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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA BARBARA

EDUARDO AQUINO RODRIGUEZ,
individually, on a representative basis, and on
behalf of all others similarly situated;

Plaintiff,

vs.

EAT SWEET FARMS, LLC, a California
Limited Liability Company; JDB PRO, INC.,
a California Corporation; and DOES 1
through 20, inclusive;

Defendants.

Case No.: 22CV00203
[Assigned to Hon. Patricia L. Kelly, Dept
SM1, 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 18, 2024
Time: 8:30 a.m.
Dept.: SM1

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 18, 2024, at 8:30 a.m., or as soon thereafter
as this matter may be heard by the Honorable Patricia L. Kelly in Department SM1 of the Santa
Barbara County Superior Court, located at 312-C East Cook Street, Santa Maria, CA 93454,
Plaintiff Eduardo Aquino Rodriguez, individually and on behalf of all others similarly situated,

1 will move this Court for an Order granting final approval of the class action settlement between
2 Plaintiff and Defendants Eat Sweet Farms, LLC and JDB Pro, Inc., which was preliminarily
3 approved by the Court. This Motion seeks final approval and entry of judgment of a \$2,150,000
4 settlement on behalf of the Class Members, and is unopposed by Defendants.

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

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

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

11 3. Finally appointing Brian Mankin, Kristina Carlson, and Mehrdad Bokhour as
12 Class Counsel;

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

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

17 6. Binding participating Class Members to the terms of the Settlement Agreement,
18 including the Release specified therein; and

19 7. Retaining jurisdiction to enforce the Settlement Agreement.

20 This Motion will be based upon this notice; the attached memorandum of points and
21 authorities; the Declarations of the Settlement Administrator (Amy Fringer of Rust Consulting,
22 Inc.), Class Counsel (Brian Mankin, Kristina Carlson, and Mehrdad Bokhour) and Plaintiff filed
23 concurrently herewith; the records and files in this action; and any other further evidence or
24 argument that the Court may receive at or before the hearing.

25 Dated: November 22, 2024

LAUBY, MANKIN & LAUBY LLP

26
27 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.....	1
III.	THE NOTICE PROCESS.....	3
A.	Notice to the Class Members	3
B.	There are Zero Objections and Only 85 Opt-Outs Thus Far, Resulting In An Impressive 99.50% of the Class Participating in the Settlement.....	4
V.	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	7
D.	Reasonable Estimate of the Nature and Amount of Recovery	7
VI.	THE REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE.....	14
A.	Plaintiff is Entitled to Recover Reasonable Attorney's Fees Under the Labor Code.....	14
B.	Class Counsel's Request for Fees Is Reasonable and Properly Calculated as a Percentage of the Common Fund	15
1.	<i>The Attorneys' Fees Requested Here Fall Within the Reasonable Range Awarded in Similar Cases Under the Well-established Common Fund Method</i>	<i>15</i>
2.	<i>The High Quality of Work and Excellent Result Obtained Support the Award.....</i>	<i>16</i>
3.	<i>Class Members Had Sufficient Notice of the Requested Fees</i>	<i>17</i>
4.	<i>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</i>	<i>17</i>
5.	<i>A Lodestar Cross-Check Confirms the Reasonableness of the Fee Award</i>	<i>22</i>
VII.	THE REQUESTED COSTS AND SERVICE AWARDS ARE REASONABLE.....	25
A.	The Requested Costs Are Reasonable and Merit Approval.....	25
B.	The Requested Service Awards are Reasonable and Merit Approval	25
VIII.	OTHERS MATTERS RE: FINAL APPROVAL	26
A.	Settlement Administration Costs	26
B.	Notice of Final Judgment to the Class	26
C.	Uncashed Checks	27
D.	Final Report	27
E.	Submission to the LWDA.....	27
IX.	CONCLUSION.....	28

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	6
<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.....	24
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472	15
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	13
<i>Ferguson v. Lieff, Cabraser, Heimann & Bernstein</i> (2003) 30 Cal.4th 1037.....	5
<i>Franklin v. Kaypro Corp.</i> (9th Cir. 1989) 884 F.2d 1222	5
<i>Horsford v. Board of Trustees of California State University</i> , 132 Cal.App.4th 359 (2005).....	17
<i>In re American Bank Note Holographics, Inc.</i> (SDNY 2001) 127 F.Supp.2d 418	4
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	7
<i>Laffitte v. Robert Half International, Inc.</i> (2016) 1 Cal.5 th 480.....	13, 14
<i>Litwin v. iRenew Bio Energy Solutions, LLC</i> , 226 Cal.App.4th at p. 883	16
<i>Mandujano v. Basic Vegetable Prods., Inc.</i> , (9th Cir. 1976) 541 F.2d 672.....	4
<i>Moniz v. Adecco USA, Inc.</i> (2021) 72 Cal.App.5th 56, 77.....	12
<i>PLCM Group, Inc. v. Drexler</i> (2000) 22 Cal.4 th 1084.....	21
<i>Press v. Lucky Stores, Inc.</i> (1983) 34 Cal.3d 311	21
<i>Rodriguez v. West Publishing</i> (9th Cir. 2009) 563 F.3d 948	24
<i>Serrano III v. Priest</i> (1977) 20 Cal.3d 25	15
<i>Stambaugh v. Super. Ct.</i> (1976) 62 Cal.App.3d 231.....	4
<i>Sternwest Corp v. Ash</i> (1986) 183 Cal.App.3d 74.....	21
<i>Vizcaino v. Microsoft Corp</i> (9th Cir. 2002) 290 F.3d 1043	16, 21
<i>Wershba v. Apple Computers, Inc.</i> (2001) 91 Cal.App.4th 246	12
<i>Williams v. MGM-Pathe Communs. Co.</i> (9th Cir. 1997) 129 F.3d 1026.....	15

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 Eduardo Aquino
4 Rodriguez respectfully requests that this Court grant final approval of the Class Action and
5 PAGA Settlement Agreement and Release (“Settlement Agreement” or “S.A.”), and enter the
6 proposed order and final judgment in this matter. This Motion is supported and unopposed by
7 Defendants Eat Sweet Farms, LLC and JDB Pro, Inc.

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

- 10 • Notwithstanding an arbitration agreement that could have resulted in no classwide
11 recovery to the Class Members, the Parties nevertheless reached a \$2,150,000 settlement with the
12 assistance of mediator Michael Strauss, Esq., on behalf of 16,880 Class Members;
- 13 • The Class Members were deemed to participate in the Settlement, and were not
14 required to submit a Claim Form to receive funds;
- 15 • There is no reversion to Defendants;
- 16 • There were zero objections to the Settlement, and 99.50% of the Class elected to
17 participate in the Settlement;
- 18 • The Class Members who opted out are represented by counsel in the related case,
19 and will have their rights separately vindicated therein.

20 In accordance with the analysis and law set forth herein as well the preliminary approval
21 motion, the Settlement should be approved and judgment entered based on the determination that
22 the Settlement is fair, reasonable, adequate, and in the best interests of the Class. (Declaration of
23 Class Counsel, Brian J. Mankin ¶¶ 13, 36 (“Mankin Decl.”).)

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

25 The settlement covers all current and former non-exempt employees employed by
26 Defendants Eat Sweet Farms, LLC, and JDB Pro, Inc., in California during the Class Period of
27 January 18, 2018, through May 24, 2024. The primary claims, which Defendants dispute and
28 deny, involved allegations that the Class Members did not receive all minimum, regular and

overtime wages owed due to Defendants’ piece-rate compensation policies, did not receive accurate itemized wage statements, as well as claims for waiting time penalties and PAGA penalties.

The Settlement includes 16,795 Participating Class Members. The following is a breakdown reflecting how the funds are allocated under the Settlement Agreement (Declaration of Administrator, Amy Fringer (“Fringer Decl.”), ¶ 21):

Gross Settlement Amount	\$ 2,150,000.00
Attorneys’ Fees (1/3)	\$ 716,666.67
Litigation Costs	\$ 17,498.39
Administrator Costs	\$ 92,000.00
PAGA Penalties	\$ 100,000.00
Class Representative Service Payment	\$ 10,000.00
Net Settlement Amount	\$ 1,216,834.94

The Participating Class Members were deemed to participate and did not need to submit a Claim Form to receive payment. (Settlement Agreement or “S.A.” ¶ 3.1). Each Participating Class Member will receive a pro rata share of the Net Settlement Amount according to the percentage of Workweeks worked during the Class Period, such that the amount actually distributed to Participating Class Members will equal 100% of the Net Settlement Amount.

The 16,795 Participating Class Members collectively worked 492,521 Workweeks during the Class Period. (Fringer Decl. ¶ 19). Assuming all of the amounts in the Settlement are approved by the Court, the *average* Individual Class Payment is estimated to be \$72.27, and the *highest* individual settlement payment is approximately \$837.94 (Fringer Decl. ¶ 22).

In addition, the Aggrieved Employees will each receive an Individual PAGA Payment based on their share of the \$25,000 in PAGA Penalties (25% of the total \$100,000 PAGA allocation), calculated pro-rata based on the number of PAGA Pay Periods worked during the PAGA Period. (S.A. ¶ 3.2.5; (Fringer Decl. ¶ 23).

The Parties agree that 15% of the Individual Class Payments will be allocated as wages subject to withholding of all applicable local, state and federal taxes and the remaining 85% will be allocated for interest and penalties (pursuant to, *e.g.*, California Labor Code §§ 203, 210, 226, 2699 etc.) from which no taxes will be withheld. (S.A. ¶ 3.2.4.1). The Individual PAGA

1 Payments will be classified entirely as civil penalties and shall be reported as required on an IRS
2 Form 1099. (S.A. ¶ 3.2.5.2). Defendants will separately pay its respective share of employer
3 payroll taxes on the sum allocated to wages. (S.A. ¶ 47(a)).

4 Pursuant to the terms of the Settlement Agreement, Defendants are required to fund the
5 Gross Settlement Amount, plus Defendants' share of payroll taxes owed on the Individual Class
6 Payments, based on the following installment plan: (1) the first installment to be paid on or
7 before January 1, 2025 or within 10 days after the Effective Date, whichever is later; (2) the
8 second installment to be paid on or before July 31, 2025; and (3) the third installment to be paid
9 on or before December 1, 2025. (S.A. ¶ 4.2). Within 14 days after receiving each installment, the
10 Administrator shall issue payments to cover all court-approved payments. (S.A. ¶ 4.3).

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

15 **III. THE NOTICE PROCESS**

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

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

21 The Settlement Administrator performed 3,644 National Change of Address search on
22 October 21, 2024, for any undeliverable Class Notices and remailed 3,644 Class Notices to a
23 more current address identified the trace (Fringer Decl.¶ 12).

24 As of the date of the Administrator Declaration, 3,101 Class Notices have been deemed
25 undeliverable, representing an 82% success rate in mailing the Class Notice. (Fringer Decl.¶ 14).

26 In accordance with California Rules of Court, rules 3.766 (d) and 3.769 (f), the Notice
27 provided Class Members with (1) a brief explanation of the case; (2) an explanation of each
28 Class Member's right to opt out of the settlement class; (3) an explanation of the process (and

relevant deadlines) through which a Class Member could opt out of the settlement class; (4) notice about the binding nature of the Judgment for Class Members who do not opt out; (5) an explanation of each Class Member's right to appear through counsel; (6) an explanation of each Class Member's right to appear at the fairness hearing and express views on the settlement, i.e., object or otherwise respond; and (7) an explanation of each Class Member's right to participate in the Settlement and receive payment accordingly. (See **Exhibit A** to the Fringer Decl.)

B. There are Zero Objections and 99.50% of the Class Elected to Participate in the Settlement

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

In this case, there are zero objections to the Settlement. (Fringer Decl. ¶¶ 17). Indeed, this is a great result. Notably, this is the lead case against Eat Sweet Farms and after the filing of this action another case was filed in *Carlos Perez Alvino et al. v. Eat Sweet Farms LLC et al.*, Santa Barbara Superior Court Case No. 24CV00180. Counsel in the subsequently filed *Alvino* case opted out 84 individuals that they represent, plus one opt-out was submitted by an individual represented by different counsel, plus only one opt-out from a class member, resulting in 86 total opt-outs, which constitutes 0.5% of the Class. (Fringer Decl. ¶¶ 17, 19). This means that (1) 99.50% of the Class Members elected to participate in the Settlement, (2) the funds that would have been paid to the 86 opt-outs will now be paid to the Participating Class Members, and (3) the opt-outs will be able to separately pursue their claims without affecting this Settlement.

1 The individuals who opted out will not be bound by the Released Class Claims. And all
2 persons who qualify as an Aggrieved Employee will still receive an Individual PAGA Payment
3 and only be bound by the PAGA Released Claims for the PAGA Period.

4 **V. EVALUATION OF THE SETTLEMENT**

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

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

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

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

27 Courts presume the absence of fraud or collusion in the negotiation of a settlement,
28 unless evidence to the contrary is offered. Thus, there is a presumption here that the negotiations

1 were conducted in good faith. (See, 3 Alba Conte & Newberg, supra, at § 11.51.) And it was.
2 The proposed settlement here was the product of arm's-length negotiation before a highly
3 experienced and reputable class action mediator, which was finally consummated in the months
4 after mediation.

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

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

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

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

26 ///

27 ///

28 ///

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 represented (and
4 hereby do represent) that this Settlement is fair and reasonable. (Mankin Decl., ¶¶ 13, 36;
5 Carlson Decl., ¶¶ 2-6; see *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
6 Cal.App.4th 1135, 1152 [Final approval of settlement affirmed where counsel were all
7 experienced litigators with class-action experience and had recommended settlement based on
8 the negotiated terms].)

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

10 Plaintiff's Motion for Preliminary Approval contained a *Kullar* analysis (which
11 provided the Court with "basic information about the nature and magnitude of the claims in
12 question and the basis for concluding that the consideration being paid for the release of those
13 claims represents a reasonable compromise." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168
14 Cal.App.4th 116, 133.) However, the Court's Order granting Preliminary Approval requested
15 that Plaintiff provided a more detailed *Kullar* analysis with concrete details as to the values of
16 the claims. Pursuant to the Court's request, a detailed summary of the claims and potential
17 damages is stated below.

18 Furthermore, Defendants presented evidence of signed arbitration agreements that
19 Plaintiff and the Class signed. The existence of these arbitration agreements that contained a
20 class action waiver, significantly reduced the value of the Class claims due to the simple fact that
21 if Defendants chose to enforce the arbitration agreements and succeeded, then the Class claims
22 would have been dismissed by the Court and essentially result in a value of zero. The very real
23 risk of a dismissal of Class claims factored into Plaintiff's counsel evaluation of the value of the
24 claims and reasonableness of the settlement, while ensuring that the best recovery could be had
25 on behalf of the Class – given these significant risks.

26 Of particular relevance to the reasonableness of the proposed Settlement is the fact that
27 significant legal and factual grounds for defending this action exist. First, in addition to
28 disputing the merits of Plaintiff's claims and arguing that the arbitration agreement was

1 enforceable, Defendants strongly disputed that Plaintiff could obtain class certification,
2 arguing a lack of commonality of the legal claims and injuries. Defendants further argued that
3 they complied with the applicable law and that any purported deviations therefrom were
4 individualized in nature, thereby limiting Plaintiff's ability to certify the class. While Plaintiff
5 asserts that this is a suitable case for certification, he realizes that there is always a significant
6 risk associated with class certification proceedings, which could significantly limit the claims
7 that he could pursue on a class basis.

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

12 Based upon detailed data obtained through informal discovery and information
13 exchanges, Plaintiff's counsel estimated the following big-picture data points through the date
14 of mediation: (1) 17,000 Class Members, (2) 504,000 workweeks, (3) 2,520,000 shifts worked
15 during the Class Period, and (4) approximately 206,420 wage statements during the PAGA
16 period. (Brian Mankin Decl. in Support of Preliminary Approval ("Mankin MPA Decl.") ¶ 26).

17 Plaintiff's unpaid wage claims had several theories of liability. First, Plaintiff alleged
18 that Defendants failed to separately compensate for all rest breaks. Second, Plaintiff alleged
19 that Defendants' rounding practice resulted in an underpayment during the instances when
20 Defendants separately paid rest breaks. In total, Plaintiff's counsel estimated the maximum
21 value of these unpaid wages to be \$5,053,845, assuming a 13.2% violation rate. Then, if one
22 were to factor into the existence of the arbitration agreements, there was a significant risk that
23 the value of this claim would be reduced to zero if the Court dismissed the Class claims.
24 (Mankin Decl. ¶ 13).

25
26 However, Defendants vehemently opposed these unpaid wage claims on the merits and
27 the propriety of class certification. Furthermore, Defendants raised several defenses (as
28 discussed in the Sections above). Thus, for mediation and settlement purposes, Plaintiff and

1 Class Counsel applied a 30% risk for the claim at class certification stage and then a 30%
2 merits-based risk. In sum, Plaintiff's counsel calculated the risk-adjusted value of the unpaid
3 wage claims as \$2,476,384. (Mankin Decl. ¶ 13).

4 Additionally, Plaintiff alleged meal break claims against Defendants. Based on
5 mediation analysis and investigation, including expert review of timekeeping data, Class
6 Counsel estimated 12.1% of pay periods had at least one meal violation, leading to an alleged
7 138,600 meal violations. This established a maximum potential value for this claim of
8 \$2,620,926 (138,600 violations multiplied but the average hourly rate of \$18.91 as the
9 applicable premium rate under § 226.7.) However, Defendants raised numerous arguments
10 against this claim, including compliant written policies and valid meal waivers. Defendants
11 argued that a fact-finder would have to make an individualized determination for each Class
12 Member as to why a meal was missed or late and the reasons why. As a result, Plaintiff and
13 Class Counsel considered these risks and defenses, along with the relatively low violation
14 rates; and for settlement purposes, applied a 40% risk at the class certification stage and an
15 additional 40% risk on the merits, setting the risk-adjusted value for the meal break claims at
16 \$943,533. Additionally, the existence of the arbitration agreements posed a significant risk that
17 the value of this claim would be reduced to zero if the Court dismissed the Class claims.
18 (Mankin Decl. ¶ 13).

19 As for the claim for failure to reimburse business expenses, Plaintiff calculated
20 potential violations in approximately 50,400 workweeks, with a maximum potential value of
21 \$1,008,000. However, Defendants argued that its employees were not required, but actually
22 discouraged, from incurring business expenses as Defendants would provide all necessary tools
23 and equipment, such as gardening gloves and sheers. Thus, Defendants argued that any
24 unreimbursed expenses were not "necessary." As a result, Class Counsel factored the risks and
25 defenses into mediation and settlement and determined that this claim had minimal value
26 ((Mankin Decl. ¶ 13).

1 Plaintiff also alleged claims for waiting time penalties and wage statement violations,
2 including failure to accurately state all applicable hourly rates and total hours worked. Some
3 of these claims were derivative of the claims above, meaning that they only had merit if the
4 claims for unpaid wages or meal/rest breaks were successful. But Defendants raised a variety
5 of defenses to these derivative claims that impacted the valuation. Namely, as to the wage
6 statement violations, Defendants argued that its wage statements did not violate Labor Code §
7 226 and even if there was a “technical” violation, that Plaintiff would be unable to prove the
8 required “knowing and intentional” and “injury” elements. Then, as to the waiting time
9 penalty claim, Plaintiff’s valuation had to account for the fact that this claim was derivative of
10 the unpaid wage and meal/rest break claims (e.g., the unpaid wage premiums) and, if those
11 claims failed at certification or on the merits, there would be no waiting time penalties owed,
12 so the same risks for those claims applied to this claim. Furthermore, even if the unpaid wage
13 and/or meal/rest claims succeeded at certification and on the merits, Plaintiff would have to
14 prove that the violations (if any existed) were “willful” under the meaning of Labor Code §
15 203. And, here, Defendants argued that there could not be a finding of a “willful” violation
16 since they had compliant written policies, and any deviations therefrom were inadvertent and
17 unintentional. (Mankin MPA Decl. ¶ 30). Furthermore, Defendants argued that “an employer's
18 objectively reasonable, good faith belief that it has provided employees with adequate wage
19 statements precludes an award of penalties under section 226, subdivision (e)(1). An employer
20 that believes reasonably and in good faith, albeit mistakenly, that it has complied with wage
21 statement requirements does not fail to comply with those requirements knowingly and
22 intentionally.” (*Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1087.) For
23 example, Defendants argued that any missed or short meal or rest breaks were not reported or
24 made known to Defendants, then Defendants had a good faith belief that it provided accurate
25 wage statements to its employees. (Mankin Decl. ¶ 13).

26 While the theoretical maximum potential damages stretched into the 8-figures, that
27 figure fails to account for the various risks at arbitration, class certification, on the merits, and
28 the many evidentiary issues present in a class action of this size. The maximum values for

these claims if one were to apply the unpaid wage claims violation rates were as follows: (1) \$5,391,619 for waiting time penalties [10,000 former employees x \$18.91 per hour x 7.2 hours per day x 30 days x 13.2% violation rate], and (2) \$3,425,400 for wage statement violations. (Mankin Decl. ¶ 13).

Based on these facts and defenses, Plaintiff placed a 30% risk at class certification and estimated another 30% risk the merits for both the waiting time and wage statement claims, leading to a risk-adjusted value of \$2,641,893 for the waiting time claims and \$1,678,446 for the wage statement claims. Finally, the existence of the arbitration agreements posed a significant risk that the value of these claims would be reduced to zero if the Court dismissed the other Class claims since these are derivative claims. (Mankin Decl. ¶ 13).

In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiff estimates the risk-adjusted class recovery as follows:

• Unpaid Wage Claims	\$ 2,476,384
• Meal Claims	\$ 943,533
• Wage Statement Claims	\$ 1,678,446
• Waiting Time Penalty Claims	<u>\$ 2,641,893</u>
• Total Risk Adjusted Penalties and Damages	\$ 7,740,256

For that reason, the settlement presented to the Court is fair, adequate, and reasonable when applying all risks and considering the potential outcomes at class certification and trial as the proposed settlement is 27.8% of the risk-adjusted class damages and penalties. (Mankin Decl. ¶ 13).

Likewise, while the PAGA penalties had a maximum value in the eight figures of \$10,010,000, this also fails to incorporate the risks above and, further, fails to acknowledge that courts have wide latitude to reduce the civil penalties “based on the facts and circumstances of a particular case” and if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(e)(2). Moreover, Defendants argued against the merits of the underlying claims and particularly that the “willfulness” standard and/or “good faith” defenses mitigated the civil penalty claims and

1 rendered any such penalties as uncertain. Defendants also argued it is improper to stack civil
2 penalty claims on top of underlying statutory claims – and at best, the maximum value for
3 PAGA penalties would be \$3,432,000. Plaintiff’s counsel then applied the same class risk
4 analysis for PAGA penalties as follows:

5 **a. Unpaid Wage Claims:** Plaintiff applied the same 30% risk on the merits as to
6 the class analysis, setting the risk-adjusted PAGA penalty at \$2,402,400. However, this does
7 not factor in the other risks or the Court’s ability to reduce the penalties even further, which
8 Defendants argued would occur due to the relatively small amount of unpaid wages and the
9 fact that, if liability attached, the Class Members were already being compensated for these
10 violations. For that reason, a 75% reduction off the risk-adjusted value is calculated at
11 \$600,600.

12 **b. Meal Violations:** Plaintiff’s expert’s analysis when extrapolated to the PAGA
13 period found 24,964 PAGA pay periods with violations (a violation rate of 12.1%). Plaintiff
14 then applied the same 40% risks on the merits as to the class analyses, setting the risk-adjusted
15 PAGA penalties for meals at \$1,887,600. However, this does not factor in the other risks or the
16 Court’s ability to reduce the penalties even further, which Defendants argued would occur due
17 to its alleged compliant written policies. For that reason, a 75% reduction off the risk-adjusted
18 values are calculated at \$471,900.

19 **c. Derivative Claims for Wage Statements:** Plaintiff applied the 30% risk on the
20 merits for the wage statement violations which mirror the risks on the merits as the class
21 analysis, setting the risk-adjusted PAGA penalties for wage statement violations at \$2,402,400.
22 However, this does not factor in the other risks or the Court’s ability to reduce the penalties
23 even further, which Defendants argued would occur due to the “technical” nature of the
24 violations and that Plaintiff would be unable to prove the “knowing and intentional” and
25 “injury” elements. For that reason, a 75% reduction off the risk-adjusted value is calculated at
26 \$600,600.
27
28

1 **d.** The maximum combined risk-adjusted value that factored in additional
2 reductions for all PAGA claims is \$1,673,100. Plaintiff allocated \$100,000 of the total Gross
3 Settlement Amount to the PAGA claims.

4 **e.** The reasonableness and fairness of the PAGA Penalties allocation is apparent
5 from the fact that it is approximately 6% of the risk-adjusted value.

6 For these reasons, the Parties submit that this settlement is fair and reasonable as
7 Plaintiff and Class Counsel have represented the State’s interests and those of the public
8 interest, which is the purpose of PAGA. The Parties believe that this PAGA settlement is “fair,
9 reasonable, and adequate in view of PAGA's purposes to remediate present labor law
10 violations, deter future ones, and to maximize enforcement of state labor laws” as Defendants
11 will review their policies and practices to ensure compliance with State laws and statutes
12 (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77 [287 Cal.Rptr.3d 107].) (Mankin
13 Decl. ¶ 13).

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

22 Additionally, as discussed above, in light of signed arbitration agreements that Plaintiff
23 and the Class signed, the value of the Class claims would be likely to be significantly reduced. If
24 Defendants chose to enforce the arbitration agreements, then the Class claims would have been
25 dismissed by the Court and essentially result in a value of zero. (Mankin Decl. ¶ 13).

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

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

6 Of course, Defendants deny liability, denies that any damages should be assessed, and
7 denies all of the value assessed by Plaintiff. Notwithstanding these arguments, the Settlement
8 commits Defendants to pay \$2,150,000 to settle the litigation.

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

10 For their efforts in creating a common fund for the benefit of the Class, the Settlement
11 Agreement provided that Class Counsel may seek reasonable fees of \$716,666.67 (one-third of
12 the Gross Settlement Amount). This amount will be paid from the Gross Settlement Amount, as
13 provided by the Settlement Agreement. These fees are warranted under the law and within the
14 range of fees commonly awarded in similar cases.

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

24 **A. Plaintiff is Entitled to Recover Reasonable Attorney's Fees Under the** 25 **Labor Code**

26 Plaintiff and the Class in this action are entitled to recover reasonable attorneys' fees,
27 expenses and costs under section 218.5 of the California Labor Code, which provides that, "[i]n
28 any action brought for the nonpayment of wages ... the Court shall award reasonable attorneys'

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

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

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

20 **1. *The Attorneys’ Fees Requested Here Fall Within the Reasonable***
21 ***Range Awarded in Similar Cases Under the Well-established***
22 ***Common Fund Method***

23 The California Supreme Court approved trial courts’ usage of the common fund method
24 of awarding attorneys’ fees in wage and hour class actions, like this one, and upheld a fee
25 awarded of 1/3 of the total settlement amount obtained for the class. *See Laffitte, supra*, 1 Cal.5th
26 at 506; *see also*, 4 Newberg on Class Actions, § 14:6 at 552 (“fee awards in class actions average
27 around one-third of the recovery”). Specifically, in *Laffitte*, the Court wrote: “[w]e join the
28 overwhelming majority of federal and state courts in holding that when class action litigation

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

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

25 **2. *The High Quality of Work and Good Result Obtained Despite the***
26 ***Arbitration Agreement Support the Award***

27 In addition to the fact that a Class benefit was created with a \$2,150,000 non-reversionary
28 common fund settlement on behalf of 16,795 employees, the fairness of the requested fee award

1 of 1/3 of the Settlement Amount is supported by the high quality of work performed by Class
2 Counsel and the positive result obtained for the Class. This result occurred because Class
3 Counsel diligently, efficiently, and creatively pursued this case and reached a successful
4 settlement for the benefit of the entire Class. ***In fact, some Class Member will receive \$837.94***
5 ***each, which is a good result*** when taking into consideration that these are temporary employees
6 that work on harvesting fruits during various seasons – so this also is one of the reasons that the
7 number of the Class is large, due to the constant turnover of employees. Moreover, the fact that
8 the settlement was embraced and supported by the Class, as evidenced by a 99.50% participation
9 rate, demonstrates that Class Counsel obtained a favorable result for the Class.

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

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

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

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

26 An additional factor militating in favor of the granting of the requested fee award is the
27 fact that this case was both legally and financially risky for Class Counsel. (*See Vizcaino v.*
28 *Microsoft Corp* (9th Cir. 2002) 290 F.3d 1043, 1048-49.) Class Counsel have been representing

1 the Class in this matter on a strictly contingency basis, and as such, incurred the risk of non-
2 recovery after a substantial investment of time, money, and resources, and have done so since the
3 inception of this case without any payment or compensation. Specifically, there was the prospect
4 of enormous cost inherent in class action litigation, as well as a battle with a well-funded
5 corporation who was represented by an experienced law firm; the risk that Defendants could
6 prevail on its argument that the class should not be certified; and the risk that Defendants could
7 prevail on the merits of some or all of the claims.

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

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

24 *Id.* at 399-400.

25 Indeed, as Plaintiff's Counsel can attest, not all class/PAGA cases are successful. Many
26 cases end with no fees or a greatly reduced fee that is far less than lodestar, often due to no fault
27 of counsel (i.e., bankruptcy, change in the law, consolidation or coordination or preemption,
28 being top filed, etc.). According to Mayer Brown LLP's study entitled, An Empirical Analysis

1 of Class Actions, cited in *Laguna v. Coverall North America, Inc.* (9th Cir. 2014) 753 F.3d 918,
2 found that only one-third of class actions are successful, compared to two-thirds that are defeated
3 and result in no payment to the class members.¹

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

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

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

- 10 • Heavily litigated Class/PAGA action that Class Counsel certified as a class,
11 prevailed on summary adjudication, fully prepared for trial and one day before the
12 start of trial, ***Defendant filed for bankruptcy, resulting in complete loss of***
13 ***attorneys fees and all costs advanced*** (*Garza v. Quality Conversation*, San
14 Bernardino Superior Court Case No. CIVDS1506788);
- 15 • Class actions in which ***Defendants filed for bankruptcy, resulting in a loss of all***
16 ***fees and costs*** (*Gomez v. Ultimate Logistics*, Riverside Superior Court Case No.
17 RIC1723054, and *Bonilla v. Home Energy*, San Bernardino Superior Court Case
18 No. CIVSB2215927);
- 19 • ***Class Counsel have been forced to dismiss class and PAGA cases without any***
20 ***compensation or reimbursement of fees or costs due to the financial condition***
21 ***of Defendant***, (*Cox v. NurseLoop*, San Bernardino Superior Court Case No.
22 CIVSB2225440; *Joyce v. GES Distribution*, Riverside Superior Court Case No.
23 RIC1905739).
- 24 • Of course, there is also the reality that a Defendant may prevail on the merits,
25 whereby Class Counsel will receive no compensation and lose it out of pocket
26 costs entirely. Class Counsel have experienced a situation wherein it prevailed at
27 trial on a PAGA case, only to have the appellate court reverse the decision and

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

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

Sample of Cases with Negative Multiplier 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 20.0 multiplier:** In *Carr v. Edible Arrangements*, San Bernardino Superior Court, Class Counsel has litigated the case for over **5 years** with 1,000 plus hours in attorney time, leading to the class certification in favor of Plaintiff. Despite all the work invested into the matter, including preparing for trial, a financial review confirmed that Defendant could only fund a \$100,000 settlement, resulting in a mere \$33,000 fee and a **-20.0 negative multiplier**;
- **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 20 multiplier:** Class Counsel has litigated the case for over **5 years** with an estimated 1,000 plus hours in attorney time, leading to the class certification in favor of Plaintiff on all claims for over 1,500 class members. Despite all the work invested into the matter, including preparing for trial, a financial review discovered that Defendant could only fund a \$100,000 settlement, resulting in a 33,000 fee and a massive negative multiplier;
- **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. ¶ 22).

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. ¶ 22).

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. ¶ 22).

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. (*Id.*)

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.²

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

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

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

17 Historically, California courts have approved multipliers of 1.5 to 4. *See Coalition for*
18 *Los Angeles County Planning v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 251
19 **(multiplier of 2+ approved)**; *Sternwest Corp v. Ash* (1986) 183 Cal.App.3d 74, 75. The
20 multiplier requested by Class Counsel below is within the range of multipliers found to be
21 appropriate by various federal and state courts in California. In *Sternwest Corp. v. Ash*, for
22 instance, the Court of Appeal remanded for a lodestar enhancement of **“two, three, four or**
23 **otherwise.”** *Id.* at 76; *see also Wershba*, 91 Cal.App.4th at 255 (**“Multipliers can range from 2**

24
25 ² www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

26 ³ In practice, the lodestar method is difficult to apply, time-consuming to administer, inconsistent in result, and
27 capable of manipulation. In addition, the lodestar creates inherent incentive to prolong the litigation until sufficient
28 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.

to 4 or even higher”); *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78, 83 (affirming 2.34 multiplier); *Coalition for Los Angeles County Planning in the Pub. Interest v. Board of Supervisors*, 76 Cal.App.3d 241, 251 (affirming multiplier of approximately 2); *Craft v. County of Los Angeles*, 2008 U.S. Dist. LEXIS 27526 (C.D. Cal. Apr. 1, 2008) (applying 5.2 multiplier); See also *Steinder v. Am. Broadcasting Co., Inc.* (9th Cir. 2007) 248 Fed. Appx. 780, 783 (approving multiplier of 6.85 and citing cases with comparable or higher multipliers); *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 (finding no abuse of discretion in awarding a multiplier of 3.65). In *Torchia v. WW Grainger, Inc.* (E.D. Cal. 2014) 304 F.R.D. 256, 275-278, a federal magistrate in Fresno approved attorneys’ fees of \$522,500 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 \$268,165. This results in a fair and reasonable 2.67 multiplier, as summarized in the following table, and in the submitted declaration of Plaintiff’s counsel:

Attorney/Timekeeper	Role	Yrs Experience	Rate	Hours	Fee
Brian J. Mankin (Partner - LML)	Trial Counsel	23	\$775	109 ⁴	\$84,475
Kristina Carlson (Associate - LML)	Handling Attorney	10	\$600	206.40	\$123,840
Mehrdad Bokhour (Principal - Owner)	Trial Counsel	12	\$650	85.50	\$59,850
Grand Total				400.90	\$268,165

(See Mankin Decl., ¶ 27; Carlson Decl. ¶ 5; Bokhour Decl. ¶ 21).

⁴ Includes an estimated 15 hours of additional work preparing for and attending the hearing (inclusive of finalizing and filing the motion, appearing at the hearing, addressing the Court’s questions/concerns, submitting revised documents, responding to class members who are anxious to receive their check, and so on), as well as 20 hours in anticipated work to be performed after the final approval, working with counsel, administrator, and Class Members (which includes up to 1.5 years of case management relating to ensuring timely payment from Defendants, reviewing the calculations, checks are timely mailed, responding to class members questions about the timing of checks/missing checks/lost checks and remailings, working with the administrator regarding uncashed checks and remailings, assisting with the Administrator’s declarations regarding payments and uncashed checks, potentially filing an amended judgment, appearing at the final disbursement hearing and/or submitting paperwork related thereto.

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

5 Moreover, the Wolters Kluwer 2023 Real Rate Report (“Real Rate Report”) provides
6 directly applicable information in this regard. The Real Rate Report is based on an enormous and
7 statistically significant compilation of data, comprising millions of billing entries from a hundred
8 thousand individual timekeepers who worked at thousands of law firms. The Real Rate Report
9 then compiles and analyzes this data to provide the hourly rates for partners and associates in
10 major metropolitan areas. For the southern California area: (a) the rate for partners in Los
11 Angeles is between \$840 and \$1,159 per hour for the middle and upper quartiles, and (b) the
12 rates for associates with seven or more years of experience, the median rate is \$674 per hour, and
13 the upper quartile rate is \$888 per hour. And, perhaps most importantly, the information
14 provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, or
15 reviews or other publications – instead, the Real Rate Report is based on the actual hours and
16 fees billed by law firms, which makes it “a much better reflection of true market rates than self-
17 reported rates in all practice areas.” *Brown v. CVS Pharmacy, Inc.* (C.D. Cal. Apr. 24, 2017)
18 2017 U.S. Dist. LEXIS 182309, at *21; *PLCM Group*, 22 Cal.4th at 1085 (holding that rates
19 should be premised upon precisely this form of independent, “objective” rate data that reflects
20 “fair market” rates actually billed to clients “in the community for similar work”). (Mankin
21 Decl., ¶ 26.)

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

1 experience doing similar employment law work in this region.

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

4 **VII. THE REQUESTED COSTS AND SERVICE PAYMENT ARE REASONABLE**

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

6 The Settlement Agreement authorized litigation expenses up to \$30,000. However,
7 Class Counsel's actual combined costs through the final approval hearing are \$17,498.39,
8 including \$9,993.39 by Lauby Mankin Lauby LLP and \$7,505 by Bokhour Law Group.
9 (Mankin Decl. ¶ 29, 33; Bokhour Decl. ¶ 25.) Since Class Counsel's actual costs were less
10 than the amount allocated, the saving will be placed in the Net Settlement Amount. These
11 costs include mediation fees, filing fees, CourtCall charges, expert fees, court filing fees, and
12 process server fees.

13 **B. The Requested Class Representative Service Payment is Reasonable and**
14 **Merits Approval**

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

25 Under the Settlement, Defendants agreed to pay a Class Representative Service
26 Payment to named Plaintiff in the amount of \$10,000 in recognition of his contribution as the
27 Class Representative and the fact that he agreed to a general release of all claims. In addition,
28 Plaintiff also undertook significant risks, including the risk of being blackballed in the industry

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

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

14 The Notice sent to each Class Member detailed the proposed service award. No Class
15 Member has objected to the proposed payment to Plaintiff. Thus, Plaintiff's request for a Class
16 Representative Service Payment is both reasonable and appropriate, and should be approved.

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

18 **A. Settlement Administration Costs**

19 The parties agreed that the Administrator, Rust Consulting, Inc., would be compensated
20 for services performed. The Administrator's flat fee is \$92,000.00; however, if Defendants
21 choses to fund the Gross Settlement Amount in 2024, there will be additional fee of \$1,250 for
22 an additional year of tax reporting which the Defendants will pay in addition to the Gross
23 Settlement Amount. Thus, the total amount that the Administrator may request is \$93,250.
24 (Fringer Decl., ¶¶ 21, 24.)

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

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

1 **C. Uncashed Checks**

2 The Settlement Agreement provides that unclaimed funds will be submitted to the
3 California State Controller’s Unclaimed Property Fund in the name of the Class Member or
4 Aggrieved Employee, thereby leaving no “unpaid residue” subject to the requirements of
5 California Code of Civil Procedure Section 384, subd. (b). (S.A. ¶ 4.4.3).

6 **D. Final Report**

7 Pursuant to the terms of the Settlement Agreement, Defendants are required to fund the
8 Gross Settlement Amount, plus Defendants’ share of payroll taxes owed on the Individual
9 Class Payments, based on the following installment plan: (1) the first installment to be paid on
10 or before January 1, 2025 or within 10 days after the Effective Date, whichever is later; (2) the
11 second installment to be paid on or before July 31, 2025; and (3) the third installment to be
12 paid on or before December 1, 2025. (S.A. ¶ 4.2). The Administrator then has 14 days
13 thereafter process the funds after each installment payment is made and issue checks to the
14 Class Members, who will then have 180 days to cash their checks. Accordingly, the Parties
15 project that the check cashing deadline for the final check will occur on approximately May
16 30, 2026. Thus, the Parties propose submitting a final report in the form of a declaration from
17 the Administrator approximately July 1, 2026, and then holding a disbursement hearing
18 thereafter at the Court’s convenience.

19 *However, it should be noted that the uncashed check fund will not actually be*
20 *forwarded to the State Controller until approximately one year after the check cashing*
21 *deadline due to the mandatory holding period imposed upon the Administrator. Thus, the*
22 *Administrator cannot likely issue checks to the State Controller until July 2027, and thus, the*
23 *Court may prefer to set the hearing re: disbursements for July 2027.*

24 **E. Submission to the LWDA**

25 As set forth in the Mankin Declaration at ¶ 34, the Settlement Agreement and this
26 motion are concurrently being submitted to the LWDA in accordance with Labor Code §
27 2699(1)(2). The LWDA has not commented on the Settlement to date.

28 ///

1 **IX. CONCLUSION**

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

4 Dated: November 22, 2024

LAUBY, MANKIN & LAUBY LLP

5
6 BY: 
7 Brian J. Mankin, Esq.
8 Attorneys for Plaintiff and the Class
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PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

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

On November 22, 2024, I caused to be served the foregoing document(s) described as follows:

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

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

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

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

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

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

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

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

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 22, 2024, Riverside, California.

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


Tracie Chiarito, Declarant

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