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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

JOEL ARELLANO, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

PACIFIC AWARD METALS, INC., a
California Corporation; and DOES 1 through
20, inclusive;

Defendants.

Case No.: 22STCV13489
*[Assigned to Hon. Lawrence P. Riff, Dept. 7,
for all purposes]*

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

Hearing:

Date: July 11, 2024

Time: 10:00 a.m.

Dept.: 7

Complaint Filed: April 22, 2022

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on July 11, 2024, at 10:00 a.m., or as soon thereafter as
3 this matter may be heard by the Honorable Lawrence P. Riff in Department 7 of the Los Angeles
4 County Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiff
5 Joel Arellano, individually and on behalf of all others similarly situated, will move this Court for
6 an Order granting final approval of the class action settlement between Plaintiff and Defendant
7 Pacific Award Metals, Inc. (“Defendant” or “PAM”), which was preliminarily approved by the
8 Court on February 27, 2024. This Motion seeks final approval and entry of judgment of a
9 \$995,000.00 settlement on behalf of the Class Members, and is unopposed by Defendant.

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

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

25 This Motion will be based upon this notice; the attached memorandum of points and
26 authorities; the Declarations of the Settlement Administrator (Taylor Mitzner of Phoenix
27 Settlement Administrators), Class Counsel (Brian Mankin and Kristina Carlson) and Plaintiff
28 filed concurrently herewith; the records and files in this action; and any other further evidence or

1 argument that the Court may receive at or before the hearing.

2 Dated: June 17, 2024

LAUBY, MANKIN & LAUBY LLP

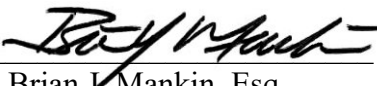
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4 BY: 
5 Brian J. Mankin, Esq.
6 Attorneys for Plaintiff and the Class
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I. SUMMARY OF ARGUMENT AND ESSENTIAL POINTS

Pursuant to California Rules of Court, Rule 3.769(d) and (e), Plaintiff Joel Arellano respectfully requests that this Court grant final approval of the Amended Class Action and PAGA Settlement Agreement (“Settlement Agreement”), and enter the proposed order and final judgment in this matter. This Motion is supported and unopposed by Defendant Pacific Award Metals, Inc. (“Defendant” or “PAM”).

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

- After considerable work, the Parties reached a \$995,000 settlement on behalf of 165 Class Members with the assistance of an experienced class action mediator;
- The Class Members were deemed to participate in the Settlement, and were not required to submit a Claim Form to receive funds;
- There is no reversion to Defendant;
- There were zero objections and zero opt-outs to the Settlement, meaning 100% of the Class is participating in the Settlement;
- **The Class Members will receive \$3,293.67 on average**, although each Class Member's Individual Class Payment will be allocated pro rata based on the percentage of weeks worked, whereby each Class Member will receive approximately \$28.43 for each week worked during the Class Period.

In accordance with the analysis and law set forth herein as well the preliminary approval motion, 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; ¶¶ 13, 35 (“Mankin Decl.”))

II. PERTINENT BACKGROUND AND SETTLEMENT TERMS

Plaintiff and the Class Members include all current and former nonexempt employees of Defendant Pacific Award Metals, Inc., who worked for Defendant in California at any time during the Class Period of April 22, 2018 to August 25, 2023. Defendant manufactures sheet

metal products for use in various aspects of the construction industry. Plaintiff alleged numerous wage and hour violations on behalf of the Class Members, who operate machinery that manufactures and distributes a wide array of products for construction. One of the primary claims in this action is unpaid wage claims due to rounding and short meal breaks. Plaintiff also alleged meal and rest break violations, along with wage statement claims, waiting time claims and PAGA Penalties.

The Settlement includes 165 Participating Class Members. The following is a breakdown reflecting how the funds are allocated under the Settlement Agreement (Declaration of Administrator, Taylor Mitzner (“Mitzner Decl.”), ¶ 13):

Gross Settlement Amount	\$ 995,000.00
Attorneys’ Fees (1/3 of the GSA)	\$ 331,666.67
Litigation Costs	\$ 11,878.10
Administrator Costs	\$ 8,000.00
PAGA Penalties	\$ 90,000.00
Class Representative Service Award	\$ 10,000.00
Net Settlement Amount	\$ 543,455.23

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.” ¶ 1.37). 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. (S.A. ¶ 3.2.4).

Assuming all of the amounts in the Settlement are approved by the Court, *the average Individual Class Payment is estimated to be \$3,293.67 and the highest Individual Class Payment is approximately \$7,931.37* and the lowest payment is approximately \$28.43 for a short term employee who worked one week during the Class Period. (Mitzner Decl. ¶ 14). The Participating Class Members collectively worked 19,117 Workweeks during the Class Period, resulting in a Workweek value of approximately \$28.43/week.

In addition, 112 Aggrieved Employees, who collectively worked 8,486 Workweeks during the PAGA Period, will each receive an Individual PAGA Payment based on their share of

1 the \$22,500 in PAGA Penalties (25% of the total \$90,000 PAGA allocation), calculated pro-rata
2 based on the number of Weeks Worked during the PAGA Period. (S.A. ¶ 3.2.5). The average
3 payment to the Aggrieved Employees is \$200.89. (Mitzner Decl. ¶ 15).

4 The Parties agree that 30% will be allocated as wages subject to withholding of all
5 applicable local, state and federal taxes; and 70% will be allocated for interest and penalties
6 (pursuant to, e.g., California Labor Code sections 203, 210, 226, etc.) from
7 which no taxes will be withheld. (S.A. ¶ 3.2.4.1). Additionally, the PAGA Penalties payable to
8 the Aggrieved Employees will be classified entirely as civil penalties and shall be reported as
9 required on an IRS Form 1099. (S.A. ¶¶ 3.2.5.1 and 3.2.5.2). Defendant will separately pay its
10 share of employer payroll taxes on the sum allocated to wages. (S.A. ¶¶ 3.1).

11 The Settlement Agreement provides that Defendant shall deposit the Settlement Amount
12 within 15 days after the “Effective Date” (S.A. ¶ 4.3), which will be the day that the Court enters
13 the Final Order/Judgment since there were no objections. Within 10 days of receipt, the
14 Settlement Administrator shall issue payments to cover all court-approved payments. (S.A. ¶
15 4.4).

16 Class Members and Aggrieved Employee will have 180 days to cash the settlement
17 check. If a Class Member and/or Aggrieved Employee fails to cash a check by the deadline, the
18 Settlement Administrator shall issue unclaimed funds to the California State Controller in the
19 name of the individual. (S.A. ¶ 4.4.3).

20 **III. THE NOTICE PROCESS**

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

22 Pursuant to the Court’s Order and the Settlement Agreement, the Parties directed the
23 Settlement Administrator to review and update the Class Members’ addresses, mail the Court-
24 approved Notice Packet, and process their responses. The Administrator also posted the relevant
25 documents on its website for the Class Members to access.

26 Prior to mailing the Class Notice, the Settlement Administrator performed a National
27 Change of Address search on all Class Members to determine if any had moved. (Mitzner Decl.,
28 ¶ 4). On April 8, 2024, the Class Notice was initially sent via first-class mail to 165 Class

Members. (Mitzner Decl., ¶ 5). Initially, 7 Class Notices were determined to be undeliverable, but after locating new addresses and re mailing the Notices, all Notices were determined to be delivered, resulting in a 100% success rate in mailing the Notice Packet. (Mitzner Decl., ¶ 6-7).

In accordance with California Rules of Court, rules 3.766 (d) and 3.769 (f), the Notice provided Class Members with (1) a brief explanation of the case; (2) an explanation of each 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 Mitzner Decl.)

B. There are Zero Objections and Zero Opt-Outs, Resulting In An Impressive 100% of the Class Participating 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 were zero objections and zero opt-outs -- meaning that 100% of the Class Members are participating in the Settlement, and there were zero Workweek disputes. (Mitzner Decl., ¶ 8-10).

V. EVALUATION OF THE SETTLEMENT

It is axiomatic that California law strongly favors and encourages settlements. (See *Stambaugh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236.) This presumption in favor of

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

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

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

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

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

27 Here, Plaintiff and Class Counsel have diligently investigated the claims raised in this
28 litigation and, after taking into account the disputed factual and legal issues involved in this

1 action, the risks attending further prosecution, and the benefits to be received pursuant to the
2 compromise and settlement of the action as set forth in the Settlement, concluded that the
3 settlement terms are fair, reasonable, and in the best interest of the Class.

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

9 **B. Plaintiffs' Investigation Was Sufficient**

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

20 **C. Class Counsel Are Experienced in Similar Litigation and Endorse the**
21 **Settlement**

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

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28 ///

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

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

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

22 Of course, Defendant denies that any damages should be assessed and denies all of the
23 value assessed by Plaintiff. Notwithstanding these arguments, the Settlement commits
24 Defendant to pay \$995,000.00 to settle the litigation.

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

26 For their efforts in creating a common fund for the benefit of the Class, the Settlement
27 Agreement provided that Class Counsel may seek reasonable fees of \$331,666.67 (one-third of
28 the Gross Settlement Amount). This amount will be paid from the settlement amount, as

provided by the Settlement Agreement. These fees are warranted under the law and within the range of fees commonly awarded in similar cases.

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

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

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

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

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

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

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

26 The California Supreme Court’s *Laffitte* decision was consistent with its prior rulings
27 recognizing that “when a number of persons are entitled in common to a specific fund, and an
28 action brought by ... plaintiffs for the benefit of all results in the creation or preservation of that

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

15 **2. The High Quality of Work and Excellent Result Obtained Support**
16 **the Award**

17 In addition to the fact that a Class benefit was created with a \$995,000.00 non-
18 reversionary common fund settlement on behalf of only 165 employees, the fairness of the
19 requested fee award of 1/3 of the Settlement Amount is supported by the high quality of work
20 performed by Class Counsel and the positive result obtained for the Class. This great result
21 occurred because Class Counsel diligently, efficiently, and creatively pursued this case and
22 reached a successful settlement for the benefit of the entire Class. ***In fact, some Class Member***
23 ***will receive \$7,931.37 each, which is an excellent result.*** Moreover, the fact that the settlement
24 was embraced and supported by the Class, as evidenced by a 100% participation rate,
25 demonstrates that Class Counsel obtained a favorable result for the Class.

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

27 Rule 3.769 of the California Rules of Court requires that the Class Members be given
28 notice of any agreement regarding an application for attorneys' fees. Here, the Notice

1 preliminarily approved by the Court and distributed to the Class Members apprised them of the
2 requested attorneys fees, which was consistent with the Notice.

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

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

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

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

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

14 *Id.* at 399-400.

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

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

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

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

- 28 • Heavily litigated Class/PAGA action that Class Counsel certified as a class,
prevailed on summary adjudication, fully prepared for trial and one day before the
start of trial, ***Defendant filed for bankruptcy, resulting in complete loss of
attorneys fees and all costs advanced*** (*Garza v. Quality Conversation*, San
Bernardino Superior Court Case No. CIVDS1506788);

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

- Class actions in which ***Defendants filed for bankruptcy, resulting in a loss of all fees and costs*** (*Gomez v. Ultimate Logistics*, Riverside Superior Court Case No. RIC1723054, and *Bonilla v. Home Energy*, San Bernardino Superior Court Case No. CIVSB2215927);
- ***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. ¶ 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. ¶ 21).

Class/PAGA Cases Converted to Small Individual Settlements

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

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).

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

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

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

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

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

19 Despite recognized limitations of the so-called lodestar method, some California and
20 federal courts acknowledge the utility of a lodestar "cross-check."³ (*Lealao, supra*, 82
21 Cal.App.4th at 46-47.) Under the "lodestar multiplier" method of cross-checking the
22 reasonableness of attorneys' fees in class actions, the court ascertains Class counsel's total
23 "lodestar" amount by multiplying the number of hours reasonably expended by each attorney or
24 legal staff member by their hourly rates, and then enhances or reduces this lodestar figure by a

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.

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

6 Historically, California courts have approved multipliers of 1.5 to 4. *See Coalition for*
7 *Los Angeles County Planning v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 251
8 **(multiplier of 2+ approved)**; *Sternwest Corp v. Ash* (1986) 183 Cal.App.3d 74, 75. The
9 multiplier requested by Class Counsel below is within the range of multipliers found to be
10 appropriate by various federal and state courts in California. In *Sternwest Corp. v. Ash*, for
11 instance, the Court of Appeal remanded for a lodestar enhancement of “**two, three, four or**
12 **otherwise.**” *Id.* at 76; *see also Wershba*, 91 Cal.App.4th at 255 (“**Multipliers can range from 2**
13 **to 4 or even higher**”); *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78, 83
14 **(affirming 2.34 multiplier)**; *Coalition for Los Angeles County Planning in the Pub. Interest v.*
15 *Board of Supervisors*, 76 Cal.App.3d 241, 251 **(affirming multiplier of approximately 2)**;
16 *Craft v. County of Los Angeles*, 2008 U.S. Dist. LEXIS 27526 (C.D. Cal. Apr. 1, 2008)
17 **(applying 5.2 multiplier)**; *See also Steinder v. Am. Broadcasting Co., Inc.* (9th Cir. 2007) 248
18 Fed. Appx. 780, 783 **(approving multiplier of 6.85** and citing cases with comparable or higher
19 multipliers); *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 (finding no abuse
20 of discretion in **awarding a multiplier of 3.65**). In *Torchia v. WW Grainger, Inc.* (E.D. Cal.
21 2014) 304 F.R.D. 256, 275-278, a federal magistrate in Fresno approved attorneys’ fees of
22 \$522,500 **constituting a 3.57 multiplier** on class counsel’s total lodestar of \$153,856 in a wage
23 and hour class action.

24 The actual aggregated lodestar between the Plaintiff’s attorneys that worked on this case
25 is approximately \$230,295. This results in a fair and reasonable 1.44 multiplier, as summarized
26 in the following table, and in the submitted declarations of Plaintiff’s counsel:
27
28

Attorney/Timekeeper	Rate	Hours	Fee
Brian J. Mankin <i>Trial Counsel / Partner</i> (23 Years)	\$775	117⁴	\$90,675
Kristina Carlson <i>Associate</i> (10 Years)	\$600	232.7	\$139,620
Grand Total for All Attorneys			\$230,295

(Mankin Decl. ¶ 25; Carlson Decl. ¶ 5).

Class Counsel's requested rates are reasonable under the Laffey Matrix (www.laffeymatrix.com) which indicates that the benchmark rate for an attorney with 20+ years of experience (such as Mr. Mankin) is \$914, while the rate for attorneys with 8-10 years of experience (such as Ms. Carlson) is \$672. Moreover, the Wolters Kluwer 2017 Real Rate Report ("Real Rate Report") provides directly applicable information in this regard. The Real Rate Report is based on an enormous and statistically significant compilation of data: 25.8 million billing entries and 23.9 million hours billed by over 112,100 individual timekeepers from 4,620 law firms, totaling \$9.02 billion in fees billed. (See Wolters Kluwer's ELM Solutions, Inc., 2017 Real Rate Report). The Real Rate Report then compiles and analyzes this data to provide 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. These numbers are not surprising given that a 4-year-old article in the National Law Journal stated that in **2014** partners in Los Angeles charge an average

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.

of \$665, while the average associate rate is \$401. (Sloan, \$1,000 Per Hour Isn't Rare Anymore; Nominal Billing Levels Rise, But Discounts Ease Blow (2014) Nat. Law Journal.)⁵. (Mankin Decl., ¶ 24.)

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

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.

VII. THE REQUESTED COSTS AND SERVICE AWARDS ARE REASONABLE

A. The Requested Costs Are Reasonable and Merit Approval

The Settlement Agreement authorized litigation expenses up to \$20,000. (Settlement Agreement ¶ 3.2.2). However, Class Counsel's actual costs through the final approval hearing are estimated to be \$11,878.10 (Mankin Decl. ¶ 27). Since Class Counsel's actual costs were less than the amount allocated, the saving will be placed in the Net Settlement Amount.

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 is appropriate to induce individuals to step forward and assume the burdens and obligations of representing the Class. Courts regularly approve service payments to compensate named

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

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

8 Under the Settlement, Defendant agreed to pay Service Awards in the amount of
9 \$10,000 to the named Plaintiff in recognition of his contribution as the Class Representative
10 and the fact that he agreed to a general release of all claims. In addition, Plaintiff also
11 undertook significant risks, including the risk of being blackballed in the industry and the risk
12 that they could have been liable for Defendant’s costs if he lost. This factor is a significant one
13 for a wage earner, and the potential risk is very real. (*See Whiteway v. FedEx Kinkos Office &*
14 *Print Svcs., Inc.* (N.D. Cal. Dec. 17, 2007) No. C 05-2320 SBA, 2007 WL 4531783, at *3 (“the
15 few courts to consider this ‘class representatives’ dilemma’ have not found it inequitable to
16 assess costs upon the lead or named plaintiff in a class action.”).)

17 Plaintiff also committed a significant number of hours to assist with the
18 litigation/settlement processes of this case. Finally, he entered into a general release of all
19 claims against Defendant, whereas the Class Members only released the claims alleged. The
20 requested Service Payment is reasonable, particularly in light of the substantial benefits
21 Plaintiff generated for the Class Members, the risks he undertook, and in exchange for
22 executing a general release against Defendant. (See Plaintiff’s declaration for supporting
23 information.)

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

27 ///

28 ///

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

2 **A. Settlement Administration Costs**

3 The parties agreed that the Administrator, Phoenix Settlement Administrators, would be
4 compensated for services performed. The Administrator's flat fee is \$8,000.00. (Mitzner
5 Decl., ¶ 17; Exhibit B thereto.)

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

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

10 **C. Uncashed Checks**

11 The Settlement Agreement provides that unclaimed funds will be submitted to the
12 California State Controller's Unclaimed Property Fund in the name of the Class Member
13 thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil
14 Procedure Section 384, subd. (b). (S.A. ¶ 4.4.3.)

15 **D. Final Report**

16 Defendant's payment is due 15 days after the Effective Date, which will on the date that
17 the final order is entered. The Administrator then has 10 days thereafter process the funds and
18 issue checks to the Class Members, who will then have 180 days to cash their checks.
19 Accordingly, if Final Approval is granted on July 11, 2024, the Parties project that the check
20 cashing deadline will occur on approximately February 1, 2025. Approximately 30 days after
21 the check cashing deadline, the Parties will be prepared to submit a declaration from the
22 Administrator attesting to its disbursement of all payments required under the Settlement
23 Agreement.

24 Thus, the Parties propose submitting a final report in the form of a declaration from the
25 Administrator approximately March 3, 2025 and then holding a disbursement hearing
26 thereafter at the Court's convenience. ***However, it should be noted that the uncashed check
27 fund will not actually be forwarded to the State Controller until approximately one year after
28 the check cashing deadline due to the mandatory holding period imposed upon the***

1 *Administrator. Thus, the Administrator cannot likely issue checks to the State Controller*
2 *until March 2026, and thus, the Court may prefer to set the hearing re: disbursements for*
3 *April 2026.*

4 **E. Submission to the LWDA**

5 As set forth in the Mankin Declaration at ¶ 29, the Settlement Agreement and this
6 motion are concurrently being submitted to the LWDA in accordance with Labor Code §
7 2699(1)(2). The LWDA has not commented on the Settlement to date.

8 **IX. CONCLUSION**

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

11 Dated: June 17, 2024

LAUBY, MANKIN & LAUBY LLP

12
13 BY:



14 Brian J. Mankin, Esq.
15 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 June 17, 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.

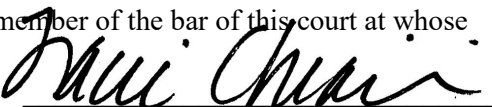
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service 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 June 17, 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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