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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

SUSANA CALDERON, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

PRUDENTIAL INS CO OF AMERICA, a
New Jersey Corporation; and DOES 1
through 20, inclusive;

Defendants.

Case No.: 22STCV13172

*[Assigned to Hon. Elihu M. Berle, Dept 6 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: February 5, 2024

Time: 9:00 a.m.

Dept.: 6

Complaint Filed: April 20, 2022

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on February 5, 2024, at 9:00 a.m., or as soon thereafter as
3 this matter may be heard by the Honorable Elihu Berle in Department 6 of the above-captioned
4 court, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiff Susana
5 Calderon, individually and on behalf of all others similarly situated, will move this Court for an
6 Order granting final approval of the class action settlement between Plaintiff and The Prudential
7 Insurance Company of America (“Defendant” or “Prudential”). This Motion, which is supported
8 by Defendant, seeks final approval and entry of judgment of a \$385,000 settlement on behalf of
9 the putative class members.

10 Specifically, Plaintiff will and hereby does move the Court to grant final approval of the
11 Class Action and PAGA Settlement Agreement (“Settlement Agreement”), and enter the
12 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 Misty Lauby as Class Counsel for purposes
17 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 (Lluvia Islas of Phoenix Settlement
27 Administrators), Class Counsel (Brian Mankin and Misty Lauby) and Plaintiff (Susana Calderon)
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: December 4, 2023

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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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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

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

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

10 • After extensive work, the Parties reached a \$385,000 settlement with the
11 assistance of Jeff Krivis, who is one of the most experienced and reputable class action mediators
12 in California, that is tailored to a limited release of the claims alleged on behalf of the Class
13 Members;

14 • The Class Members were deemed to participate in the Settlement, and were not
15 required to submit a Claim Form to receive funds;

16 • There is no reversion to Defendant;

17 • There are zero objections and zero opt-outs to the Settlement thus far, meaning
18 100% of the Class is currently participating in the Settlement.¹

19 In accordance with the analysis and law set forth herein as well the preliminary approval
20 motion, the Settlement should be approved and judgment entered based on the determination that
21 the Settlement is fair, reasonable, adequate, and in the best interests of the Class. (Declaration of
22 Class Counsel, Brian J. Mankin; ¶¶ 13, 35 (“Mankin Decl.”).)

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

24 The Settlement is comprised of two classes of similarly situated employees. First, during
25 Plaintiff’s employment at Prudential, she worked as a Customer Service Representative, and
26 thus, she seeks to represent all similarly situated Customer Service Representatives (i.e., the
27

28 ¹ The deadline for Class Members to respond to the Class Notice is January 23, 2024 (the “Response Deadline”).
After the Response Deadline passes and before the Final Approval Hearing, the administrator will file an updated
declaration with the final results of the notice process.

“Customer Service Class”). Additionally, Plaintiff alleges that Defendant issued wage statements to all employees in California that failed to comply with Labor Code § 226, and thus, Plaintiff also seeks to represent all employees in California who received an allegedly non-compliant wage statement during the applicable period (i.e., the “Wage Statement Class”). Each Class is more specifically defined as follows:

Wage Statement Class: all current and former non-exempt Prudential employees in the State of California at any time during the period of April 20, 2021, through July 30, 2023 (the “Wage Statement Class Period”).

Customer Service Class: all current and former non-exempt Prudential employees in California whose primary job responsibilities were making and/or receiving calls, assisting customers, or answering customers’ queries at any time during the period of April 20, 2018, through July 30, 2023 (the “Customer Service Class Period”).

The Settlement includes 217 total Class Members, which includes 211 Wage Statement Class Members and 60 Customer Service Class Members (and most Customer Service Class Members are also Wage Statement Class Members). The following is a breakdown reflecting how the funds are allocated under the Settlement Agreement (Declaration of Administrator, Lluvia Islas (“Islas Decl.”), ¶ 12):

<i>Gross Settlement Amount</i>	\$ 385,000.00
Attorneys’ Fees (1/3)	\$ 128,333.33
Litigation Costs	\$ 15,330.63
Administrator Costs	\$ 8,500.00
PAGA Penalties	\$ 40,000.00
Class Representative Service Award	\$ 7,500.00
<i>Net Settlement Amount</i>	\$ 185,336.04

The Class Members do 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 number of Share Points credited. Class Member’s Share Points will be calculated based on the number of Pay Periods worked during each class. A Class Member who is a member of the Customer Service Class only (and not of the Wage

Statement Class) will receive 0.5 Share Points for each Pay Period Worked during the Customer Service Class Period. A Class Member who is a member of the Wage Statement Class only (and not of the Customer Service Class) will receive 1.0 Share Points for each Pay Period Worked during the Wage Statement Class Period. And Class Member who is a member of both the Customer Service Class and Wage Statement Class will receive 1.2 Share Points for each Pay Period Worked during the Customer Service Class Period. A Class Member who is a member of both the Customer Service Class and Wage Statement Class and is no longer employed by Defendant will receive 1.25 Share Points for each Pay Period Worked during the Customer Service Class Period. The Net Settlement Amount will be divided by the number of Share Points credited to all Class Members, resulting in a value per Share Point (referred to as the Share Point Rate). The Administrator will multiply the Share Point Rate by the number of Share Points credited to each Class Member to determine the Individual Class Payment to each Participating Class Member. (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 \$854.06, the *highest* payment is approximately \$7,079.46 and the lowest is approximately \$25.13 for a short term employee. (Islas Decl. ¶ 13).

In addition, 211 Aggrieved Employees will each receive an Individual PAGA Payment based on their share of the \$10,000 PAGA Penalties (25% of the total \$40,000 PAGA allocation), calculated pro-rata based on the number of Pay Periods Worked during the PAGA Period. (S.A. ¶ 3.2.5.1).

The Parties agree that portions of the Individual Class Payment paid to the Participating Class Members in the Customer Service Class will be allocated as 20% to wage claims (the “Wage Portion”) and remaining 80% will be allocated to settlement of claims for interest and penalties (the “Non-Wage Portion”). Portions of the Individual Class Payment paid to the Participating Class Members belonging only in the Wage Statement Class will be treated 100% as penalties and interest, and will be included in the Non-Wage Portion. (S.A. ¶ 3.2.4.1). Additionally, the PAGA Penalties payable to the Aggrieved Employees will be classified entirely as civil penalties and shall be reported as required on an IRS Form 1099. (S.A. ¶¶ 3.2.5.1 and

1 3.2.5.2).

2 The Settlement Agreement provides that Defendant shall deposit the Settlement Amount
3 within 14 days after the “Effective Date” (S.A. ¶ 4.4), which will be the deadline to file an
4 appeal. Additionally, Defendant will separately fund its share of payroll taxes. Within 10 days
5 of receipt, the Settlement Administrator shall issue payments to cover all court-approved
6 payments. (S.A. ¶ 4.4).

7 Class Members will have 180 days to cash the settlement check. (S.A. ¶ 4.4.1). If a Class
8 Member fails to cash a check by the deadline, the Settlement Administrator shall issue unclaimed
9 funds to the California State Controller in the name of the Class Member. (S.A. ¶ 4.4.3).

10 **III. THE NOTICE PROCESS**

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

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

15 Prior to mailing the Class Notice, the Settlement Administrator performed a National
16 Change of Address search on all Class Members to determine if any had moved. (Islas Decl., ¶
17 4). On November 15, 2023, the Class Notice was sent via first-class mail to the Class Members
18 in English and Spanish. (Islas Decl., ¶ 5). All Notices were determined to be delivered. (Islas
19 Decl., ¶ 6-7). Accordingly, there was a **100%** success rate in mailing the Class Notice.

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

1 **B. There are No Objections and No Opt-Outs Thus Far, Resulting In An**
2 **Impressive 100% of the Class Participating in the Settlement**

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

11 In this case, as noted above, there are no objections and no opt-outs to the Settlement thus
12 far -- meaning that 100% of the Class Members are currently participating in the Settlement.
13 (Islas Decl., ¶ 9-10). The Parties will provide an updated declaration from the Administrator
14 after the Response Deadline passes, but thus far, the Class views this as a fair and reasonable
15 settlement.

16 **V. EVALUATION OF THE SETTLEMENT**

17 It is axiomatic that California law strongly favors and encourages settlements. (See
18 *Stambaugh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236.) This presumption in favor of
19 settlement applies with particular force in the context of class actions. (See *Ferguson v. Lieff,*
20 *Cabraser, Heimann & Bernstein* (2003) 30 Cal.4th 1037 [“[p]ublic policy favoring settlement is
21 especially weighty for class actions”]; *Bell v. Am. Title Ins. Co.* (1991) 226 Cal.App.3d 1589,
22 1607-1608 [affirming the trial court’s approval of a class settlement and implicitly endorsing its
23 citation of federal precedent for the notion that there is a “strong public policy in favor of
24 settlement of class actions”]; see also *Franklin v. Kaypro Corp.* (9th Cir. 1989) 884 F.2d 1222,
25 1229, quoting *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950 [“it hardly
26 seems necessary to point out that there is an overriding public interest in settling and quieting
27 litigation. This is particularly true in class action suits”].)

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

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

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

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

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

23 As the Settlement Agreement itself reveals, there is no preferential treatment for any
24 segment of the class, as the Settlement is designed to compensate all Class Members fairly and
25 adequately. And pursuant to California Rules of Court Rule 3.769(b), the parties have disclosed
26 the agreed upon and proposed attorney fee award, which is well within the range of
27 reasonableness for matters of this nature.
28

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

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

12 **C. Class Counsel Are Experienced in Similar Litigation and Endorse the**
13 **Settlement**

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

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

21 Plaintiff's Motion for Preliminary Approval contained a comprehensive *Kullar* analysis
22 (which sufficiently provided the Court with "basic information about the nature and magnitude
23 of the claims in question and the basis for concluding that the consideration being paid for the
24 release of those claims represents a reasonable compromise." (*Kullar v. Foot Locker Retail,*
25 *Inc.* (2008) 168 Cal.App.4th 116, 133.) Of course, a settlement is not judged against what
26 might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to
27 provide 100% of the damages sought to be fair and reasonable. (*Wershba v. Apple Computers,*
28 *Inc.* (2001) 91 Cal.App.4th 246, 250.) ("Compromise is inherent and necessary in the settlement

1 process ... even if the relief afforded by the proposed settlement is substantially narrower than it
2 would be if the suits were to be successfully litigated, this is no bar to a class settlement because
3 the public interest may indeed be served by a voluntary settlement in which each side gives
4 ground in the interest of avoiding litigation.”)

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

13 Of course, Defendant denies that any damages or penalties should be assessed and
14 denies all of the value assessed by Plaintiff. Notwithstanding these arguments, the Settlement
15 commits Defendant to pay \$385,000 to settle the litigation.

16 **VI. THE REQUESTED ATTORNEYS’ FEES ARE FAIR AND REASONABLE**

17 For their efforts in creating a common fund for the benefit of the Class, the Settlement
18 Agreement provided that Class Counsel may seek reasonable fees of \$128,333.33 (one-third of
19 the Settlement Amount). This amount will be paid from the settlement amount, as provided by
20 the Settlement Agreement. These fees are warranted under the law and within the range of fees
21 commonly awarded in similar cases.

22 As shown herein, the requested percentage of one-third of the settlement fund as payment
23 for attorneys’ fees should be granted for several reasons, including one-third is the standard
24 bench mark in California for class action settlements (see e.g., *Chavez v. Netflix, Inc.* (2008) 162
25 Cal.App.4th 43, 66 n. 11 (“Empirical studies show that, regardless whether the percentage
26 method or the lodestar method is used, fee awards in class actions average around one-third of
27 the recovery”), that the California Supreme Court recently held that the percentage of the fund
28 method survives in California class action cases (*Laffitte v. Robert Half International, Inc.*

1 (2016) 1 Cal.5th 480, and through the prism of a lodestar cross-check. Accordingly, this request
2 should receive final approval.

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

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

18 **B. Class Counsel's Request for Fees Is Reasonable and Properly Calculated as**
19 **a Percentage of the Common Fund**

20 Under the "common fund" doctrine, the request for attorneys' fees in the amount of 1/3
21 of the common fund is reasonable and appropriate, because (1) it is within the approved range
22 for percentages awarded as attorneys' fees in similar cases; (2) it is supported by the high quality
23 of Class Counsel's work on this case and the results obtained for the Class; (3) the Class had
24 sufficient notice of the fee request; (4) it is supported by the fact that this case was handled on a
25 contingency basis and was undertaken despite various risks and expenses; and (5) the lodestar
26 cross-check supports the fee request.
27
28

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

4 Recently, the California Supreme Court approved trial courts' usage of the common fund
5 method of awarding attorneys' fees in wage and hour class actions, like this one, and upheld a
6 fee awarded of 1/3 of the total settlement amount obtained for the class. *See Laffitte v. Robert*
7 *Half Int'l Inc.* (2016) 1 Cal. 5th 480, 506 ("when class action litigation establishes a monetary
8 fund for the benefit of the class members, and the trial court in its equitable powers awards class
9 counsel a fee out of that fund, the court may determine the amount of a reasonable fee by
10 choosing an appropriate percentage of the fund created"); *see also*, 4 Newberg on Class Actions,
11 § 14:6 at 552 ("fee awards in class actions average around one-third of the recovery").

12 **2. *The High Quality of Work and Excellent Result Obtained Support***
13 ***the Award***

14 In addition to the fact that a Class benefit was created with a \$385,000 non-reversionary
15 common fund settlement, the fairness of the requested fee award of 1/3 of the Settlement
16 Amount is supported by the high quality of work performed by Class Counsel and the positive
17 result obtained for the Class. This great result occurred because Class Counsel diligently,
18 efficiently, and creatively pursued this case and reached a successful settlement for the benefit of
19 the entire Class. In fact, some Class Member will receive \$7,079.46, which is an excellent result.
20 Moreover, the fact that the settlement was embraced and supported by the Class, as evidenced by
21 a 100% participation rate, demonstrates that Class Counsel obtained a favorable result for the
22 Class.

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

24 Rule 3.769 of the California Rules of Court requires that the Class Members be given
25 notice of any agreement regarding an application for attorneys' fees. Here, the Notice
26 preliminarily approved by the Court and distributed to the Class Members apprised them of the
27 requested deductions for attorneys' fees and costs, as follows: "Up to \$128,333.33 (one-third of
28 the Gross Settlement) to Class Counsel for attorneys' fees and up to \$20,000 for their litigation

1 expenses...” (Islas Decl., Exh. A.)

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

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

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

22 If Plaintiff had lost this case, Class Counsel would have recovered nothing, and would
23 have lost its out-of-pocket costs. This is not an easy burden for Plaintiff’s Counsel, which is a
24 small firm. (Mankin Decl. ¶ 20). If, despite these hardships and risks, the best Plaintiff’s
25 Counsel could hope for is merely to be paid its customary hourly rate multiplied by the number
26 of hours worked on all cases (including cases like this where the lodestar is far greater than the
27 potential fee award), then Class Counsel would not be compensated for the hardships and serious
28 risks they faced litigating this contingency case, and would not be incentivized to take on similar

1 cases in the future. (*Id.*)

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

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

19 *Id.* at 399-400.

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

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

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

Despite recognized limitations of the so-called lodestar method, some California and
federal courts acknowledge the utility of a lodestar "cross-check."³ (*Lealao, supra*, 82

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

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

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

10 Historically, California courts have approved multipliers of 1.5 to 4. *See Coalition for*
11 *Los Angeles County Planning v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 251
12 **(multiplier of 2+ approved)**; *Sternwest Corp v. Ash* (1986) 183 Cal.App.3d 74, 75. The
13 multiplier requested by Class Counsel below is within the range of multipliers found to be
14 appropriate by various federal and state courts in California. In *Sternwest Corp. v. Ash* (1986)
15 183 Cal.App.3d 74, for instance, the Court of Appeal remanded for a lodestar enhancement of
16 **“two, three, four or otherwise.”** *Id.* At 76; *see also Wershba*, 91 Cal.App.4th at 255
17 **(“Multipliers can range from 2 to 4 or even higher”)**; *City of Oakland v. Oakland Raiders*
18 (1988) 203 Cal.App.3d 78, 83 **(affirming 2.34 multiplier)**; *Coalition for Los Angeles County*
19 *Planning in the Pub. Interest v. Board of Supervisors*, 76 Cal.App.3d 241, 251 **(affirming**
20 **multiplier of approximately 2)**; *Craft v. County of San Bernardino*, 2008 U.S. Dist. LEXIS
21 27526 (C.D. Cal. Apr. 1, 2008) **(applying 5.2 multiplier)**; *See also Steinder v. Am. Broadcasting*
22 *Co., Inc.* (9th Cir. 2007) 248 Fed. Appx. 780, 783 **(approving multiplier of 6.85** and citing cases
23 **with comparable or higher multipliers)**; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d
24 1043, 1051 (finding no abuse of discretion in **awarding a multiplier of 3.65**). In *Torchia v. WW*
25 *Grainger, Inc.* (E.D. Cal. 2014) 304 F.R.D. 256, 275-278, a federal magistrate in Fresno
26 approved attorneys’ fees of \$550,000 **constituting a 3.57 multiplier** on class counsel’s total

27 hours have been expended. Herr, David F., *Manual for Complex Litigation*, § 14.121 (1988); *See also In re*
28 *Activision* (N.D. Cal 1989) 723 F.Supp 1373.

lodestar of \$153,856, in a wage and hour class action where class counsel expended 457.85 hours on the case, engaged in limited formal discovery, and where the case settled for \$2,750,000 within one year from filing the Complaint with 909 class members claiming \$1,305,200 and the remainder, except for the attorneys' fees and costs, reverting to the company.

The actual aggregated lodestar between the Plaintiff's attorneys that worked on this case is approximately \$170,835. This results in a *negative multiplier*, as summarized in the following table, and in the submitted declaration of Plaintiff's counsel:

Attorney/Timekeeper	Rate	Hours	Fee
Brian J. Mankin <i>Trial Counsel / Partner</i> (22 Years)	\$775	121.8⁴	\$94,395
Misty M. Lauby <i>Partner / Handling Atty</i> (16 Years)	\$650	117.6	\$76,440
Grand Total for All Attorneys			\$170,835

(See Mankin Decl., ¶ 25; Lauby Decl. ¶ 9.)

Class Counsel's requested rates of \$775 and \$650 are eminently 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 \$1,057, while the rate for attorneys with 11-19 years of experience (such as Ms. Lauby) is \$878, and the rate for attorneys with 8-10 years of experience is \$777. 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:

⁴ Includes an estimated 30 hours of additional work preparing for and attending the hearing, as well as anticipated work to be performed after the final approval hearing with counsel, administrator, employees, and the court.

(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 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.)

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 a Litigation Expenses Payment of not more than \$20,000. (Settlement Agreement ¶ 3.2.2). However, Class Counsel’s actual costs through the final approval hearing are estimated to be \$15,330.63. (Mankin Decl. ¶ 29.) Since Class Counsel’s actual costs were less than the amount allocated, the saving will be placed in the Net Settlement Amount. These costs include mediation fees, filing fees, CourtCall charges, and

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 court filing fees, and process server fees.

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

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

13 Under the Settlement, Defendant agreed to pay a Service Award in the amount of
14 \$7,500 to Ms. Calderon in recognition of her contribution as the Class Representative. Ms.
15 Calderon came forward and undertook significant risk, including the risk of being blackballed
16 in the industry and the risk that she could have been liable for Defendants’ costs if she lost.
17 This factor is a significant one for a wage earner, and the potential risk is very real. (*See*
18 *Whiteway v. FedEx Kinkos Office & Print Svcs., Inc.* (N.D. Cal. Dec. 17, 2007) No. C 05-2320
19 SBA, 2007 WL 4531783, at *3 (“the few courts to consider this ‘class representatives’
20 dilemma’ have not found it inequitable to assess costs upon the lead or named plaintiff in a
21 class action.”).)

22 Ms. Calderon also committed a significant number of hours to assist with the
23 litigation/settlement processes of this case. Finally, she entered into a general release of all
24 claims against Defendant, whereas the Class Members only released the claims alleged. The
25 requested Service Payment is reasonable, particularly in light of the substantial benefits
26 Plaintiff generated for the Class Members, the risks she undertook, and in exchange for
27 executing a general release against Defendant while giving up the right to pursue separate
28 individual claims. (See Plaintiff’s Declaration ¶¶ 6-10.)

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

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

5 **A. Settlement Administration Costs**

6 The parties agreed that the Administrator, Phoenix Settlement Administrators, would be
7 compensated for services performed. The Administrator's flat fee is \$8,500.00, which
8 included considerable work performed by the administrator in resolving the data issues. (Isias
9 Decl., ¶ 15; Exhibit B thereto.)

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

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

14 **C. Uncashed Checks**

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

19 **D. Final Report**

20 Defendant's payment is due 14 days after the Effective Date. The Administrator then
21 has 10 days thereafter process the funds and issue checks to the Class Members, who will then
22 have 180 days to cash their checks. Accordingly, the Parties project that the check cashing
23 deadline will occur within 8 months after Final Approval (assuming there are no objections
24 submitted before the Response Deadline). As required by the LA Model Settlement
25 Agreement at ¶ 8.8.6, "at least 15 days before any deadline set by the Court, the Administrator
26 will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable
27 for filing in Court attesting to its disbursement of all payments required under this Agreement."
28

1 The Parties propose submitting a final report in the form of a declaration from the
2 Administrator (setting forth the money that was actually paid to the Participating Class
3 Members, Aggrieved Employees and potentially the unclaimed funds) approximately 9 months
4 after the Final Approval hearing date (i.e., approximately November 2024).

5 **E. Submission to the LWDA**

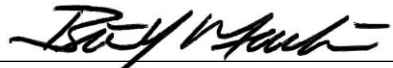
6 As set forth in the Mankin Declaration at ¶ 29, the Settlement Agreement and this
7 motion are concurrently being submitted to the LWDA in accordance with Labor Code §
8 2699(1)(2). The LWDA has not commented on the Settlement to date.

9 **IX. CONCLUSION**

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

12 Dated: December 4, 2023

LAUBY, MANKIN & LAUBY LLP

13
14 BY: 
15 Brian J. Mankin, Esq.
16 Attorneys for Plaintiff and the Class
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I, Tracie Chiarito, declare I am a citizen of the United States of America and am employed in Riverside, California; I am over the age of 18 years and am not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, California 92504. On December 4, 2023, I served the within **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; DECLARATIONS IN SUPPORT THEREOF; AND [PROPOSED] FINAL ORDER AND JUDGMENT** in said action by electronic filing service Case Home Page website to the parties on the service list maintained on the Case Home Page website for this case pursuant to the Court Order establishing the case website and authorizing service of documents.

Executed on December 4, 2023, at Riverside, California.

Tracie Chiarito, Declarant

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