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Attorneys for Plaintiffs, and on behalf of others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

SAMUEL JOHNSON, individually, on a
representative basis, and on behalf of all
others similarly situated; and JAZMIN
VALERIO individually, on a representative
basis, and on behalf of all others similarly
situated;

Plaintiffs,

vs.

THE J.G WENTWORTH COMPANY, a
California Corporation; SETTLEMENT
FUNDING LLC, a California Corporation;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: 37-2022-00048277-CU-OE-CTL
*[Assigned to Hon. Katherine Bacal, Dept C-
69, for all purposes]*

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

Hearing:

Date: August 16, 2024

Time: 1:30 p.m.

Dept.: C-69

Complaint Filed: December 1, 2022

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on August 16, 2024, at 1:30 p.m., or as soon thereafter as
3 this matter may be heard by the Honorable Katherine Bacal in Department C-69 of the San
4 Diego County Superior Court, located at 330 W Broadway, San Diego, CA 92101, Plaintiffs
5 Samuel Johnson and Jazmin Valerio, individually and on behalf of all others similarly situated,
6 will move this Court for an Order granting final approval of the class action settlement between
7 Plaintiffs and Defendants The J.G. Wentworth Company and Settlement Funding, LLC. This
8 Motion seeks final approval and entry of judgment of a \$436,000.00 settlement on behalf of 71
9 Class Members, and is unopposed by Defendants.

10 Specifically, Plaintiffs will and hereby do move the Court to grant final approval of the
11 Class and PAGA Settlement Agreement and Release of Claims (“Settlement Agreement” or
12 “S.A.”), and enter the proposed order and final judgment filed concurrently herewith:

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

15 2. Finally appointing Plaintiffs as the Class Representatives for purposes of
16 settlement;

17 3. Finally appointing Brian Mankin and Misty Lauby as Class Counsel for purposes
18 of settlement;

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

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

23 6. Binding participating Class Members to the terms of the Settlement Agreement,
24 including the Release specified therein; and

25 7. Retaining jurisdiction to enforce the Settlement Agreement.
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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), Class Counsel (Brian Mankin and Misty Lauby) and Plaintiffs 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: July 25, 2024

LAUBY, MANKIN & LAUBY LLP

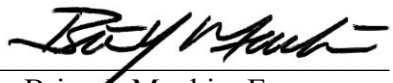
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8 BY: 
9 Brian J. Mankin, Esq.
10 Attorneys for Plaintiffs and the Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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

3 Pursuant to California Rules of Court, Rule 3.769(d) and (e), Plaintiffs Samuel Johnson
4 and Jazmin Valerio respectfully request that this Court grant final approval of the Class and
5 PAGA Settlement Agreement and Release of Claims (“Settlement Agreement” or “S.A.”), and
6 enter the proposed order and final judgment in this matter. This Motion is supported and
7 unopposed by The J.G. Wentworth Company and Settlement Funding, LLC (“Defendants”).

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

- 10 • After extensive work, discovery and mediation, the Parties reached a \$436,000
11 total settlement (which amount includes a credit in the amount of \$186,000 for Defendant’s prior
12 payment to 15 employees in the settlement class) with the assistance of an experienced mediator,
13 which is tailored to a limited release of the claims alleged on behalf of 71 Class Members;
- 14 • The Class Members were deemed to participate in the Settlement, and were not
15 required to submit a Claim Form to receive funds;
- 16 • There is no reversion to Defendants;
- 17 • There were zero objections and zero opt-outs to the Settlement, meaning 100% of
18 the Class is participating in the Settlement;

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

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

24 Plaintiffs and the Class Members include all current and former nonexempt employees
25 employed by Defendants The J.G. Wentworth Company and Settlement Funding, LLC
26 (“Defendants”) in California at any time from December 1, 2018, through December 4, 2023 (the
27 “Class Period”). As the Court will recall from the Preliminary Approval process, during the
28 course of litigation, Defendants engaged in direct settlement discussions with various employees

in an effort to resolve their unpaid wage claims prior to class certification and ultimately paid 15 employees a total sum of \$186,000 (the “Prior Payment”). Defendants did not require a release for these payments to these employees (who are referred to as the “Previously Paid Settlement Class Members”). As litigation continued, discovery was exchanged, and the parties prepared for class certification as to the remaining claims for these 15 individuals and all wage and hour claims of the 56 other employees, the Parties agreed to mediate with Glenn Lerman on July 11, 2023. At the conclusion of mediation, the Parties reached a comprehensive resolution of all claims and issues, whereby the mediator’s proposal called for Defendants to receive a credit for the \$186,000 Prior Payment, and pay an additional \$250,000 to settle the remaining claims of all Class Members, resulting in a Gross Combined Payment of \$436,000.

The Court granted preliminary approval and thereafter the Notice Process was very successful, as there were zero objections and zero opt-outs. The Parties now seek the Court’s final approval.

Below is a breakdown reflecting how the funds are allocated under the Settlement Agreement (Declaration of Administrator, Mayra Gonzalez (“Gonzalez Decl.”), ¶ 13):

<i>Gross Combined Amount</i>	\$ 436,000.00
Credit for the Prior Payment	\$ 186,000.00
Attorneys’ Fees (30%)	\$ 130,800.00
Litigation Costs	\$ 12,839.79
Administrator Costs	\$ 6,000.00
PAGA Penalties	\$ 25,000.00
Class Representative Service Awards	\$ 15,000.00
<i>Net Settlement Amount</i>	\$ 60,360.21

The 15 Previously Paid Settlement Class Members will each receive \$250 flat payment from the Net Settlement Amount for any remaining claims and for releasing the Released Class Claims. (S.A. ¶ 49(c)). The remaining \$56,610.21 will be paid to the 56 Class Members who did not receive a prior payment, and who were generally shorter tenured employees. Assuming all of the amounts in the Settlement are approved by the Court, the average Individual Class Payment is estimated to be \$1,010.90 and the highest Individual Class Payment is approximately \$4,455.83. (Gonzalez Decl. ¶ 11-12). However, the actual payment will be calculated on a pro-

1 rata basis according to the number of Weeks Worked by each Class Member during the Class
2 Period. (S.A. ¶ 49(h)).

3 In a nutshell, 100% of the Class fully supported the Settlement in light of there not being
4 any objections, opt-outs or workweek disputes. (Gonzalez Decl. ¶ 7-8).

5 Further, the Settlement provides that one-third will be allocated as wages subject to
6 withholding of all applicable local, state and federal taxes; and the remaining two-thirds will be
7 allocated for interest and penalties (pursuant to, e.g., California Labor Code sections 203, 210,
8 226, etc.) from which no taxes will be withheld. Additionally, the PAGA Penalties payable to
9 the Aggrieved Employees will be classified entirely as civil penalties and shall be reported as
10 required on an IRS Form 1099. Defendants will separately pay its share of employer payroll
11 taxes on the sum allocated to wages. (S.A. ¶ 49(i)).

12 The Effective Date will occur 60 days after final approval is granted (assuming no notice
13 is filed to appeal or vacate final approval and judgment, or otherwise challenge the settlement),
14 and then Defendants shall deposit the Settlement Amount within 15 days after the Effective
15 Date. Within 10 days of receipt of the Settlement Amount, the Settlement Administrator shall
16 issue payments to cover all court-approved payments. (S.A. ¶ 71-72).

17 Class Members and Aggrieved Employee will have 180 days to cash the settlement
18 check. If a Class Member and/or Aggrieved Employee fails to cash a check by the deadline, the
19 Settlement Administrator shall issue unclaimed funds to the California State Controller in the
20 name of the individual. (S.A. ¶ 73).

21 **III. THE NOTICE PROCESS**

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

23 Pursuant to the Court's Order and the Settlement Agreement, the Parties directed the
24 Settlement Administrator to review and update the Class Members' addresses, mail the Court-
25 approved Notice Packet, and process their responses.

26 Prior to mailing the Class Notice, the Settlement Administrator performed a National
27 Change of Address search on all Class Members to determine if any had moved. (Gonzalez
28 Decl., ¶ 4). On April 5, 2024, the Class Notice was initially sent via first-class mail to 71 Class

Members. (Gonzalez Decl., ¶ 5). Impressively, all Notices were determined to be delivered, resulting in a 100% success rate in mailing the Notice Packet. (Gonzalez Decl., ¶ 6).

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

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

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

In this case, there were zero objections and zero opt-outs -- meaning that 100% of the Class Members are participating in the Settlement, and there were zero Workweek disputes. (Gonzalez Decl., ¶ 7-9).

V. EVALUATION OF THE SETTLEMENT

It is axiomatic that California law strongly favors and encourages settlements. (See *Stambaugh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236.) This presumption in favor of settlement applies with particular force in the context of class actions. (See *Ferguson v. Lieff,*

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

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

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

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

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

26 Here, Plaintiffs and Class Counsel have diligently investigated the claims raised in this
27 litigation and, after taking into account the disputed factual and legal issues involved in this
28 action, the risks attending further prosecution, and the benefits to be received pursuant to the

1 compromise and settlement of the action as set forth in the Settlement, concluded that the
2 settlement terms are fair, reasonable, and in the best interest of the Class.

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

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

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

18 **C. Class Counsel Are Experienced in Similar Litigation and Endorse the**
19 **Settlement**

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

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

26 Plaintiffs' Motion for Preliminary Approval contained a comprehensive *Kullar* analysis
27 (which sufficiently provided the Court with "basic information about the nature and magnitude
28 of the claims in question and the basis for concluding that the consideration being paid for the

1 release of those claims represents a reasonable compromise.” (*Kullar v. Foot Locker Retail,*
2 *Inc.* (2008) 168 Cal.App.4th 116, 133.) Of course, a settlement is not judged against what
3 might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to
4 provide 100% of the damages sought to be fair and reasonable. (*Wershba v. Apple Computers,*
5 *Inc.* (2001) 91 Cal.App.4th 246, 250.) (“Compromise is inherent and necessary in the settlement
6 process ... even if the relief afforded by the proposed settlement is substantially narrower than it
7 would be if the suits were to be successfully litigated, this is no bar to a class settlement because
8 the public interest may indeed be served by a voluntary settlement in which each side gives
9 ground in the interest of avoiding litigation.”)

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

18 Of course, Defendants deny that any damages should be assessed and denies all of the
19 value assessed by Plaintiffs. Notwithstanding these arguments, the Settlement commits
20 Defendants to pay a total of \$436,000.00 to settle the litigation.

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

22 For their efforts in creating a common fund for the benefit of the Class, the Settlement
23 Agreement provided that Class Counsel may seek reasonable fees of \$130,800 (30% of the Gross
24 Combined Payment). This amount will be paid from the settlement amount, as provided by the
25 Settlement Agreement. These fees are warranted under the law and within the range of fees
26 commonly awarded in similar cases.

27 As shown herein, the requested 30% of the settlement fund as payment for attorneys’ fees
28 should be granted for several reasons, including that 30% is less than the one-third bench mark in

1 California for class action settlements (see e.g., *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th
2 43, 66 n. 11 (“Empirical studies show that, regardless whether the percentage method or the
3 lodestar method is used, fee awards in class actions average around one-third of the recovery”),
4 that the California Supreme Court recently held that the percentage of the fund method survives
5 in California class action cases (*Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480),
6 and through the prism of a lodestar cross-check. Accordingly, this request should receive final
7 approval.

8 **A. Plaintiffs are Entitled to Recover Reasonable Attorney’s Fees Under the**
9 **Labor Code**

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

23 Additionally, at the time of Preliminary Approval, the Court inquired whether Plaintiffs
24 may seek a percentage of fees on the Prior Payment, and as set forth in Plaintiffs’ Supplemental
25 Brief that was filed on February 26, 2024, the answer is yes. Without question, Class Counsel’s
26 efforts during the litigation (including filing the LWDA letter, Class/PAGA Complaint,
27 discovery, etc.) were the direct result of Defendants issuing the Prior Payment to the 15
28 Previously Paid Class Members. But for Class Counsel’s work, the Prior Payment would not

1 have been issued.

2 In such instances, the catalyst theory (codified under *Code of Civil Procedure* § 1021.5)
3 has long been recognized in California as a way to provide for the recovery of attorneys' fees
4 when litigation benefits a large number of people. Its main principle is to consider the "impact,
5 of the action, not its manner of resolution." *Graham v. Daimler Chrysler Corp.*, 34 Cal.4th 553,
6 568 (2004)(citing *Folsom v. Butte County Assn. of Gov't*, 32 Cal.3d 668, 685 (1982)). Here,
7 Plaintiffs' litigation was the catalyst for Defendants' decision to pay out \$186,000 in individual
8 settlements prior to the execution of the class-wide settlement. Accordingly, under the catalyst
9 theory, the positive impact of the instant action upon a large class of employees entitles Plaintiffs
10 to be awarded attorneys' fees.

11 In virtually identical circumstances, many other courts have awarded attorneys fees based
12 on Prior Payments in Class Action settlements, including:

- 13 • *Armando Flores, et al. v. Sunrise Respiratory Care, Inc., et al.*, San Bernardino
14 Superior Court Case No. CIVSB2127592, Order on Motion for Final Approval
15 issued June 14, 2023, Judge Joseph Ortiz found that Class Counsel was entitled to
16 1/3 of the full settlement value, including a credit to Defendant for previously
17 paid individual settlements.
- 18 • *Amy Phelan v. RLS-CMC, Inc.*, Riverside Superior Court Case No.
19 CVRI2101907, Judge Harold Hopp found that Class Counsel was entitled to 1/3
20 of the full settlement value even though there was a credit for prior individual
21 settlements.
- 22 • *Rodarte v. Wright Business Graphics*, San Bernardino Superior Court Case No.
23 CIVSB2206705, the Court awarded 1/3 fees on the full settlement value, which
24 included a credit of \$41,270 to Defendant for prior settlement payments.
25

26 For all of these reasons, Class Counsel should be compensated for the successful payment
27 it helped procure to the Previously Paid Class Members.

28 ///

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

3 Under the “common fund” doctrine, the request for attorneys’ fees of 30% of the
4 common fund is reasonable and appropriate, because (1) it is within the approved range for
5 percentages awarded as attorneys’ fees in similar cases; (2) it is supported by the high quality of
6 Class Counsel’s work on this case and the results obtained for the Class; (3) the Class had
7 sufficient notice of the fee request; (4) it is supported by the fact that this case was handled on a
8 contingency basis and was undertaken despite various risks and expenses; and (5) the lodestar
9 cross-check supports the fee request.

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

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

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

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

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

17 In addition to the fact that a Class benefit was created with a \$436,000.00 non-
18 reversionary common fund settlement on behalf of only 71 employees, the fairness of the
19 requested fee award of 30% of the Gross Combined Payment is supported by the high quality of
20 work performed by Class Counsel and the positive result obtained for the Class. This great result
21 occurred because Class Counsel diligently, efficiently, and creatively pursued this case and
22 reached a successful settlement for the benefit of the entire Class. ***In fact, some Class Members***
23 ***will receive \$4,455.83 each, which is an excellent result.*** Moreover, the fact that the settlement
24 was embraced and supported by the Class, as evidenced by a 100% participation rate,
25 demonstrates that Class Counsel obtained a favorable result for the Class.

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

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

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

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

11 **4. The Contingent Nature of Class Counsel's Representation of**
12 ***Plaintiffs and the Class Further Supports the Fee Award at 30% of***
13 ***the Common Fund***

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

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

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

14 *Id.* at 399-400.

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

22 Thus, the contingent nature of this case supports a fee of 30% of the common fund.

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

25 Despite recognized limitations of the so-called lodestar method, some California and
26 federal courts acknowledge the utility of a lodestar "cross-check."² (*Lealao, supra*, 82
27 Cal.App.4th at 46-47.) Under the "lodestar multiplier" method of cross-checking the
28 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

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

² 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.

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

7 Historically, California courts have approved multipliers of 1.5 to 4. But here, the actual
8 aggregated lodestar between the Plaintiffs’ attorneys that worked on this case is approximately
9 \$175,955. This results in a negative multiplier, as summarized in the following table, and in the
10 submitted declarations of Plaintiff’s counsel:

Attorney/Timekeeper	Rate	Hours	Fee
Brian J. Mankin <i>Trial Counsel / Partner</i> (23 Years)	\$775	78³	\$60,450
Misty Lauby <i>Handling Atty / Partner</i> (16 Years)	\$650	177.7	\$115,505
Grand Total for All Attorneys			\$175,955

17 (Mankin Decl. ¶ 25; Lauby Decl. ¶ 5).

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

22 Moreover, the Wolters Kluwer 2023 Real Rate Report (“Real Rate Report”) provides
23 directly applicable information in this regard. The Real Rate Report is based on an enormous and
24 statistically significant compilation of data, comprising millions of billing entries from a hundred
25 thousand individual timekeepers who worked at thousands of law firms. The Real Rate Report
26 then compiles and analyzes this data to provide the hourly rates for partners and associates in
27

28 ³ Includes an estimated 15 hours of additional work preparing for and attending the hearing, as well as 15 hours in
anticipated work to be performed after the final approval, particularly in light of the payment plan, as it will require
considerable more work with counsel, administrator, and Class Members.

1 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., ¶ 24.)

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

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

25 The Settlement Agreement authorized litigation expenses up to \$20,000. However,
26 Class Counsel’s actual costs through the final approval hearing are estimated to be \$12,839.79
27 (Mankin Decl. ¶ 27). Since Class Counsel’s actual costs were less than the amount allocated,
28 the saving will be placed in the Net Settlement Amount.

1 **B. The Requested Service Awards are Reasonable and Merits Approval**

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

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

22 Plaintiffs also committed a significant number of hours to assist with the
23 litigation/settlement processes of this case. Finally, they entered into a general release of all
24 claims against Defendants, whereas the Class Members only released the claims alleged. The
25 requested Service Payment is reasonable, particularly in light of the substantial benefits
26 Plaintiffs generated for the Class Members, the risks they undertook, and in exchange for
27 executing a general release against Defendants. (See Plaintiffs’ declarations for supporting
28 information.)

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

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

5 **A. Settlement Administration Costs**

6 The parties agreed that the Administrator, Phoenix Settlement Administrators, would be
7 compensated for services performed. The Administrator's flat fee is \$6,000.00. (Gonzalez
8 Decl., ¶ 16; Exhibit B thereto.)

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

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

13 **C. Uncashed Checks**

14 The Settlement Agreement provides that unclaimed funds will be submitted to the
15 California State Controller's Unclaimed Property Fund in the name of the Class Member
16 thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil
17 Procedure Section 384, subd. (b). (S.A. ¶ 73).

18 **D. Final Report**

19 Defendants' payment is due 15 days after the Effective Date, which will occur 60 days
20 after final approval is granted (assuming an appeal or challenge is not filed). The
21 Administrator then has 10 days thereafter process the funds and issue checks to the Class
22 Members, who will then have 180 days to cash their checks. Accordingly, if Final Approval is
23 granted on August 16, 2024, the Parties project that the check cashing deadline will occur on
24 approximately May 8, 2025. Approximately one month later, the Parties will be prepared to
25 submit a declaration from the Administrator attesting to its disbursement of all payments
26 required under the Settlement Agreement.

27 Thus, the Parties propose submitting a final report in the form of a declaration from the
28 Administrator approximately June 8, 2025 and then holding a disbursement hearing thereafter

1 at the Court's convenience. *However, it should be noted that the uncashed check fund will*
2 *not actually be forwarded to the State Controller until approximately one year after the*
3 *check cashing deadline due to the mandatory holding period imposed upon the*
4 *Administrator. Thus, the Administrator cannot likely issue checks to the State Controller*
5 *until May 2026, and thus, the Court may prefer to set the hearing re: disbursements for June*
6 *2026.*

7 **E. Submission to the LWDA**

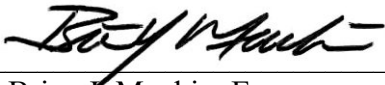
8 As set forth in the Mankin Declaration at ¶ 29, the Settlement Agreement and this
9 motion are concurrently being submitted to the LWDA in accordance with Labor Code §
10 2699(1)(2). The LWDA has not commented on the Settlement to date.

11 **IX. CONCLUSION**

12 Plaintiffs respectfully submit that the Settlement is fair, adequate, and reasonable, and
13 merits final approval.

14 Dated: July 25, 2024

LAUBY, MANKIN & LAUBY LLP

15
16 BY: 
17 Brian J. Mankin, Esq.
18 Attorneys for Plaintiffs 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 July 25, 2024, I caused to be served the foregoing document(s) described as follows:

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

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

☐ **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

☐ **By Overnight Service** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

☐ **By Certified Mail-Return Receipt Requested** I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California

☐ **By Personal Service** I caused said document(s) to be personally served by hand on the parties listed on the attached service list.

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 25, 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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