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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

CARLOS FLORES, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

NIKKISO AMERICA, INC., a Delaware
Corporation; ACD, LLC, a California Limited
Liability Company; CRYOGENIC
INDUSTRIES, INC., a Delaware
Corporation; CRYOGENIC INDUSTRIES
SERVICE COMPANIES, LLC, a California
Limited Liability Company; CRYOQUIP,
LLC, a California Limited Liability
Company; COSMODYNE, LLC, a California
Limited Liability Company; and DOES 1
through 20, inclusive;

Defendants.

Case No.: CVRI2204626
*[Assigned to Hon. Harold Hopp, Dept 1, for
all purposes]*

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

Hearing

Date: October 28, 2024
Time: 8:30 a.m.
Dept: 1

Complaint filed: October 25, 2022

TO THE COURT AND PARTIES OF RECORD:

PLEASE TAKE NOTICE THAT on October 28, 2024, at 8:30 a.m., or as soon thereafter
as this matter may be heard by the Honorable Harold Hopp in Department 1 of the Riverside
County Superior Court located at 4050 Main Street, Riverside, CA 92501, Plaintiff Carlos Flores

1 respectfully moves this Court for an Order granting final approval of the class action settlement
2 between Plaintiff and Defendants Nikkiso America, Inc., ACD, LLC, Cryogenic Industries, Inc.,
3 Cryogenic Industries Service Companies, LLC, Cryoquip, LLC, Cosmodyne, LLC, and
4 Integrated Cryogenic Solutions, LLC (collectively, “Defendants”), which was preliminarily
5 approved by the Court. This Motion, which is supported and unopposed by Defendants, seeks
6 final approval and entry of judgment of a \$460,000.00 settlement on behalf of 325 Participating
7 Class Members.

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

- 11 1. Finally certifying the Class, as defined in the Settlement Agreement and the
12 Court’s Order Granting Preliminary Approval of the Settlement;
 - 13 2. Finally appointing Plaintiff as Class Representative for purposes of settlement;
 - 14 3. Finally appointing Brian Mankin and Peter Carlson of Lauby Mankin Lauby LLP
15 as Class Counsel for purposes of settlement;
 - 16 4. Finding that the Class Notice Packet was properly provided to the Class in
17 accordance with the Court’s Order granting Preliminary Approval;
 - 18 5. Finally approving the settlement as fair, adequate, and reasonable, based upon the
19 terms set forth in the Settlement Agreement;
 - 20 6. Binding Participating Class Members, Aggrieved Employees, Plaintiff and the
21 State of California to the terms of the Settlement Agreement, including the Released Class
22 Claims and PAGA Released Claims specified therein; and
 - 23 7. Retaining jurisdiction to enforce the Settlement Agreement.
- 24
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1 This Motion will be based upon this notice; the attached memorandum of points and
2 authorities; the Declarations of the Settlement Administrator (Mayra Gonzalez of Phoenix
3 Settlement Administrators), and Class Counsel (Brian Mankin and Peter Carlson) filed
4 concurrently herewith; the records and files in this action; and any other further evidence or
5 argument that the Court may receive at or before the hearing.

6 Dated: October 4, 2024

LAUBY, MANKIN & LAUBY LLP

7
8 BY:



Brian J. Mankin, Esq.
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 Carlos Flores
4 respectfully requests that this Court grant final approval of the Class and PAGA Settlement
5 Agreement and Release of Claims (the “Settlement Agreement” or “S.A.”), which is supported
6 and unopposed by Defendants, and enter the proposed order and final judgment in this matter.

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

- 9 • After considerable work, the Parties reached a \$460,000 settlement on behalf of
10 325 Class Members with the assistance of an experienced class action mediator;
11 • The Class Members were deemed to participate in the Settlement, and were not
12 required to submit a Claim Form to receive funds;
13 • There is no reversion to Defendants;
14 • There were no valid objections¹ and no opt-outs to the Settlement, meaning 100%
15 of the Class is participating in the Settlement;
16 • The Class Members will receive a maximum payment of \$2,737.18 and an
17 average of \$753.10, although each Class Member’s Individual Class Payment will
18 be allocated pro rata based on the percentage of weeks worked.

19 In accordance with the analysis and law set forth herein, the Settlement should be
20 approved, and judgment entered based on the determination that the Settlement is fair,
21 reasonable, adequate, and in the best interests of the Class. (Declaration of Class Counsel, Brian
22 J. Mankin [“Mankin Decl.”] ¶¶ 13, 34).

23 **II. SUMMARY OF THE SETTLEMENT**

24 Defendants manufacture systems and products for the liquid gas industry. During
25 litigation, Defendants and their counsel provided information showing that the joint claims
26 against all entities under the “corporate umbrella” of Nikkiso America must end on December

27 _____
28 ¹ The Administrator received a blank objection and a blank dispute form from the same Class Member. The
Administrator sent a letter to the individual and requested that he/she clarify their response, but there was no
response from the individual. The blank dispute and objection forms are attached as Exhibits B and C to the
Administrator’s declaration.

31, 2019, because, after that date, Defendants completely separated each entity from one another, both in policies and practices. Thus, the Parties mediated and settled claims on behalf of two distinct classes of employees, the ACD Class and Cryogenic Class, which are further defined as follows:

ACD Class: All current and former nonexempt (hourly paid) employees employed by Defendant ACD, LLC (which also does business in California as ACD and Nikkiso ACD) in California during the ACD Class Period of January 1, 2020, through January 16, 2024. (S.A. ¶¶ 2-4).

Cryogenic Class: All current and former nonexempt (hourly paid) employees employed by Defendants Nikkiso America, Inc., ACD, LLC, Cryogenic Industries, Inc., Cryogenic Industries Service Companies, LLC, Cryoquip, LLC, Cosmodyne, LLC, and Integrated Cryogenic Solutions, LLC in California during the Cryogenic Class Period of October 25, 2018, through December 31, 2019. (S.A. ¶¶ 2-4).

The primary claims (which Defendants vehemently disputed) involved allegations that Defendants failed to pay the Class all wages owed, failed to provide compliant meal and rest breaks, as well as wage statement violations, waiting time penalties, and PAGA penalties arising from the same underlying conduct.

The Settlement includes 325 Participating Class Members. The following is a breakdown of how the funds are allocated under the Settlement Agreement (Gonzalez Decl. ¶ 11):

	Total Amount
<i>Gross Settlement Amount</i>	\$ 460,000.00
Attorneys' Fees (1/3)	\$ 153,333.33
Litigation Costs	\$ 22,910.05
Administrator Costs	\$ 9,000.00
PAGA Penalties	\$ 30,000.00
<i>Net Settlement Amount</i>	\$ 244,756.62

The Participating Class Members were deemed to participate and did not need to submit a Claim Form to receive payment. (S.A. ¶ 31). Each Participating Class Member will receive an Individual Class Payment which will be calculated and apportioned from the Net Settlement Amount based on the number of Weeks Worked by each Class Member in both classes during the Combined Class Period. (S.A. ¶ 54(c)).

1 Assuming all of the amounts in the Settlement are approved by the Court, the highest
2 payment to Participating Class Members is estimated to be \$2,737.18, the average payment is
3 estimated to be \$753.10 and the lowest is \$10.06 for a short term employee who only worked
4 one week during the Class Period. (Gonzalez Decl. ¶ 12).

5 In addition, the 91 Aggrieved Employees will share in the \$7,500 PAGA Payment based
6 on Weeks Worked, who will receive \$82.42 each on average. (Gonzalez Decl. ¶ 13).

7 The Individual Class Payments to Participating Class Members will be allocated as
8 follows: one-third (33.333%) will be allocated as wages subject to withholding of all applicable
9 local, state and federal taxes; and two-thirds (66.667%) will be allocated for interest and
10 statutory penalties (pursuant to, e.g., California Labor Code sections 203, 210, 226) from which
11 no taxes will be withheld. The Settlement Administrator will issue to each Participating Class
12 Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the
13 wage allocation and a Form 1099 with respect to the penalties and interest allocations. (S.A. ¶
14 54(d)). Payments to Aggrieved Employees will be treated as civil penalties and paid on a Form
15 1099.

16 The Settlement Agreement provides that Defendants shall fund the Settlement Amount
17 within 15 days of the Effective Date, which is anticipated to be the date the Court enters an order
18 granting Final Approval. The Settlement Administrator is then required to issue payments within
19 10 calendar days of receipt of the payment. (S.A. ¶ 76-77). Class Members will have 180 days
20 to cash the settlement check. If a Class Member fails to cash a check by the deadline, the
21 Administrator shall issue unclaimed funds to the California State Controller in the name of the
22 Participating Class Member/Aggrieved Employee. (S.A. ¶ 78).

23 **III. THE NOTICE PROCESS**

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

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

1 Prior to mailing the Notice Packet, the Settlement Administrator performed a National
2 Change of Address search on all Class Members to determine if any had moved. (*Id.* at ¶ 4).
3 Then, on July 26, 2024, the Notice Packet was sent via first-class mail to the 325 Class Members
4 to advise each about the suit and settlement. Initially 10 Notice Packets were returned as
5 undeliverable, but the Administrator was able to use advanced tracking methods, including a skip
6 trace to locate updated addresses, and then remailed all 10 Notice Packets. Ultimately, there
7 were no undeliverable Notices, resulting in a **100%** success rate in mailing the Notice Packets.
8 (*Id.* at ¶ 6).

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

18 **B. THERE WERE NO VALID OBJECTIONS AND NO OPT-OUTS, RESULTING IN AN**
19 **IMPRESSIVE 100% CLASS PARTICIPATION IN THE SETTLEMENT**

20 California law makes clear that the percentage of objectors and opt-outs is an important
21 factor in the Court's consideration of a proposed class action settlement. *See Dunk v. Ford*
22 *Motor Co. (1996) 48 Cal.App.4th 1794, 1802.* Also, the Ninth Circuit recognize that in the final
23 fairness analysis, the number or percentage of class members who object to the settlement is a
24 significant factor. *See Mandujano v. Basic Vegetable Prods., Inc. (9th Cir. 1976) 541 F.2d 672,*
25 *677.*

26 Here, no valid objections were submitted. However, as noted above, one class member
27 submitted a blank objection form. The same individual also submitted a blank dispute form. The
28 Administrator sent a letter to the individual, requesting that they correct the deficiency, but the

individual failed to respond. (Gonzalez Decl. ¶¶ 8-9, and see Exhibits B and C for true and correct copies of the blank dispute and objection forms). There were no opt-outs to the Settlement, meaning that 100% of the Class Members elected to participate and receive a share of the Settlement. (Gonzalez Decl. ¶ 7).

In light of this positive reaction to the Settlement and its overall terms, it is clear that the Settlement, which was the product of arm's-length negotiations, is fair and reasonable and the Parties therefore respectfully request that the Court grant final approval and enter the proposed judgment as requested. *See Dunk*, 48 Cal.App.4th at 1800-1802 (class action settlements should be approved if they are fair and reasonable, and a low percentage of objectors and opt-outs is evidence of an agreement's fairness).

IV. EVALUATION OF THE SETTLEMENT

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

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

Fairness is presumed when: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; (4) the percentage of objectors and

1 opt outs is small, and (5) the range of reasonableness of the settlement fund to a possible
2 recovery in light of all attendant risks of litigation.” *Dunk, supra*, 48 Cal.App.4th at 1802. All
3 five of these factors are discussed in detail below.

4 **A. THE SETTLEMENT WAS REACHED THROUGH INFORMED ARMS-LENGTH**
5 **NEGOTIATION**

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

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

16 As the Settlement Agreement itself reveals, the Settlement is designed to fairly and
17 adequately compensate all Class Members. And, pursuant to California Rules of Court Rule
18 3.769 (b), the parties have disclosed the agreed upon and proposed attorney fee award, which is
19 well within the range of reasonableness for matters of this nature.

20 **B. PLAINTIFF’S INVESTIGATION WAS SUFFICIENT**

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

1 during various time periods, and prepared comprehensive damages calculations regarding the
2 claims at issue.

3 **C. CLASS COUNSEL ARE EXPERIENCED IN SIMILAR LITIGATION AND ENDORSE THE**
4 **SETTLEMENT**

5 Class Counsel are experienced in this type of litigation, and they have (and hereby do)
6 represent that this Settlement is fair and reasonable. (Mankin Decl. ¶¶ 13, 34); *see 7-Eleven*
7 *Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152 (Final
8 approval of settlement affirmed where counsel were all experienced litigators with class-action
9 experience and had recommended settlement based on the negotiated terms).

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

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

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

25
26 Of course, a settlement is not judged against what might have been recovered had a
27 plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought
28 to be fair and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 246, 250

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

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

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

15 For their efforts in creating a common fund for the benefit of the class, the Settlement
16 Agreement provided that Class Counsel seek reasonable fees of one-third of the Settlement
17 Amount, which is \$153,333.33. These fees are warranted under the law and within the range of
18 fees commonly awarded in similar cases.

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

28 ///

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

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

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

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

25 ***1. The Attorneys’ Fees Requested Here Fall Within the Reasonable Range***
26 ***Awarded in Cases Under the Established Common Fund Method***

27 The California Supreme Court approved trial courts’ usage of the common fund method
28 of awarding attorneys’ fees in wage and hour class actions, like this one, and upheld a fee

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

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

1 **2. *The High Quality of Work and Excellent Result Support the Award***

2 In addition to the fact that a Class benefit was created with a non-reversionary common
3 fund settlement, the fairness of the requested fee award of 1/3 of the Settlement Amount is
4 supported by the high quality of work performed by Class Counsel and the positive result
5 obtained for the Class in spite of the risks of ongoing litigation. This result occurred because
6 Class Counsel diligently, efficiently, and creatively pursued this case and reached a settlement
7 for the benefit of the entire Class. The fact that the settlement was embraced and supported by
8 the Class, as evidenced by a 100% participation rate, demonstrates that Class Counsel obtained a
9 favorable result for the Class.

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

11 Rule 3.769 of the California Rules of Court requires that the Class Members be given
12 notice of any agreement regarding an application for attorneys' fees. Here, the Notice
13 preliminarily approved by the Court and distributed to the Class Members apprised them that
14 Class Counsel will ask for fees of one-third of the Gross Settlement Amount. (Gonzalez Decl.,
15 Exh. A.)

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

24 **4. *The Contingent Nature of Class Counsel's Representation of Plaintiffs***
25 ***and the Class Further Supports the 1/3 Fee Award***

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

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

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

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

24 *Id.* at 399-400.

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

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

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

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

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

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

(**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 \$550,000 **constituting a 3.57 multiplier** on class counsel's total lodestar of \$153,856 in a wage and hour class action.

However, in this case, the actual aggregated lodestar between the Plaintiff's attorneys that worked on this case is approximately \$161,940, which results in a negative multiplier, as summarized in the following table:

Attorney/Timekeeper	Rate	Hours	Fee
Brian J. Mankin <i>Trial Counsel / Partner</i> (23 Years)	\$775	86⁴	\$66,650
Peter Carlson <i>Senior Associate</i> (10 Years)	\$650	146.6	\$95,290
Grand Total for All Attorneys			\$161,940

(Mankin Decl. ¶ 26; Carlson Decl. ¶ 5, 9).

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

Moreover, the Wolters Kluwer 2023 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, comprising millions of billing entries from a hundred thousand individual timekeepers who worked at thousands of law firms. The Real Rate Report then compiles and analyzes this data to provide the hourly rates for partners and associates in

⁴ Includes an estimated 15 hours of additional work preparing for and attending the hearing, as well as 20 hours in anticipated work to be performed after the final approval, particularly in light of the payment plan, as it will require considerable more work with counsel, administrator, and Class Members.

1 major metropolitan areas. For the southern California area: (a) the rate for partners in Los
2 Angeles is between \$840 and \$1,159 per hour for the middle and upper quartiles, and (b) the
3 rates for associates with seven or more years of experience, the median rate is \$674 per hour, and
4 the upper quartile rate is \$888 per hour. And, perhaps most importantly, the information
5 provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, or
6 reviews or other publications – instead, the Real Rate Report is based on the actual hours and
7 fees billed by law firms, which makes it “a much better reflection of true market rates than self-
8 reported rates in all practice areas.” *Brown v. CVS Pharmacy, Inc.* (C.D. Cal. Apr. 24, 2017)
9 2017 U.S. Dist. LEXIS 182309, at *21; *PLCM Group*, 22 Cal.4th at 1085 (holding that rates
10 should be premised upon precisely this form of independent, “objective” rate data that reflects
11 “fair market” rates actually billed to clients “in the community for similar work”). (Mankin
12 Decl., ¶ 25.)

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

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

23 **VI. THE REQUESTED COSTS ARE REASONABLE AND NO SERVICE AWARD IS**
24 **REQUESTED**

25 **A. THE REQUESTED COSTS ARE REASONABLE AND MERIT APPROVAL**

26 The Settlement Agreement authorized litigation costs of up to \$25,000. (S.A. ¶ 54(f)).
27 Class Counsel’s actual costs through the final approval hearing are estimated to be \$22,910.05.
28 (Mankin Decl. ¶ 28, and Exhibit “C” thereto). These costs include mediation fees, filing fees,

expert charges, CourtCall charges, and process server fees.

B. A SERVICE AWARD IS NOT REQUESTED

In light of Plaintiff's separate individual settlement relating to separate discrimination type claims, Plaintiff is not requesting a service award. However, Plaintiff submitted a declaration setting forth his duties and qualifications to serve as a Class Representative at the time of Preliminary Approval.

VII. OTHER MATTERS FOR FINAL APPROVAL

A. SETTLEMENT ADMINISTRATION COSTS

The Administrator, Phoenix Settlement Administrators, agreed to administer the settlement for a flat-fee of \$9,000. (Gonzalez Decl. ¶ 15-19). This amount was fully disclosed to the Class Members in the Class Notice, and no Class Members objected to it. Phoenix Settlement Administrator's declaration also fully complies with the CMO in regards to the fixed fee and other work to be performed. As such, the Parties request that the Administrator's fee request be approved.

B. UNCASHED CHECKS

The Settlement Agreement provides that if checks are not cashed within the 180 day check cashing period, then the uncashed funds will be issued to the California State Controller's Office in the name of the Class Member and/or Aggrieved Employee.

C. FINAL REPORT

Defendants are required issue payment to the Administrator within 15 days of the Effective Date, which is expected to occur on the day that Final Approval is granted. The Administrator will then have 10 days to issue payment to the Class Members, who will then have 180 days to cash their checks. Thus, the Parties propose submitting a declaration from the Administrator setting forth the money that was actually paid to the Class Members and Aggrieved Employees, as well as the value of the uncashed checks that will be paid to the State Controller (with a projected date of payment of the uncashed check fund) on approximately June 20, 2025. Thereafter, the Parties and Court can hold a disbursement hearing at the Court's convenience to discuss the status of payments, including the status of forwarding any

1 cashed checks to the State Controller.

2 **D. SUBMISSION TO THE LWDA**

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

5 **VIII. CONCLUSION**

6 Plaintiff respectfully submit that the Settlement is fair, adequate, and reasonable, and
7 merits approval. This motion is unopposed by Defendant.

8 Dated: October 4, 2024

LAUBY, MANKIN & LAUBY LLP

9
10 BY:



11 Brian J. Mankin, Esq.
12 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, CA 92504.

On October 4, 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 October 4, 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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