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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

SALVADOR RAMOS, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

WHITE LINE SYSTEMS, LLC, a Texas
Limited Liability Company, DRIVEN 2
DRIVE LEASING, LLC, a Texas Limited
Liability Company, and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVSB2216314

*[Assigned to the Hon. Jessica Morgan, Dept.
S26, for all purposes]*

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

Hearing:

Date: August 22, 2024

Time: 8:30 a.m.

Dept.: 26

Complaint Filed: July 27, 2022

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 22, 2024, at 8:30 a.m., or as soon thereafter as
this matter may be heard by the Honorable Jessica Morgan in Department S26 of the San
Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA
92415, Plaintiff Salvador Ramos, individually and on behalf of all others similarly situated, will
move this Court for an Order granting final approval of the class action settlement between

1 Plaintiff and Defendants White Line Systems, LLC, and Driven 2 Drive Leasing, LLC, which
2 was preliminarily approved by the Court. This Motion seeks final approval and entry of
3 judgment of a \$825,000 settlement on behalf of the Class Members, and is unopposed by
4 Defendants.

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

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

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

24 Dated: July 29, 2024

LAUBY, MANKIN & LAUBY LLP

25
26 BY:



Brian J. Mankin, Esq.

Attorneys for Plaintiffs 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 Salvador Ramos
4 respectfully requests that this Court grant final approval of the Class and Representative Action
5 Settlement Agreement and Release of Claims (“Settlement Agreement” or “S.A.”), and enter the
6 proposed order and final judgment in this matter. This Motion is supported and unopposed by
7 Defendants White Line Systems, LLC, and Driven 2 Drive Leasing, LLC.

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

- 10 • After considerable work, discovery and mediation, the Parties reached a \$825,000
11 settlement with the assistance of an experienced mediator, which is tailored to a limited release
12 of the claims alleged on behalf of 512 Class Members;
- 13 • The Class Members were deemed to participate in the Settlement, and were not
14 required to submit a Claim Form to receive funds;
- 15 • There is no reversion to Defendants;
- 16 • There were zero objections and zero opt-outs to the Settlement, meaning 100% of
17 the Class is participating in the Settlement.

18 In accordance with the analysis and law set forth herein as well the preliminary approval
19 motion, the Settlement should be approved and judgment entered based on the determination that
20 the Settlement is fair, reasonable, adequate, and in the best interests of the Class. (Declaration of
21 Class Counsel, Brian J. Mankin; ¶¶ 14, 34 (“Mankin Decl.”).)

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

23 The settlement covers all current and former truck drivers who were employed by
24 Defendants in California at any time during the Class Period of July 27, 2018 through March 4,
25 2023. The primary claims, which Defendants dispute and deny, involved allegations that the
26 Class Members did not receive all wages owed, did not receive accurate itemized wage
27 statements, were not reimbursed for expenses, as well as claims for waiting time penalties and
28 PAGA penalties.

1 The Settlement includes 512 Participating Class Members. The following is a
2 breakdown reflecting how the funds are allocated under the Settlement Agreement (Declaration
3 of Administrator, Nick Castro (“Castro Decl.”), ¶ 13):

Gross Settlement Amount	\$ 825,000.00
Attorneys’ Fees (1/3)	\$ 275,000.00
Litigation Costs	\$ 12,235.37
Administrator Costs	\$ 8,350.00
PAGA Payment	\$ 50,000.00
Class Representative Service Award	\$ 7,500.00
Net Settlement Amount	\$ 471,914.63

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9 The Participating Class Members were deemed to participate and did not need to submit a
10 Claim Form to receive payment. Each Participating Class Member will receive a pro rata share
11 of the Net Settlement Amount according to the percentage of Workweeks worked during the
12 Class Period, such that the amount actually distributed to Participating Class Members will equal
13 100% of the Net Settlement Amount.

14 Assuming all of the amounts in the Settlement are approved by the Court, the *average*
15 Individual Class Payment is estimated to be \$921.71, and the *highest* individual settlement
16 payment is approximately \$4,392.31. (Castro Decl. ¶ 13).

17 In addition, 319 Aggrieved Employees will each receive an Individual PAGA Payment
18 based on their share of the \$12,500 PAGA Payment (25% of the total \$50,000 PAGA allocation),
19 calculated pro-rata based on the number of Pay Periods worked during the PAGA Period. (S.A.
20 ¶ 51(h)). The average payment to PAGA Members is \$39.18. (Castro Decl. ¶ 14).

21 The Parties agree that 20% of the Individual Class Payments will be allocated as wages
22 subject to withholding of all applicable local, state and federal taxes and the remaining 80% will
23 be allocated for interest and penalties (pursuant to, *e.g.*, California Labor Code §§ 203, 210, 226,
24 2699 etc.) from which no taxes will be withheld. (S.A. ¶ 51(d)). The Individual PAGA
25 Payments will be classified entirely as civil penalties and shall be reported as required on an IRS
26 Form 1099. (S.A. ¶¶ 51(d)). Defendants will separately pay its respective share of employer
27 payroll taxes on the sum allocated to wages. (S.A. ¶ 51(a)).
28

Pursuant to the terms of the Settlement Agreement, Defendants are required to fund the Settlement Amount, plus Defendants' share of payroll taxes owed on the Individual Class Payments, in two separate payments with the final payment on approximately December 10, 2024. (S.A. ¶ 73). Within 10 days after receiving the entire Settlement Amount, the Administrator shall issue payments to cover all court-approved payments. (S.A. ¶ 74).

Class Members will have 180 days to cash the settlement check. If a Class Member fails to cash a check by the deadline, the Administrator shall issue unclaimed funds to the California State Controller in the name of the Class Member/PAGA Member (S.A. ¶ 75).

III. THE NOTICE PROCESS

A. Notice to the Class Members

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

Prior to mailing the Class Notice, the Settlement Administrator performed a National Change of Address search on all Class Members to determine if any had moved. (Castro Decl., ¶ 6). On March 18, 2024, the Class Notice was sent via first-class mail to 512 Class Members. (Castro Decl., ¶ 7). Initially, 52 Class Notices were returned as undeliverable, but the Settlement Administrator used advanced tracking methods to locate new addresses and remailed 33 Notices. Ultimately, 19 Class Notices were determined to be undelivered, resulting in a 96.3% success rate in mailing the Notice Packet. (Castro Decl., ¶ 8-10).

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.,

1 object or otherwise respond; and (7) an explanation of each Class Member’s right to participate
2 in the Settlement and receive payment accordingly. (See **Exhibit A** to the Castro Decl.)

3 **B. There are Zero Objections and Zero Opt-Outs Thus Far, Resulting In An**
4 **Impressive 100% of the Class Participating in the Settlement**

5 California law makes clear that the percentage of objectors and opt-outs is an important
6 factor in the Court’s consideration of a proposed class action settlement. (See *Dunk v. Ford*
7 *Motor Co.* (1186) 48 Cal.App.4th 1794 at 1802.) Indeed, the Ninth Circuit and other federal
8 courts recognize that in the final fairness analysis, the number or percentage of class members
9 who object to the settlement is a significant factor. (See *Mandujano v. Basic Vegetable Prods.,*
10 *Inc.*, (9th Cir. 1976) 541 F.2d 672, 677; *In re American Bank Note Holographics, Inc.* (SDNY
11 2001) 127 F.Supp.2d 418, 425 [“[i]t is well settled that the reaction of the class to the settlement
12 is perhaps the most significant factor to be weighed in considering its adequacy.”])

13 In this case, there are zero objections and zero opt-outs to the Settlement – meaning that
14 100% of the Class Members are currently participating in the Settlement. (Castro Decl., ¶ 11-
15 12).

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. 11869) 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 present here and 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.) And it was.
15 The proposed settlement here was the product of arm's-length negotiation before a highly
16 experienced and reputable class action mediator, which was finally consummated in the months
17 after 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 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 Defendants' defenses. Finally, Class Counsel synthesized and analyzed
9 information provided by Defendants 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., ¶¶ 14, 34;
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, Defendants deny liability, deny that any damages should be assessed, and
14 deny all of the value assessed by Plaintiff. Notwithstanding these arguments, the Settlement
15 commits Defendants to pay \$825,000 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 \$275,000.00 (one-third of
19 the Settlement Amount). This amount will be paid from the settlement amount. These fees are
20 warranted under the law and within the range of fees commonly awarded in similar cases.

21 As shown herein, the requested percentage of one-third of the settlement fund as payment
22 for attorneys’ fees should be granted for several reasons. First, one-third is the standard
23 benchmark in California for class action settlements. *See, e.g., Chavez v. Netflix, Inc.* (2008) 162
24 Cal.App.4th 43, 66 n. 11 (“Empirical studies show that, regardless whether the percentage
25 method or the lodestar method is used, fee awards in class actions average around one-third of
26 the recovery”). Second, the California Supreme Court upheld that the percentage of the fund
27 method survives in California class action cases. *See Laffitte v. Robert Half International, Inc.*
28 (2016) 1 Cal.5th 480. Third, the requested amount is eminently reasonable through the prism of

1 a lodestar cross-check. Accordingly, this request should receive final approval.

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

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

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

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

26 ///

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

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

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

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

8 In addition to the fact that a Class benefit was created with a \$825,000 non-reversionary
9 common fund settlement, the fairness of the requested fee award of 1/3 of the Settlement
10 Amount is supported by the high quality of work performed by Class Counsel and the positive
11 result obtained for the Class. This result occurred because Class Counsel diligently, efficiently,
12 and creatively pursued this case and reached a successful settlement for the benefit of the entire
13 Class. ***In fact, some Class Member will receive \$4,392.31 each, which is an excellent result.***
14 Moreover, the fact that the settlement was embraced and supported by the Class, as evidenced by
15 a 100% participation rate, demonstrates that Class Counsel obtained a favorable result for the
16 Class.

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

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

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

Members' due process rights were fulfilled.

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

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

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

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

Id. at 399-400.

Indeed, as Plaintiff's Counsel can attest, not all class/PAGA cases are successful. Many cases end with no fees or a greatly reduced fee that is far less than lodestar, often due to no fault

1 of counsel (i.e., bankruptcy, change in the law, consolidation or coordination or preemption,
2 being top filed, etc.). According to Mayer Brown LLP's study entitled, An Empirical Analysis
3 of Class Actions, cited in *Laguna v. Coverall North America, Inc.* (9th Cir. 2014) 753 F.3d 918,
4 found that only one-third of class actions are successful, compared to two-thirds that are defeated
5 and result in no payment to the class members.¹

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

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

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

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

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

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. ¶ 21).

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

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

1 willing to take on cases to help all Class Members – not just those employed by large
2 corporations.

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

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

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

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

19 Historically, California courts have approved multipliers of 1.5 to 4. *See Coalition for*
20 *Los Angeles County Planning v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 251
21 **(multiplier of 2+ approved)**; *Sternwest Corp v. Ash* (1986) 183 Cal.App.3d 74, 75. The
22 multiplier requested by Class Counsel below is within the range of multipliers found to be
23 appropriate by various federal and state courts in California. In *Sternwest Corp. v. Ash*, for
24

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

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

instance, the Court of Appeal remanded for a lodestar enhancement of “**two, three, four or otherwise.**” *Id.* at 76; *see also Wershba*, 91 Cal.App.4th at 255 (“**Multipliers can range from 2 to 4 or even higher**”); *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78, 83 (**affirming 2.34 multiplier**); *Coalition for Los Angeles County Planning in the Pub. Interest v. Board of Supervisors*, 76 Cal.App.3d 241, 251 (**affirming multiplier of approximately 2**); *Craft v. County of Los Angeles*, 2008 U.S. Dist. LEXIS 27526 (C.D. Cal. Apr. 1, 2008) (**applying 5.2 multiplier**); *See also Steinder v. Am. Broadcasting Co., Inc.* (9th Cir. 2007) 248 Fed. Appx. 780, 783 (**approving multiplier of 6.85** and citing cases with comparable or higher multipliers); *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 (finding no abuse of discretion in **awarding a multiplier of 3.65**). In *Torchia v. WW Grainger, Inc.* (E.D. Cal. 2014) 304 F.R.D. 256, 275-278, a federal magistrate in Fresno approved attorneys’ fees of \$522,500 **constituting a 3.57 multiplier** on class counsel’s total lodestar of \$153,856 in a wage and hour class action

The actual aggregated lodestar between the Plaintiff’s attorneys that worked on this case is approximately \$182,510. This results in a fair and reasonable 1.5 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> (23 Years)	\$775	106⁴	\$82,150
Misty Lauby <i>Handling Atty / Partner</i> (16 Years)	\$650	154.4	\$100,360
Grand Total for All Attorneys			\$182,510

(Mankin Decl. ¶ 26; Lauby Decl. ¶ 5).

⁴ Includes an estimated 15 hours of additional work preparing for and attending the hearing, as well as 15 hours in anticipated work to be performed after the final approval, particularly in light of the payment plan, as it will require considerable more work with counsel, administrator, and Class Members.

1 The hourly rates above are comparable to those of other attorneys with equal or similar
2 experience, if not somewhat lower (i.e., the Laffey Matrix at www.laffeymatrix.com indicates that
3 the benchmark rate for an 8–10-year attorney to be \$676/hour and a 11-19 year attorney at
4 \$764/hour, and a 20+ year attorney at \$919/hour). Moreover, the Wolters Kluwer Real Rate
5 Report (“Real Rate Report”), provides directly applicable information in this regard. The Real
6 Rate Report is based on an enormous and statistically significant compilation of data. For
7 instance, in 2017, the report was based on 25.8 million billing entries and 23.9 million hours
8 billed by over 112,100 individual timekeepers from 4,620 law firms, totaling \$9.02 billion in fees
9 billed. The Real Rate Report then compiles and analyzes this data to provide the hourly rates for
10 partners and associates in major metropolitan areas. In 2018, for the southern California area,
11 which is based on billing entries for 999 partners and 1,361 associates, the Real Rate Report
12 states that: (a) the median rate for partners in Los Angeles is \$695 and the upper quartile is \$995
13 per hour, and (b) the median rate for associates in Los Angeles is \$550 and the upper quartile is
14 \$721 (2018 Kluwer Real Rate Report, page 21). And, perhaps most importantly, the information
15 provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, or
16 reviews or other publications – instead, the Real Rate Report is based on the actual hours and
17 fees billed by law firms. (Mankin Decl., ¶ 25.)

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

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

28 ///

1 **VII. THE REQUESTED COSTS AND SERVICE AWARDS ARE REASONABLE**

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

3 The Settlement Agreement authorized litigation expenses up to \$20,000. However,
4 Class Counsel's actual costs through the final approval hearing are estimated to be \$12,235.37.
5 (Mankin Decl. ¶ 28.) Since Class Counsel's actual costs were less than the amount allocated,
6 the saving will be placed in the Net Settlement Amount. These costs include mediation fees,
7 filing fees, CourtCall charges, expert fees, court filing fees, and process server fees.

8 **B. The Requested Service Awards are Reasonable and Merit Approval**

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

19 Under the Settlement, Defendants agreed to pay a Service Award to Plaintiff Salvador
20 Ramos in the amount of \$7,500 in recognition of his contribution as the Class Representative
21 and the fact that he agreed to a general release of all claims. In addition, Plaintiff also
22 undertook significant risks, including the risk of being blackballed in the industry and the risk
23 that he could have been liable for Defendants' costs if he lost. This factor is a significant one
24 for a wage earner, and the potential risk is very real. (*See Whiteway v. FedEx Kinkos Office &*
25 *Print Svcs., Inc.* (N.D. Cal. Dec. 17, 2007) No. C 05-2320 SBA, 2007 WL 4531783, at *3 ("the
26 few courts to consider this 'class representatives' dilemma' have not found it inequitable to
27 assess costs upon the lead or named plaintiff in a class action."))
28

1 Plaintiff also committed a significant number of hours to assist with the
2 litigation/settlement processes of this case. Finally, he entered into a general release of all
3 claims against Defendants, whereas the Class Members only released the claims alleged. The
4 requested Service Payment is reasonable, particularly in light of the substantial benefits
5 Plaintiff generated for the Class Members, the risks he undertook, and in exchange for
6 executing a general release against Defendants while giving up the right to pursue separate
7 individual claims. (See Plaintiff's Declaration ¶¶ 3-9.)

8 The Notice sent to each Class Member detailed the proposed service award. No Class
9 Member has objected to the proposed payment to Plaintiff. Thus, Plaintiff's request for a
10 Service Award is both reasonable and appropriate, and should be approved.

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

12 **A. Settlement Administration Costs**

13 The parties agreed that the Administrator, ILYM Group, would be compensated for
14 services performed. The Administrator's flat fee is \$8,350.00. (Castro Decl., ¶ 15.)

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

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

19 **C. Uncashed Checks**

20 The Settlement Agreement provides that unclaimed funds will be submitted to the
21 California State Controller's Unclaimed Property Fund in the name of the Class Member or
22 PAGA Member, thereby leaving no "unpaid residue" subject to the requirements of California
23 Code of Civil Procedure Section 384, subd. (b). (S.A. ¶ 75).

24 **D. Final Report**

25 Defendants' final payment is due on approximately December 10, 2024. The
26 Administrator then has 10 days thereafter process the funds and issue checks to the Class
27 Members, who will then have 180 days to cash their checks. Accordingly, the Parties project
28 that the check cashing deadline will occur on approximately June 18, 2025. Thus, the Parties

1 propose submitting a final report in the form of a declaration from the Administrator
2 approximately July 18, 2025 and then holding a disbursement hearing thereafter at the Court's
3 convenience.

4 **E. Submission to the LWDA**

5 As set forth in the Mankin Declaration at ¶ 30, 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: July 29, 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 July 29, 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.

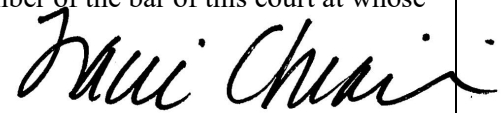
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service 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 July 29, 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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