

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
T: (951) 320-1444 | F: (951) 320-1445

Attorneys for Plaintiff, on a representative basis, and on behalf of all others similarly situated

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

AUDRIANA SPARKS, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

LOGAN PROPERTY MANAGEMENT,
INC., a California Corporation; and DOES 1
through 20, inclusive;

Defendants.

Case No.: CVRI2302103
*[Assigned to Hon. Harold Hopp, Dept 1, for
all purposes]*

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

Hearing
Date: December 2, 2024
Time: 8:30 a.m.
Dept: 1

Complaint filed: April 25, 2023

TO THE COURT AND PARTIES OF RECORD:

PLEASE TAKE NOTICE THAT on December 2, 2024, at 8:30 a.m., or as soon
thereafter as this matter may be heard by the Honorable Harold Hopp in Department 1 of the
Riverside County Superior Court located at 4050 Main Street, Riverside, CA 92501, Plaintiff
Audriana Sparks respectfully moves this Court for an Order granting final approval of the class
action settlement between Plaintiff and Defendant Logan Property Management, Inc., which was
preliminarily approved by the Court. This Motion, which is supported and unopposed by
Defendant, seeks final approval and entry of judgment of a \$255,000.00 settlement on behalf of

97 Participating Class Members.

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

1. Finally certifying the Class, as defined in the Settlement Agreement and the Court’s Order Granting Preliminary Approval of the Settlement;
2. Finally appointing Plaintiff as Class Representative for purposes of settlement;
3. Finally appointing Brian Mankin and Peter Carlson of Lauby Mankin Lauby LLP as Class Counsel for purposes of settlement;
4. Finding that the Class Notice Packet was properly provided to the Class in accordance with the Court’s Order granting Preliminary Approval;
5. Finally approving the settlement as fair, adequate, and reasonable, based upon the terms set forth in the Settlement Agreement;
6. Binding Participating Class Members, Aggrieved Employees, Plaintiff and the State of California to the terms of the Settlement Agreement, including the Released Class Claims and PAGA Released Claims specified therein; and
7. Retaining jurisdiction to enforce the Settlement Agreement.

This Motion will be based upon this notice; the attached memorandum of points and authorities; the Declarations of the Settlement Administrator (Mayra Gonzalez of Phoenix Settlement Administrators), Class Counsel (Brian Mankin and Peter Carlson) and Plaintiff Audriana Sparks filed concurrently herewith; the records and files in this action; and any other further evidence or argument that the Court may receive at or before the hearing.

Dated: November 5, 2024

LAUBY, MANKIN & LAUBY LLP

BY:



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

TABLE OF CONTENTS

I.	SUMMARY OF ARGUMENT AND ESSENTIAL POINTS	1
II.	SUMMARY OF THE SETTLEMENT	1
III.	THE NOTICE PROCESS.....	3
A.	Notice to the Class Members	3
B.	There were No Objections and 3 Opt-Outs, Resulting in an Impressive 100% Class Participation in the Settlement.....	4
IV.	EVALUATION OF THE SETTLEMENT	4
A.	The Settlement was Reached through Informed Arms-Length Negotiation	5
B.	Plaintiff's Investigation was Sufficient.....	6
C.	Class Counsel are Experienced in Similar Litigation and Endorse the Settlement	6
D.	Reasonable Estimate of the Nature and Amount of Recovery	6
V.	THE REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE.....	7
A.	Plaintiff is Entitled to Recover Reasonable Attorneys' Fees Under the Labor Code.....	8
B.	Class Counsel's Request for Fees is Reasonable and Properly Calculated as a Percentage of the Common Fund	8
1.	The Attorneys' Fees Requested Here Fall Within the Reasonable Range Awarded in Cases Under the Established Common Fund Method	9
2.	The High Quality of Work and Excellent Result Support the Award	10
3.	Class Members Had Sufficient Notice of the Requested Fees	10
4.	The Contingent Nature of Class Counsel's Representation of Plaintiffs and the Class Further Supports the 1/3 Fee Award.....	11
5.	A Lodestar Cross-Check Confirms the Reasonableness of the Fee Award.....	12
VI.	THE REQUESTED COSTS AND SERVICE AWARDS ARE REASONABLE.....	14
A.	The Requested Costs are Reasonable and Merit Approval.....	14
B.	The Requested Service Award is Reasonable and Merit Approval.....	14
VII.	OTHER MATTERS FOR FINAL APPROVAL	15
A.	Settlement Administration Costs	15
B.	Uncashed Checks	16
C.	Final Report	16
D.	Submission to the LWDA.....	16
VIII.	CONCLUSION.....	16

TABLE OF AUTHORITIES

State Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135	7
<i>Bell v. Am. Title Ins. Co.</i> (1991) 226 Cal.App.3d 1589	5
<i>Bell v. Farmers Insurance Exchange</i> (2004) 115 Cal.App.4th 715.....	18
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472	10
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	8
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	5
<i>Ferguson v. Lieff, Cabraser, Heimann & Bernstein</i> (2003) 30 Cal.4th 1037.....	5
<i>Horsford v. Board of Trustees of California State University</i> , 132 Cal.App.4th 359 (2005).....	12
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	7
<i>Laffitte v. Robert Half International, Inc.</i> (2016) 1 Cal.5th 480.....	8, 9
<i>Litwin v. iRenew Bio Energy Solutions, LLC</i> (2014) 226 Cal.App.4th 877	11
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> (2010) 186 Cal.App.4th 399	7
<i>PLCM Group, Inc. v. Drexler</i> (2000) 22 Cal.4th 1084.....	16
<i>Press v. Lucky Stores, Inc.</i> (1983) 34 Cal.3d 311	16
<i>Serrano III v. Priest</i> (1977) 20 Cal.3d 25	10
<i>Sternwest Corp v. Ash</i> (1986) 183 Cal.App.3d 74.....	16
<i>Wershba v. Apple Computers, Inc.</i> (2001) 91 Cal.App.4th 246	7
<i>Williams v. MGM-Pathe Communs. Co.</i> (9th Cir. 1997) 129 F.3d 1026.....	10

Federal Cases

<i>In re American Bank Note Holographics, Inc.</i> (SDNY 2001) 127 F.Supp.2d 418	4
<i>Laguna v. Coverall North America, Inc.</i> (9th Cir. 2014) 753 F.3d 918	12
<i>Mandujano v. Basic Vegetable Prods., Inc.</i> (9th Cir. 1976) 541 F.2d 672.....	4
<i>Rodriguez v. West Publishing</i> (9th Cir. 2009) 563 F.3d 948	18
<i>Van Bronkhorst v. Safeco Corp.</i> (9th Cir. 1976) 529 F.2d 943	5
<i>Vizcaino v. Microsoft Corp</i> (9th Cir. 2002) 290 F.3d 1043.....	11
<i>Whiteway v. FedEx Kinkos Office & Print Svcs., Inc.</i> (N.D. Cal. Dec. 17, 2007) 2007 WL 4531783.....	19

1

2

3

8

- # O

22

26

27

management. Plaintiff and the Class Members included all current and former nonexempt (hourly paid) employees employed by Defendant Logan Property Management, Inc., in California and who received bonus pay during the Class Period of April 25, 2019, through April 29, 2024. The primary claims (which Defendant vehemently disputed) involved allegations that Defendant failed to pay the Class all wages owed, failed to provide compliant meal and rest breaks, as well as wage statement violations, waiting time penalties, and PAGA penalties arising from the same underlying conduct.

The Settlement includes 96 Participating Class Members, and the following is a breakdown of how the funds are allocated under the Settlement Agreement (Declaration of Settlement Administrator, Mayra Gonzalez [“Gonzalez Decl.”] ¶ 12):

	Total Amount
<i>Gross Settlement Amount</i>	\$ 255,000.00
Attorneys’ Fees (1/3)	\$ 85,000.00
Litigation Costs	\$ 8,133.40
Administrator Costs	\$ 6,000.00
PAGA Penalties	\$ 20,000.00
Class Representative Service Award	\$ 5,000.00
<i>Net Settlement Amount</i>	\$ 130,866.60

The Participating Class Members were deemed to participate and did not need to submit a Claim Form to receive payment. (S.A. ¶ 25). Each Participating Class Member will receive an Individual Class Payment comprised of a \$250 minimum payment, plus the remaining amount will then be apportioned from the Net Settlement Amount based on the number of Weeks Worked by each Class Member during the Class Period. (S.A. ¶ 49(c)).

Assuming all of the amounts in the Settlement are approved by the Court, the highest payment to Participating Class Members is estimated to be \$2,693, the average payment is estimated to be \$1,363.19 and the lowest is \$305.96. (Gonzalez Decl. ¶ 13).

In addition, the 49 Aggrieved Employees will share in the \$5,000 PAGA Payment based on Weeks Worked, who will receive \$102.04 each on average. (Gonzalez Decl. ¶ 14).

The Individual Class Payments to Participating Class Members will be allocated as 20 percent to wages subject to standard withholdings and 80 percent for interest and statutory

penalties (pursuant to, e.g., California Labor Code sections 203, 210, 226) from which no taxes will be withheld. The Settlement Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the penalties and interest allocations. (S.A. ¶ 49(d)). Payments to Aggrieved Employees will be treated as civil penalties and paid on a Form 1099.

The Settlement Agreement provides that Defendant shall fund the Settlement Amount within 15 days of the Effective Date, which is anticipated to be the date the Court enters an order granting Final Approval. The Settlement Administrator is then required to issue payments within 10 calendar days of receipt of the payment. (S.A. ¶ 71-72). Class Members will have 180 days to cash the settlement check. (S.A. ¶ 73). If a Class Member fails to cash a check by the deadline, the Administrator shall issue unclaimed funds to the California State Controller in the name of the Participating Class Member/Aggrieved Employee.

III. THE NOTICE PROCESS

A. NOTICE TO THE CLASS MEMBERS

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

Prior to mailing the Notice Packet, the Settlement Administrator performed a National Change of Address search on all Class Members to determine if any had moved. (*Id.* at ¶ 4). Then, on September 9, 2024, the Notice Packet was sent via first-class mail to the 97 Class Members to advise each about the suit and settlement. There were 4 undeliverable Notices, resulting in a 96% 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

1 Class Member's right to appear at the fairness hearing and express views on the settlement, i.e.,
2 object or otherwise respond; and (7) an explanation of each Class Member's right to participate
3 in the Settlement and receive payment accordingly. (See **Exhibit A** to the Gonzalez Decl.).

4 **B. THERE WERE NO OBJECTIONS AND ONE OPT-OUT, RESULTING IN AN**
5 **IMPRESSIVE 98.97% CLASS PARTICIPATION IN THE SETTLEMENT**

6 California law makes clear that the percentage of objectors and opt-outs is an important
7 factor in the Court's consideration of a proposed class action settlement. *See Dunk v. Ford*
8 *Motor Co. (1996) 48 Cal.App.4th 1794, 1802.* Also, the Ninth Circuit recognize that in the final
9 fairness analysis, the number or percentage of class members who object to the settlement is a
10 significant factor. *See Mandujano v. Basic Vegetable Prods., Inc. (9th Cir. 1976) 541 F.2d 672,*
11 *677.*

12 Here, no objections were submitted, no disputes as to Work Weeks, and one opt-outs,
13 meaning that 98.97% of the Class Members elected to participate and receive a share of the
14 Settlement. (Gonzalez Decl. ¶¶ 8-10).

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

21 **IV. EVALUATION OF THE SETTLEMENT**

22 It is axiomatic that California law strongly favors and encourages settlements. *See*
23 *Stambaugh v. Super. Ct. (1976) 62 Cal.App.3d 231, 236.* This presumption in favor of
24 settlement applies with particular force in the context of class actions. *See Ferguson v. Lieff,*
25 *Cabraser, Heimann & Bernstein (2003) 30 Cal.4th 1037* (Kennard, J., concurring and dissenting)
26 ("[p]ublic policy favoring settlement is especially weighty for class actions"); *Bell v. Am. Title*
27 *Ins. Co. (1991) 226 Cal.App.3d 1589, 1607-1608* (affirming approval of a class settlement and
28 implicitly endorsing its citation of federal precedent for the notion that there is a "strong public

policy in favor of settlement of class actions”); *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950 (“it hardly seems necessary to point out that there is an overriding public interest in settling and quieting litigation. This is particularly true in class action suits”).

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

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

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

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

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

As the Settlement Agreement itself reveals, the Settlement is designed to fairly and adequately compensate all Class Members. And, pursuant to California Rules of Court Rule 3.769 (b), the parties have disclosed the agreed upon and proposed attorney fee award, which is

1 well within the range of reasonableness for matters of this nature.

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

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

13 **C. CLASS COUNSEL ARE EXPERIENCED IN SIMILAR LITIGATION AND ENDORSE THE**
14 **SETTLEMENT**

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

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

21 Plaintiff’s Motion for Preliminary Approval contained a comprehensive *Kullar* analysis
22 which sufficiently provided the Court with “basic information about the nature and magnitude
23 of the claims in question and the basis for concluding that the consideration being paid for the
24 release of those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail,*
25 *Inc.* (2008) 168 Cal.App.4th 116, 133. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*
26 (2010) 186 Cal.App.4th 399, later clarified *Kullar* by noting that an explicit statement of the
27 maximum theoretical amount that the class could recover was not part of the “basic
28 information” that counsel was required to produce:

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

Of course, a settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 246, 250 (“Compromise is inherent and necessary in the settlement process ... even if the relief afforded 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”).

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

V. THE REQUESTED ATTORNEYS’ FEES ARE FAIR AND REASONABLE

For their efforts in creating a common fund for the benefit of the class, the Settlement Agreement provided that Class Counsel seek reasonable fees of one-third of the Settlement Amount, which is \$85,000.00. These fees are warranted under the law and within the range of fees commonly awarded in similar cases.

1 As shown herein, the requested percentage of one-third of the settlement fund as payment
2 for attorneys' fees should be granted for several reasons. First, one-third is the standard
3 benchmark in California for class action settlements. *See, e.g., Chavez v. Netflix, Inc.* (2008) 162
4 Cal.App.4th 43, 66 n. 11 ("Empirical studies show that, regardless whether the percentage
5 method or the lodestar method is used, fee awards in class actions average around one-third of
6 the recovery"). Second, the California Supreme Court upheld that the percentage of the fund
7 method survives in California class action cases. *See Laffitte v. Robert Half International, Inc.*
8 (2016) 1 Cal.5th 480. Third, the requested amount is eminently reasonable through the prism of
9 a lodestar cross-check. Accordingly, this request should receive final approval.

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

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

25 **B. CLASS COUNSEL'S REQUEST FOR FEES IS REASONABLE AND PROPERLY**
26 **CALCULATED AS A PERCENTAGE OF THE COMMON FUND**

27 Under the "common fund" doctrine, the request for attorneys' fees in the amount of 1/3
28 of the common fund is reasonable and appropriate, because (1) it is within the approved range

1 for percentages awarded as attorneys’ fees in similar cases; (2) it is supported by the high quality
2 of Class Counsel’s work on this case and the results obtained for the Class; (3) the Class had
3 sufficient notice of the fee request; (4) it is supported by the fact that this case was handled on a
4 contingency basis and was undertaken despite various risks and expenses; and (5) the lodestar
5 cross-check supports the fee request.

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

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

21 The California Supreme Court’s *Laffitte* decision was consistent with its prior rulings
22 recognizing that “when a number of persons are entitled in common to a specific fund, and an
23 action brought by ... plaintiffs for the benefit of all results in the creation or preservation of that
24 fund, such ... plaintiffs may be awarded attorneys’ fees out of the fund.” *Serrano III v. Priest*
25 (1977) 20 Cal.3d 25, 34; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 (“[A] lawyer who
26 recovers a common fund . . . is entitled to reasonable attorneys’ fees from the fund as a whole”).
27 Notably, when fees are calculated as a percentage of the common fund, they should be calculated
28 based on the amount that was available to be claimed, rather than as a percentage of the actual

1 amount claimed. *See Boeing Co.*, 444 U.S. at 475-6, 480-1 (the SCOTUS held that attorneys for
2 a successful class may recover a fee based on the fund created for the class, even if some class
3 members make no claims against the fund, so that money remains in it that will be returned to
4 the defendant, explaining: “[t]heir [class members’] right to share the harvest of the lawsuit upon
5 proof of their identity, whether or not they exercise it, is a benefit in the fund created by the
6 efforts of the class representatives and their counsel.” *See also Williams v. MGM-Pathe*
7 *Communs. Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 (trial court “abused its discretion by basing
8 the fee on the class members’ claims against the fund rather than on a percentage of the entire
9 fund or on the lodestar”).

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

11 In addition to the fact that a Class benefit was created with a non-reversionary common
12 fund settlement, the fairness of the requested fee award of one-third of the Settlement Amount is
13 supported by the high quality of work performed by Class Counsel and the positive result
14 obtained for the Class in spite of the risks of ongoing litigation. This result occurred because
15 Class Counsel diligently, efficiently, and creatively pursued this case and reached a settlement
16 for the benefit of the entire Class. The fact that the settlement was embraced and supported by
17 the Class, as evidenced by a 98.97% participation rate, demonstrates that Class Counsel obtained
18 a favorable result for the Class.

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

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

25 The Class Notice also advised the class members of the procedures for objecting to the
26 proposed settlement and appearing at the settlement hearing, where they could present their
27 objections to any aspect of the settlement, including the amount of attorneys’ fees to be awarded
28 to class counsel. *Litwin v. iRenew Bio Energy Solutions, LLC* (2014) 226 Cal.App.4th 877, 883

1 (“Procedural due process requires that affected parties be provided with ‘the right to be heard at a
2 meaningful time and in a meaningful manner’”). In accordance with the foregoing, it is
3 respectfully submitted that the instant notice complied with Rule 3.769 and, as a result, the Class
4 Members’ due process rights were fulfilled.

5 **4. The Contingent Nature of Class Counsel’s Representation of Plaintiffs**
6 **and the Class Further Supports the 1/3 Fee Award**

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

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

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

Id. at 399-400.

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

8 For all of these reasons, a fee of one-third of the common fund is fair and reasonable.

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

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

21 Historically, California courts have approved multipliers of 1.5 to 4. But here, the actual
22 aggregated lodestar between the Plaintiff's attorneys that worked on this case is approximately
23 \$132,390, resulting in a negative multiplier, as summarized in the following table:

24
25
26 ¹ www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

27 ² In practice, the lodestar method is difficult to apply, time-consuming to administer, inconsistent in result, and
28 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.

Attorney/Timekeeper	Rate	Hours	Fee
Brian J. Mankin <i>Trial Counsel / Partner</i> (23 Years)	\$775	68³	\$52,700
Peter Carlson <i>Senior Associate</i> (10 Years)	\$650	122.6	\$79,690
Grand Total for All Attorneys			\$132,390

(Mankin Decl. ¶ 25; Carlson Decl. ¶ 9-10).

Class Counsel’s hourly rates 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 reviews or other publications – instead, the Real Rate Report is based on the actual hours and fees billed by law firms, which makes it “a much better reflection of true market rates than self-reported rates in all practice areas.” *Brown v. CVS Pharmacy, Inc.* (C.D. Cal. Apr. 24, 2017) 2017 U.S. Dist. LEXIS 182309, at *21; *PLCM Group*, 22 Cal.4th at 1085 (holding that rates should be premised upon precisely this form of independent, “objective” rate data that reflects

³ Includes an estimated 15 hours of additional work preparing for and attending the hearing, as well as 20 hours in anticipated work to be performed after the final approval, particularly in light of the payment plan, as it will require considerable more work with counsel, administrator, and Class Members.

1 “fair market” rates actually billed to clients “in the community for similar work”). (Mankin
2 Decl., ¶ 24.)

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

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

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

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

15 The Settlement Agreement authorized litigation costs of up to \$20,000. (S.A. ¶ 49(f)).
16 Class Counsel’s actual costs through the final approval hearing are estimated to be \$8,133.40.
17 (Mankin Decl. ¶ 28, and Exhibit “C” thereto). These costs include mediation fees, filing fees,
18 expert charges, CourtCall charges, and process server fees. The savings will be placed in the
19 Net Settlement Amount and paid to the Participating Class Members.

20 **B. THE REQUESTED SERVICE AWARD IS REASONABLE AND MERIT APPROVAL**

21 A named plaintiff is an essential ingredient of any class action and an incentive award
22 is appropriate to induce individuals to step forward and assume the burdens and obligations of
23 representing the Class. Courts regularly approve a service payment to compensate named
24 plaintiffs for their service to the class and the risks they incurred during the course of the
25 litigation. *See, e.g. Bell v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715, 726
26 (upholding “service payments” to named Plaintiff for their efforts in bringing class action);
27 *Rodriguez v. West Publishing* (9th Cir. 2009) 563 F.3d 948, 959 (stating that incentive awards
28 are “intended to compensate class representatives for work done on behalf of the class, to make

up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.”).

Defendant agreed to pay a Service Award of \$5,000 to Plaintiff in recognition of her contribution as Class Representative. (*See* Plaintiff’s Decl. ¶ 3-8). Moreover, Plaintiff came forward and undertook significant risks, including the risk of being blackballed in the industry and the risk that she could have been liable for Defendant’s costs if she lost. This factor is a significant one for a wage earner, and the potential risk is very real. *See Whiteway v. FedEx Kinkos Office & Print Svcs., Inc.* (N.D. Cal. Dec. 17, 2007) 2007 WL 4531783, at *3 (“the few courts to consider this ‘class representatives’ dilemma’ have not found it inequitable to assess costs upon the lead or named plaintiff in a class action.”).)

Plaintiff also committed a significant number of hours to assist with the litigation/settlement processes of this case. The requested Service Award is reasonable, particularly in light of the substantial benefits Plaintiff generated for the Class Members, the risks she undertook and the time and effort devoted to assisting with the Class/PAGA settlement. (*See* Plaintiff’s Decl. ¶ 4-8).

The Notice sent to each Class Member detailed the proposed service award. No Class Member objected to the proposed service award to Plaintiff. Thus, Plaintiff’s request that the Court approve the award because it is both reasonable and appropriate.

VII. OTHER MATTERS FOR FINAL APPROVAL

A. SETTLEMENT ADMINISTRATION COSTS

The Administrator, Phoenix Settlement Administrators, agreed to administer the settlement for a flat-fee of \$6,000. (Gonzalez Decl. ¶ 16-20). This amount was fully disclosed to the Class Members in the Class Notice, and no Class Members objected to it. Phoenix Settlement Administrator’s declaration also fully complies with the CMO in regards to the fixed fee and other work to be performed. As such, the Parties request that the Administrator’s fee request be approved.

///

///

1 **B. UNCASHED CHECKS**

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

5 **C. FINAL REPORT**

6 Defendant will issue payment to the Administrator within 15 days of the Effective Date,
7 which is expected to occur on the day that Final Approval is granted. The Administrator will
8 then have 10 days to issue payment to the Class Members, who will then have 180 days to cash
9 their checks. The Parties propose holding a disbursement hearing approximately one year after
10 the final approval hearing, and further propose submitting a declaration from the Administrator
11 15 days before this hearing, which will set forth the money that was actually disbursed, along
12 with the status of issuing funds to the State Controller.

13 **D. SUBMISSION TO THE LWDA**

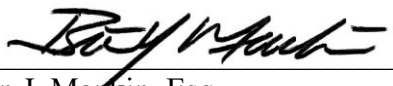
14 As set forth in the Mankin Declaration at ¶ 29, the settlement and this motion were
15 concurrently submitted to the LWDA in accordance with Labor Code § 2699(1)(2).

16 **VIII. CONCLUSION**

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

19 Dated: November 5, 2024

LAUBY, MANKIN & LAUBY LLP

20
21 BY: 
22 Brian J. Mankin, Esq.
23 Attorneys for Plaintiff and the Class
24
25
26
27
28

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 November 5, 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.

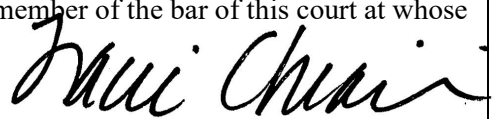
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service 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 November 5, 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

SERVICE LIST

Joseph M. Parker, Esq.
PARKER LEGAL GROUP, PC
600 W. Broadway, #700
San Diego, CA 92101
619-930-9821
jparker@parkerlegalgroup.com
Attorneys for Defendant, LOGAN PROPERTY MANAGEMENT, INC.