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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

GENNINE MERRITT, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

DMA CLAIMS, INC., a California
Corporation; DMA CLAIMS
MANAGEMENT, INC., an Illinois
Corporation; VENBROOK GROUP, LLC, a
Delaware Limited Liability Company;
VENBROOK INSURANCE SERVICES,
LLC, a California Limited Liability
Company; and DOES 1 through 20, inclusive;

Defendants.

Case No.: 21STCV31200

*[Assigned to Hon. Stuart M. Rice, 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 16, 2023

Time: 10:30 a.m.

Dept.: 1

Complaint Filed: August 24, 2021

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on May 16, 2023, at 10:30 a.m., or as soon thereafter as
3 this matter may be heard by the Honorable Stuart Rice in Department 1 of the above-captioned
4 court, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Gennine
5 Merritt, individually and on behalf of all others similarly situated, will move this Court for an
6 Order granting final approval of the class action settlement between Plaintiff and Defendant,
7 which was preliminarily approved by the Court on January 20, 2023. This Motion seeks final
8 approval and entry of judgment of a \$750,000 settlement on behalf of the Class Members, and is
9 unopposed by Defendants DMA Claims, Inc., DMA Claims Management, Inc., Venbrook
10 Group, LLC, and Venbrook Insurance Services, LLC.

11 Specifically, Plaintiff will and hereby does move the Court to grant final approval of the
12 Class Action and PAGA Settlement Agreement (“Settlement Agreement”), and enter the
13 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 Plaintiff as the Class Representative for purposes of settlement;
- 17 3. Finally appointing Brian Mankin, Peter Carlson and Mehrdad Bokhour as Class
18 Counsel for purposes of settlement;
- 19 4. Finding that the Class Notice was properly provided to the Class in accordance
20 with the Court’s Order granting Preliminary Approval;
- 21 5. Finally approving the settlement as fair, adequate, and reasonable, based upon the
22 terms set forth in the Settlement Agreement;
- 23 6. Binding participating Class Members to the terms of the Settlement Agreement,
24 including the Release specified therein; and
- 25 7. Retaining jurisdiction to enforce the Settlement Agreement.

26 This Motion will be based upon this notice; the attached memorandum of points and
27 authorities; the Declarations of the Settlement Administrator (Taylor Mitzner of Phoenix
28 Settlement Administrators), Class Counsel (Brian Mankin, Peter Carlson and Mehrdad Bokhour)

1 and Plaintiff (Gennine Merritt) filed concurrently herewith; the records and files in this action;
2 and any other further evidence or argument that the Court may receive at or before the hearing.

3 Dated: April 24, 2023

LAUBY, MANKIN & LAUBY LLP

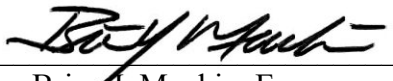
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5 BY: 
6 Brian J. Mankin, Esq.
7 Attorneys for Plaintiff and the Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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 and PAGA Settlement
5 Agreement (“Settlement Agreement”) already on file in this action, and enter the proposed order
6 and final judgment in this matter. This Motion is supported and unopposed by Defendants DMA
7 Claims, Inc., DMA Claims Management, Inc., Venbrook Group, LLC, and Venbrook Insurance
8 Services, LLC (“Defendants”).

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 \$750,000 settlement with the
12 assistance of Jeff Krivis, who is one of the most experienced and reputable class action mediators
13 in California, that is tailored to a limited release of the claims alleged on behalf of 186 Class
14 Members;
- 15 • The Class Members were deemed to participate in the Settlement, and were not
16 required to submit a Claim Form to receive funds;
- 17 • There is no reversion to Defendants;
- 18 • There were zero objections and only one opt-out to the Settlement, meaning
19 99.5% of the Class is currently participating in the Settlement.¹

20 In accordance with the analysis and law set forth herein as well the preliminary approval
21 motion, the Settlement should be approved and judgment entered based on the determination that
22 the Settlement is fair, reasonable, adequate, and in the best interests of the Class. (Declaration of
23 Class Counsel, Brian J. Mankin; ¶¶ 13, 35 (“Mankin Decl.”).)

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

25 Plaintiff and the Class Members include current and former nonexempt employees (i.e.,
26 meaning they are eligible to receive overtime pay) of Defendants DMA, including all former
27

28 ¹ The deadline for Class Members to respond to the Class Notice is April 28, 2023 (the “Response Deadline”). After
the Response Deadline passes and well before the Final Approval Hearing, the administrator will file an updated
declaration with the final results of the notice process.

employees of Defendant DMA who were employed by Defendant Venbrook, who worked in California at any time during the period of August 23, 2017, through September 29, 2022 (the “Class Period”). The primary claims, which Defendants dispute, involved allegations that the Class Members did not receive all minimum, regular and overtime wages owed, did not receive accurate itemized wage statements, were denied meal and rest breaks, were not reimbursed for all business expenses, as well as claims for waiting time penalties and PAGA penalties.

The Settlement includes 185 Participating Class Members (excluding the one opt-out). The following is a breakdown reflecting how the funds are allocated under the Settlement Agreement (Declaration of Administrator, Taylor Mitzner (“Mitzner Decl.”), ¶ 13):

Gross Settlement Amount	\$ 750,000.00
Attorneys’ Fees (1/3)	\$ 250,000.00
Litigation Costs	\$ 15,299.58
Administrator Costs	\$ 6,000.00
PAGA Penalties	\$ 75,000.00
Class Representative Service Award	\$ 10,000.00
Net Settlement Amount	\$ 393,700.42

The 185 Participating Class Members were deemed to participate and did not need to submit a Claim Form to receive payment. (Settlement Agreement or “S.A.” ¶¶ 1.37). Each Participating Class Member will receive a pro rata share of the Net Settlement Amount according to the percentage of hours he/she worked during the Class Period, such that the amount actually distributed to Participating Class Members will equal 100% of the Net Settlement Amount. (Settlement Agreement ¶ 3.2.4)

Assuming all of the amounts in the Settlement are approved by the Court, the *average* Individual Class Payment is estimated to be \$2,116.67 and the *highest* individual settlement payment is approximately \$5,114.07 and the lowest payment is approximately \$41.58 for an employee who only worked one Pay Period in the Class Period. (Mitzner Decl. ¶ 15). The Participating Class Members collectively worked 9,469 pay periods during the Class Period, and each Pay Period is valued at approximately \$41.58.

In addition, 103 Aggrieved Employees will each receive an Individual PAGA Payment based on their share of the \$18,750 in PAGA Penalties (25% of the total \$75,000 PAGA

1 allocation), calculated pro-rata based on the number of Pay Periods Worked during the PAGA
2 Period. (S.A. ¶ 3.2.5.1).

3 Twenty percent (20%) of each Individual Settlement Amount shall constitute wages (for
4 which each participating Class Member will be issued an IRS Form W-2 for such payment), and
5 the remaining eighty percent (80%) shall constitute interest and penalties (each for which each
6 participating Class Member will be issued an IRS Form 1099). (S.A. ¶ 3.2.4.1). The Settlement
7 Agreement provides that Defendants shall deposit the Settlement Amount within 14 days after
8 the “Effective Date” (S.A. ¶ 4.4), which will be the date Judgment is entered since no Class
9 Member objected or moved to intervene. Additionally, Defendants will separately fund their
10 share of payroll taxes. Within 10 days of receipt, the Settlement Administrator shall issue
11 payments to cover all court-approved payments. (S.A. ¶ 4.4).

12 Class Members will have 180 days to cash the settlement check. (S.A. ¶ 4.4.1). If a Class
13 Member fails to cash a check by the deadline, the Settlement Administrator shall issue unclaimed
14 funds to the California State Controller in the name of the Class Member. (S.A. ¶ 4.4.3).

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 Prior to mailing the Class Notice, the Settlement Administrator performed a National
22 Change of Address search on all Class Members to determine if any had moved. (Mitzner Decl.,
23 ¶ 4). On January 23, 2023, the Class Notice was sent via first-class mail to 182 Class Members.
24 (Mitzner Decl., ¶ 5). Ultimately, only two Class Notices were determined to be undeliverable.
25 (Mitzner Decl., ¶ 6).

26 After the initial mailing to 182 individuals, Defendants discovered that 4 individuals were
27 inadvertently left off the Class List. The Parties submitted a stipulation and order to the Court,
28 and then Defendant moved via ex parte for permission to send the Notice to the 4 individuals and

1 give them the full 45 day period to respond to the Notice. On March 9, 2023, the Court entered
2 an Order authorizing the Administrator to mail the Notice to the 4 individuals, which the
3 Administrator mailed on March 10, 2023. Thus far, none have opted-out or otherwise
4 responded, but their deadline to respond April 24, 2023. (Mitzner Decl., ¶ 11). The Parties will
5 have the Administrator submit a supplemental declaration with the final tally of responses
6 shortly after the April 24th deadline, and well before the May 16th final approval hearing.

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

16 **B. There are Zero Objections and One Opt-Out Thus Far, Resulting In An**
17 **Impressive 99.5% of the Class Participating in the Settlement**

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

26 In this case, as noted above, there are zero objections and only one opt-out to the
27 Settlement thus far -- meaning that 99.5% of the Class Members are currently participating in the
28 Settlement. (Mitzner Decl., ¶ 8-10). The Parties will provide an updated declaration from the

1 Administrator after the Response Deadline passes, but thus far, the Class views this as a fair and
2 reasonable settlement.

3 **V. EVALUATION OF THE SETTLEMENT**

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

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

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

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

26 Courts presume the absence of fraud or collusion in the negotiation of a settlement,
27 unless evidence to the contrary is offered. Thus, there is a presumption here that the negotiations
28 were conducted in good faith. (See, 3 Alba Conte & Newberg, *supra*, at § 11.51.) The proposed

1 settlement here was the product of arm's-length negotiation before a highly experienced and
2 reputable class action mediator to reach a settlement, which was finally consummated in the
3 months after mediation.

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

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

14 **B. Plaintiff's Investigation Was Sufficient**

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

25 **C. Class Counsel Are Experienced in Similar Litigation and Endorse the**
26 **Settlement**

27 Class Counsel are experienced in this type of litigation, and they have represented (and
28 hereby do represent) that this Settlement is fair and reasonable. (Mankin Decl., ¶¶ 13, 35;

1 Carlson Decl., ¶¶ 2-6; see *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
2 Cal.App.4th 1135, 1152 [Final approval of settlement affirmed where counsel were all
3 experienced litigators with class-action experience and had recommended settlement based on
4 the negotiated terms].)

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

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

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

26 Of course, Defendant denies that any damages should be assessed and denies all of the
27 value assessed by Plaintiff. Notwithstanding these arguments, the Settlement commits
28 Defendant to pay \$750,000 to settle the litigation.

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

2 For their efforts in creating a common fund for the benefit of the Class, the Settlement
3 Agreement provided that Class Counsel may seek reasonable fees of \$250,000 (one-third of the
4 Settlement Amount). This amount will be paid from the settlement amount, as provided by the
5 Settlement Agreement. These fees are warranted under the law and within the range of fees
6 commonly awarded in similar cases.

7 As shown herein, the requested percentage of one-third of the settlement fund as payment
8 for attorneys' fees should be granted for several reasons, including one-third is the standard
9 bench mark in California for class action settlements (see e.g., *Chavez v. Netflix, Inc.* (2008) 162
10 Cal.App.4th 43, 66 n. 11 ("Empirical studies show that, regardless whether the percentage
11 method or the lodestar method is used, fee awards in class actions average around one-third of
12 the recovery")), that the California Supreme Court recently held that the percentage of the fund
13 method survives in California class action cases (*Laffitte v. Robert Half International, Inc.*
14 (2016) 1 Cal.5th 480, and through the prism of a lodestar cross-check. Accordingly, this request
15 should receive final approval.

16 **A. Plaintiff is Entitled to Recover Reasonable Attorney's Fees Under the**
17 **Labor Code**

18 Plaintiff and the Class in this action are entitled to recover reasonable attorneys' fees,
19 expenses and costs under section 218.5 of the California Labor Code, which provides that, "[i]n
20 any action brought for the nonpayment of wages ... the Court shall award reasonable attorneys'
21 fees and costs to the prevailing party." In addition, Plaintiff and the Class are entitled to recover
22 reasonable attorneys' fees pursuant to section 1194.2 of the Labor Code, which provides that,
23 "... any employee receiving less than the legal minimum wage ... applicable to the employee is
24 entitled to recover in a civil action the unpaid balance of the full amount of this minimum
25 wage... including ... reasonable attorney's fees, and costs of suit." Plaintiff is also entitled to
26 fees and costs under section 226(e) of the Labor Code (employee who prevails on claim for
27 itemized wage statement violation "is entitled to an award of costs and reasonable attorneys'
28 fees"); under PAGA (Labor Code § 2699(g), which provides "Any employee who prevails in any

1 action shall be entitled to an award of reasonable attorney's fees and costs, including any filing
2 fee paid"); and, potentially, section 1021.5 of the California Code of Civil Procedure.

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

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

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

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

28 ///

1 The California Supreme Court's *Laffitte* decision was consistent with its prior rulings
2 recognizing that "when a number of persons are entitled in common to a specific fund, and an
3 action brought by ... plaintiffs for the benefit of all results in the creation or preservation of that
4 fund, such ... plaintiffs may be awarded attorneys' fees out of the fund." *Serrano III v. Priest*
5 (1977) 20 Cal.3d 25, 34; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 ("[A] lawyer who
6 recovers a common fund . . . is entitled to reasonable attorneys' fees from the fund as a whole").
7 Notably, when fees are calculated as a percentage of the common fund, they should be calculated
8 based on the amount that was available to be claimed, rather than as a percentage of the actual
9 amount claimed. *See Id.* at 475-6, 480-1 (the SCOTUS held that attorneys for a successful class
10 may recover a fee based on the fund created for the class, even if some class members make no
11 claims against the fund, so that money remains in it that will be returned to the defendant,
12 explaining: "[t]heir [class members'] right to share the harvest of the lawsuit upon proof of their
13 identity, whether or not they exercise it, is a benefit in the fund created by the efforts of the class
14 representatives and their counsel." *See also Williams v. MGM-Pathe Communs. Co.* (9th Cir.
15 1997) 129 F.3d 1026, 1027 (trial court "abused its discretion by basing the fee on the class
16 members' claims against the fund rather than on a percentage of the entire fund or on the
17 lodestar").

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

20 In addition to the fact that a Class benefit was created with a \$750,000 non-reversionary
21 common fund settlement, the fairness of the requested fee award of 1/3 of the Settlement
22 Amount is supported by the high quality of work performed by Class Counsel and the positive
23 result obtained for the Class. This great result occurred because Class Counsel diligently,
24 efficiently, and creatively pursued this case and reached a successful settlement for the benefit of
25 the entire Class. In fact, some Class Member will receive more than \$3,344, which is an
26 excellent result. Moreover, the fact that the settlement was embraced and supported by the
27 Class, as evidenced by a 99.5% participation rate, demonstrates that Class Counsel obtained a
28 favorable result for the Class.

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

2 Rule 3.769 of the California Rules of Court requires that the Class Members be given
3 notice of any agreement regarding an application for attorneys' fees. Here, the Notice
4 preliminarily approved by the Court and distributed to the Class Members apprised them of the
5 requested attorneys fees, which was consistent with the new LA Model Agreement and Notice.

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

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

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

27 If Plaintiff had lost this case, Class Counsel would have recovered nothing, and would
28 have lost its out-of-pocket costs. This is not an easy burden for Plaintiff's Counsel, which are

1 two small firms. (Mankin Decl. ¶ 20). If, despite these hardships and risks, the best Plaintiff's
2 Counsel could hope for is merely to be paid its customary hourly rate multiplied by the number
3 of hours worked on all cases (including cases like this where the lodestar is far greater than the
4 potential fee award), then Class Counsel would not be compensated for the hardships and serious
5 risks they faced litigating this contingency case, and would not be incentivized to take on similar
6 cases in the future. (*Id.*)

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

11 The market value of the services provided by plaintiffs' counsel in
12 a case of this magnitude must take into consideration that any
13 compensation has been deferred for up to four years from the time
14 an hourly fee attorney would begin collecting fees from his or her
15 client; that the demands of the present case substantially precluded
16 other work during that extended period, which makes the ultimate
17 risk of not obtaining fees all the greater (since the attorneys must
18 use savings or incur debt to keep their offices afloat and their
19 families fed during the years-long litigation); and that a failure to
20 fully compensate for the enormous risk in bringing even a wholly
21 meritorious case would effectively immunize large or politically
22 powerful defendants from being held to answer for constitutional
23 deprivations, resulting in harm to the public."

24 *Id.* at 399-400.

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

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

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

1 **5. A Lodestar Cross-Check Confirms the Reasonableness of the Fee**
2 **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.* (11863) 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 Historically, California courts have approved multipliers of 1.5 to 4. *See Coalition for*
15 *Los Angeles County Planning v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 251
16 **(multiplier of 2+ approved)**; *Sternwest Corp v. Ash* (11866) 183 Cal.App.3d 74, 75. The
17 multiplier requested by Class Counsel below is within the range of multipliers found to be
18 appropriate by various federal and state courts in California. In *Sternwest Corp. v. Ash* (11866)
19 183 Cal.App.3d 74, for instance, the Court of Appeal remanded for a lodestar enhancement of
20 **“two, three, four or otherwise.”** *Id.* At 76; *see also Wershba*, 91 Cal.App.4th at 255
21 **(“Multipliers can range from 2 to 4 or even higher”)**; *City of Oakland v. Oakland Raiders*
22 (11868) 203 Cal.App.3d 78, 83 **(affirming 2.34 multiplier)**; *Coalition for Los Angeles County*
23 *Planning in the Pub. Interest v. Board of Supervisors*, 76 Cal.App.3d 241, 251 **(affirming**
24 **multiplier of approximately 2)**; *Craft v. County of San Bernardino*, 2008 U.S. Dist. LEXIS
25 27526 (C.D. Cal. Apr. 1, 2008) **(applying 5.2 multiplier)**; *See also Steinder v. Am. Broadcasting*

26 _____
27 ³ In practice, the lodestar method is difficult to apply, time-consuming to administer, inconsistent in result, and
28 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.

Co., Inc. (9th Cir. 2007) 248 Fed. Appx. 780, 783 (**approving multiplier of 6.85** and citing cases with comparable or higher multipliers); *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 (finding no abuse of discretion in **awarding a multiplier of 3.65**). In *Torchia v. WW Grainger, Inc.* (E.D. Cal. 2014) 304 F.R.D. 256, 275-278, a federal magistrate in Fresno approved attorneys' fees of \$550,000 **constituting a 3.57 multiplier** on class counsel's total lodestar of \$153,856, in a wage and hour class action where class counsel expended 457.85 hours on the case, engaged in limited formal discovery, and where the case settled for \$2,750,000 within one year from filing the Complaint with 909 class members claiming \$1,305,200 and the remainder, except for the attorneys' fees and costs, reverting to the company.

The actual aggregated lodestar between the Plaintiffs' attorneys that worked on this case is approximately \$238,315. This results in a **small 1.05 multiplier**, as summarized in the following table, and in the submitted declaration of Plaintiffs' counsel:

Attorney/Timekeeper	Role	Yrs Experience	Rate	Hours	Fee
Brian J. Mankin (Partner - LML)	Trial Counsel	22	\$775	108⁴	\$83,700
Peter Carlson (Senior Associate - LML)	Handling Attorney	8	\$575	174.2	\$100,165
Mehrdad Bokhour (Principal - Owner)	Trial Counsel	10	\$550	99	\$54,450
Grand Total for All Attorneys				381.2	\$238,315

(See Mankin Decl., ¶ 25; Carlson Decl. ¶ 8; Bokhour Decl. ¶ 19).

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) is \$914, while the rate for attorneys with 8-10 years of experience (such as Mr. 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

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 billing entries and 23.9 million hours billed by over 112,100 individual timekeepers from 4,620
2 law firms, totaling \$9.02 billion in fees billed. (*See* Wolters Kluwer’s ELM Solutions, Inc., 2017
3 Real Rate Report). The Real Rate Report then compiles and analyzes this data to provide the
4 hourly rates for partners and associates in major metropolitan areas. For the southern California
5 area, which is based on billing entries for 1,125 partners and 1,566 associates, the Real Rate
6 Report states that: (a) the rates for partners in Los Angeles is between \$640 and \$869.75 per hour
7 for the middle and upper quartiles, and (b) the rates for associates in Los Angeles is between
8 \$478.74 and \$638.97 for the median and upper quartiles. And, perhaps most importantly, the
9 information provided in the Real Rate Report is not based on self-reported numbers, surveys,
10 sampling, or reviews or other publications – instead, the Real Rate Report is based on the actual
11 hours and fees billed by law firms. These numbers are not surprising given that a 4-year-old
12 article in the National Law Journal stated that in **2014** partners in Los Angeles charge an average
13 of \$665, while the average associate rate is \$401. (Sloan, \$1,000 Per Hour Isn’t Rare Anymore;
14 Nominal Billing Levels Rise, But Discounts Ease Blow (2014) Nat. Law Journal.)⁵. (Mankin
15 Decl., ¶ 24.)

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

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

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

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

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

3 The Settlement Agreement authorized a Litigation Expenses Payment of not more than
4 \$20,000. (Settlement Agreement ¶ 3.2.2). However, Class Counsel's actual combined costs
5 through the final approval hearing are estimated to be \$15,299.58, including \$8,149.58 by
6 Lauby Mankin Lauby LLP and \$7,150 by Bokhour Law Group. (Mankin Decl. ¶ 29; Bokhour
7 Decl. ¶ 22.) Since Class Counsel's actual costs were less than the amount allocated, the saving
8 will be placed in the Net Settlement Amount. These costs include mediation fees, filing fees,
9 CourtCall charges, and court filing fees, and process server fees.

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

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

21 Under the Settlement, Defendants agreed to pay a Service Award in the amount of
22 \$10,000 to Ms. Merritt in recognition of her contribution as the Class Representative and the
23 fact that she agreed to forego separate individual retaliation and wrongful termination claims,
24 and instead agreed to only serve as a class representative. (See Plaintiff's Declaration ¶¶ 7.)
25 In addition to foregoing to separate individual claims, Ms. Merritt also undertook significant
26 risk, including the risk of being blackballed in the industry and the risk that she could have
27 been liable for Defendant's costs if she lost. She believes that her participation in this class
28 action caused her to lose 4 employment opportunities. (See Plaintiff's Declaration ¶ 8.) This

1 factor is a significant one for a wage earner, and the potential risk is very real. (*See Whiteway*
2 *v. FedEx Kinkos Office & Print Svcs., Inc.* (N.D. Cal. Dec. 17, 2007) No. C 05-2320 SBA,
3 2007 WL 4531783, at *3 (“the few courts to consider this ‘class representatives’ dilemma’
4 have not found it inequitable to assess costs upon the lead or named plaintiff in a class
5 action.”).)

6 Ms. Merritt also committed a significant number of hours to assist with the
7 litigation/settlement processes of this case. Finally, she entered into a general release of all
8 claims against Defendant, whereas the Class Members only released the claims alleged. The
9 requested Service Payment is reasonable, particularly in light of the substantial benefits
10 Plaintiff generated for the Class Members, the risks she undertook, and in exchange for
11 executing a general release against Defendant while giving up the right to pursue separate
12 individual claims. (See Plaintiff’s Declaration ¶¶ 6-10.)

13 The Notice sent to each Class Member detailed the proposed service award. No Class
14 Member has objected to the proposed payment to Plaintiff. Thus, Plaintiff requests that the
15 Court approve the award because it is both reasonable and appropriate.

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

17 **A. Settlement Administration Costs**

18 The parties agreed that the Administrator, Phoenix Settlement Administrators, would be
19 compensated for services performed. The Administrator’s flat fee is \$6,000.00, which
20 included considerable work performed by the administrator in resolving the data issues.
21 (Mitzner Decl., ¶ 16; Exhibit B thereto.)

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

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

26 **C. Uncashed Checks**

27 The Settlement Agreement provides that unclaimed funds will be submitted to the
28 California State Controller’s Unclaimed Property Fund in the name of the Class Member

1 thereby leaving no “unpaid residue” subject to the requirements of California Code of Civil
2 Procedure Section 384, subd. (b). (S.A. ¶ 4.4.3.)

3 **D. Final Report**

4 Defendants’ payment is due 14 days after the Effective Date. The Administrator then
5 has 10 days thereafter process the funds and issue checks to the Class Members, who will then
6 have 180 days to cash their checks. Accordingly, the Parties project that the check cashing
7 deadline will occur on approximately December 6, 2023. As required by the LA Model
8 Settlement Agreement at ¶ 8.8.6, “at least 15 days before any deadline set by the Court, the
9 Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed
10 declaration suitable for filing in Court attesting to its disbursement of all payments required
11 under this Agreement.”

12 The Parties propose submitting a final report in the form of a declaration from the
13 Administrator approximately 8 months after the Final Approval hearing date (i.e.,
14 approximately February 1, 2024).

15 **E. Submission to the LWDA**

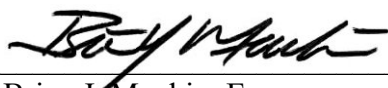
16 As set forth in the Mankin Declaration at ¶ 29, the Settlement Agreement and this
17 motion are concurrently being submitted to the LWDA in accordance with Labor Code §
18 2699(1)(2). The LWDA has not commented on the Settlement to date.

19 **IX. CONCLUSION**

20 Plaintiff respectfully submits that the Settlement is fair, adequate, and reasonable, and
21 merits final approval.

22 Dated: April 24, 2023

LAUBY, MANKIN & LAUBY LLP

23
24 BY: 
25 Brian J. Mankin, Esq.
26 Attorneys for Plaintiff and the Class
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I, Tracie Chiarito, declare I am a citizen of the United States of America and am employed in Riverside, California; I am over the age of 18 years and am not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, California 92504. On April 24, 2023, I served the within **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; DECLARATIONS IN SUPPORT THEREOF; AND [PROPOSED] FINAL ORDER AND JUDGMENT** in said action by electronic filing service Case Home Page website to the parties on the service list maintained on the Case Home Page website for this case pursuant to the Court Order establishing the case website and authorizing service of documents.

Executed on April 24, 2023, at Riverside, California.

Tracie Chiarito
Tracie Chiarito, Declarant

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