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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

MATTHEW NORTON, individually, on a representative basis, and on behalf of all others similarly situated; Plaintiff, vs. CUMMINS INC., an Indiana Corporation; and DOES 1 through 20, inclusive; Defendants.	Case No.: 30-2023-01319123-CU-OE-CXC *[Assigned to the Hon. William Claster, Dept CX101, for all purposes]* **PLAINTIFF'S NOTICE OF MOTION AND UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT; DECLARATIONS IN SUPPORT THEREOF; AND [PROPOSED] FINAL ORDER AND JUDGMENT** Hearing: Date: October 24, 2025 Time: 9:00 a.m. Dept.: CX101

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 24, 2025, at 9:00 a.m., or as soon thereafter as this matter may be heard by the Honorable William Claster in Department CX101 of the Orange County Superior Court, located at 751 W. Santa Ana Blvd., Santa Ana, CA 92701, Plaintiff Matthew Norton, individually and on behalf of all others similarly situated, will and hereby does move this Court for entry of an Order granting final approval of the Class and PAGA action settlement between Plaintiff and Defendant Cummins Inc., which was preliminarily approved by the Court. This Motion seeks final approval and entry of judgment of a $2,000,000 settlement on behalf of the Class Members and is unopposed by Defendant.

Specifically, Plaintiff will and hereby does move the Court to grant final approval of the Amended Class and PAGA Action Settlement Agreement and Release of Claims ("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 the Class Representative for purposes of settlement;

3. Finally appointing Brian Mankin and Kristina Carlson as Class Counsel;

4. Finding that the Class Notice 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 to the terms of the Settlement Agreement, including the Release 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 (Taylor Mitzner of Phoenix Settlement Administrators), Class Counsel (Brian Mankin and Kristina Carlson) and Plaintiff 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: October 2, 2025 LAUBY, MANKIN & LAUBY LLP

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF ARGUMENTS AND ESSENTIAL POINTS

Pursuant to California Rules of Court, Rule 3.769(d) and (e), Plaintiff Matthew Norton respectfully requests that this Court grant final approval of the Class and PAGA Action Settlement Agreement and Class Notice ("Settlement Agreement" or "S.A.") and enter the proposed order and final judgment in this matter. This Motion is supported and unopposed by Defendant Cummins Inc. ("Defendant" or "Cummins").

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

- After considerable work, discovery, and mediation, the Parties reached a $2,000,000 settlement with the assistance of mediator Steven Rottman, which is tailored to a limited release of the claims alleged on behalf of 679 Class Members;
- The Class Members were deemed to participate in the Settlement and were not required to submit a Claim Form to receive funds;
- There is no reversion to Defendant;
- There were <u>zero</u> objections and only three opt-outs to the Settlement, meaning 99.56% of the Class is participating in the Settlement.

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

II. PERTINENT BACKGROUND AND SETTLEMENT TERMS

The Settlement covers all current and former non-exempt employees of Defendant who resided and worked for Defendant in California at any time during the Class Period of April 14, 2019, through the date of Preliminary Approval of May 2, 2025. The primary claims, which Defendant disputes and denies, involved allegations that the Class Members did not receive compliant meal and rest periods, did not receive all regular and overtime wages owed including when Defendant failed to factor in additional earned compensation into regular rate calculations, did not receive accurate itemized wage statements, were not reimbursed for necessary business expenses, and include claims for waiting time penalties and PAGA penalties.

The Settlement includes 676 Participating Class Members. The following is a breakdown reflecting how the funds are allocated under the Settlement Agreement (Declaration of Administrator, Taylor Mitzner ("Mitzner Decl."), ¶ 12):

Gross Settlement Amount	**$ 2,000,000.00**
Attorneys' Fees (1/3)	$ 666,666.67
Litigation Costs	$ 30,000.00
Administrator Costs	$ 8,000.00
PAGA Penalties	$ 100,000.00
Class Representative Service Award	$ 5,000.00
Net Settlement Amount	**$ 1,190,333.34**

The Participating Class Members were deemed to participate and did not need to submit a Claim Form to receive payment. (Settlement Agreement or "S.A." ¶ 29, 72). Each Participating Class Member will receive a pro rata share of the Net Settlement Amount according to the number of Workweeks worked during the Class Period, such that the amount actually distributed to Participating Class Members will equal 100% of the Net Settlement Amount.

The 676 Participating Class Members collectively worked 94,900 Workweeks during the Class Period, resulting in a net value of approximately $12.54/Workweek. (Mitzner Decl. ¶ 11). Assuming all of the amounts in the Settlement are approved by the Court, the *average* Individual Class Payment is estimated to be $1,760.85, and the *highest* Individual Class Payment is approximately $4,139.20 (Mitzner Decl. ¶ 13).

In addition, 511 Aggrieved Employees collectively worked 26,146 pay periods during the PAGA Period, and will each receive an Individual PAGA Payment based on their share of the $100,000 in PAGA Penalties (25% of the total $100,000 PAGA allocation), calculated pro-rata based on the number of Pay Periods during the PAGA Period. (S.A. ¶ 50(h); Mitzner Decl. ¶ 14) The average payment to the Aggrieved Employees is $48.92. (Mitzner Decl. ¶ 14).

The Parties agree that 25% of the Individual Class Payments will be allocated as wages subject to withholding of all applicable local, state and federal taxes and the remaining 75% will be allocated for interest and statutory penalties from which no taxes will be withheld. (S.A. ¶

50(d)). The Individual PAGA Payments will be classified entirely as civil penalties and shall be reported as required on an IRS Form 1099. (S.A. ¶ 50(h)). Defendant will separately pay its respective share of employer payroll taxes on the wage portion of the Individual Class Payments. (S.A. ¶ 50(a)).

Pursuant to the terms of the Settlement Agreement, the Effective Date means the date on which the Final Judgment entered by the Court, upon final approval of the Settlement, is no longer subject to appeal and thus becomes final, and more specifically the later of: (a) the date of final affirmance on an appeal of the Final Judgment; (b) the date of the final dismissal with prejudice of the last pending appeal from the Final Judgment; or (c) if no appeal is filed, the expiration date of the time for the filing or noticing of any form of valid appeal from the Final Judgment (*i.e.*, 60 calendar days after the Final Judgment is entered). (S.A. ¶ 18). Defendant is then required to fund the Gross Settlement Amount, plus Defendant's share of payroll taxes owed on the wage portion of the Individual Class Payments, within 20 days of the Effective Date (S.A. ¶ 75). Within 10 days after receiving the funds, the Administrator shall issue payments to cover all court-approved payments. (S.A. ¶ 76).

Participating Class Members and Aggrieved Employees will have 180 days after mailing by the Administrator to cash their settlement checks. If a Participating Class Member or Aggrieved Employee fails to cash a check by the deadline, the check will be void and a stop-payment will be issued, and the Administrator shall issue unclaimed funds to the California State Controller in the name of the Class Member/Aggrieved Employee (S.A. ¶ 77).

III. THE NOTICE PROCESS

A. <u>Notice to the Class Members</u>

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

Prior to mailing the Class Notice, the Settlement Administrator performed a National Change of Address search on all Class Members to determine if any had moved. (Mitzner Decl.

¶ 5). On June 11, 2025, the Class Notice was sent via first-class mail to 679 Class Members. (Mitzner Decl.¶ 6).

As of the date of the Administrator Declaration, zero Notices were returned as undeliverable, resulting in a 100% success rate in mailing the Notice Packet. (Mitzner Decl. ¶ 7).

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 or object to the settlement class, and right to dispute the number of workweeks and/or pay periods that they were credited with working; (3) an explanation of the process (and relevant deadlines) through which a Class Member could opt out of or object to the settlement class, or dispute the number of workweeks and/or pay periods that they were credited with working; (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 Mitzner Decl.)

B. **There are Zero Objections and Three Opt-Outs, Resulting In An Impressive 99.56% 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 are zero objections and three opt-outs to the Settlement -- meaning that 99.56% of the Class Members are participating in the Settlement. (Mitzner Decl. ¶ ¶ 8-10).

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, Cabraser, Heimann & Bernstein* (2003) 30 Cal.4th 1037 ["[p]ublic policy favoring settlement is especially weighty for class actions"]; *Bell v. Am. Title Ins. Co.* (1991) 226 Cal.App.3d 1589, 1607-1608 [affirming the trial court's approval of a class settlement and implicitly endorsing its citation of federal precedent for the notion that there is a "strong public policy in favor of settlement of class actions"]; see also *Franklin v. Kaypro Corp.* (9th Cir. 11869) 884 F.2d 1222, 1229, quoting *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 present here and 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.) And they were. The proposed settlement here was the product of arm's-length negotiation before a highly experienced and reputable class action mediator, which was finally consummated in the months after mediation.

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, there is no preferential treatment for any segment of the class, as the Settlement is designed to compensate all Class Members fairly and adequately. And pursuant to California Rules of Court Rule 3.769(b), the parties have disclosed the agreed upon and proposed attorneys' fee award, which is well within the range of reasonableness for matters of this nature.

B. <u>**Plaintiff's Investigation Was Sufficient**</u>

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

C. <u>**Class Counsel Are Experienced in Similar Litigation and Endorse the Settlement**</u>

Class Counsel are experienced in this type of litigation, and they have represented (and hereby do represent) that this Settlement is fair and reasonable. (Mankin Decl., ¶¶ 13, 34;

Carlson Decl., ¶¶ 2-6; see *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152 [Final approval of settlement affirmed where counsel were all experienced litigators with class-action experience and had recommended settlement based on the negotiated terms].)

D. <u>There are Zero Objectors and Only Three Opt Outs</u>

There are <u>zero</u> objections and only three opt-outs to the Settlement. (Mitzner Decl. ¶¶ 8-9). The lack of objectors and the small number of opt outs shows that the Class favorably views the Settlement and supports a finding that the Settlement is fair, reasonable and adequate.

E. <u>Reasonable Estimate of the Nature and Amount of Recovery</u>

Plaintiff's Motion for Preliminary Approval contained a comprehensive *Kullar* analysis (which sufficiently provided the Court with "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) 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 discovery and information exchanges, and factoring in claim certification probabilities and liability probabilities, Class Counsel formulated detailed damages models to evaluate the claims in preparation for mediation and in order to reach a realistic and reasonable resolution.

Of course, Defendant denies liability, denies that any damages should be assessed, and denies all of the value assessed by Plaintiff. Notwithstanding these arguments, the Settlement commits Defendant to pay $2,000,000 to settle the litigation.

VI. 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 may seek reasonable fees of $666,666.67 (one-third of the Settlement Amount). This amount will be paid from the Gross Settlement Amount. These fees are warranted under the law and within the range of fees commonly awarded in similar cases.

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

A. **Plaintiff is Entitled to Recover Reasonable Attorneys' Fees Under the Labor Code**

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

B. <u>Class Counsel's Request for Fees Is Reasonable and Properly Calculated as a Percentage of the Common Fund</u>

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

1. The Attorneys' Fees Requested Here Fall Within the Reasonable Range Awarded in Similar Cases Under the Well-Established Common Fund Method

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

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

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

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

In addition to the fact that a Class benefit was created with a $2,000,000 non-reversionary common fund settlement, the fairness of the requested fee award of 1/3 of the Gross Settlement Amount is supported by the high quality of work performed by Class Counsel and the positive result obtained for the Class. This result occurred because Class Counsel diligently, efficiently, and creatively pursued this case and reached a successful settlement for the benefit of the entire

Class. ***In fact, some Class Members will receive <u>$4,139.20</u> <u>*each*</u>, which is an excellent result***. Moreover, the fact that the Settlement was embraced and supported by the Class, as evidenced by a 99.56% participation rate, demonstrates that Class Counsel obtained a favorable result for the Class.

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

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

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

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

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

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

The market value of the services provided by plaintiffs' counsel in a case of this magnitude must take into consideration that any compensation has been deferred for up to four years from the time an hourly fee attorney would begin collecting fees from his or her client; that the demands of the present case substantially precluded other work during that extended period, which makes the ultimate risk of not obtaining fees all the greater (since the attorneys must use savings or incur debt to keep their offices afloat and their families fed during the years-long litigation); and that a failure to fully compensate for the enormous risk in bringing even a wholly meritorious case would effectively immunize large or politically powerful defendants from being held to answer for constitutional deprivations, resulting in harm to the public." *Id.* at 399-400.

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

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

Sample of Cases with Zero Recovery for Class Counsel

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

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

- In 2025 alone, there have been a number of Class/ PAGA actions in which ***Defendants filed for bankruptcy, resulting in a potential loss of all fees and costs***. These bankruptcies resulted an anticipated **attorneys fees loss of approximately $1.3 million due to the loss of nearly $4 million in Class/PAGA settlements** (*Williamson v. Kal Freight, Inc., et. al*, Riverside Superior Court Case No. CVRI2204960; *Grammatico v. Kal Freight, Inc.*, San Bernardino Superior Court Case No. CIVSB2214750; *Lyons v. Modivcare*, San Bernardino Superior Court Case No. CIVSB2312049; *Turner v. Sharon Care*, Los Angeles Superior Court Case No. 24STCV02146);
- In a multi-plaintiff, Class/PAGA action that was litigated for **7 years** and with a certified class, Class Counsel eventually reached a settlement with Defendants that factored in Defendants' financial constraints. This settlement resulted in a **negative 7.75 multiplier**. After the Court granted Final Approval, ***Defendants have defaulted and failed to fund any payments to the Settlement Administrator; and a result, Class Counsel began the collections process, but have not yet recovered any funds.*** (*Carr v. H&IC Bros. Corp*., San Bernardino Superior Court Case No. CIVDS1711425);
- Heavily litigated Class/PAGA action that Class Counsel certified as a class, prevailed on summary adjudication, fully prepared for trial and one day before the start of trial, ***Defendant filed for bankruptcy, resulting in complete loss of attorneys fees and all costs advanced*** (*Garza v. Quality Conversation*, San Bernardino Superior Court Case No. CIVDS1506788);
- Class actions in which ***Defendants filed for bankruptcy, resulting in a loss of all fees and costs*** (*Gomez v. Ultimate Logistics*, Riverside Superior Court Case No. RIC1723054, and *Bonilla v. Home Energy*, San Bernardino Superior Court Case No. CIVSB2215927);
- In a pending matter, Class Counsel has litigated the case for over ***5 years*** with an estimated 1,000 plus hours in attorney time, leading to the class certification in

favor of Plaintiff on all claims for over 1,500 class members. Despite all the work invested into the matter, including preparing for an upcoming trial, the likely outcome will either be (1) defendants filing bankruptcy that will result in zero recovery, or (2) a greatly discounted settlement based on defendant's financial obstacles and ability-to-pay;

- ***Class Counsel have been forced to dismiss class and PAGA cases without any compensation or reimbursement of fees or costs due to the financial condition of Defendant***, (*Cox v. NurseLoop*, San Bernardino Superior Court Case No. CIVSB2225440; *Joyce v. GES Distribution*, Riverside Superior Court Case No. RIC1905739).

Of course, there is also the reality that a Defendant may prevail on the merits, whereby Class Counsel will receive no compensation and lose its out of pocket costs entirely. Class Counsel have experienced a situation wherein it prevailed at trial on a PAGA case, only to have the appellate court reverse the decision and rule in favor of Defendant, thereby reversing the fee and cost award and resulting in no recovery of fees or costs. (Mankin Decl. ¶ 21).

Sample of Cases with a Negative Multiplier for Class Counsel

Even when Plaintiff's Counsel achieved a settlement and what appears to be a "favorable" outcome, there are countless times when the fees requested by Plaintiff's Counsel still result in a ***large negative attorney fee multiplier***, including the following examples:

- ***Negative 4.26 multiplier:*** In *Pompa v. Landforce*, San Bernardino Superior Court Case No. CIVDCX10100451, Class Counsel litigated for over 4.5 years, and obtained class certification. Yet, despite the fact that a settlement was eventually achieved, it resulted in a negative 4.26 multiplier for Class Counsel due to financial condition;
- ***Negative 4.24 multiplier:*** In *Sacks v. Natural Energy*, San Bernardino Superior Court Case No. CIVDS1811288, the matter resulted in a settlement with a negative 4.24 multiplier for Class Counsel due to financial condition;

- ***Negative 2.85 multiplier:*** In *Sowle v. Sherpaul*, Riverside Superior Court Case No. RIC2002410¸ Class Counsel's lodestar was nearly the same amount as the gross settlement amount – thus, resulting in a negative 2.85 multiplier.

(Mankin Decl. ¶ 21).

<u>Class/PAGA Cases Converted to Small Individual Settlements</u>

There are also many situations when Plaintiff's Counsel is forced to convert matters into small individual settlements (and therein lose substantial attorneys fees) for a variety of reasons, including due the financial constraints of a defendant, or because a company may engage in a "Pick-up Stix Campaign" to settle directly with the class members, or because a defendant engages in a reverse auction and settles a class/PAGA case with another firm that will take less (i.e., cherry picking), thereby cutting off Class Counsel's recovery. There are indeed numerous examples of this occurring that result in an individual settlement, thereby causing Class Counsel to bear the burden of a loss in attorneys' fees. (Mankin Decl. ¶ 21).

<u>These Factors Support the Fee Request and a Reasonable Multiplier</u>

The situations highlight instances where Class Counsel here (Lauby Mankin Lauby LLP) has had to bear the weight of a complete loss or steep reduction in fees and costs. This is not an easy burden for Plaintiff's Counsel, which is a small firm. (Mankin Decl. ¶ 20).

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

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

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

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

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

Historically, California courts have approved multipliers of 1.5 to 4. *See Coalition for Los Angeles County Planning v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 251 (**multiplier of 2+ approved**); *Sternwest Corp v. Ash* (1986) 183 Cal.App.3d 74, 75. The multiplier requested by Class Counsel below is within the range of multipliers found to be appropriate by various federal and state courts in California. In *Sternwest Corp. v. Ash*, for instance, the Court of Appeal remanded for a lodestar enhancement of "**two, three, four or otherwise**." *Id*. at 76; *see also Wershba*, 91 Cal.App.4th at 255 ("**Multipliers can range from 2**

[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.

to 4 or even higher"); *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78, 83 (**affirming 2.34 multiplier**); *Coalition for Los Angeles County Planning in the Pub. Interest v. Board of Supervisors*, 76 Cal.App.3d 241, 251 (**affirming multiplier of approximately 2**); *Craft v. County of Los Angeles*, 2008 U.S. Dist. LEXIS 27526 (C.D. Cal. Apr. 1, 2008) (**applying 5.2 multiplier**); *See also Steinder v. Am. Broadcasting Co., Inc*. (9th Cir. 2007) 248 Fed. Appx. 780, 783 (**approving multiplier of 6.85** and citing cases with comparable or higher multipliers); *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 (finding no abuse of discretion in **awarding a multiplier of 3.65**). In *Torchia v. WW Grainger, Inc.* (E.D. Cal. 2014) 304 F.R.D. 256, 275-278, a federal magistrate in Fresno approved attorneys' fees of $550,000 **constituting a 3.57 multiplier** on class counsel's total lodestar of $153,856 in a wage and hour class action.

As set forth in the declarations of Class Counsel, the Plaintiff's attorneys that worked on this case spent approximately 360.1 hours litigating the case and achieving the settlement, thereby resulting in a fair and reasonable 2.4 multiplier that is directly in line with the cases cited above. (See Mankin Decl., ¶ 26; Carlson Decl. ¶ 5).

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

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

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

VII. THE REQUESTED COSTS AND SERVICE AWARDS ARE REASONABLE

A. <u>The Requested Costs Are Reasonable and Merit Approval</u>

The Settlement Agreement authorized litigation expenses up to $30,000. Class Counsel's actual costs through the final approval hearing were actually $33,716.46, but in light of the $30,000 cap on costs, that is the amount that Class Counsel is seeking. (Mankin Decl. ¶ 27.) These costs include one half of the mediation fees ($24,000), filing fees, CourtCall charges, expert statistician costs ($7,520), court filing fees, and process server fees. (The invoices for mediation and the expert's costs are attached to the Mankin Decl. as Exhibits C and D).

/ / /

B. <u>The Requested Service Awards are Reasonable and Merit Approval</u>

A named plaintiff is an essential ingredient of any class action and an incentive award is appropriate to induce individuals to step forward and assume the burdens and obligations of representing the Class. Courts regularly approve service payments to compensate named plaintiffs for their service to the class and the risks they incurred during the course of the litigation. (*See, e.g. Bell v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding "service payments" to named Plaintiff for their efforts in bringing class action); *Rodriguez v. West Publishing* (9th Cir. 2009) 563 F.3d 948, 959 (stating that incentive awards 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.")

Under the Settlement, Defendant agreed to pay a Service Award to Plaintiff in the amount of $5,000[3] in recognition of his contribution as the Class Representative. In addition, Plaintiff also undertook significant risks, including the risk of being blackballed in the industry and the risk that he could have been liable for Defendant's costs if they 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) No. C 05-2320 SBA, 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 Payment is reasonable, particularly in light of the substantial benefits Plaintiff generated for the Class Members and the risks he undertook. (See Plaintiff Declaration ¶¶ 3-9.)

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

[3] Plaintiff separately settled his claims for retaliation in a separate individual settlement.

VIII. OTHERS MATTERS RE: FINAL APPROVAL

A. Settlement Administration Costs

The parties agreed that the Administrator, Phoenix Settlement Administrators, would be compensated for services performed. The Administrator's flat fee is $8,000.00. (Mitzner Decl., ¶ 16.)

B. Notice of Final Judgment to the Class

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

C. Uncashed Checks

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

D. Final Report

Defendant shall deposit the Gross Settlement Amount into the Qualified Settlement Fund within 20 days of the Effective Date. The Administrator then has 10 days thereafter to process the funds and issue checks to the Class Members, who will then have 180 days to cash their checks. Accordingly, the Parties project that the check cashing deadline will occur on approximately July 22, 2026. In the event of uncashed checks, the Administrator is required to hold the funds for approximately one year. Thus, the Parties propose submitting a final report in the form of a declaration from the Administrator by approximately August 24, 2027, and then holding a disbursement hearing thereafter at the Court's convenience.

E. Submission to the LWDA

As set forth in the Mankin Declaration at ¶ 30, the Settlement Agreement and this motion are concurrently being submitted to the LWDA in accordance with Labor Code § 2699(l)(2). The LWDA has not commented on the Settlement to date.

IX. CONCLUSION

Plaintiff respectfully submits that the Settlement is fair, adequate, and reasonable, and merits final approval.

Dated: October 2, 2025

LAUBY, MANKIN & LAUBY LLP

BY: ______________________________

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

PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, CA 92504.

On October 2. 2025, I caused to be served the foregoing document(s) described as follows:

PLAINTIFF'S NOTICE OF MOTION AND UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS AND PAGA 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.

[X] **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.

[X] **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 2, 2025, 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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