the Court to grant final approval of the
12 Class Action and PAGA 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 Representative for purposes of
17 settlement;

18 3. Finally appointing Brian Mankin, Kristina Carlson and Nazo Koulloukian as
19 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 (Jarrod Salinas of Phoenix

1 Settlement Administrators), Class Counsel (Brian Mankin, Kristina Carlson and Nazo
2 Koulloukian) and Plaintiffs (Laura Barboza and Damon Potter) filed concurrently herewith; the
3 records and files in this action; and any other further evidence or argument that the Court may
4 receive at or before the hearing.

5 Dated: August 1, 2023

LAUBY, MANKIN & LAUBY LLP

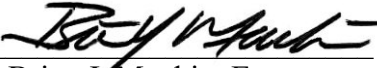
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7 BY: 
8 Brian J. Mankin, Esq.
9 Attorneys for Plaintiffs and the Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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

3 Pursuant to California Rules of Court, Rule 3.769(d) and (e), Plaintiffs Laura Barboza
4 and Damon Potter respectfully request that this Court grant final approval of the Class Action
5 and PAGA Settlement Agreement and Release of Claims (“Settlement Agreement”), and enter
6 the proposed order and final judgment in this matter. This Motion is supported and unopposed by
7 Defendant Rudolph Foods Company, 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 \$1,250,000 settlement with the
11 assistance of Steven Rottman, 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 501
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 have been zero objections and zero opt-outs to the Settlement thus far,
18 meaning 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, 33 (“Mankin Decl.”).)

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

24 Plaintiffs and the Class Members include all current and former non-exempt workers who
25 worked at any Rudolph Foods locations in California at any time from June 14, 2017, through
26 December 20, 2022 (the “Class Period”). The primary claims, which Defendant disputes,

27
28 ¹ Because the deadline for the Class Members to submit objections or opt-outs (i.e., the “Response Deadline”) occurs on August 2nd (one day 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.

1 included, but are not limited to, allegations that the Class Members did not receive all minimum,
2 regular and overtime wages owed, did not receive accurate itemized wage statements, were not
3 provided compliant meal and rest breaks, were not reimbursed for all business expenses, were
4 not paid all required sick pay, as well as claims for waiting time penalties and PAGA penalties.

5 The Settlement includes 501 Participating Class Members. The following is a
6 breakdown reflecting how the funds are allocated under the Settlement Agreement (Declaration
7 of Administrator, Jarrod Salinas (“Salinas Decl.”), ¶ 11):

Gross Settlement Amount	\$ 1,250,000.00
Attorneys’ Fees (1/3)	\$ 416,666.67
Litigation Costs	\$ 19,882.96
Administrator Costs	\$ 11,164.36
PAGA Penalties	\$ 50,000.00
Class Representative Service Awards	\$ 20,000.00
Net Settlement Amount	\$ 732,286.01

13 In terms of the payments, all Class Members were deemed to participate and did not need
14 to submit a Claim Form to receive payment. (Settlement Agreement or “S.A.” ¶ 25). Each
15 Participating Class Member will receive a pro rata share of the Net Settlement Amount according
16 to the percentage of Workweeks worked during the Class Period, such that the amount actually
17 distributed to Participating Class Members will equal 100% of the Net Settlement Amount.
18 (Settlement Agreement ¶ 49(c)).

19 Assuming all of the amounts in the Settlement are approved by the Court, the *average*
20 Individual Class Payment is estimated to be \$1,461.65 and the *highest* individual settlement
21 payment is approximately \$6,517.05. (Salinas Decl. ¶ 12). The Participating Class Members
22 collectively worked 32,361 weeks during the Class Period, resulting in a net Workweek value of
23 approximately \$22.63. (Salinas Decl. ¶ 10).

24 In addition, 337 PAGA Members will each receive an Individual PAGA Payment based
25 on their share of the \$12,500 in PAGA Penalties (25% of the total \$50,000 PAGA allocation),
26 calculated pro-rata based on the number of Weeks Worked during the PAGA Period. (S.A. ¶
27 49(h)). The PAGA Members collectively worked 16,645 Workweeks, and their average
28 Individual PAGA Payment is \$36.34. (Salinas Decl. ¶ 13).

1 Twenty percent (20%) of each Individual Settlement Amount shall constitute wages (for
2 which each Participating Class Member will be issued an IRS Form W-2 for such payment), and
3 the remaining eighty percent (80%) shall constitute interest and penalties (each for which each
4 participating Class Member will be issued an IRS Form 1099). (S.A. ¶ 49(d)). The Settlement
5 Agreement provides that Defendant shall deposit the Settlement Amount within 15 days after the
6 “Effective Date” (S.A. ¶ 72), which will be the date that the Final Order is entered assuming
7 there are no objections or motions to intervene filed. Additionally, Defendant will separately
8 fund its share of payroll taxes. Within 10 days of receipt, the Settlement Administrator shall
9 issue payments to cover all court-approved payments. (S.A. ¶ 73).

10 Class Members will have 180 days to cash the settlement check. If a Class Member fails
11 to cash a check by the deadline, the Settlement Administrator shall issue unclaimed funds to the
12 California State Controller in the name of the Class Member. (S.A. ¶ 72).

13 The Administrator will also send all unclaimed funds of PSSG Temps to a cy pres –
14 Public Justice (www.publicjustice.net).

15 **III. THE NOTICE PROCESS**

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

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

21 After the Court granted preliminary approval and in preparation for transmitting the Class
22 Data to the Administrator, Defendant discovered that it did not have addresses or social security
23 numbers for approximately 65 Class Members, who included temporary employees assigned to
24 for Defendant by PSSG (the “PSSG Temps”), a temporary staffing company that went out of
25 business. Since it was not possible for the Administrator to mail the Class Notice to the PSSG
26 Temps, the Parties determined that the next best method of giving notice of the settlement to the
27 PSSG Temps was by way of a newspaper publication. The Parties agreed to utilize a large local
28 newspaper, the Press Enterprise. The newspaper ad directed PSSG Temps to call the

1 Administrator to verify their status as a Class Member and provide their address and other
2 necessary things. For those PSSG Temps who ultimately did not call the Administrator to verify
3 their status, it would not be possible to send a check to them or even transmit their funds to the
4 State Controller because the Parties did not have their social security number, and therefore any
5 uncashed check from a PSSG Temp would be transmitted to a cy pres. The Parties submitted
6 the proposed notice plan for the PSSG Temps, and the Court approved the stipulation and
7 entered an order approving the notice process for the PSSG Temps on June 20, 2023.

8 Shortly thereafter and prior to the mailing, the Settlement Administrator performed a
9 National Change of Address search on all Class Members to determine if any had moved.
10 (Salinas Decl., ¶ 4). On July 3, 2023, the Class Notice was sent via first-class mail to 501 Class
11 Members and the newspaper ad was simultaneously placed in the Press Enterprise newspaper.
12 (Salinas Decl., ¶ 5). Ultimately, all Class Notices were determined to be deliverable. (Salinas
13 Decl., ¶ 6).

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

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

25 California law makes clear that the percentage of objectors and opt-outs is an important
26 factor in the Court's consideration of a proposed class action settlement. (See *Dunk v. Ford*
27 *Motor Co.* (1186) 48 Cal.App.4th 1794 at 1802.) Indeed, the Ninth Circuit and other federal
28 courts recognize that in the final fairness analysis, the number or percentage of class members

1 who object to the settlement is a significant factor. (See *Mandujano v. Basic Vegetable Prods.,*
2 *Inc.*, (9th Cir. 1976) 541 F.2d 672, 677; *In re American Bank Note Holographics, Inc.* (SDNY
3 2001) 127 F.Supp.2d 418, 425 [“[i]t is well settled that the reaction of the class to the settlement
4 is perhaps the most significant factor to be weighed in considering its adequacy.”])

5 In this case, as noted above, there are zero objections and opt-outs to the Settlement thus
6 far -- meaning that 100% of the Class Members are currently participating in the Settlement.
7 (Salinas Decl., ¶ 7-9). Because the Response Deadline occurs on August 2nd (one day after the
8 deadline to file this motion), the Parties will submit a supplemental declaration from the
9 Administrator by August 9, 2023 with the final accounting and responses from the Class
10 Members.

11 **V. EVALUATION OF THE SETTLEMENT**

12 It is axiomatic that California law strongly favors and encourages settlements. (See
13 *Stambaugh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236.) This presumption in favor of
14 settlement applies with particular force in the context of class actions. (See *Ferguson v. Lieff,*
15 *Cabraser, Heimann & Bernstein* (2003) 30 Cal.4th 1037 [“[p]ublic policy favoring settlement is
16 especially weighty for class actions”]; *Bell v. Am. Title Ins. Co.* (1991) 226 Cal.App.3d 1589,
17 1607-1608 [affirming the trial court’s approval of a class settlement and implicitly endorsing its
18 citation of federal precedent for the notion that there is a “strong public policy in favor of
19 settlement of class actions”]; see also *Franklin v. Kaypro Corp.* (9th Cir. 11869) 884 F.2d 1222,
20 1229, quoting *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950 [“it hardly
21 seems necessary to point out that there is an overriding public interest in settling and quieting
22 litigation. This is particularly true in class action suits”].)

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

27 Fairness is presumed when: (1) the settlement is reached through arm’s-length
28 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act

1 intelligently; (3) counsel is experienced in similar litigation; (4) the percentage of objectors and
2 opt outs is small, and (5) the range of reasonableness of the settlement fund to a possible
3 recovery in light of all attendant risks of litigation.” (*Dunk, supra*, 48 Cal.App.4th at 1802.) All
4 five of these factors are discussed in detail below.

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

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

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

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

22 **B. Plaintiffs’ Investigation Was Sufficient**

23 As set forth at the time of preliminary approval, Class Counsel’s investigation into the
24 facts and merits of the wage and hour claims alleged included substantial written discovery,
25 analyzing substantial amounts of information, correspondence, documents, policies and
26 procedures, pay data and timekeeping records, and evidence relating to the class size and the
27 commonality of the claims. During this process, Plaintiffs and Class Counsel conducted
28 investigations into the potential claims of the similarly situated employees, as well as researching

1 and investigating Defendant's defenses. Finally, Class Counsel synthesized and analyzed
2 information provided by Defendant as to the total Class Members, the number of current and
3 former employees, the number of employees who worked during various time periods, and
4 prepared comprehensive damages calculations regarding the claims at issue.

5 **C. Class Counsel Are Experienced in Similar Litigation and Endorse the**
6 **Settlement**

7 Class Counsel are experienced in this type of litigation, and they have represented (and
8 hereby do represent) that this Settlement is fair and reasonable. (Mankin Decl., ¶¶ 13, 33;
9 Carlson Decl., ¶¶ 2-6; see *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
10 Cal.App.4th 1135, 1152 [Final approval of settlement affirmed where counsel were all
11 experienced litigators with class-action experience and had recommended settlement based on
12 the negotiated terms].)

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

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

26 In light of the uncertainties of protracted litigation, this negotiated settlement reflects the
27 best practicable recovery for the Class. While the total settlement amount is, of course, a
28 compromise figure, the potential risks and opportunities of both parties were effectively weighed

1 and considered by the parties, resulting in a fair and equitable settlement. Based upon detailed
2 data obtained through discovery and information exchanges, and factoring in claim certification
3 probabilities and liability probabilities, Class Counsel formulated detailed damages models to
4 evaluate the claims in preparation for mediation and in order to reach a realistic and reasonable
5 resolution.

6 Defendant denies that any damages should be assessed and denies all of the value
7 assessed by Plaintiff. Notwithstanding these arguments, in light of the uncertainties and
8 expense associated with protracted litigation, the Settlement commits Defendant to pay
9 \$1,250,000 to settle the litigation.

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

11 For their efforts in creating a common fund for the benefit of the Class, the Settlement
12 Agreement provided that Class Counsel may seek reasonable fees of \$416,666.67 (one-third of
13 the Settlement Amount). This amount will be paid from the settlement amount, as provided by
14 the Settlement Agreement. These fees are warranted under the law and within the range of fees
15 commonly awarded in similar cases.

16 As shown herein, the requested percentage of one-third of the settlement fund as payment
17 for attorneys' fees should be granted for several reasons, including one-third is the standard
18 bench mark in California for class action settlements (see e.g., *Chavez v. Netflix, Inc.* (2008) 162
19 Cal.App.4th 43, 66 n. 11 ("Empirical studies show that, regardless whether the percentage
20 method or the lodestar method is used, fee awards in class actions average around one-third of
21 the recovery")), that the California Supreme Court held that the percentage of the fund method
22 survives in California class action cases (*Laffitte v. Robert Half International, Inc.* (2016) 1
23 Cal.5th 480, and through the prism of a lodestar cross-check. Accordingly, this request should
24 receive final approval.

25 **A. Plaintiffs Are Entitled to Recover Reasonable Attorney's Fees Under the** 26 **Labor Code**

27 Plaintiffs and the Class in this action are entitled to recover reasonable attorneys' fees,
28 expenses and costs under section 218.5 of the California Labor Code, which provides that, "[i]n

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

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

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

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

The California Supreme Court has approved trial courts' usage of the common fund method of awarding attorneys' fees in wage and hour class actions, like this one, upholding a fee awarded of 1/3 of the total settlement amount obtained for the class. *See Laffitte*, 1 Cal.5th at 506; *see also*, 4 Newberg on Class Actions, § 14:6 at 552 ("fee awards in class actions average around one-third of the recovery"). Specifically, in *Laffitte*, the Court wrote: "[w]e join the

1 overwhelming majority of federal and state courts in holding that when class action litigation
2 establishes a monetary fund for the benefit of the class members, and the trial court in its
3 equitable powers awards class counsel a fee out of that fund, the court may determine the amount
4 of a reasonable fee by choosing an appropriate percentage of the fund created”). *Id.* at 506. The
5 California Supreme Court also noted that trial courts have the discretion to award fees as a
6 percentage of the common fund, with or without the necessity to conduct a lodestar cross-check.
7 *Id.* (“...[Courts] ... retain the discretion to forgo a lodestar cross-check and use other means to
8 evaluate the reasonableness of a requested percentage fee.”)

9 The California Supreme Court’s *Laffitte* decision was consistent with its prior rulings
10 recognizing that “when a number of persons are entitled in common to a specific fund, and an
11 action brought by ... plaintiffs for the benefit of all results in the creation or preservation of that
12 fund, such ... plaintiffs may be awarded attorneys’ fees out of the fund.” *Serrano III v. Priest*
13 (1977) 20 Cal.3d 25, 34; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 (“[A] lawyer who
14 recovers a common fund . . . is entitled to reasonable attorneys’ fees from the fund as a whole”).
15 Notably, when fees are calculated as a percentage of the common fund, they should be calculated
16 based on the amount that was available to be claimed, rather than as a percentage of the actual
17 amount claimed. *See Id.* at 475-6, 480-1 (the SCOTUS held that attorneys for a successful class
18 may recover a fee based on the fund created for the class, even if some class members make no
19 claims against the fund, so that money remains in it that will be returned to the defendant,
20 explaining: “[t]heir [class members’] right to share the harvest of the lawsuit upon proof of their
21 identity, whether or not they exercise it, is a benefit in the fund created by the efforts of the class
22 representatives and their counsel.” *See also Williams v. MGM-Pathe Communs. Co.* (9th Cir.
23 1997) 129 F.3d 1026, 1027 (trial court “abused its discretion by basing the fee on the class
24 members’ claims against the fund rather than on a percentage of the entire fund or on the
25 lodestar”).
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1 **2. *The High Quality of Work and Excellent Result Obtained Support***
2 ***the Award***

3 In addition to the fact that a Class benefit was created with a \$1,250,000 non-reversionary
4 common fund settlement, the fairness of the requested fee award of 1/3 of the Settlement
5 Amount is supported by the high quality of work performed by Class Counsel and the positive
6 result obtained for the Class. This great result occurred because Class Counsel diligently,
7 efficiently, and creatively pursued this case and reached a successful settlement for the benefit of
8 the entire Class. In fact, some Class Members will receive up to ***\$6,517.05, which is an***
9 ***excellent result***. Moreover, the fact that the settlement was embraced and supported by the
10 Class, as evidenced by a 100% participation rate thus far, demonstrates that Class Counsel
11 obtained a favorable result for the Class.

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

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

17 The Class Notice also advised the class members of the procedures for objecting to the
18 proposed settlement and appearing at the settlement hearing, where they could present their
19 objections to any aspect of the settlement, including the amount of attorneys' fees to be awarded
20 to class counsel. (*Litwin v. iRenew Bio Energy Solutions, LLC* (2014) 226 Cal.App.4th 877, 883
21 ["[p]rocedural due process requires that affected parties be provided with 'the right to be heard at
22 a meaningful time and in a meaningful manner'"].) In accordance with the foregoing, it is
23 respectfully submitted that the instant notice complied with Rule 3.769 and, as a result, the Class
24 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 1/3 of***
3 ***the Common Fund***

4 An additional factor in favor of the granting of the requested fee award is the fact that this
5 case was both legally and financially risky for Class Counsel. (*See Vizcaino v. Microsoft Corp*
6 (*9th Cir. 2002*) 290 F.3d 1043, 1048-49.) Class Counsel have been representing the Class in this
7 matter on a strictly contingency basis, and as such, incurred the risk of non-recovery after a
8 substantial investment of time, money, and resources, and have done so since the inception of
9 this case without any payment or compensation. Specifically, there was the prospect of
10 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. (Mankin Decl. ¶ 20). If, despite these hardships and risks, the best Plaintiffs'
17 Counsel could hope for is merely to be paid its customary hourly rate multiplied by the number
18 of hours worked on all cases (including cases like this where the lodestar is far greater than the
19 potential fee award), then Class Counsel would not be compensated for the hardships and serious
20 risks they faced litigating this contingency case, and would not be incentivized to take on similar
21 cases in the 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

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

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

20 Despite recognized limitations of the so-called lodestar method, some California and
21 federal courts acknowledge the utility of a lodestar “cross-check.”³ (*Lealao, supra*, 82
22 Cal.App.4th at 46-47.) Under the “lodestar multiplier” method of cross-checking the
23 reasonableness of attorneys’ fees in class actions, the court ascertains Class counsel’s total
24 “lodestar” amount by multiplying the number of hours reasonably expended by each attorney or
25 legal staff member by their hourly rates, and then enhances or reduces this lodestar figure by a
26 “multiplier” to account for a range of factors, such as the novelty or difficulty of the case, its
27 contingent nature, and the degree of success achieved. *PLCM Group, Inc. v. Drexler* (2000) 22

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

³ 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.

1 Cal.4th 1084, 1095-96; *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322; *Lealao, supra*, 82
2 Cal.App.4th at 43 [court has discretion to use a multiplier to ensure that the “fee awarded is
3 within the range of fees freely negotiated in the legal marketplace in comparable litigation”].)

4 Historically, California courts have approved multipliers of 1.5 to 4. *See Coalition for*
5 *Los Angeles County Planning v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 251
6 **(multiplier of 2+ approved)**; *Sternwest Corp v. Ash* (1986) 183 Cal.App.3d 74, 75. The
7 multiplier requested by Class Counsel below is within the range of multipliers found to be
8 appropriate by various federal and state courts in California. In *Sternwest Corp. v. Ash*, for
9 instance, the Court of Appeal remanded for a lodestar enhancement of “**two, three, four or**
10 **otherwise.**” *Id.* at 76; *see also Wershba*, 91 Cal.App.4th at 255 (“**Multipliers can range from 2**
11 **to 4 or even higher**”); *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78, 83
12 **(affirming 2.34 multiplier)**; *Coalition for Los Angeles County Planning in the Pub. Interest v.*
13 *Board of Supervisors*, 76 Cal.App.3d 241, 251 **(affirming multiplier of approximately 2)**;
14 *Craft v. County of San Bernardino*, 2008 U.S. Dist. LEXIS 27526 (C.D. Cal. Apr. 1, 2008)
15 **(applying 5.2 multiplier)**; *See also Steinder v. Am. Broadcasting Co., Inc.* (9th Cir. 2007) 248
16 Fed. Appx. 780, 783 **(approving multiplier of 6.85** and citing cases with comparable or higher
17 multipliers); *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 (finding no abuse
18 of discretion in **awarding a multiplier of 3.65**). In *Torchia v. WW Grainger, Inc.* (E.D. Cal.
19 2014) 304 F.R.D. 256, 275-278, a federal magistrate in Fresno approved attorneys’ fees of
20 \$550,000 **constituting a 3.57 multiplier** on class counsel’s total lodestar of \$153,856 in a wage
21 and hour class action where class counsel engaged in limited formal discovery and settled within
22 one year from filing the Complaint.

23 The actual aggregated lodestar between the Plaintiffs’ attorneys that worked on this case
24 is approximately \$346,370. This results in a small 1.20 multiplier, as summarized in the
25 following table, and in the submitted declaration of Plaintiffs’ counsel:
26
27
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Attorney/Timekeeper	Role	Yrs Experience	Rate	Hours	Fee
Brian J. Mankin (Partner – LML)	Trial Counsel	22	\$775	109⁴	\$84,475
Kristina Carlson (Associate – LML)	Handling Attorney	9	\$550	167.2	\$91,960
Nazo Koulloukian (Principal – Koul Law)	Trial Counsel	14	\$675	213.6	\$144,180
Sahag Majarian (Principal/Owner)	Counsel	32	\$850	30.3	\$25,755
Grand Total for All Attorneys				520.1	\$346,370

(See Mankin Decl., ¶ 25; Carlson Decl. ¶ 8-9; Koulloukian Decl. ¶ 31-34; Majarian Decl. ¶ 9).

Class Counsel’s requested rates are reasonable under the Laffey Matrix (www.laffeymatrix.com) which indicates that the benchmark rate for an attorney with 20+ years of experience (such as Mr. Mankin and Mr. Majarian) is \$914, while the rate for attorneys with 8-10 years of experience (such as Ms. Carlson) is \$672. 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

⁴ Includes an estimated 35 hours that will be expended in finalizing the motion, attending the hearing, working with the parties and administrator regarding the notice and payment process, and filing any post judgment paperwork.

1 based on the actual hours and fees billed by law firms. These numbers are not surprising given
2 that a 4-year-old article in the National Law Journal stated that in **2014** partners in Los Angeles
3 charge an average of \$665, while the average associate rate is \$401. (Sloan, \$1,000 Per Hour
4 Isn't Rare Anymore; Nominal Billing Levels Rise, But Discounts Ease Blow (2014) Nat. Law
5 Journal.)⁵ (Mankin Decl., ¶ 24.)

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

9 Class Counsel are also highly experienced in Class/PAGA litigation, including having
10 been selected as a "Super Lawyer" in employment litigation on multiple occasions, having
11 achieved large settlements, and having prevailed at trial against two separate Fortune 100
12 companies. (Mankin Decl. ¶¶ 2-6; Koulloukian Decl. ¶¶ 14-22; Majarian Decl. ¶ 3-4). Indeed,
13 Class Counsel's rates are typical of the rates charged by defense counsel with similar experience
14 doing similar employment law work in this region.

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

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

17 The Settlement Agreement authorized litigation expenses up to \$25,000. (Settlement
18 Agreement ¶ 49(f)). However, Class Counsel's actual combined costs through the final
19 approval hearing are estimated to be \$19,882.96, including \$14,576.85 by Lauby Mankin
20 Lauby LLP and \$5,306.11 by Koul Law Firm. (Mankin Decl. ¶ 27; Koulloukian Decl. ¶ 35.)
21 Since Class Counsel's actual costs were less than the amount allocated, the saving will be
22 placed in the Net Settlement Amount. These costs include mediation fees, filing fees,
23 CourtCall charges, and court filing fees, and process server fees.

24 **B. The Requested Service Award is Reasonable and Merits Approval**

25 A named plaintiff is an essential ingredient of any class action and an incentive award
26 is appropriate to induce individuals to step forward and assume the burdens and obligations of

27 ⁵ The article notes that at Irell & Manella, the average partner rate is \$890/hr; Mannatt, Phelps & Phillips is \$740/hr;
28 O'Melveny & Meyers is \$715/hr; and Jeffer Mangels Butler & Mitchell is \$690/hr. *Id.*

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

9 Under the Settlement, Defendant agreed to pay Service Awards in the amount of
10 \$10,000 each to Laura Barboza and Damon Potter in recognition of their contribution as the
11 Class Representatives and the fact that they agreed to a general release of all claims. In
12 addition, Plaintiffs also undertook significant risks, including the risk of being blackballed in
13 the industry and the risk that they could have been liable for Defendant’s costs if they lost.
14 This factor is a significant one for a wage earner, and the potential risk is very real. (*See*
15 *Whiteway v. FedEx Kinkos Office & Print Svcs., Inc.* (N.D. Cal. Dec. 17, 2007) No. C 05-2320
16 SBA, 2007 WL 4531783, at *3 (“the few courts to consider this ‘class representatives’
17 dilemma’ have not found it inequitable to assess costs upon the lead or named plaintiff in a
18 class action.”).)

19 Plaintiffs also committed a significant number of hours to assist with the
20 litigation/settlement processes of this case. Finally, they entered into a general release of all
21 claims against Defendant, whereas the Class Members only released the claims alleged. The
22 requested Service Payment is reasonable, particularly in light of the substantial benefits
23 Plaintiffs generated for the Class Members, the risks they undertook, and in exchange for
24 executing a general release against Defendant while giving up the right to pursue separate
25 individual claims. (See Barboza’s Declaration ¶¶ 6-15 and Potter’s Declaration ¶¶ 3-9.)

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

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

2 **A. Settlement Administration Costs**

3 The parties agreed that the Administrator, Phoenix Settlement Administrators, would be
4 compensated for services performed. The Administrator's flat fee is \$11,164.36, which
5 included considerable work performed by the administrator in resolving the data issues and
6 paying for the newspaper ad. (Salinas Decl., ¶ 15; Exhibit B thereto.)

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

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

11 **C. Uncashed Checks**

12 The Settlement Agreement provides that unclaimed funds will be submitted to the
13 California State Controller's Unclaimed Property Fund in the name of the Class Member
14 thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil
15 Procedure Section 384, subd. (b). (S.A. ¶ 74.) However, as to PSSG Temps who did not
16 verify their status as a Class Member, their unclaimed funds will be sent to the designated cy
17 pres within 30 days after the 180-day check cashing period.

18 **D. Final Report**

19 Defendant's payment is due 15 days after the Effective Date, which will occur the date
20 that the Final Order is entered if there are no objections or motions to intervene. The
21 Administrator then has 10 days thereafter process the funds and issue checks to the Class
22 Members, who will then have 180 days to cash their checks. Accordingly, the Parties project
23 that the check cashing deadline will occur on approximately March 16, 2024. The Parties
24 propose that the Administrator issue the unclaimed funds for the PSSG Temps within 30 days
25 after the check cashing deadline (estimated to be April 15, 2024). Then on approximately
26 April 30, 2024, the Parties will be prepared to submit a declaration from the Administrator
27 attesting to its disbursement of all payments required under the Settlement Agreement.
28

1 Thus, the Parties propose submitting a final report in the form of a declaration from the
2 Administrator on approximately April 30, 2024 and then holding a disbursement hearing
3 thereafter at the Court's convenience.

4 **E. Submission to the LWDA**

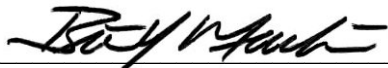
5 As set forth in the Mankin Declaration at ¶ 29, the Settlement Agreement and this
6 motion are concurrently being submitted to the LWDA in accordance with Labor Code §
7 2699(1)(2). The LWDA has not commented on the Settlement to date.

8 **IX. CONCLUSION**

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

11 Dated: August 1, 2023

LAUBY, MANKIN & LAUBY LLP

12
13 BY: 
14 Brian J. Mankin, Esq.
15 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 kristina@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

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