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

EMILIO ROSAS, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

FURNITURE AVE, INC., a California
Corporation; FURNITURE AVE CITY, a
California Corporation; FURNITURE CITY
WEST, a California Corporation; FARIS
ESCHEIK, an individual; FAWZI SAED, an
individual; OMAR RAHMAN, an individual;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: 30-2022-01284958-CU-OE-CXC
*[Assigned to Hon. Randall J. Sherman, Dept
CX105, for all purposes]*

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

Hearing

Date: January 17, 2025

Time: 10:00 a.m.

Dept: CX105

Complaint filed: October 7, 2022

1 TO THE HONORABLE COURT AND TO ALL PARTIES AND COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE THAT on January 17, 2025, at 10:00 a.m., or as soon
3 thereafter as this matter may be heard by the Honorable Randall J. Sherman in Department
4 CX105 of the Orange County Superior Court located at located at 751 W. Santa Ana Blvd.,
5 Santa Ana, CA 92701, Plaintiff Emilio Rosas (“Plaintiff” or “Class Representative”) will
6 respectfully move this Court for an Order granting final approval of the class action settlement
7 between Plaintiff and Defendants Furniture Ave, Inc., Furniture Ave City, Furniture City West,
8 Faris Escheik, Fawzi Saed, and Omar Rahman (“Defendants”), which was preliminarily
9 approved on August 30, 2024. This Motion, which is supported and unopposed by Defendant,
10 seeks final approval and entry of judgment of a \$408,000 settlement on behalf of the Class
11 Members.

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

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

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

19 3. Finally appointing Plaintiff’s Counsel as Class Counsel for purposes of
20 settlement;

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

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

25 6. Binding Participating Class Members and Aggrieved Employees to the terms of
26 the Settlement Agreement, including the Released Class Claims and PAGA Released Claims
27 specified therein; and

28 7. Retaining jurisdiction to enforce the Settlement Agreement.

1 This Motion will be based upon this notice; the attached memorandum of points and
2 authorities; the Declarations of the Administrator (Jarrod Salinas of Phoenix Settlement
3 Administrators), Class Counsel (Brian Mankin and Misty Lauby), and Plaintiff filed concurrently
4 herewith; the records and files in this action; and any other further evidence or argument that the
5 Court may receive at or before the hearing.

6 Dated: December 23, 2024

LAUBY, MANKIN & LAUBY LLP

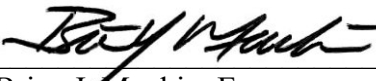
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8 BY: 
9 Brian J. Mankin, Esq.
10 Attorneys for Plaintiff and the Class
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I. SUMMARY OF ARGUMENT AND ESSENTIAL POINTS

Pursuant to California Rules of Court, Rule 3.769 (d) and (e), Plaintiff Emilio Rosas (“Plaintiff” or “Class Representative”) respectfully requests that this Court grant final approval of the Class Action and PAGA Representative Action Settlement Agreement and Release of Claims (“Settlement Agreement” or “S.A.”) on behalf of all Class Members, which includes all current and former nonexempt employees employed by Defendants Furniture Ave, Inc., Furniture Ave City, Furniture City West in California during the Class Period of October 7, 2018, through January 8, 2024. The Settlement is supported and unopposed by Defendants Furniture Ave, Inc., Furniture Ave City and Furniture City West, and their owners, Faris Escheik, Fawzi Saed, and Omar Rahman (collectively, “Defendants”).

- After considerable written discovery and then a robust exchange of information for mediation, and arms-length negotiation brokered by an experienced mediator, the Parties reached a \$408,000 settlement tailored to a limited release of the claims alleged on behalf of Class Members;

- No reversion to Defendants;

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

II. PERTINENT BACKGROUND AND SETTLEMENT TERMS

Defendants own and operate furniture stores in Southern California that share common policies, practices and owners. Plaintiff and each of the Class Members worked at one or more of the store locations in Southern California. The primary claims, which Defendants disputed, involved allegations that Defendants failed to pay the Class Members for all wages owed, failed to provide compliant meal and rest breaks, issued inaccurate and incomplete wage statements, as well as waiting time penalties and PAGA penalties arising from the same underlying conduct.

The Settlement includes 198 Participating Class Members, and the following is a breakdown of how the funds are allocated under the Settlement Agreement (Declaration of Administrator, Jarrod Salinas [“Salinas Decl.”] ¶ 12.

	Total Amount
<i>Gross Settlement Amount</i>	\$ 408,000.00
Attorneys’ Fees (1/3)	\$ 136,000.00
Litigation Costs	\$ 8,544.98
Administrator Costs	\$ 11,000.00
PAGA Penalties	\$ 40,000.00
Class Representative’s Service Award	\$ 7,500.00
<i>Net Settlement Amount</i>	\$ 204,955.02

The Participating Class Members were deemed to participate and did not need to submit a Claim Form to receive payment. Each Participating Class Member will receive a pro rata share of the Net Settlement Amount according to the percentage of Weeks Worked during the Class Period, such that the amount actually distributed to Participating Class Members will equal 100% of the Net Settlement Amount. (S.A. ¶ 45(c)).

Assuming all amounts in the Settlement are approved by the Court, the average Individual Class Payment is estimated to be \$1,035.13, the *highest* individual settlement payment is approximately \$6,416.55, and the lowest is \$23.42 for a short-term employee who worked only one Work Week. There are a total of 8,752 Weeks Worked in the Class Period, resulting in a per Workweek value of approximately \$23.42. (Salinas Decl. ¶ 11, 13).

In addition, there are 143 Aggrieved Employees who will receive a share of the PAGA Penalties based on a pro-rata basis. Thus, the \$10,000 PAGA Penalties allocated to the

1 Aggrieved Employees will be divided and paid on a Weeks Worked basis with an average pay of
2 \$69.93 to each. (Salinas Decl. ¶ 13).

3 The Settlement provides that 25% of the Individual Class Payments will be allocated as
4 wages subject to withholding of all applicable local, state and federal taxes and the remaining
5 75% will be allocated for interest and penalties (pursuant to, *e.g.*, California Labor Code §§ 203,
6 210, 226, 2699 etc.) from which no taxes will be withheld. (S.A. ¶ 45(d)). The Individual
7 PAGA Payments will be classified entirely as civil penalties and shall be reported as required on
8 an IRS Form 1099. (S.A. ¶ 45(h)).

9 Defendants shall fund the Settlement Amount, plus Defendants' share of payroll taxes
10 owed on the Individual Class Payments, over the course of three payments in 2025 with the final
11 payment on December 8, 2025. (S.A. ¶ 67). Within 10 days after receiving each payment, the
12 Administrator shall issue a disbursement in one-third increments to fund all court-approved
13 payments. (S.A. ¶ 68). Class Members will have 180 calendar days to cash each check. For any
14 check is not cashed within the 180-day period after the first and/or second payment is mailed, the
15 Administrator will hold these funds in its account, and the Participating Class Member and/or
16 Aggrieved Employee may contact the Administrator to request that the first and/or second
17 payments be reissued at any time until 180 days after the third and final check is mailed. For any
18 and all checks that are not cashed within 180 days of the third and final payment, the checks will
19 be void and a stop-payment will be issued, and the Administrator shall issue the unclaimed funds
20 to the California State Controller's Office in the name of the Participating Class Member and
21 Aggrieved Employee. (S.A. ¶ 69).

22 **III. THE NOTICE PROCESS**

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

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

27 After the Administrator received the Class Data, it performed a National Change of
28 Address search on all Class Members to determine if any had moved. (*Id.* at ¶ 4). On October 4,

2024, the Notice Packets were sent via first-class mail to 198 Class Members. (*Id.* at ¶ 5). For any Notice Packet that was returned by the USPS as undeliverable and without a forwarding address, the Administrator performed an advanced address search (i.e. skip trace) to locate updated addresses and then promptly mailed the Notice Packets to those updated addresses. Ultimately, the Administrator reports that only 2 Notice Packets were undeliverable, resulting in a 99% success rate in mailing the Notice Packets. (*Id.* at ¶ 6-7).

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

B. THERE ARE NO OBJECTIONS AND NO OPT-OUTS TO THE SETTLEMENT

California law makes clear that the percentage of objectors and opt-outs is an important factor in the Court’s consideration of a proposed class action settlement. *See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. Indeed, the Ninth Circuit and other federal courts recognize that in the final fairness analysis, the number or percentage of class members who object to the settlement is a significant factor. *See Mandujano v. Basic Vegetable Prods., Inc.* (9th Cir. 1976) 541 F.2d 672, 677; *In re American Bank Note Holographics, Inc.* (SDNY 2001) 127 F.Supp.2d 418, 425 (“[i]t is well settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy.”).

Here, there were no objections, opt-outs and/or disputes as to the Weeks Worked credited, meaning that 100% of the Class Members have elected to participate and receive a share of the Settlement. (Salinas Decl. ¶¶ 8-10).

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

7 **IV. EVALUATION OF THE SETTLEMENT**

8 It is axiomatic that California law strongly favors and encourages settlements. *See*
9 *Stambaugh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236. This presumption in favor of
10 settlement applies with particular force in the context of class actions. *See Ferguson v. Lieff,*
11 *Cabraser, Heimann & Bernstein* (2003) 30 Cal.4th 1037 (Kennard, J., concurring and dissenting)
12 (“[p]ublic policy favoring settlement is especially weighty for class actions”); *Bell v. Am. Title*
13 *Ins. Co.* (1991) 226 Cal.App.3d 1589, 1607-1608 (affirming approval of a class settlement and
14 implicitly endorsing its citation of federal precedent for the notion that there is a “strong public
15 policy in favor of settlement of class actions”); *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976)
16 529 F.2d 943, 950 (“it hardly seems necessary to point out that there is an overriding public
17 interest in settling and quieting litigation. This is particularly true in class action suits”).

18 When entertaining a request for final approval of a class action settlement, a court's
19 fundamental consideration is whether the settlement is fair, adequate and reasonable. *See Dunk*,
20 48 Cal.App.4th at 1801, fn. 7 (noting that state courts look to federal authority concerning the
21 approval of class settlements); California Rules of Court, Rule 3.769 (g).

22 Fairness is presumed when: (1) the settlement is reached through arm's-length
23 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
24 intelligently; (3) counsel is experienced in similar litigation; (4) the percentage of objectors and
25 opt outs is small, and (5) the range of reasonableness of the settlement fund to a possible
26 recovery in light of all attendant risks of litigation.” *Dunk*, 48 Cal.App.4th at 1802. All five of
27 these factors are discussed in detail below.
28

1 **A. THE SETTLEMENT WAS REACHED THROUGH INFORMED ARMS-LENGTH**
2 **NEGOTIATION**

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

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

13 As the Settlement Agreement itself reveals, the Settlement is designed to fairly and
14 adequately compensate all Class Members. And, pursuant to California Rules of Court Rule
15 3.769(b), the parties have disclosed the agreed upon and proposed attorney fee award, which is
16 well within the range of reasonableness for matters of this nature.

17 **B. PLAINTIFF'S INVESTIGATION WAS SUFFICIENT**

18 As set forth at the time of preliminary approval, Class Counsel aggressively litigated this
19 matter and performed a comprehensive investigation into the facts and merits of the wage and
20 hour claims alleged. Notably, in preparation for mediation, the Parties informally exchanged
21 documents and information that allowed both sides to calculate the potential damages and
22 evaluate potential risk, including extensive policies and procedures pertaining to each claim
23 alleged, and statistics relating to the number of current and former employees, number of shifts,
24 pay periods and other things. In this regard, Defendant provided a sampling of timekeeping and
25 payroll records, which allowed both parties and their experts to thoroughly analyze each
26 potential claim. Additionally, during this process, Plaintiff's counsel analyzed, researched, and
27 investigated the potential issues, including matters related to the calculation of damages, trial,
28 and appellate issues and risks.

1 **C. CLASS COUNSEL ARE EXPERIENCED IN SIMILAR LITIGATION AND ENDORSE THE**
2 **SETTLEMENT**

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

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

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

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

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

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

8 **V. THE REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE**

9 For their efforts in creating a common fund for the benefit of the class, the Settlement
10 Agreement provided that Class Counsel seek reasonable fees of \$136,000.00, which is one-third
11 of the common fund Settlement Amount. These fees are warranted under the law and within the
12 range of fees commonly awarded in similar cases.

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

22 **A. PLAINTIFF IS ENTITLED TO RECOVER REASONABLE ATTORNEYS' FEES UNDER**
23 **THE LABOR CODE**

24 Plaintiff and the Class in this action are entitled to recover reasonable attorneys' fees,
25 expenses and costs under section 218.5 of the California Labor Code, which provides that, "[i]n
26 any action brought for the nonpayment of wages ... the Court shall award reasonable attorneys'
27 fees and costs to the prevailing party." In addition, Plaintiff and the Class are entitled to recover
28 reasonable attorneys' fees pursuant to section 1194.2 of the Labor Code, which provides that,

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

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

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

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

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

1 California Supreme Court also noted that trial courts have the discretion to award fees as a
2 percentage of the common fund, with or without the necessity to conduct a lodestar cross-check.
3 *Id.* (“...[Courts] ... retain the discretion to forgo a lodestar cross-check and use other means to
4 evaluate the reasonableness of a requested percentage fee.”).

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

22 **2. High Quality of Work and Excellent Result Obtained Support the Award**

23 In addition to the fact that a Class benefit was created with a non-reversionary common
24 fund settlement, the fairness of the requested fee award of 1/3 of the Settlement Amount is
25 supported by the high quality of work performed by Class Counsel and the positive result
26 obtained for the Class in spite of the risks of ongoing litigation. This result occurred because
27 Class Counsel diligently, efficiently, and creatively pursued this case and reached a settlement
28 for the benefit of the entire Class. The fact that the settlement was embraced and supported by

1 the Class, as evidenced by a 100% participation rate, demonstrates that Class Counsel obtained a
2 favorable result for the Class.

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

4 Rule 3.769 of the California Rules of Court requires that the Class Members be given
5 notice of any agreement regarding an application for attorneys' fees. Here, the Notice
6 preliminarily approved by the Court and distributed to the Class Members apprised them that
7 "Up to one-third of the Settlement Amount to Class Counsel for attorneys' fees (\$136,000.00)
8 and up to \$20,000 for their litigation expenses. To date, Class Counsel have worked and incurred
9 expenses on the Action without payment..." (Salinas Decl., Exh. A.)

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

18 **4. The Contingent Nature of the Representation Further Supports the Fee**
19 **Award of 1/3 of the Common Fund**

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

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

5 The market value of the services provided by plaintiffs' counsel in
6 a case of this magnitude must take into consideration that any
7 compensation has been deferred for up to four years from the time
8 an hourly fee attorney would begin collecting fees from his or her
9 client; that the demands of the present case substantially precluded
10 other work during that extended period, which makes the ultimate
11 risk of not obtaining fees all the greater (since the attorneys must use
12 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."

13 *Id.* at 399-400.

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

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

27
28

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

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

8 However, in this case, Class Counsel is seeking a negative multiplier. For all of these
9 reasons, the contingent nature of this case and the availability of a lodestar multiplier supports a
10 fee of one-third of the common fund and granting of fee request.

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

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

23 Historically, California courts have approved multipliers of 1.5 to 4. However, in this
24 case, Class Counsel has a ***negative multiplier***, as the actual aggregated lodestar between the
25

26 ² 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.

Plaintiff's attorneys that worked on this case is approximately \$158,955, 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	100.6³	\$77,965
Misty Lauby <i>Handling Attorney</i> (16 Years)	\$650	124.6	\$80,990
Grand Total for All Attorneys			\$158,955

(Mankin Decl. ¶ 26; Lauby Decl. ¶ 11).

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 major metropolitan areas. For the southern California area: (a) the rate for partners in Los Angeles is between \$840 and \$1,159 per hour for the middle and upper quartiles, and (b) the rates for associates with seven or more years of experience, the median rate is \$674 per hour, and the upper quartile rate is \$888 per hour. And, perhaps most importantly, the information provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, or

³ Includes an estimated 15 hours of additional work preparing for and attending the hearing (inclusive of finalizing and filing the motion, appearing at the hearing, addressing the Court's questions/concerns, submitting revised documents, responding to class members who are anxious to receive their check, and so on), as well as 20 hours in anticipated work to be performed after the final approval, working with counsel, administrator, and Class Members (which includes up to 1.5 years of case management relating to ensuring timely payment from Defendants, reviewing the calculations, checks are timely mailed, responding to class members questions about the timing of checks/missing checks/lost checks and remailings, working with the administrator regarding uncashed checks and remailings, assisting with the Administrator's declarations regarding payments and uncashed checks, potentially filing an amended judgment, appearing at the final disbursement hearing and/or submitting paperwork related thereto).

1 reviews or other publications – instead, the Real Rate Report is based on the actual hours and
2 fees billed by law firms, which makes it “a much better reflection of true market rates than self-
3 reported rates in all practice areas.” *Brown v. CVS Pharmacy, Inc.* (C.D. Cal. Apr. 24, 2017)
4 2017 U.S. Dist. LEXIS 182309, at *21; *PLCM Group*, 22 Cal.4th at 1085 (holding that rates
5 should be premised upon precisely this form of independent, “objective” rate data that reflects
6 “fair market” rates actually billed to clients “in the community for similar work”). (Mankin
7 Decl., ¶ 25.)

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

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

18 **VI. THE REQUESTED COSTS AND SERVICE AWARDS ARE REASONABLE**

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

20 Plaintiff’s Counsel requests reimbursement of their actual out-of-pocket expenses
21 incurred to prosecute this action. These expenses were incidental and necessary to the effective
22 representation of the employees. *See Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19.
23 Plaintiff’s Counsel are permitted to recover their litigation costs and expenses under the common
24 fund doctrine. *See Serrano III*, 20 Cal.3d at 35 (common fund doctrine permits recovery of fees
25 and costs from the fund); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1424 n.6
26 (costs are recoverable from the common fund “[o]f necessity, and for precisely the same reasons
27 discussed above with respect to the recovery of attorneys’ fees by . . . [Plaintiffs’] attorneys”).
28 Furthermore, Plaintiff’s Counsel are entitled to recover “those out-of-pocket expenses that would

1 normally be charged to a fee-paying client.” *Harris*, 24 F.3d at 19.

2 The Settlement Agreement authorized litigation costs of up to \$20,000. (S.A. ¶ 45(f)).
3 Class Counsel’s actual costs through the final approval hearing are estimated to be \$8,544.98.
4 (Mankin Decl. ¶ 29). These costs include mediation fees, filing fees, and other costs that include
5 Attorney Service charges, expert discovery fees, CourtCall charges, and process service fees.
6 (*Id.*) These costs are reasonable and uncontested, and should be approved, with the savings
7 placed in the Net Settlement Amount and paid to Participating Class Members.

8 **B. THE REQUESTED SERVICE AWARD IS 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 the named
12 plaintiff for service to the class and risks incurred during the course of the litigation. *See, e.g.*
13 *Bell v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding “service
14 payments” to named Plaintiff for their efforts in bringing class action); *Rodriguez v. West*
15 *Publishing* (9th Cir. 2009) 563 F.3d 948, 959 (stating that incentive awards are “intended to
16 compensate class representatives for work done on behalf of the class, to make up for financial
17 or reputational risk undertaken in bringing the action, and, sometimes, to recognize their
18 willingness to act as a private attorney general.”).

19 The Settlement Agreement provides an incentive award payment to Plaintiff of \$7,500.
20 This amount is reasonable given the average recovery that Class Members will receive, as well
21 as the time and effort Plaintiff devoted to this case, and the risk that accompanied the litigation.
22 His efforts included providing factual background for the Class and PAGA complaint;
23 providing documents and information about Defendant’s policies; participating in phone calls
24 to discuss litigation and settlement strategy; making himself available throughout the litigation
25 to assist with analyzing the claims and defenses; helping Class Counsel prepare for the
26 mediation; and reviewing the settlement documents. The Class Representative also assumed
27 significant risk in bringing this litigation – namely, had the case lost, he could have been
28 ordered to pay Defendant’s costs.

1 Plaintiff also committed a significant number of hours to assist with the
2 litigation/settlement processes of this case and entered into a general release of all claims
3 against Defendant. The requested Service Award is reasonable, particularly in light of the
4 substantial benefits Plaintiff generated for the Class Members, the risks he undertook, and in
5 exchange for executing a general release against Defendant while giving up the right to pursue
6 separate individual claims. (*See* Plaintiff Decl. for supporting information).

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

10 **VII. OTHER MATTERS FOR FINAL APPROVAL**

11 **A. SETTLEMENT ADMINISTRATION COSTS**

12 Phoenix Settlement Administrators agreed to administer the settlement for a flat (“not
13 to exceed”) fee of \$11,000. (Salinas Decl. ¶ 16). This amount was fully disclosed to the Class
14 Members in the Class Notice, and no Class Members objected to it. As such, the Parties
15 request that the Administrator’s fee request be approved.

16 **B. UNCASHED CHECKS**

17 The Settlement Agreement provides that uncashed checks (following a 180-day check
18 cashing period after the final payment is issued) will be submitted to the to the California State
19 Controller’s Office in the name of the Class Member and/or Aggrieved Employee.

20 **C. FINAL REPORT**

21 Defendants are required to issue the third and final payment to the Administrator by
22 December 8, 2025. The Administrator will then have 10 calendar days after Defendants’
23 deposit of the Settlement Amount into the Qualified Settlement Fund to issue payment to the
24 Class Members and Aggrieved Employees, who will then have 180 calendar days to cash their
25 final check. Thus, the deadline to cash checks should occur on about June 16, 2026. The
26 uncashed check funds will likely be sent to the State Controller by August 2027. Therefore,
27 the Parties propose submitting a declaration from the Administrator and holding a final
28 disbursement hearing in the latter part of 2027.

As set forth in the Mankin Declaration at ¶ 31, the settlement agreement and this entire motion are concurrently being submitted to the LWDA in accordance with Labor Code § 2699(1)(2).

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

LAUBY, MANKIN & LAUBY LLP

BY: 
 Brian J. Mankin, Esq.
 Attorneys for Plaintiff and the Class

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 December 23, 2024, I caused to be served the foregoing document(s) described as follows:

**NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND
PAGA REPRESENTATIVE 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 December 23, 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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