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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

STEPHANIE CUEVAS, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

TARLANI CORP. a California Corporation;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVSB2202953
*[Assigned to Hon. Jessica Morgan, Dept S26,
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 11, 2023

Time: 8:30 a.m.

Dept: S26

Complaint filed: January 28, 2022

TO THE COURT AND PARTIES OF RECORD:

PLEASE TAKE NOTICE THAT on October 11, 2023, at 8:30 a.m., or as soon thereafter
as this matter may be heard by the Honorable Jessica Morgan in Department S26 of the San
Bernardino County Superior Court, located at 247 West Third Street San Bernardino CA 92415,
Plaintiff Stephanie Cuevas will respectfully move this Court for an Order granting final approval
of the class action settlement between Plaintiff and Defendant Tarlani Corp., which was
preliminarily approved by the Court. This Motion, which is supported and unopposed by
Defendant, seeks final approval and entry of judgment of a \$1,063,471.88 settlement on behalf of

the Class Members.

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

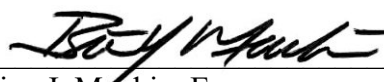
1. Finally certifying the Class, as defined in the Settlement Agreement and the Court’s Order Granting Preliminary Approval of the Settlement;
2. Finally appointing Plaintiff as Class Representative for purposes of settlement;
3. Finally appointing Brian Mankin and Kristina Carlson of Lauby Mankin Lauby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

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

Dated: September 18, 2023

LAUBY, MANKIN & LAUBY LLP

BY:



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

TABLE OF CONTENTS

I.	SUMMARY OF ARGUMENT AND ESSENTIAL POINTS	1
II.	PERTINENT BACKGROUND AND SETTLEMENT TERMS	2
III.	THE NOTICE PROCESS	4
A.	Notice to the Class Members	4
B.	There are Zero Objections and Zero 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	6
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
V.	THE REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE	8
A.	Plaintiff is Entitled to Recover Reasonable Attorneys' Fees Under the Labor Code	9
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 Similar Cases Under the Well-established Common Fund Method	10
2.	The High Quality of Work and Excellent Result Obtained Support the Award	11
3.	Class Members Had Sufficient Notice of the Requested Fees	11
4.	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	12
5.	A Lodestar Cross-Check Confirms the Reasonableness of the Fee Award	16
VI.	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	18
VII.	OTHER MATTERS FOR FINAL APPROVAL	20
A.	Settlement Administration Costs	20
B.	Uncashed Checks	20
C.	Final Report	20
D.	Submission to the LWDA	20
VIII.	CONCLUSION	20

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.....	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>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.4 th 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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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

3 Pursuant to California Rules of Court, Rule 3.769 (d) and (e), Plaintiff respectfully
4 requests that this Court grant final approval of the Class Action and PAGA Settlement
5 Agreement and Release of Claims (the “Settlement Agreement” or “S.A.”) already on file in this
6 action, which is supported and unopposed by Defendant Tarlani Corp., and enter the proposed
7 order and final judgment in this matter.

8 There are several essential reasons why this settlement should be approved. First, after
9 considerable work, preparation, exchange of data and mediation, the Parties reached a \$737,500
10 settlement on behalf of the Class Members and Aggrieved Employees (the “Gross Settlement
11 Amount”), subject to an Escalator Clause that Class Counsel negotiated on behalf of the Class
12 that would increase the Gross Settlement Amount by \$4.21 for each Patient Visit¹ that the Class
13 Members worked above 192,500 total Patient Visits. After Defendant provided the final Class
14 Data to the Settlement Administrator, it was determined that the Escalator Clause was triggered
15 because the Class collectively worked a total of 269,928 Patient Visits (77,428 Patient Visits
16 more than cap). This resulted in an upward adjustment of \$325,971.88 to the Gross Settlement
17 Amount, bringing the new Gross Settlement Amount to \$1,063,471.88 (plus Defendant will
18 separately pay its share of payroll taxes on the wage portion of the Individual Class Payments).
19 (See Declaration of Settlement Administrator, Lluvia Islas (“Islas Decl.”), ¶ 11.) The Class
20 was informed of the updated Gross Settlement Amount in the Class Notice. (See Exhibit A to
21 the Islas Decl. for a true and correct version of the Class Notice that was mailed to the Class
22 Members.)

23 Second, the Class Members were deemed to participate in the Settlement, and were not
24 required to submit a Claim Form to receive funds. Plus, there is no reversion to Defendant, so all
25 funds will be distributed to the Class.

26
27 ¹ “Patient Visits” or “Patient Visits Completed” in the context of a Class Member, who are healthcare field workers,
28 means any and all patient visits during the Class Period during which the Class Member saw an assigned patient for
Defendant at the patient’s residence. Likewise, in the context of Aggrieved Employees, it means any and all patient
visits during the PAGA Period during which the Aggrieved Employee saw an assigned patient for Defendant at the
patient’s residence.

Third, there were no objections and no opt-outs from the 688 Class Members, meaning that **100%** of the Class elected to participate in the settlement.

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

In accordance with the analysis and law set forth herein, the Settlement should be approved, and judgment entered based on the determination that the Settlement is fair, reasonable, adequate, and in the best interests of the Class. (Declaration of Class Counsel, Brian J. Mankin [“Mankin Decl.”] ¶¶ 13, 33).

II. PERTINENT BACKGROUND AND SETTLEMENT TERMS

Plaintiff and the Class Members include all current and former non-exempt (hourly paid) employees employed by Defendant in California as a healthcare field worker (including but not limited to LVN, RN, and/or Certified Home Health Aid) (excluding office staff) at any time during the Class Period of January 28, 2018, through April 23, 2023 (the “Class Members”). Plaintiff and the putative class alleged claims for: (1) failure to pay minimum wages, (2) failure to pay for rest and recovery periods, (3) failure to reimburse for business expenses, (4) failure to timely pay final wages, (5) failure to provide accurate itemized wage statements, (6) unfair and unlawful competition pursuant to California Business and Professions Code §§ 17200 *et seq.*, and (7) related claims under PAGA, including misclassification.

The Settlement includes 688 Participating Class Members. The following is a breakdown reflecting how the funds are allocated under the Settlement Agreement (Declaration of Administrator, Lluvia Islas (“Islas Decl.”), ¶ 11-12):

<i>Gross Settlement Amount</i>	\$ 1,063,471.88
Attorneys’ Fees (1/3)	\$ 354,490.63
Litigation Costs	\$ 10,948.74
Administrator Costs	\$ 13,500.00
PAGA Penalties	\$ 50,000.00
Class Representative Service Award	\$ 7,500.00
<i>Net Settlement Amount</i>	\$ 639,532.51

1 The Class Members were deemed to participate and did not need to submit a Claim Form
2 to receive payment. Assuming all of the amounts are approved by the Court, the highest
3 payment to Participating Class Members is estimated at \$21,155.22, and the average payment is
4 \$911.38. Of course, the actual payments will be calculated on a pro-rata basis according to the
5 number of Patient Visits worked by each Class Member. The Participating Class collectively
6 worked 269,928 Patient Visits during the Class Period, so each Patient Visit will have a value of
7 approximately \$2.32. (Islas Decl. ¶ 13).

8 Additionally, 25% of the PAGA Penalties will be allocated to the Aggrieved Employees.
9 In this case, 539 Aggrieved Employees collectively worked a total of 193,048 Patient Visits
10 during the PAGA Period, and will share in the \$12,500 award (accounting for 25% of the total
11 \$50,000 allocation). The highest Individual PAGA Payment to be paid is approximately
12 \$365.06, and the average Individual PAGA Payment to be paid is approximately \$23.19. (Islas
13 Decl. ¶ 14).

14 The Parties agree that one-third (1/3) of the Individual Settlement Payments will be
15 allocated as wages subject to withholding of all applicable local, state and federal taxes and the
16 remaining two-thirds (2/3) will be allocated for interest and penalties (pursuant to, *e.g.*,
17 California Labor Code sections 203, 210, 226, etc.) from which no taxes will be withheld. (S.A.
18 ¶ 47(d)). Additionally, the PAGA Penalties payable to the Aggrieved Employees will be
19 classified entirely as civil penalties and shall be reported as required on an IRS Form 1099.
20 (S.A. ¶¶ 47(h)). Defendant will separately pay its share of employer payroll taxes on the sum
21 allocated to wages. (S.A. ¶ 47(a)).

22 Defendant is required to fund the Gross Settlement Amount under a three-part payment
23 plan that requires one-third of the Gross Settlement Amount to be paid on December 1, 2023;
24 one-third on May 1, 2024, and the final one-third on September 1, 2024. Each payment will be
25 divided proportionally between Plaintiff, the Participating Class Members, the Aggrieved
26 Employees, the LWDA, Class Counsel (for fees and costs), and the Settlement Administrator.
27 (S.A. ¶ 69).

28 ///

1 **III. THE NOTICE PROCESS**

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

3 Pursuant to the Court's Order and the Settlement Agreement, the Parties directed the
4 Settlement Administrator to review and update the Class Members' addresses, mail the Court-
5 approved Notice Packet, and process their responses. (Islas Decl. ¶ 2).

6 Prior to mailing the Notice Packet, the Settlement Administrator performed a National
7 Change of Address search on all Class Members to determine if any had moved. (*Id.* ¶ 4). Then,
8 on August 18, 2023, the Notice Packet was sent via first-class mail to all 688 Class Members to
9 advise each about the suit and settlement. (*Id.* ¶ 5). Ultimately, it was determined that all Notice
10 Packets were deliverable, meaning that there was a 100% success rate in mailing the Notice
11 Packets. (*Id.* ¶ 6).

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

21 **B. THERE ARE ZERO OBJECTIONS AND ZERO OPT-OUTS, RESULTING IN AN**
22 **IMPRESSIVE 100% CLASS PARTICIPATION IN THE SETTLEMENT**

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

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

3 Here, there are zero objections and zero opt-outs to the Settlement, meaning that 100% of
4 the Class Members will receive a share of the Settlement (Islas Decl. ¶¶ 7-8). Thus, the Class
5 fully viewed this as a fair and reasonable settlement.

6 **IV. EVALUATION OF THE SETTLEMENT**

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

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

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

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1 **A. THE SETTLEMENT WAS REACHED THROUGH INFORMED ARMS-LENGTH**
2 **NEGOTIATION**

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

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

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

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

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

1 **C. CLASS COUNSEL ARE EXPERIENCED IN SIMILAR LITIGATION AND ENDORSE THE**
2 **SETTLEMENT**

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

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

9 Plaintiff's Motion for Preliminary Approval contained a comprehensive *Kullar* analysis
10 which sufficiently provided the Court with "basic information about the nature and magnitude
11 of the claims in question and the basis for concluding that the consideration being paid for the
12 release of those claims represents a reasonable compromise." *Kullar v. Foot Locker Retail,*
13 *Inc.* (2008) 168 Cal.App.4th 116, 133. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*
14 (2010) 186 Cal.App.4th 399, later clarified *Kullar* by noting that an explicit statement of the
15 maximum theoretical amount that the class could recover was not part of the "basic
16 information" that counsel was required to produce:

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

23 Of course, a settlement is not judged against what might have been recovered had a
24 plaintiff prevailed at trial, nor does the settlement have to provide 99% of the damages sought to
25 be fair and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 246, 250
26 ("Compromise is inherent and necessary in the settlement process ... even if the relief afforded
27 by the proposed settlement is substantially narrower than it would be if the suits were to be
28 successfully litigated, this is no bar to a class settlement because the public interest may indeed

1 be served by a voluntary settlement in which each side gives ground in the interest of avoiding
2 litigation”).

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

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

11 For their efforts in creating a common fund for the benefit of the class, the Settlement
12 Agreement provided that Class Counsel seek reasonable fees of one-third of the Gross
13 Settlement Amount, which is \$354,490.63. Not only did Class Counsel negotiate a fair and
14 reasonable settlement, but also negotiated an Escalator Clause that resulted in the total Gross
15 Settlement Amount increasing by \$325,971.88. These fees are warranted under the law and
16 within the range of fees commonly awarded in similar cases.

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

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

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

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

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

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

4 The California Supreme Court approved trial courts' usage of the common fund method
5 of awarding attorneys' fees in wage and hour class actions, like this one, and upheld a fee
6 awarded of 1/3 of the total settlement amount obtained for the class. *See Laffitte, supra*, 1 Cal.5th
7 at 506; *see also*, 4 Newberg on Class Actions, § 14:6 at 51 ("fee awards in class actions average
8 around one-third of the recovery"). Specifically, in *Laffitte*, the Court wrote: "[w]e join the
9 overwhelming majority of federal and state courts in holding that when class action litigation
10 establishes a monetary fund for the benefit of the class members, and the trial court in its
11 equitable powers awards class counsel a fee out of that fund, the court may determine the amount
12 of a reasonable fee by choosing an appropriate percentage of the fund created"). *Id.* at 506. The
13 California Supreme Court also noted that trial courts have the discretion to award fees as a
14 percentage of the common fund, with or without the necessity to conduct a lodestar cross-check.
15 *Id.* ("...[Courts] ... retain the discretion to forgo a lodestar cross-check and use other means to
16 evaluate the reasonableness of a requested percentage fee.").

17 The California Supreme Court's *Laffitte* decision was consistent with its prior rulings
18 recognizing that "when a number of persons are entitled in common to a specific fund, and an
19 action brought by ... plaintiffs for the benefit of all results in the creation or preservation of that
20 fund, such ... plaintiffs may be awarded attorneys' fees out of the fund." *Serrano III v. Priest*
21 (1977) 20 Cal.3d 25, 34; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 ("[A] lawyer who
22 recovers a common fund . . . is entitled to reasonable attorneys' fees from the fund as a whole").
23 Notably, when fees are calculated as a percentage of the common fund, they should be calculated
24 based on the amount that was available to be claimed, rather than as a percentage of the actual
25 amount claimed. *See Boeing Co.*, 444 U.S. at 475-6, 480-1 (the SCOTUS held that attorneys for
26 a successful class may recover a fee based on the fund created for the class, even if some class
27 members make no claims against the fund, so that money remains in it that will be returned to
28 the defendant, explaining: "[t]heir [class members'] right to share the harvest of the lawsuit upon

1 proof of their identity, whether or not they exercise it, is a benefit in the fund created by the
2 efforts of the class representatives and their counsel.” *See also Williams v. MGM-Pathe*
3 *Communs. Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 (trial court “abused its discretion by basing
4 the fee on the class members’ claims against the fund rather than on a percentage of the entire
5 fund or on the lodestar”).

6 **2. The High Quality of Work and Excellent Result Obtained Support the**
7 **Award**

8 In addition to the fact that a Class benefit was created under the common fund settlement,
9 the fairness of the requested fee award of 1/3 of the Settlement Amount is supported by the high
10 quality of work performed by Class Counsel and the positive result obtained for the Class. This
11 result occurred because Class Counsel diligently, efficiently, and creatively pursued this case and
12 reached a settlement for the benefit of the entire Class. The fact that the settlement was embraced
13 and supported by the Class, as evidenced by a 100% participation rate, demonstrates that Class
14 Counsel obtained a favorable result for the Class.

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

16 Rule 3.769 of the California Rules of Court requires that the Class Members be given
17 notice of any agreement regarding an application for attorneys’ fees. Here, the Notice
18 preliminarily approved by the Court and distributed to the Class Members apprised them of the
19 fee request: “Up to one-third of the Settlement Amount to Class Counsel for attorneys’ fees
20 (\$354,490.63) and up to \$20,000 for their litigation expenses. To date, Class Counsel have
21 worked and incurred expenses on the Action without payment.” (Islas Decl., Exh. A.)

22 The Class Notice also advised the class members of the procedures for objecting to the
23 proposed settlement and appearing at the settlement hearing, including the amount of attorneys’
24 fees to be awarded to class counsel. *Litwin v. iRenew Bio Energy Solutions, LLC* (2014) 226
25 Cal.App.4th 877, 883 (“Procedural due process requires that affected parties be provided with
26 ‘the right to be heard at a meaningful time and in a meaningful manner’”). In accordance with
27 the foregoing, it is respectfully submitted that the instant notice complied with Rule 3.769 and, as
28 a result, the Class Members’ due process rights were fulfilled.

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

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

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

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

1 *Id.* at 399-400.

2 Indeed, as Plaintiff's Counsel can attest, not all class/PAGA cases are successful. Many
3 cases end with no fees or a greatly reduced fee that is far less than lodestar, often due to no fault
4 of counsel (i.e., bankruptcy, change in the law, consolidation or coordination or preemption,
5 being top filed, etc.). According to Mayer Brown LLP's study entitled, An Empirical Analysis
6 of Class Actions, cited in *Laguna v. Coverall North America, Inc.* (9th Cir. 2014) 753 F.3d 918,
7 found that only one-third of class actions are successful, compared to two-thirds that are defeated
8 and result in no payment to the class members.²

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

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

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

- 15 • Heavily litigated Class/PAGA action that Class Counsel certified as a class,
16 prevailed on summary adjudication, fully prepared for trial and one day before the
17 start of trial, ***Defendant filed for bankruptcy, resulting in complete loss of***
18 ***attorneys fees and all costs advanced*** (*Garza v. Quality Conversation*, San
19 Bernardino Superior Court Case No. CIVDS1506788);
- 20 • Class actions in which ***Defendants filed for bankruptcy, resulting in a loss of all***
21 ***fees and costs*** (*Gomez v. Ultimate Logistics*, Riverside Superior Court Case No.
22 RIC1723054, and *Bonilla v. Home Energy*, San Bernardino Superior Court Case
23 No. CIVSB2215927);
- 24 • In a pending matter, Class Counsel has litigated the case for over ***5 years*** with an
25 estimated 1,000 plus hours in attorney time, leading to the class certification in
26 favor of Plaintiff on all claims for over 1,500 class members. Despite all the work
27 invested into the matter, including preparing for an upcoming trial, the likely
28

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

outcome will either be (1) defendants filing bankruptcy that will result in zero recovery, or (2) a greatly discounted settlement based on defendant's financial obstacles and ability-to-pay;

- ***Class Counsel have been forced to dismiss class and PAGA cases without any compensation or reimbursement of fees or costs due to the financial condition of Defendant***, (*Cox v. NurseLoop*, San Bernardino Superior Court Case No. CIVSB2225440; *Joyce v. GES Distribution*, Riverside Superior Court Case No. RIC1905739).
- Of course, there is also the reality that a Defendant may prevail on the merits, whereby Class Counsel will receive no compensation and lose it out of pocket costs entirely. Class Counsel have experienced a situation wherein it prevailed at 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. ¶ 20).

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. ¶ 20).

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. ¶ 20).

These Factors Support the Fee Request and a Reasonable Multiplier

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

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

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

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

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

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

15 Historically, California courts have approved multipliers of 1.5 to 4. *See Coalition for*
16 *Los Angeles County Planning v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 251
17 **(multiplier of 2+ approved)**; *Sternwest Corp v. Ash* (1986) 183 Cal.App.3d 74, 75. The
18 multiplier requested by Class Counsel below is within the range of multipliers found to be
19 appropriate by various federal and state courts in California. In *Sternwest Corp. v. Ash*, for
20 instance, the Court of Appeal remanded for a lodestar enhancement of “**two, three, four or**
21 **otherwise.**” *Id.* at 76; *see also Wershba*, 91 Cal.App.4th at 255 (“**Multipliers can range from 2**
22 **to 4 or even higher**”); *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78, 83
23 **(affirming 2.34 multiplier)**; *Coalition for Los Angeles County Planning in the Pub. Interest v.*
24 *Board of Supervisors*, 76 Cal.App.3d 241, 251 **(affirming multiplier of approximately 2)**;
25 *Craft v. County of Los Angeles*, 2008 U.S. Dist. LEXIS 27526 (C.D. Cal. Apr. 1, 2008)
26 **(applying 5.2 multiplier)**; *See also Steinder v. Am. Broadcasting Co., Inc.* (9th Cir. 2007) 248

27
28 ³ In practice, the lodestar method is difficult to apply, time-consuming to administer, inconsistent in result, and
capable of manipulation. In addition, the lodestar creates inherent incentive to prolong the litigation until sufficient
hours have been expended. Herr, David F., *Manual for Complex Litigation*, § 14.121 (1988); *See also In re*
Activision (N.D. Cal 1989) 723 F.Supp 1373.

Fed. Appx. 780, 783 (**approving multiplier of 6.85** and citing cases with comparable or higher multipliers); *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 (finding no abuse of discretion in **awarding a multiplier of 3.65**). In *Torchia v. WW Grainger, Inc.* (E.D. Cal. 2014) 304 F.R.D. 256, 275-278, a federal magistrate in Fresno approved attorneys' fees of \$550,000 **constituting a 3.57 multiplier** on class counsel's total lodestar of \$153,856 in a wage and hour class action.

The actual aggregated lodestar between the Plaintiff's attorneys that worked on this case is approximately \$199,717.50. This results in a fair and reasonable 1.77 multiplier, as 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	87⁴	\$67,425
Kristina Carlson <i>Associate</i> (9 Years)	\$550	182.3	\$100,265
Peter Carlson <i>Senior Associate</i> (8 Years)	\$575	55.7	\$32,027.50
Grand Total for All Attorneys			\$199,717.50

(See Mankin Decl., ¶ 25; P. Carlson Decl. ¶ 8; K. Carlson Decl. ¶ 5.)

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.,

⁴ 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.

2017 Real Rate Report). The Real Rate Report then compiles and analyzes this data to provide the hourly rates for partners and associates in major metropolitan areas. For the southern California area, which is based on billing entries for 1,125 partners and 1,566 associates, the Real Rate Report states that: (a) the rates for partners in Los Angeles is between \$640 and \$869.75 per hour for the middle and upper quartiles, and (b) the rates for associates in Los Angeles is between \$478.74 and \$638.97 for the median and upper quartiles. And, perhaps most importantly, the information provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, or reviews or other publications – instead, the Real Rate Report is based on the actual hours and fees billed by law firms. (Mankin Decl., ¶ 24.)

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

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

VI. THE REQUESTED COSTS AND SERVICE AWARDS ARE REASONABLE

A. THE REQUESTED COSTS ARE REASONABLE AND MERIT APPROVAL

The Settlement Agreement authorized litigation costs of up to \$20,000. (S.A. ¶ 47(f)). However, Class Counsel’s actual costs through the final approval hearing were \$10,948.74, so this is the amount requested. The saving will be placed in the Net Settlement Amount for payment to the Class Members. (Mankin Decl. ¶ 27). These costs include mediation fees, filing fees, expert data analysis costs, CourtCall charges, and process server fees.

B. THE REQUESTED SERVICE AWARD IS REASONABLE AND MERITS APPROVAL

A named plaintiff is an essential ingredient of any class action and an incentive award

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

10 Under the Settlement, Defendant agreed to pay a Service Award of \$7,500 to Plaintiff
11 in recognition of her contribution as a Class Representative.

12 Her efforts included providing factual background for the Class and PAGA complaint;
13 providing documents and information about Defendant’s compensation plan; participating in
14 phone calls to discuss litigation and settlement strategy; making herself available throughout
15 the litigation to assist with analyzing the claims and defenses; helping Class Counsel prepare
16 for the mediation; and reviewing the settlement documents. The Class Representative also
17 assumed significant risk in bringing this litigation – namely, had she lost, she could have been
18 ordered to pay Defendant’s costs. This factor is a significant one for a wage earner, and the
19 potential risk is very real. *See Whiteway v. FedEx Kinkos Office & Print Svcs., Inc.* (N.D. Cal.
20 Dec. 17, 2007) 2007 WL 4531783, at *3 (“the few courts to consider this ‘class
21 representatives’ dilemma’ have not found it inequitable to assess costs upon the lead or named
22 plaintiff in a class action.”)

23 Plaintiff also committed a significant number of hours to assist with the
24 litigation/settlement processes of this case and entered into a general release of all claims
25 against Defendant, whereas the Class Members only released the claims alleged. The
26 requested Service Award is reasonable, particularly in light of the substantial benefits Plaintiff
27 generated for the Class Members, the risks she undertook, and the general release she gave in
28 order to benefit the class. (*See* Pla Decl. ¶¶ 3-9).

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

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

5 **A. SETTLEMENT ADMINISTRATION COSTS**

6 The Administrator's initial bid was for \$10,000 for a single payment to the Class.
7 However, in order to issue three payments to the Class, the Administrator's updated bid is a
8 flat-fee of \$13,500.00 due to the payment plan. (Islas Decl. ¶ 16). As such, the Parties request
9 that the Administrator's fee be approved.

10 **B. UNCASHED CHECKS**

11 The Settlement Agreement and Final Order provides that uncashed checks will be
12 issued to the California State Controller in the name of the Class Member.

13 **C. FINAL REPORT**

14 As set forth above and in the Final Order, Defendant's final payment is due on about
15 September 1, 2024. As a result, the 180-day check cashing deadline is projected to occur on
16 about March 10, 2025. As such, the Parties propose submitting a final report in the form of a
17 declaration from the Administrator (setting forth the money that was actually paid to the class
18 members and will be paid to the State Controller) on approximately April 10, 2025.

19 **D. SUBMISSION TO THE LWDA**

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

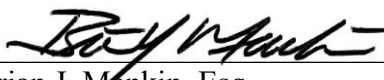
22 **VIII. CONCLUSION**

23 Plaintiff respectfully submits that the Settlement is fair, adequate, and reasonable, and
24 merits approval. This motion is unopposed by Defendant.

25 Dated: September 18, 2023

LAUBY, MANKIN & LAUBY LLP

26 BY:


27 Brian J. Mankin, Esq.

28 Attorneys for Plaintiff and the Class

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, 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 September 18, 2023, Riverside, California.

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



Tracie Chiarito, Declarant

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