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

MARIA SOLEDAD RANGEL MERCADO,
individually and on behalf of all others
similarly situated;

Plaintiff,

vs.

NORTH BAY DISTRIBUTION, INC., a
California Corporation; CHARTWELL
STAFFING SERVICES, INC., a New York
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: FCS057328

*[Assigned to Hon. Tim P. Kam, Dept 7, 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: October 14, 2024

Time: 9:00 a.m.

Dept.: 7

Complaint Filed: October 21, 2021

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on October 14, 2024, at 9:00 a.m., or as soon thereafter as
3 this matter may be heard by the Honorable Tim P. Kam in Department 7 of the Solano County
4 Superior Court, located at 600 Union Ave., Fairfield, CA, 94533, Plaintiff Maria Soledad Rangel
5 Mercado, 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 Defendants
7 North Bay Distribution, Inc., (“North Bay”) and Chartwell Staffing Services, Inc., (“Chartwell”)
8 (collectively, “Defendants”). This Motion, which is supported by Defendants, seeks final
9 approval and entry of judgment of a \$1,500,000 settlement on behalf of the putative class
10 members.

11 Specifically, Plaintiff will and hereby does move the Court to grant final approval of the
12 Class Action Settlement Agreement and Release of Claims (“Settlement Agreement”), and enter
13 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 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 (Kaylie O’Connor of CPT Group),
28 Class Counsel (Brian Mankin, Peter Carlson, and Mehrdad Bokhour) and Plaintiff filed

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

3 Dated: September 18, 2024

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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TABLE OF CONTENTS

I.	SUMMARY OF ARGUMENT AND ESSENTIAL POINTS	1
II.	PERTINENT BACKGROUND AND SETTLEMENT TERMS	1
III.	THE NOTICE PROCESS.....	3
A.	Notice to the Class Members	3
B.	There are No Objections and One Opt-Out, Resulting In An Impressive 99.9% of the Class Participating in the Settlement	4
V.	EVALUATION OF THE SETTLEMENT	4
A.	The Settlement Was Reached Through Informed Arms-Length Negotiation	5
B.	Plaintiff's Investigation Was Sufficient.....	6
C.	Class Counsel Are Experienced in Similar Litigation and Endorse the Settlement	7
D.	Reasonable Estimate of the Nature and Amount of Recovery	7
VI.	THE REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE.....	8
A.	Plaintiff is Entitled to Recover Reasonable Attorney's Fees Under the Labor Code.....	8
B.	Class Counsel's Request for Fees Is Reasonable and Properly Calculated as a Percentage of the Common Fund	9
1.	<i>The Attorneys' Fees Requested Here Fall Within the Reasonable Range Awarded in Cases Under the Established Common Fund Method</i>	<i>9</i>
2.	<i>The High Quality of Work and Excellent Result Obtained Support the Award.....</i>	<i>10</i>
3.	<i>Class Members Had Sufficient Notice of the Requested Fees</i>	<i>11</i>
4.	<i>The Contingent Nature of Class Counsel's Representation of Plaintiff and the Class Further Supports the Fee Award at 1/3 of the Common Fund</i>	<i>11</i>
5.	<i>A Lodestar Cross-Check Confirms the Reasonableness of the Fee Award</i>	<i>15</i>
VII.	THE REQUESTED COSTS AND SERVICE AWARDS ARE REASONABLE.....	18
A.	The Requested Costs Are Reasonable and Merit Approval.....	18
B.	The Requested Service Award is Reasonable and Merits Approval	19
VIII.	OTHERS MATTERS RE: FINAL APPROVAL	20
A.	Settlement Administration Costs	20
B.	Notice of Final Judgment to the Class	20
C.	Uncashed Checks	20
D.	Final Report	20
E.	Submission to the LWDA.....	21
IX.	CONCLUSION.....	21

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	7
<i>Bell v. Am. Title Ins. Co.</i> (1991) 226 Cal.App.3d 1589	5
<i>Bell v. Farmers Insurance Exchange</i> (2004) 115 Cal.App.4th 715.....	16
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	8
<i>Ferguson v. Lieff, Cabraser, Heimann & Bernstein</i> (2003) 30 Cal.4th 1037.....	5
<i>Franklin v. Kaypro Corp.</i> (9th Cir. 1989) 884 F.2d 1222	5
<i>Horsford v. Board of Trustees of California State University</i> , 132 Cal.App.4th 359 (2005).....	12
<i>In re American Bank Note Holographics, Inc.</i> (SDNY 2001) 127 F.Supp.2d 418	5
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	7
<i>Laffitte v. Robert Half International, Inc.</i> (2016) 1 Cal.5 th 480.....	9, 10
<i>Litwin v. iRenew Bio Energy Solutions, LLC</i> , 226 Cal.App.4th at p. 883	11
<i>Mandujano v. Basic Vegetable Prods., Inc.</i> , (9th Cir. 1976) 541 F.2d 672.....	5
<i>PLCM Group, Inc. v. Drexler</i> (2000) 22 Cal.4 th 1084.....	13
<i>Press v. Lucky Stores, Inc.</i> (1983) 34 Cal.3d 311	13
<i>Rodriguez v. West Publishing</i> (9th Cir. 2009) 563 F.3d 948	16
<i>Stambaugh v. Super. Ct.</i> (1976) 62 Cal.App.3d 231.....	5
<i>Sternwest Corp v. Ash</i> (1986) 183 Cal.App.3d 74.....	13
<i>Wershba v. Apple Computers, Inc.</i> (2001) 91 Cal.App.4th 246	7

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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

3 Pursuant to California Rules of Court, Rule 3.769(d) and (e), Plaintiff respectfully
4 requests that this Court grant final approval of the Class Action Settlement Agreement and
5 Release of Claims (“Settlement Agreement”) already on file in this action, which is supported
6 and unopposed by Defendants North Bay Distribution, Inc., (“North Bay”) and Chartwell
7 Staffing Services, Inc., (“Chartwell”) (collectively, “Defendants”), and enter the proposed order
8 and final judgment in this matter.

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

- 11 • After extensive work, the Parties reached a \$1,500,000 settlement with the
12 assistance of Lynn Frank, who is one of the most experienced and reputable class action
13 mediators in California, that is tailored to a limited release of the claims alleged on behalf of the
14 Class Members;
- 15 • The Class Members were deemed to participate in the Settlement, and were not
16 required to submit a Claim Form to receive funds;
- 17 • There is no reversion to Defendant;
- 18 • There are zero objections and only one opt-out to the Settlement, meaning 99.9%
19 of the Class elected to participate in the Settlement.

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 are current and former nonexempt employees who
26 worked at a North Bay Facility in California at any time during the Class Period of October 21,
27 2017, through July 25, 2023, including Direct Hires of North Bay and Temporary Employees
28 assigned by Chartwell. Defendant North Bay owned and operated the North Bay Facilities in

California and hired “Direct Employees,” whereas Defendant Chartwell is a staffing company that employed and assigned Temporary Employees to work at a North Bay Facility. The primary claims, which Defendants dispute, involved allegations that the Class Members did not receive all wages owed, did not receive accurate itemized wage statements, were denied meal and rest breaks, as well as claims for waiting time penalties and PAGA penalties.

The Settlement includes 2,171 Participating Class Members (excluding the one opt-out), which is less than the 2,500 that was projected at preliminary approval. The following is a breakdown reflecting how the funds are allocated under the Settlement Agreement (Declaration of Administrator, Kaylie O’Connor (“O’Connor Decl.”), ¶ 15):

Gross Settlement Amount	\$ 1,500,000.00
Attorneys’ Fees (1/3)	\$ 500,000.00
Litigation Costs	\$ 20,177.88
Administrator Costs	\$ 25,500.00
PAGA Penalties	\$ 100,000.00
Class Representative Service Award	\$ 10,000.00
Net Settlement Amount	\$ 844,322.12

The 2,171 Participating Class Members were deemed to participate and did not need to submit a Claim Form to receive payment. (Settlement Agreement or “S.A.” ¶ 31). Each Participating Class Member will receive a pro rata share of the Net Settlement Amount according to the percentage of Weeks 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 ¶ 51(c)).

Assuming all of the amounts in the Settlement are approved by the Court, the *average* Individual Class Payment is estimated to be \$388.73 and the *highest* individual settlement payment is approximately \$2,767.56 and the lowest payment is approximately \$9.07 for an employee who only worked one Workweek in the Class Period. (O’Connor Decl. ¶ 16). The Participating Class Members collectively worked 93,049 Workweeks during the Class Period, and thus each Workweek is valued at approximately \$9.07.

In addition, 1,225 Aggrieved Employees will each receive an Individual PAGA Payment based on their share of the \$25,000 in PAGA Penalties (25% of the total \$100,000 PAGA

allocation), calculated pro-rata based on the number of Weeks Worked during the PAGA Period. (S.A. ¶ 51(h)).

Twenty percent (20%) of each Individual Class Payment shall constitute wages (for which each participating Class Member will be issued an IRS Form W-2 for such payment), and the remaining eighty percent (80%) shall constitute interest and penalties (each for which each participating Class Member will be issued an IRS Form 1099). (S.A. ¶ 51(d)). The Settlement Agreement provides that Defendant North Bay shall fund the Settlement Amount in two installments with the first payment occurring 15 days after the “Effective Date,” which will be the date Judgment is entered since no Class Member objected or moved to intervene, and the second payment due on January 10, 2025. Additionally, Defendant will separately fund their share of payroll taxes. Within 10 days of receipt of both payments, the Settlement Administrator shall issue payments to cover all court-approved payments. (S.A. ¶ 75-76).

Participating Class Members and Aggrieved Employees will have 180 days to cash the settlement check. If they fail to cash a check by the deadline, the Administrator shall issue unclaimed funds to the California State Controller’s Unclaimed Property Fund in the name of the Class Member and/or and Aggrieved Employee. (S.A. ¶ 77).

III. THE NOTICE PROCESS

A. Notice to the Class Members

Pursuant to the Court’s Order and the Settlement Agreement, the Parties directed the Settlement Administrator to review and update the Class Members’ addresses, mail the Court-approved Notice Packet, and process their responses.

Prior to mailing the Class Notice, the Settlement Administrator performed a National Change of Address search on all Class Members to determine if any had moved. (O’Connor Decl., ¶ 6). On June 5, 2024, the Class Notice was sent via first-class mail to the Class Members in English and Spanish. (O’Connor Decl., ¶ 7). Initially, 228 Notices were returned by the Post Office due an old address or Class Members moving, but after performing a skip trace, the Administrator re-mailed 136 Notices. Ultimately, only 96 Notices were deemed to be undeliverable, resulting in a **95.6%** success rate in mailing the Class Notice. (O’Connor Decl., ¶

1 8-9).

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

11 **B. There are No Objections and One Opt-Out, Resulting In An Impressive**
12 **99.9% of the Class Participating in the Settlement**

13 California law makes clear that the percentage of objectors and opt-outs is an important
14 factor in the Court's consideration of a proposed class action settlement. (See *Dunk v. Ford*
15 *Motor Co. (198) 48 Cal.App.4th 1794* at 1802.) Indeed, the Ninth Circuit and other federal
16 courts recognize that in the final fairness analysis, the number or percentage of class members
17 who object to the settlement is a significant factor. (See *Mandujano v. Basic Vegetable Prods.,*
18 *Inc.*, (9th Cir. 1976) 541 F.2d 672, 677; *In re American Bank Note Holographics, Inc.* (SDNY
19 2001) 127 F.Supp.2d 418, 425 ["[i]t is well settled that the reaction of the class to the settlement
20 is perhaps the most significant factor to be weighed in considering its adequacy."])

21 In this case, as noted above, there are no objections, no workweek disputes and one opt-
22 out to the Settlement -- meaning that 99.9% of the Class Members are participating in the
23 Settlement. (O'Connor Decl., ¶ 11-13). Thus, the Class views this as a fair and reasonable
24 settlement.

25 **V. EVALUATION OF THE SETTLEMENT**

26 It is axiomatic that California law strongly favors and encourages settlements. (See
27 *Stambaugh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236.) This presumption in favor of
28 settlement applies with particular force in the context of class actions. (See *Ferguson v. Lieff,*

1 *Cabraser, Heimann & Bernstein* (2003) 30 Cal.4th 1037 [“[p]ublic policy favoring settlement is
2 especially weighty for class actions”]; *Bell v. Am. Title Ins. Co.* (1991) 226 Cal.App.3d 1589,
3 1607-1608 [affirming the trial court’s approval of a class settlement and implicitly endorsing its
4 citation of federal precedent for the notion that there is a “strong public policy in favor of
5 settlement of class actions”]; see also *Franklin v. Kaypro Corp.* (9th Cir. 1989) 884 F.2d 1222,
6 1229, quoting *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950 [“it hardly
7 seems necessary to point out that there is an overriding public interest in settling and quieting
8 litigation. This is particularly true in class action suits”].)

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

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

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

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

26 Here, Plaintiff and Class Counsel have diligently investigated the claims raised in this
27 litigation and, after taking into account the disputed factual and legal issues involved in this
28 action, the risks attending further prosecution, and the benefits to be received pursuant to the

1 compromise and settlement of the action as set forth in the Settlement, concluded that the
2 settlement terms are fair, reasonable, and in the best interest of the Settlement Class.

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

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

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

19 Additionally, as set forth in the Preliminary approval motion, Class Counsel successfully
20 resolved the case despite an arbitration agreement. In fact, during the early stages of this case,
21 Defendant Chartwell filed two separate motions to compel arbitration. At the hearing on
22 September 19, 2022, the Court did not grant or deny Defendant's motion; instead, the Court set
23 an evidentiary hearing for November 7, 2022 (the same day as the hearing on Chartwell's second
24 motion) to take evidence prior to determining whether Plaintiff and Chartwell entered into an
25 arbitration agreement. However, counsel for the Parties met and conferred and agreed that, that
26 given the size and scope of the class and PAGA claims in the case, the unsettled issues relating
27 to whether this case would proceed to arbitration, in whole or part, and the burden, expense and
28 risk associated with continuing to litigate this matter, the case was a candidate for mediation.

1 Ultimately, the Parties scheduled mediation.

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

4 Class Counsel are experienced in this type of litigation, and they have represented (and
5 hereby do represent) that this Settlement is fair and reasonable. (Mankin Decl., ¶¶ 13, 35;
6 Carlson Decl., ¶¶ 2-6; see *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
7 Cal.App.4th 1135, 1152 [Final approval of settlement affirmed where counsel were all
8 experienced litigators with class-action experience and had recommended settlement based on
9 the negotiated terms].)

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

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

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

1 models to evaluate the claims in preparation for mediation and in order to reach a realistic and
2 reasonable resolution.

3 Of course, Defendants deny that any damages or penalties should be assessed and
4 denies all of the value assessed by Plaintiff. Notwithstanding these arguments, the Settlement
5 commits Defendants to pay \$1,500,000 to settle the litigation.

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

7 For their efforts in creating a common fund for the benefit of the Class, the Settlement
8 Agreement provided that Class Counsel may seek reasonable fees of \$500,000.00 (one-third of
9 the Settlement Amount). This amount will be paid from the settlement amount, as provided by
10 the Settlement Agreement. These fees are warranted under the law and within the range of fees
11 commonly awarded in similar cases.

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

21 **A. Plaintiff is Entitled to Recover Reasonable Attorney's Fees Under the** 22 **Labor Code**

23 Plaintiff and the Class in this action are entitled to recover reasonable attorneys' fees,
24 expenses and costs under section 218.5 of the California Labor Code, which provides that, "[i]n
25 any action brought for the nonpayment of wages ... the Court shall award reasonable attorneys'
26 fees and costs to the prevailing party." In addition, Plaintiff and the Class are entitled to recover
27 reasonable attorneys' fees pursuant to section 1194.2 of the Labor Code, which provides that,
28 "... any employee receiving less than the legal minimum wage ... applicable to the employee is

entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage... including ... reasonable attorney's fees, and costs of suit." Plaintiff is 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 Cases Under the Established Common Fund Method

The California Supreme Court approved trial courts' usage of the common fund method of awarding attorneys' fees in wage and hour class actions, like this one, and upheld a fee awarded of 1/3 of the total settlement amount obtained for the class. *See Laffitte, supra*, 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 overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created"). *Id.* at 506. The

1 California Supreme Court also noted that trial courts have the discretion to award fees as a
2 percentage of the common fund, with or without the necessity to conduct a lodestar cross-check.
3 *Id.* (“...[Courts] ... retain the discretion to forgo a lodestar cross-check and use other means to
4 evaluate the reasonableness of a requested percentage fee.”).

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

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

24 In addition to the fact that a Class benefit was created with a non-reversionary common
25 fund settlement, the fairness of the requested fee award of 1/3 of the Settlement Amount is
26 supported by the high quality of work performed by Class Counsel and the positive result
27 obtained for the Class in spite of the risks of ongoing litigation. This result occurred because
28 Class Counsel diligently, efficiently, and creatively pursued this case and reached a settlement

1 for the benefit of the entire Class. The fact that the settlement was embraced and supported by
2 the Class, as evidenced by a 99.9% participation rate, demonstrates that Class Counsel obtained a
3 favorable result for the Class.

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

5 Rule 3.769 of the California Rules of Court requires that the Class Members be given
6 notice of any agreement regarding an application for attorneys' fees. Here, the Notice
7 preliminarily approved by the Court and distributed to the Class Members apprised them of the
8 requested deductions for attorneys' fees and costs, as follows: "Up to one-third of the Settlement
9 Amount to Class Counsel for attorneys' fees (\$500,000.00) and up to \$25,000 for their litigation
10 expenses. . . ." (O'Connor Decl., Exh. A.)

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

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

22 An additional factor militating in favor of the granting of the requested fee award is the
23 fact that this case was both legally and financially risky for Class Counsel. *See Vizcaino v.*
24 *Microsoft Corp* (9th Cir. 2002) 290 F.3d 1043, 1048-49. Class Counsel have been representing
25 the Class in this matter on a strictly contingency basis, and as such, incurred the risk of non-
26 recovery after a substantial investment of time, money, and resources, and have done so since the
27 inception of this case without any payment or compensation. Specifically, there was the prospect
28 of enormous cost inherent in class action litigation; the risk that Defendant could prevail on its

1 argument that the class should not be certified; and the risk that Defendant could prevail on the
2 merits of some or all of the claims.

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

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

20 *Id.* at 399-400.

21 Indeed, as Plaintiff's Counsel can attest, not all class/PAGA cases are successful. Many
22 cases end with no fees or a greatly reduced fee that is far less than lodestar, often due to no fault
23 of counsel (i.e., bankruptcy, change in the law, consolidation or coordination or preemption,
24 being top filed, etc.). According to Mayer Brown LLP's study entitled, An Empirical Analysis
25 of Class Actions, cited in *Laguna v. Coverall North America, Inc.* (9th Cir. 2014) 753 F.3d 918,
26 found that only one-third of class actions are successful, compared to two-thirds that are defeated
27 and result in no payment to the class members.¹

28 As exemplified by the contingent nature of high risk class action litigation, Plaintiff's
Counsel can further attest to having had many cases result in (a) zero recovery, (b) negative
multiplier and (c) an individual settlement in lieu of a class recovery, as demonstrated below:

///
///
///

¹ www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

1 **Sample of Cases with Zero Recovery for Class Counsel**

2 The following is a small sample of cases in which Plaintiff's Counsel have received zero
3 recovery on class/PAGA cases due to the company's financial condition.

- 4 • Heavily litigated Class/PAGA action that Class Counsel certified as a class,
5 prevailed on summary adjudication, fully prepared for trial and one day before the
6 start of trial, ***Defendant filed for bankruptcy, resulting in complete loss of***
7 ***attorneys fees and all costs advanced*** (*Garza v. Quality Conversation*, San
8 Bernardino Superior Court Case No. CIVDS1506788);
- 9 • Class actions in which ***Defendants filed for bankruptcy, resulting in a loss of all***
10 ***fees and costs*** (*Gomez v. Ultimate Logistics*, Riverside Superior Court Case No.
11 RIC1723054, and *Bonilla v. Home Energy*, San Bernardino Superior Court Case
12 No. CIVSB2215927);
- 13 • In a pending matter, Class Counsel has litigated the case for over **5 years** with an
14 estimated 1,000 plus hours in attorney time, leading to the class certification in
15 favor of Plaintiff on all claims for over 1,500 class members. Despite all the work
16 invested into the matter, including preparing for an upcoming trial, the likely
17 outcome will either be (1) defendants filing bankruptcy that will result in zero
18 recovery, or (2) a greatly discounted settlement based on defendant's financial
19 obstacles and ability-to-pay;
- 20 • ***Class Counsel have been forced to dismiss class and PAGA cases without any***
21 ***compensation or reimbursement of fees or costs due to the financial condition***
22 ***of Defendant***, (*Cox v. NurseLoop*, San Bernardino Superior Court Case No.
23 CIVSB2225440; *Joyce v. GES Distribution*, Riverside Superior Court Case No.
24 RIC1905739).
- 25 • Of course, there is also the reality that a Defendant may prevail on the merits,
26 whereby Class Counsel will receive no compensation and lose it out of pocket
27 costs entirely. Class Counsel have experienced a situation wherein it prevailed at
28 trial on a PAGA case, only to have the appellate court reverse the decision and

rule in favor of Defendant, thereby reversing the fee and cost award and resulting in no recovery of fees or costs. (Mankin Decl. ¶ 21).

Sample of Cases with Zero Recovery for Class Counsel

Even when Plaintiff’s Counsel achieved a settlement and what appears to be a “favorable” outcome, there are countless times when the fees requested by Plaintiff’s Counsel still result in a *large negative attorney fee multiplier*, including the following examples:

- **Negative 4.26 multiplier:** In *Pompa v. Landforce*, San Bernardino Superior Court Case No. CIVDS1700451, Class Counsel litigated for over 4.5 years, and obtained class certification. Yet, despite the fact that a settlement was eventually achieved, it resulted in a negative 4.26 multiplier for Class Counsel due to financial condition;
- **Negative 4.24 multiplier:** In *Sacks v. Natural Energy*, San Bernardino Superior Court Case No. CIVDS1811288, the matter resulted in a settlement with a negative 4.24 multiplier for Class Counsel due to financial condition;
- **Negative 2.85 multiplier:** In *Sowle v. Sherpaul*, Riverside Superior Court Case No. RIC2002410, Class Counsel’s lodestar was nearly the same amount as the gross settlement amount – thus, resulting in a negative 2.85 multiplier.

(Mankin Decl. ¶ 21).

Class/PAGA Cases Converted to Small Individual Settlements

There are also many situations when Plaintiff’s Counsel is forced to convert matters into small individual settlements (and therein lose substantial attorneys fees) for a variety of reasons, including due the financial constraints of a defendant, or because a company may engage in a “Pick-up Stix Campaign” to settle directly with the class members, or because a Defendant engages in a reverse auction and settles a class/PAGA case with another firm that will take less (i.e., cherry picking), thereby cutting off Class Counsel’s recovery. There are indeed numerous examples of this occurring that result in an individual settlement, thereby causing Class Counsel to bear the burden of a loss in attorneys’ fees. (Mankin Decl. ¶ 21).

///

1 **These Factors Support the Fee Request and a Reasonable Multiplier**

2 The situations highlight instances where Class Counsel here (Lauby Mankin Lauby LLP)
3 has had to bear the weight of a complete loss or steep reduction in fees and costs. This is not an
4 easy burden for Plaintiff's Counsel, which is a small firm. (Mankin Decl. ¶ 20).

5 To offset these risks and unfavorable results, Courts historically award a multiplier on
6 Class Counsel's lodestar, as discussed further below. Because if the *best* Plaintiff's Counsel
7 could hope for is merely to be paid its customary hourly rate multiplied by the number of hours
8 worked on a case, then Class Counsel would not be compensated for the hardships and serious
9 risks they faced litigating contingency cases and incurring losses on the unfavorable results, and
10 would not be incentivized to take on similar cases in the future. (*Id.*)

11 The availability of a "lodestar multiplier" allows Class Counsel to be an advocate for
12 employees and take on risky cases where Class Counsel may have to shoulder the risks of
13 litigation in other cases, so that the class members do not have to forego their right to the justice
14 system. A multiplier ensures that class members in the future will have access to competent
15 counsel who are willing to offer contingency fee agreements in risky cases and be available and
16 willing to take on cases to help all Class Members – not just those employed by large
17 corporations.

18 For all of these reasons, the contingent nature of this case and the availability of a
19 lodestar multiplier supports a fee of one-third of the common fund and granting of fee request.

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

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

1 contingent nature, and the degree of success achieved. *PLCM Group, Inc. v. Drexler* (2000) 22
2 Cal.4th 1084, 1095-96; *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322; *Lealao*, supra, 82
3 Cal.App.4th at 43 [court has discretion to use a multiplier to ensure that the “fee awarded is
4 within the range of fees freely negotiated in the legal marketplace in comparable litigation”].)

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

22 The actual aggregated lodestar between the Plaintiff’s attorneys that worked on this case
23 is approximately \$321,342.50. This results in a fair and reasonable 1.55 multiplier, as
24 summarized in the following table, and in the submitted declaration of Plaintiff’s counsel:
25
26
27
28

Attorney/Timekeeper	Role	Yrs Experience	Rate	Hours	Fee
Brian J. Mankin (Partner – LML)	Trial Counsel	23	\$775	141²	\$ 109,275
Peter Carlson (Senior Associate – LML)	Handling Attorney	10	\$650	185.2	\$120,380
Mehrdad Bokhour (Principal – Owner)	Trial Counsel	12	\$675	132.5	\$ 89,437.50
Carlos Garcia (Bokhour Law Group)	Paralegal	12	\$150	15	\$ 2,250
Grand Total for All Attorneys				473.7	\$321,342.50

(See Mankin Decl., ¶ 25; Carlson Decl. ¶ 9; Bokhour Decl. ¶ 21.)

The hourly rates above are comparable to those of other attorneys with equal or similar experience, if not somewhat lower (*i.e.*, the Laffey Matrix at www.laffeymatrix.com indicates that the benchmark rates are: \$777/hour for an 8–10-year attorney, \$878/hour for a 11–19-year attorney, and \$1,057/hour for a 20+ year attorney).

Moreover, the Wolters Kluwer 2023 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, comprising millions of billing entries from a hundred thousand individual timekeepers who worked at thousands of law firms. 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: (a) the rate for partners in Los Angeles is between \$840 and \$1,159 per hour for the middle and upper quartiles, and (b) the rates for associates with seven or more years of experience, the median rate is \$674 per hour, and

² Includes an estimated 15 hours of additional work preparing for and attending the hearing (inclusive of finalizing and filing the motion, appearing at the hearing, addressing the Court’s questions/concerns, submitting revised documents, responding to class members who are anxious to receive their check, and so on), as well as 20 hours in anticipated work to be performed after the final approval, working with counsel, administrator, and Class Members (which includes up to 1.5 years of case management relating to ensuring timely payment from Defendants, reviewing the calculations, checks are timely mailed, responding to class members questions about the timing of checks/missing checks/lost checks and remailings, working with the administrator regarding uncashed checks and remailings, assisting with the Administrator’s declarations regarding payments and uncashed checks, potentially filing an amended judgment, appearing at the final disbursement hearing and/or submitting paperwork related thereto.

1 the upper quartile rate is \$888 per hour. And, perhaps most importantly, the information
2 provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, or
3 reviews or other publications – instead, the Real Rate Report is based on the actual hours and
4 fees billed by law firms, which makes it “a much better reflection of true market rates than self-
5 reported rates in all practice areas.” *Brown v. CVS Pharmacy, Inc.* (C.D. Cal. Apr. 24, 2017)
6 2017 U.S. Dist. LEXIS 182309, at *21; *PLCM Group*, 22 Cal.4th at 1085 (holding that rates
7 should be premised upon precisely this form of independent, “objective” rate data that reflects
8 “fair market” rates actually billed to clients “in the community for similar work”). (Mankin
9 Decl., ¶ 26.)

10 Class Counsel are also highly experienced in Class/PAGA litigation, including having
11 been named by the LA Times as one “Southern California Leading Lawyers” in the May 2023
12 issue of Consumer Attorneys of Southern California (a recognition given to 17
13 employment/labor law attorneys in 2023), having been selected as “Super Lawyer” in
14 employment litigation over the last 5 consecutive years, having achieved large settlements,
15 having prevailed at trial in PAGA-only actions and Class Action jury trials. (Mankin Decl. ¶¶ 2-
16 6). Indeed, Class Counsel’s rates are typical of the rates charged by defense counsel with similar
17 experience doing similar employment law work in this region.

18 Thus, Plaintiff’s Counsel’s rates reasonable and typical, and the attorneys’ fees requested
19 confirm that the fee request is fair and reasonable under the lodestar multiplier cross-check.

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

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

22 The Settlement Agreement authorized a Litigation Expenses Payment of not more than
23 \$25,000. (Settlement Agreement ¶ 51(f)). However, Class Counsel’s actual combined costs
24 through the final approval hearing are \$20,177.88, including \$13,190.73 by Lauby Mankin
25 Lauby LLP and \$6,987.15 by Bokhour Law Group. (Mankin Decl. ¶ 28; Bokhour Decl. ¶ 25.)
26 Since Class Counsel’s actual costs were less than the amount allocated, the saving will be
27 placed in the Net Settlement Amount. These costs include mediation fees, filing fees,
28 CourtCall charges, expert costs, court filing fees, and process server fees.

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

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

12 Under the Settlement, Defendants agreed to pay a Service Award in the amount of
13 \$10,000 to Ms. Rangel in recognition of her contribution as the Class Representative. She
14 came forward and undertook significant risk, including the risk of being blackballed in the
15 industry and the risk that she could have been liable for Defendants’ costs if she lost. This
16 factor is a significant one for a wage earner, and the potential risk is very real. (*See Whiteway*
17 *v. FedEx Kinkos Office & Print Svcs., Inc.* (N.D. Cal. Dec. 17, 2007) No. C 05-2320 SBA,
18 2007 WL 4531783, at *3 (“the few courts to consider this ‘class representatives’ dilemma’
19 have not found it inequitable to assess costs upon the lead or named plaintiff in a class
20 action.”)

21 Ms. Rangel also committed a significant number of hours to assist with the
22 litigation/settlement processes of this case. Finally, she entered into a general release of all
23 claims against Defendants, whereas the Class Members only released the claims alleged. The
24 requested Service Payment is reasonable, particularly in light of the substantial benefits
25 Plaintiff generated for the Class Members, the risks she undertook, and in exchange for
26 executing a general release against Defendants while giving up the right to pursue separate
27 individual claims. (See Plaintiff’s Declaration ¶¶ 5-9.)
28

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

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

5 **A. Settlement Administration Costs**

6 The parties agreed that the Administrator, CPT Group, would be compensated for
7 services performed. The Administrator's flat fee is \$25,500.00, which included considerable
8 work performed by the administrator in resolving the data issues. (O'Connor Decl., ¶ 18.)

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

10 The Proposed Final Approval Order directs the Settlement Administrator to give notice
11 of entry of judgment by including a postcard to the Class Members at the same time the checks
12 are mailed, and will be posted on the Administrator's website.

13 **C. Uncashed Checks**

14 The Settlement Agreement provides that unclaimed funds will be submitted to the
15 California State Controller's Unclaimed Property Fund in the name of the Class Member
16 thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil
17 Procedure Section 384, subd. (b). (S.A. ¶ 77.)

18 **D. Final Report**

19 Defendants' final payment is due on January 10, 2025 (assuming the Effective Date
20 occurs at least 15 days prior). The Administrator then has 10 days thereafter process the funds
21 and issue checks to the Class Members, who will then have 180 days to cash their checks.
22 Accordingly, the Parties project that the check cashing deadline will occur within on about July
23 19, 2025.

24 The Parties propose submitting a final report in the form of a declaration from the
25 Administrator (setting forth the money that was actually paid to the Participating Class
26 Members, Aggrieved Employees and the status of paying any unclaimed funds to the State
27 Controller on approximately September 1, 2025), and then holding a disbursement hearing at
28 the Court's convenience thereafter. It should be noted that the Administrator will likely hold

1 the uncashed funds for approximately one year before issuing the uncashed check payment to
2 the State Controller in accordance with the dormancy rules. Some Courts prefer to wait an
3 additional year before having the disbursement hearing to confirm that payment to the State
4 Controller has been issued, and alternatively, other Courts prefer to hold the disbursement
5 hearing shortly after the check cashing deadline and rely on the Administrator's representation
6 that the funds will be transmitted to the State Controller after the one year holding period. The
7 Parties are unclear of the Court's preference and are happy to adjust the proposed timeline
8 accordingly.

9 **E. Submission to the LWDA**

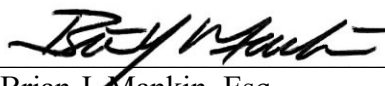
10 As set forth in the Mankin Declaration at ¶ 30, the Settlement Agreement and this
11 motion are concurrently being submitted to the LWDA in accordance with Labor Code §
12 2699(1)(2). The LWDA has not commented on the Settlement to date.

13 **IX. CONCLUSION**

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

16 Dated: September 18, 2024

LAUBY, MANKIN & LAUBY LLP

17
18 BY: 
19 Brian J. Mankin, Esq.
20 Attorneys for Plaintiff and the Class
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23
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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 September 18, 2024, I caused to be served the foregoing document(s) described as follows:

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

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

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

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

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

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

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

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

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 18, 2024, 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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