

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

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

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

DARREL NORTHRUP, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

GUYOU CONSTRUCTION, INC., a
California Corporation; MARCUS A.
GUYOU, an individual; and DOES 1 through
20, inclusive;

Defendants.

Case No.: CVRI2105858
*[Assigned to Hon. Harold Hopp, 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: December 12, 2023
Time: 8:30 a.m.
Dept: 1

Complaint filed: December 29, 2021

TO THE COURT AND PARTIES OF RECORD:

PLEASE TAKE NOTICE THAT on December 12, 2023, at 8:30 a.m., or as soon
thereafter as this matter may be heard by the Honorable Harold Hopp in Department 1 of the
Riverside County Superior Court located at 4050 Main Street, Riverside, CA 92501, Plaintiff
Darrel Northrup respectfully moves this Court for an Order granting final approval of the class
action settlement between Plaintiff and Defendants Guyou Construction, Inc. and Marcus Gayou
(collectively, "Defendants"), which was preliminarily approved by the Court. This Motion,
which is supported and unopposed by Defendants, seeks final approval and entry of judgment of

1 a \$300,000.00 settlement on behalf of the Class, LWDA and Aggrieved Employee.

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

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

7 2. Finally appointing Plaintiff as Class Representative for purposes of settlement;

8 3. Finally appointing Brian Mankin and Misty Lauby of Lauby Mankin Lauby LLP
9 as Class Counsel for purposes of settlement;

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

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

14 6. Binding Participating Class Members, Plaintiff and the LWDA to the terms of the
15 Settlement Agreement, including the Released Class Claims and PAGA Released Claims
16 specified therein; and

17 7. Retaining jurisdiction to enforce the Settlement Agreement.

18 This Motion will be based upon this notice; the attached memorandum of points and
19 authorities; the Declarations of the Administrator (Taylor Mitzner of Phoenix Administrators),
20 Class Counsel (Brian Mankin and Misty Lauby) and Plaintiff Darrel Northrup filed concurrently
21 herewith; the records and files in this action; and any other further evidence or argument that the
22 Court may receive at or before the hearing.

23 Dated: November 14, 2023

LAUBY, MANKIN & LAUBY LLP

24
25 BY:



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

TABLE OF CONTENTS

I.	SUMMARY OF ARGUMENT AND ESSENTIAL POINTS	1
II.	SUMMARY OF THE SETTLEMENT	1
III.	THE NOTICE PROCESS.....	3
A.	Notice to the Class Members	3
B.	There were No Objections and No Opt-Outs, Resulting in an Impressive 100% Class Participation in the Settlement.....	4
IV.	EVALUATION OF THE SETTLEMENT	5
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	6
D.	Reasonable Estimate of the Nature and Amount of Recovery	7
V.	THE REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE.....	8
A.	Plaintiff is Entitled to Recover Reasonable Attorneys' 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.	The Attorneys' Fees Requested Here Fall Within the Reasonable Range Awarded in Cases Under the Established Common Fund Method	9
2.	The High Quality of Work and Excellent Result Support the Award	10
3.	Class Members Had Sufficient Notice of the Requested Fees	11
4.	The Contingent Nature of Class Counsel's Representation of Plaintiffs and the Class Further Supports the Fee Award at 1/3 of the Common Fund.....	11
5.	A Lodestar Cross-Check Confirms the Reasonableness of the Fee Award	12
VI.	THE REQUESTED COSTS AND SERVICE AWARDS ARE REASONABLE.....	14
A.	The Requested Costs are Reasonable and Merit Approval.....	14
B.	The Requested Service Award is Reasonable and Merit Approval.....	14
VII.	OTHER MATTERS FOR FINAL APPROVAL	15
A.	Settlement Administration Costs	15
B.	Uncashed Checks	16
C.	Final Report	16
D.	Submission to the LWDA.....	16
VIII.	CONCLUSION.....	16

TABLE OF AUTHORITIES

State 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.....	18
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472	10
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	8
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	5
<i>Ferguson v. Lieff, Cabraser, Heimann & Bernstein</i> (2003) 30 Cal.4th 1037.....	5
<i>Horsford v. Board of Trustees of California State University</i> , 132 Cal.App.4th 359 (2005).....	12
<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.5th 480.....	8, 9
<i>Litwin v. iRenew Bio Energy Solutions, LLC</i> (2014) 226 Cal.App.4th 877	11
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> (2010) 186 Cal.App.4th 399	7
<i>PLCM Group, Inc. v. Drexler</i> (2000) 22 Cal.4th 1084.....	16
<i>Press v. Lucky Stores, Inc.</i> (1983) 34 Cal.3d 311	16
<i>Serrano III v. Priest</i> (1977) 20 Cal.3d 25	10
<i>Sternwest Corp v. Ash</i> (1986) 183 Cal.App.3d 74.....	16
<i>Wershba v. Apple Computers, Inc.</i> (2001) 91 Cal.App.4th 246	7
<i>Williams v. MGM-Pathe Communs. Co.</i> (9th Cir. 1997) 129 F.3d 1026.....	10

Federal Cases

<i>In re American Bank Note Holographics, Inc.</i> (SDNY 2001) 127 F.Supp.2d 418	4
<i>Laguna v. Coverall North America, Inc.</i> (9th Cir. 2014) 753 F.3d 918	12
<i>Mandujano v. Basic Vegetable Prods., Inc.</i> (9th Cir. 1976) 541 F.2d 672.....	4
<i>Rodriguez v. West Publishing</i> (9th Cir. 2009) 563 F.3d 948	18
<i>Van Bronkhorst v. Safeco Corp.</i> (9th Cir. 1976) 529 F.2d 943	5
<i>Vizcaino v. Microsoft Corp</i> (9th Cir. 2002) 290 F.3d 1043.....	11
<i>Whiteway v. FedEx Kinkos Office & Print Svcs., Inc.</i> (N.D. Cal. Dec. 17, 2007) 2007 WL 4531783.....	19

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 Darrel Northrup
4 respectfully requests that this Court grant final approval of the Class Action Settlement
5 Agreement and Release of Claims (the “Settlement Agreement” or “S.A.”) on file in this action
6 and enter the proposed order and final judgment, which is supported and unopposed by
7 Defendants Guyou Construction, Inc., and its principal owner, Marcus Gayou, (collectively,
8 “Guyou” or “Defendants”).

9 There are several essential reasons why this settlement should be approved. First, after
10 considerable work, preparation, exchange of data and mediation, the Parties reached a \$300,000
11 settlement on behalf of the Class Members and Aggrieved Employees (the “Settlement
12 Amount”), plus Defendants will separately pay their share of payroll taxes on the wage portion
13 of the Individual Class Payments. (See Declaration of Administrator, Taylor Mitzner (“Mitzner
14 Decl.”), ¶ 12).

15 Second, the Class Members were deemed to participate in the Settlement, and were not
16 required to submit a Claim Form to receive funds. Plus, there is no reversion to Defendants, so
17 all funds will be distributed to the employees.

18 Third, there were no objections and no opt-outs from the 205 Class Members, meaning
19 that **100%** of the Class elected to participate in the settlement.

20 Finally, the release language (that was approved by the Court at Preliminary Approval) is
21 narrowly tailored to the claims alleged.

22 Thus, in accordance with the analysis and law set forth herein, the Settlement should be
23 approved, and judgment entered based on the determination that the Settlement is fair,
24 reasonable, adequate, and in the best interests of the Class. (Declaration of Class Counsel, Brian
25 J. Mankin [“Mankin Decl.”] ¶¶ 13, 34).

26 **II. SUMMARY OF THE SETTLEMENT**

27 Defendant Guyou Construction is a construction company in California that specializes in
28 residential roofing and solar installation. Plaintiff and the Class includes all current and former

non-exempt (i.e., hourly paid) employees employed by Guyou Construction under the job titles of inspection technician, installation foreman, installation technician, or operation & maintenance/service technician in California at any time during the Class Period of December 29, 2017, through January 26, 2023. The primary claims (which Defendants vehemently disputed) involved allegations that Defendants failed to pay the Class all wages owed failed to provide compliant meal and rest breaks, failed to provide accurate itemized wage statement violations, waiting time penalties, and PAGA penalties arising from the same underlying conduct.

The Settlement includes 205 Participating Class Members, and the following is a breakdown of how the funds are allocated under the Settlement Agreement (Mitzner Decl. ¶ 14):

	Total Amount
<i>Settlement Amount</i>	\$ 300,000.00
Attorneys' Fees (1/3)	\$ 100,000.00
Litigation Costs	\$ 16,980.42
Administrator Costs	\$ 7,000.00
PAGA Penalties	\$ 30,000.00
Class Representative Service Award	\$ 7,500.00
<i>Net Settlement Amount</i>	\$ 138,519.58

The Participating Class Members were deemed to participate and did not need to submit a Claim Form to receive payment. (S.A. ¶ 23). Each Participating Class Member will receive an Individual Class Payment which will be calculated and apportioned from the Net Settlement Amount based on the number of Weeks Worked by each Class Member during the Class Period. (S.A. ¶ 49(c)).

Assuming all of the amounts in the Settlement are approved by the Court, the highest payment to Participating Class Members is estimated to be \$3,810.28, the average payment is estimated to be \$675.71 and the lowest is \$15.88 for a short term employee who only worked one week during the Class Period. (Mitzner Decl. ¶ 15).

In addition, the 161 Aggrieved Employees will share in the \$7,500 PAGA Payment based on Weeks Worked, who will receive \$46.58 each on average. (Mitzner Decl. ¶ 16).

1 The Individual Class Payments to Participating Class Members will be allocated as one-
2 third (33.33%) to wages subject to standard withholdings and two-thirds (66.67%) for interest
3 and statutory penalties (pursuant to, e.g., California Labor Code sections 203, 210, 226) from
4 which no taxes will be withheld. The Settlement Administrator will issue to each Participating
5 Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect
6 to the wage allocation and a Form 1099 with respect to the penalties and interest allocations.
7 (S.A. ¶ 49(d)). Individual PAGA Payments to Aggrieved Employees will be treated as civil
8 penalties and paid on a Form 1099.

9 The Settlement Agreement provides that Defendants shall fund the Settlement Amount
10 within 15 days of the Effective Date (which is anticipated to be the date the Court enters an order
11 granting Final Approval). However, Defendants have already funded the Settlement Amount, so
12 the Administrator may be able to issue payments within 10 calendar days of entry of the Final
13 Order. (S.A. ¶ 71-72; Mitzner Decl. ¶ 3). Class Members will have 180 days to cash the
14 settlement check. If a Class Member fails to cash a check by the deadline, the Administrator
15 shall issue unclaimed funds to the California State Controller in the name of the Participating
16 Class Member/Aggrieved Employee. (S.A. ¶ 73).

17 **III. THE NOTICE PROCESS**

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

19 Pursuant to the Court's Order and the Settlement Agreement, the Parties directed the
20 Administrator to review and update the Class Members' addresses, mail the Court-approved
21 Notice Packet, and process their responses. (Mitzner Decl. ¶ 3).

22 Prior to mailing the Notice Packet, the Administrator performed a National Change of
23 Address search on all Class Members to determine if any had moved. (*Id.* at ¶ 4). Then, on
24 September 15, 2023, the Notice Packet was sent via first-class mail to the 205 Class Members to
25 advise each about the suit and settlement. There were initially 13 undeliverable or returned
26 notices, so the Administrator used updated tracking methods and remailed 9 Notice Packets.
27 Ultimately, there were 4 undeliverable Notices, resulting in a **98%** success rate in mailing the
28 Notice Packets. (*Id.* at ¶ 6-7).

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

11 **B. THERE WERE NO OBJECTIONS AND NO OPT-OUTS, RESULTING IN AN**
12 **IMPRESSIVE 100% CLASS PARTICIPATION 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. (1996) 48 Cal.App.4th 1794, 1802*. Also, the Ninth Circuit recognize that in the final
16 fairness analysis, the number or percentage of class members who object to the settlement is a
17 significant factor. *See Mandujano v. Basic Vegetable Prods., Inc. (9th Cir. 1976) 541 F.2d 672,*
18 *677*.

19 Here, no objections or opt-outs were submitted, meaning that 100% of the Class
20 Members elected to participate and receive a share of the Settlement. (Mitzner Decl. ¶¶ 8-9).

21 In light of this positive reaction to the Settlement and its overall terms, it is clear that the
22 Settlement, which was the product of arm's-length negotiations, is fair and reasonable and the
23 Parties therefore respectfully request that the Court grant final approval and enter the proposed
24 judgment as requested. *See Dunk*, 48 Cal.App.4th at 1800-1802 (class action settlements should
25 be approved if they are fair and reasonable, and a low percentage of objectors and opt-outs is
26 evidence of an agreement's fairness).

27 ///

28 ///

1 **IV. EVALUATION OF THE SETTLEMENT**

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

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

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

22 **A. THE SETTLEMENT WAS REACHED THROUGH INFORMED ARMS-LENGTH**
23 **NEGOTIATION**

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

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

6 As the Settlement Agreement itself reveals, the Settlement is designed to fairly and
7 adequately compensate all Class Members. And, pursuant to California Rules of Court Rule
8 3.769 (b), the parties have disclosed the agreed upon and proposed attorney fee award, which is
9 well within the range of reasonableness for matters of this nature.

10 **B. PLAINTIFF'S INVESTIGATION WAS SUFFICIENT**

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

21 **C. CLASS COUNSEL ARE EXPERIENCED IN SIMILAR LITIGATION AND ENDORSE THE**
22 **SETTLEMENT**

23 Class Counsel are experienced in this type of litigation, and they have (and hereby do)
24 represent that this Settlement is fair and reasonable. (Mankin Decl. ¶¶ 13, 34); *see 7-Eleven*
25 *Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152 (Final
26 approval of settlement affirmed where counsel were all experienced litigators with class-action
27 experience and had recommended settlement based on the negotiated terms).

28 ///

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

2 Plaintiff's Motion for Preliminary Approval contained a comprehensive *Kullar* analysis
3 which sufficiently provided the Court with "basic information about the nature and magnitude
4 of the claims in question and the basis for concluding that the consideration being paid for the
5 release of those claims represents a reasonable compromise." *Kullar v. Foot Locker Retail,*
6 *Inc.* (2008) 168 Cal.App.4th 116, 133. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*
7 (2010) 186 Cal.App.4th 399, later clarified *Kullar* by noting that an explicit statement of the
8 maximum theoretical amount that the class could recover was not part of the "basic
9 information" that counsel was required to produce:

10 Greenwell misunderstands *Kullar*, apparently interpreting it to
11 require the record in all cases to contain evidence in the form of an
12 explicit statement of the maximum amount the plaintiff class could
13 recover if it prevailed on all its claims – a number which appears
14 nowhere in the record of the case. But *Kullar* does not, as
15 Greenwell claims, require any such explicit statement of value; it
16 requires a record which allows "an understanding of the amount
17 that is in controversy and the realistic range of outcomes of the
18 litigation.

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

27 In light of the uncertainties of protracted litigation, this negotiated settlement reflects the
28 best practicable recovery for the Class. While the total settlement amount is, of course, a
compromise figure, the potential risks and opportunities of both parties were effectively weighed
and considered by the parties, resulting in a fair and equitable settlement. Based upon detailed

1 data obtained through informal discovery and information exchanges, and factoring in class
2 certification probabilities and liability probabilities, Class Counsel formulated detailed damages
3 models to evaluate the claims for mediation in order to reach a realistic and reasonable resolution
4 as set forth at preliminary approval.

5 **V. THE REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE**

6 For their efforts in creating a common fund for the benefit of the class, the Settlement
7 Agreement provided that Class Counsel seek reasonable fees of one-third of the Settlement
8 Amount, which is \$100,000.00. These fees are warranted under the law and within the range of
9 fees commonly awarded in similar cases.

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

19 **A. PLAINTIFF IS ENTITLED TO RECOVER REASONABLE ATTORNEYS' FEES UNDER**
20 **THE LABOR CODE**

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

1 fees and costs under section 226(e) of the Labor Code (employee who prevails on claim for
2 itemized wage statement violation “is entitled to an award of costs and reasonable attorneys’
3 fees”), under PAGA (Labor Code § 2699(g), which provides “Any employee who prevails in any
4 action shall be entitled to an award of reasonable attorney’s fees and costs, including any filing
5 fee paid”), and, potentially, section 1021.5 of the California Code of Civil Procedure.

6
7 **B. CLASS COUNSEL’S REQUEST FOR FEES IS REASONABLE AND PROPERLY**
8 **CALCULATED AS A PERCENTAGE OF THE COMMON FUND**

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

16 ***1. The Attorneys’ Fees Requested Here Fall Within the Reasonable Range***
17 ***Awarded in Cases Under the Established Common Fund Method***

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

1 *Id.* (“...[Courts] ... retain the discretion to forgo a lodestar cross-check and use other means to
2 evaluate the reasonableness of a requested percentage fee.”).

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

20 **2. The High Quality of Work and Excellent Result Support the Award**

21 In addition to the fact that a Class benefit was created with a non-reversionary common
22 fund settlement, the fairness of the requested fee award of 1/3 of the Settlement Amount is
23 supported by the high quality of work performed by Class Counsel and the positive result
24 obtained for the Class in spite of the risks of ongoing litigation. This result occurred because
25 Class Counsel diligently, efficiently, and creatively pursued this case and reached a settlement
26 for the benefit of the entire Class. The fact that the settlement was embraced and supported by
27 the Class, as evidenced by a 100% 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 that
5 Class Counsel will ask for fees of one-third of the Settlement Amount. (Mitzner Decl., Exh. A.)

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 ("Procedural due process requires that affected parties be provided with 'the right to be heard at a
11 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 Plaintiffs**
15 **and the Class Further Supports the Fee Award at 1/3 of the Common**
16 **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; the risk that Defendants could prevail on its
24 argument that the class should not be certified; and the risk that Defendants could prevail on the
25 merits of some or all of the claims.

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

1 risk inherent in such situations:

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

10 *Id.* at 399-400.

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

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 Award***

21 Despite recognized limitations of the so-called lodestar method, some California and
22 federal courts acknowledge the utility of a lodestar "cross-check."² (*Lealao, supra*, 82
23 Cal.App.4th at 46-47.) Under the "lodestar multiplier" method of cross-checking the
24 reasonableness of attorneys' fees in class actions, the court ascertains Class counsel's total

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

27 ² 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.

“lodestar” amount by multiplying the number of hours reasonably expended by each attorney or legal staff member by their hourly rates, and then enhances or reduces this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty or difficulty of the case, its contingent nature, and the degree of success achieved. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-96; *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322; *Lealao, supra*, 82 Cal.App.4th at 43 [court has discretion to use a multiplier to ensure that the “fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation”].)

The actual aggregated lodestar between the Plaintiff’s attorneys that worked on this case is approximately \$133,832.50. This results in a *negative multiplier*. The hours and rates are summarized in the following table, and in the submitted declarations of Plaintiff’s counsel:

Attorney/Timekeeper	Rate	Hours	Fee
Brian J. Mankin <i>Trial Counsel / Partner</i> (22 Years)	\$775	88.9³	\$68,897.50
Misty Lauby <i>Handling Attorney / Partner</i> (16 Years)	\$650	99.9	\$64,935.00
Grand Total for All Attorneys			\$133,832.50

(Mankin Decl. ¶ 25; Lauby Decl. ¶ 9).

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: \$676/hour for an 8–10-year attorney, \$764/hour for a 11-19 year attorney, and \$919/hour for a 20+ year attorney). Moreover, the Wolters Kluwer 2017 Real Rate Report (“Real Rate Report”) provides directly applicable information in this regard. The Real Rate Report is based on an enormous and statistically significant compilation of data: 25.8 million billing entries and 23.9 million hours billed by over 112,100 individual timekeepers from 4,620 law firms, totaling \$9.02 billion in fees billed. (See Wolters Kluwer’s ELM Solutions, Inc., 2017 Real Rate Report). The Real Rate Report then compiles and analyzes this data to provide

³ Includes an estimated 15 hours of additional work preparing for and attending the hearing, as well as 20 hours in anticipated work to be performed after the final approval, particularly in light of the payment plan, as it will require considerable more work with counsel, administrator, and Class Members.

1 the hourly rates for partners and associates in major metropolitan areas. For the southern
2 California area, which is based on billing entries for 1,125 partners and 1,566 associates, the
3 Real Rate Report states that: (a) the rates for partners in Los Angeles is between \$640 and
4 \$869.75 per hour for the middle and upper quartiles, and (b) the rates for associates in Los
5 Angeles is between \$478.74 and \$638.97 for the median and upper quartiles. And, perhaps most
6 importantly, the information provided in the Real Rate Report is not based on self-reported
7 numbers, surveys, sampling, or reviews or other publications – instead, the Real Rate Report is
8 based on the actual hours and fees billed by law firms. (Mankin Decl., ¶ 24.)

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

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

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

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

21 The Settlement Agreement authorized litigation costs of up to \$20,000. (S.A. ¶ 49(f)).
22 Class Counsel’s actual costs through the final approval hearing are estimated to be \$16,980.42.
23 (Mankin Decl. ¶ 27, and Exhibit “D” thereto). These costs include mediation fees, filing fees,
24 expert charges, CourtCall charges, and process server fees.

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

26 A named plaintiff is an essential ingredient of any class action and an incentive award
27 is appropriate to induce individuals to step forward and assume the burdens and obligations of
28 representing the Class. Courts regularly approve a service payment to compensate named

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

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

16 Plaintiff also committed a significant number of hours to assist with the
17 litigation/settlement processes of this case. The requested Service Award is reasonable,
18 particularly in light of the substantial benefits Plaintiff generated for the Class Members, the
19 risks he undertook and the time and effort devoted to assisting with the Class/PAGA
20 settlement. (*See* Plaintiff’s Decl. ¶ 4-8).

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

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

25 **A. SETTLEMENT ADMINISTRATION COSTS**

26 The Administrator, Phoenix Administrators, agreed to administer the settlement for a
27 flat-fee of \$7,000. (Mitzner Decl. ¶ 18). This amount was fully disclosed to the Class
28 Members in the Class Notice, and no Class Members objected to it. Phoenix Administrator’s

1 declaration also fully complies with the CMO in regards to the fixed fee and other work to be
2 performed. As such, the Parties request that the Administrator's fee request be approved.

3 **B. UNCASHED CHECKS**

4 The Settlement Agreement provides that if checks are not cashed within the 180 day
5 check cashing period, then the uncashed funds will be issued to the California State Controller's
6 Office in the name of the Class Member and/or Aggrieved Employee.

7 **C. FINAL REPORT**

8 The Parties anticipate that the latest the check cashing deadline will occur is mid-June
9 2024, so the Parties propose submitting a declaration from the Administrator setting forth the
10 money that was actually paid to the class members and potentially to the State on
11 approximately July 17, 2024.

12 **D. SUBMISSION TO THE LWDA**

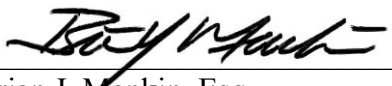
13 As set forth in the Mankin Declaration at ¶ 29, the settlement and this motion were
14 concurrently submitted to the LWDA in accordance with Labor Code § 2699(1)(2).

15 **VIII. CONCLUSION**

16 Plaintiff respectfully submit that the Settlement is fair, adequate, and reasonable, and
17 merits approval. This motion is unopposed by Defendants.

18
19 Dated: November 14, 2023

LAUBY, MANKIN & LAUBY LLP

20
21 BY: 
22 Brian J. Mankin, Esq.
23 Attorneys for Plaintiff and the Class
24
25
26
27
28

PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, California 92504.

On November 14, 2023, I caused to be served the foregoing document(s) described as follows:

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

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

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

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

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

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

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

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

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 14, 2023, Riverside, California.

☐ **Federal** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



Tracie Chiarito, Declarant

SERVICE LIST

Susan L. Mason, Esq.
Matthew Riley, Esq.
TYSON & MENDES, LLP
5661 La Jolla Blvd.
La Jolla, CA 92037
858-459-4400
858-459-3864-fax
smason@tysonmendes.com
mriley@tysonmendes.com
Attorneys for Defendants GUYOU CONSTRUCTION, INC. and MARCUS A. GAYOU