

1 B. James Fitzpatrick (SBN: 129056)
2 Laura L. Franklin (SBN: 282642)
3 FITZPATRICK & SWANSTON
4 555 S. Main Street
5 Salinas, CA 93901
6 Telephone: (831) 755-1311
7 Facsimile: (831) 755-1319

8 Larry W. Lee (SBN: 228175)
9 Max W. Gavron (SBN: 291697)
10 DIVERSITY LAW GROUP, P.C.
11 515 S. Figueroa Street, Suite 1250
12 Los Angeles, California 90071
13 Telephone: (213) 488-6555
14 Facsimile (213) 488-6554

15 Attorneys for Plaintiff,
16 YANNET JIMENEZ on behalf of herself and all similarly situated employees
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

YANNET JIMENEZ on behalf of herself
and all similarly situated employees,

v.

SAMBRAILO PACKAGING; and DOES 1
through 50, inclusive,

Defendants.

Case No. 20CV003281

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; AND MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT**

Date: June 30, 2023

Time: 8:30 a.m.

Dept: 15

Complaint Filed: December 7, 2020

FAC Filed: April 18, 2023

Trial Date: Not Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 30, 2023, at 8:30 a.m., or as soon thereafter as the matter may be heard, before the Honorable Thomas W. Wills, judge presiding, in Department 15 of the above referenced Court located at 1200 Aguajito Road, Monterey, California 93940, Plaintiff Yannet Jimenez (“Plaintiff”) will and hereby move this Court for the following relief with respect to the Joint Stipulation and Settlement Agreement of Class Action and PAGA Claims (“Settlement Agreement” or “Settlement”) entered into by Plaintiff and Defendant Sambrailo Packaging (“Defendant”) (together with Plaintiff, the “Parties”):

1. That the Court approve the Settlement Agreement referenced above;
2. That the Court certify the following Settlement Class for settlement purposes: all current and former non-exempt employees of Defendant who worked for Defendant in California during the Class Period (the “Settlement Class”);
3. That Plaintiff Yannet Jimenez be appointed as the Class Representative and B. James Fitzpatrick and Laura L. Franklin of Fitzpatrick & Swanston, and Larry W. Lee and Max W. Gavron of Diversity Law Group, P.C. be appointed as Class Counsel;
4. That the Court preliminarily approve the Stipulation of Settlement and the Gross Settlement Amount in the amount of One Million Four Hundred Thousand Dollars and Zero Cents (\$1,400,000.00);
5. That the Court finds on a preliminary basis that the Settlement Agreement appears to be within the range of reasonableness of a settlement, including the amount of the PAGA penalties, Class Representative service payment, attorneys’ fees and costs, settlement administration costs, and the allocation of payments to Settlement Class Members, that could ultimately be given final approval by this Court;
6. That the Court approve the mailing of the proposed Notice of Pendency of Class Action, also referred to as the “Notice of Proposed Settlement” or “Notice,” to be sent to Settlement Class Members;
7. That the Court appoint Phoenix Settlement Administrators as the Settlement Administrator; and

1 8. That the Court schedule the matter for a Final Fairness and Final Approval
2 hearing.

3 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
4 provides for court approval of the settlement of a purported class action and allows the Court
5 to preliminarily certify a class for settlement purposes.

6 The basis for this Motion, filed without any opposition from Defendant, is that the
7 proposed settlement is fair, adequate, and reasonable, and the procedures proposed by the
8 Parties are adequate to ensure the opportunity of class members to participate in, opt-out of, or
9 object to the settlement.

10 This Motion will be based on the attached Memorandum of Points and Authorities, the
11 Stipulation of Settlement and the proposed Notice, and the supporting Declarations of B. James
12 Fitzpatrick, Larry W. Lee, Max W. Gavron, and Yannet Jimenez, upon the oral arguments of
13 counsel (should there be any), and on the complete records and file herein.

14
15 Dated: June 7, 2023

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP

16
17 By: 
18 B. James Fitzpatrick
19 Larry W. Lee
20 Attorneys for Plaintiff,
21 YANNET JIMENEZ on behalf of herself and
22 all similarly situated employees
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1 **I. INTRODUCTION**

2 This is a wage and hour class and representative PAGA action arising from various
3 alleged Labor Code violations by Defendant Sambrailo Packaging (“Defendant”) primarily
4 relating to unlawful rounding policies, which allegedly resulted in unpaid time and improper
5 meal periods, among other violations. Based on these claims, Plaintiff Yannet Jimenez
6 (“Plaintiff”) asserts violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 1174, 1175,
7 1194, 1197, 1198, 1199, 2802, and 2698, *et seq.*, the Private Attorneys General Act of 2004
8 (the “PAGA”), Business and Professions Code § 17200, *et seq.* (the “UCL”), and common
9 law. Defendant denies each, every, and all of the allegations of the operative Complaint and
10 contends that its wage and hour practices comply with the Labor Code.

11 Prior to the settlement of this action, Plaintiff and Defendant (jointly referred to as the
12 “Parties”) thoroughly investigated and litigated the facts relating to the claims alleged in the
13 operative Complaint against Defendant. Thereafter, the Parties participated in two separate
14 full-day mediations with neutrals Michael Masuda, Esq. and later Deborah Saxe, Esq. The
15 Parties were ultimately able to reach the current settlement, which requires Defendant to pay a
16 maximum total payment of \$1,400,000.00 to settle the class and PAGA claims of the putative
17 class members. The Parties believe that this amount is fair, adequate, and reasonable,
18 especially given the risks and uncertainty of class certification and the merits of this case. A
19 true and correct copy of the Joint Stipulation and Settlement Agreement of Class Action and
20 PAGA Claims (the “Settlement Agreement” or “Settlement”) is attached as **Exhibit A** to the
21 Declaration of Max W. Gavron (“Gavron Decl.”) submitted concurrently herewith.

22 While Plaintiff and her counsel believe they could prevail on the merits of the claims at
23 trial, they recognize the inherent risks in drawn-out litigation and the specific risk that Plaintiff
24 could fail to establish liability. Based on their own independent investigation and evaluation,
25 the Parties and their respective counsel are of the opinion that the Settlement for the
26 consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and
27 adequate and is in the best interests of the Settlement Class and Defendant in light of all
28 known circumstances and the expenses and risks inherent in litigation.

Therefore, the Parties respectfully request that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

II. DISCUSSION

A. Relevant Background and Settlement Negotiations

Defendant operates a packaging business with locations throughout the State of California, including Salinas, San Juan Bautista, Watsonville, Santa Maria, and Castroville. Plaintiff was employed by Defendant from about 2008 to about August 2020, and was assigned to work at the Salinas facility as her primary workplace. *See* Declaration of Yannet Jimenez (“Jimenez Decl.”) ¶ 2.

On December 7, 2020, Plaintiff filed a class and representative action complaint in the Superior Court of California, County of Monterey on behalf of herself and all similarly situated employees against Defendant. Declaration of Max W. Gavron (“Gavron Decl.”) ¶ 2. Plaintiff subsequently filed a First Amended Complaint on April 18, 2023. *Id.* ¶ 3. The First Amended Complaint is the operative Complaint (“Complaint”). *Id.* ¶ 3.

The Complaint asserts claims for: (1) failure to provide meal periods or compensation in lieu thereof in violation of Labor Code §§ 226.7 and 1198 and the Wage Order; (2) failure to provide rest periods or compensation in lieu thereof in violation of Labor Code §§ 226.7 and 1198 and the Wage Order; (3) failure to pay hourly and overtime wages in violation of Labor Code §§ 1194 and 1198 and the Wage Order; (4) failure to pay minimum wage in violation of Labor Code §§ 1194, 1197, and 1199 and the Wage Order; (5) failure to comply with itemized employee wage statement requirements in violation of Labor Code §§ 226, 1174, and 1175 and the Wage Order; (6) failure to pay all wages upon termination in violation of Labor Code §§ 201, 202, and 203 and the Wage Order; (7) failure to pay wages timely in violation of Labor Code § 204; (8) failure to reimburse work related expenses in violation of Labor Code § 2802 and the Wage Order; (9) California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698; and (10) unfair business practices in violation of Business and Professions Code § 17200, *et seq.* and common law. Specifically, Plaintiff alleged that Defendant required employees to attend mandatory orientation and safety training, keep

1 company-issued two-way radios on their person and respond to calls at all times during a shift,
2 including meal and rest periods, and respond to phone calls off-the-clock regarding the start
3 time of their next shift. Plaintiff also alleges that Defendant regularly rounded employee time
4 punches to the detriment of employees. As such, Plaintiff alleges that she and other employees
5 were not paid all for all hours worked, including minimum and overtime wages. In addition,
6 Plaintiff alleges that employees did not receive reporting time pay on occasions when
7 employees reported to work but were not permitted to work, were not provided off-duty meal
8 and rest periods or paid premiums in lieu thereof, and were not reimbursed for work-related
9 expenses such as personal cell phone costs and mileage incurred for travel to and from
10 Defendant's facilities. Moreover, Plaintiff alleges that Defendant failed to timely pay wages
11 when due and upon separation of employment. Finally, Plaintiff alleges that Defendant failed
12 to provide accurate itemized wage statements as a result of the above practices. Gavron Decl.
13 ¶ 4.

14 Since the initiation of the lawsuit, the Parties have conducted significant written
15 discovery and three depositions. Defendant produced over 27,000 pages of documents and
16 data including a 20% sampling of the putative class members' time and payroll records.
17 Gavron Decl. ¶ 5. Plaintiff also reviewed Defendant's written policies and procedures
18 regarding meal and rest periods, timekeeping, overtime, rounding, reimbursement, payment of
19 final wages, among others. Gavron Decl. ¶ 5. Outside of the rounding policy, most of
20 Defendant's written policies were at least facially compliant. Gavron Decl. ¶ 5. This
21 investigation enabled Plaintiff to perform an analysis of the putative class and Defendant's
22 liability. *Id.*

23 On January 6, 2023, the Court granted Plaintiff's Motion for Class Certification and
24 certified a class consisting of: "All current and former non-exempt employees of Defendants
25 who worked for Defendants in California at any time from June 10, 2016, through December
26 31, 2021" (the "Class"). *Id.* ¶ 6. The Court also certified two sub-classes of: "All current and
27 former non-exempt employees of Defendants who worked for Defendants in California at any
28 time who worked any work shift of more than 5 hours between June 10, 2016, and December

31, 2021” (the “Meal Period Sub-Class”); and “All current and former non-exempt employees of Defendants who worked for Defendants in California at any time who worked at more than one location during the same workday between June 10, 2016, through December 31, 2021¹” (the “Travel Time Sub-Class”). *Id.* ¶ 6. Plaintiff continued to litigate the other theories of liability on a PAGA basis, but only obtained certification for those classes addressed above. *Id.* ¶ 6. Plaintiff also moved to amend the complaint to include an additional class representative but the Court ultimately denied that motion, as moot, in conjunction with the ruling on Plaintiff’s Motion for Class Certification.

Throughout the litigation, the Parties have engaged in multiple settlement attempts, including private mediation with neutral Michael Masuda, Esq. on November 4, 2021, multiple follow up calls with Mr. Masuda, and another private mediation with neutral Deborah Saxe, Esq. on March 9, 2023, following Plaintiff obtaining class certification. *Id.* ¶ 7. After thorough investigation and evaluation of the facts and claims, as well as arm’s length negotiation, the Parties accepted a mediator’s proposal following the mediation with Ms. Saxe and later memorialized the terms of their agreement in the Joint Stipulation and Settlement Agreement of Class Action and PAGA Claims. *Id.* ¶ 8; Ex. A.

The Parties recognize the risk, expense, and delay in continuing litigation with the class and PAGA claims, and believe the Settlement to be fair, reasonable, and adequate. Gavron Decl. ¶ 9. Accordingly, the Parties desire to settle, compromise, and discharge all disputes and claims arising from or relating to the afore-referenced claims.

Any settlement of a class action lawsuit must be reviewed and approved by the Court. This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to the class members for their comment or objections. The *Manual for Complex Litigation, Third* § 30.41 states:

Approval of class action settlements involves a two-step process. First, counsel submits the proposed terms of settlement and the court makes a preliminary fairness evaluation. If the preliminary evaluation of the proposed settlement does not disclose grounds to

¹ Through the discovery process, Plaintiff learned that Defendant revised its practices to stop rounding employee time beginning in January 2022, which is why the class period for this sub-class was limited.

1 doubt its fairness or other obvious deficiencies, such as unduly
2 preferential treatment of class representatives or of segments of the
3 class, or excessive compensation for attorneys, and appears to fall
4 within the range of possible approval, the court should direct that
notice...be given to the class members of a formal fairness hearing,
at which arguments and evidence may be presented in support of
and in opposition to the settlement.

5 (Fed. Jud. Ctr., 3rd ed. 1995).

6 Thus, the preliminary approval by the trial court is simply a conditional finding that the
7 settlement appears to be within the range of acceptable settlements. As Professor Newberg
8 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or
9 conference concerning a tentative settlement proposal may vary. The court may find that the
10 settlement proposal contains some merit, is within the range of reasonableness required for a
11 settlement offer, or is presumptively valid subject only to any objections that may be raised at
12 a final hearing.” Alba Conte & Herbert B. Newberg, *4 Newberg on Class Actions* § 11.26 (4th
13 ed. 2002).

14 The procedures for the parties’ submission of a proposed settlement for preliminary
15 approval by the court also are discussed in *4 Newberg on Class Actions*:

16 When the parties to an action reach a monetary settlement, they will
17 usually prepare and execute a joint stipulation of settlement, which
18 is submitted to the court for preliminary approval. The stipulation
19 should set forth the central terms of the agreement, including but not
limited to, the amount of settlement, form of payment, manner of
determining the effective date of settlement and any recapture
clause.

20 *Id.* § 11.24.

21 Here, the Parties have reached such an agreement and have submitted to this Court in
22 connection with this Motion a copy of the Settlement Agreement fully setting forth the
23 agreement reached by the Parties. The Settlement Agreement sets forth all terms of the
24 agreement reached by the Parties, which include, among other things, the method for
25 calculating the Settlement Class Members’ individual portions of the Gross Settlement
26 Amount.

27 //

28 //

1 **B. Proposed Settlement Class Definition**

2 The current settlement is being settled on behalf of “all current and former non-exempt
3 employees of Defendant who worked for Defendant in California during the Class Period (the
4 “Settlement Class”).” *See* Settlement Agreement ¶ 32. The Class Period is defined as “June 10,
5 2016, through the earlier of June 9, 2023, or the date of preliminary approval of the class
6 settlement.” *See* Settlement Agreement ¶ 5. Because of the date for the hearing on Plaintiff’s
7 Motion for Preliminary Approval, the class period will end June 9, 2023.

8 **C. Settlement Terms and Evaluation**

9 Courts presume the absence of fraud or collusion in the negotiation of settlement
10 unless evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir.
11 1989); *Mars Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.*, 834 F.2d 677, 682
12 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts
13 do not substitute their judgment for that of the proponents, particularly where, as here,
14 settlement has been reached with the participation of experienced counsel familiar with the
15 litigation. *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal.
16 2004); *Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp.
17 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979);
18 *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass’n*, 79 F.R.D. 571 (E.D. Pa. 1978).

19 While the recommendations of counsel proposing the settlement are not conclusive, the
20 Court can properly take them into account, particularly where, as here, they have been
21 involved in discovery and negotiations for some period of time, appear to be competent, have
22 experience with this type of litigation, and have exchanged substantial evidence from the
23 opposing party. *See Newberg on Class Actions, supra*, § 11.47; *Nat’l Rural Telecomms. Coop.*,
24 221 F.R.D. at 528 (“[s]o long as the integrity of the arm’s length negotiation process is
25 preserved, however, a strong initial presumption of fairness attaches to the proposed
26 settlement...[citations] and ‘great weight’ is accorded to the recommendations of counsel, who
27 are most closely acquainted with the facts of the underlying litigation”).

28 Here, both Plaintiff’s and Defendant’s counsel have a great deal of experience in wage

1 and hour class action litigation. Plaintiff's counsel have been approved as class counsel in a
2 number of wage and hour class actions and have extensive litigation experience. Declaration
3 of B. James Fitzpatrick ("Fitzpatrick Decl.") ¶¶ 4-5; Declaration of Larry W. Lee ("Lee
4 Decl.") ¶¶ 6-8; Gavron Decl. ¶¶ 33-39. Each side has apprised the other of and litigated their
5 respective factual contentions, legal theories, and defenses, resulting in negotiations taking
6 place between the Parties. Gavron Decl. ¶ 9.

7 **1. Potential Exposure**

8 Leading into mediation in March 2023, Defendant represented that the putative class
9 included 1,154 non-exempt employees who worked approximately 44,000 workweeks.
10 Gavron Decl. ¶ 17. Plaintiff retained an expert to analyze the 20% sampling of time and pay
11 records and create a damages model. Gavron Decl. ¶ 17. Plaintiff estimated the potential
12 damages, without accounting for various risk factors, totaled approximately:

- 13 • \$1,700,000 for meal period violations based analysis of the time records
14 showing violation rates ranging from 59.6% in 2016 to as low as 23.5% in 2023;
- 15 • \$839,750 for rest period violations assuming a 25% violation rate;
- 16 • \$140,000 for improperly rounded wages;
- 17 • \$322,000 for unpaid overtime and minimum wages premised on 30 minutes of
18 unpaid time per workweek with an average rate of pay of \$14.65;
- 19 • \$1,300,000 for Labor Code § 226(e) penalties premised on 14,537 pay periods
- 20 • \$440,000 for unreimbursed business expenses premised on \$10 per workweek;
- 21 and
- 22 • \$3,864,084 in waiting time penalties premised on 1099 former employees x
23 (\$14.65 average hourly rate x 8 hours x 30 days)).

24 Gavron Decl. ¶ 17. The total potential class penalties are thus approximately \$8.6 million.

25 Gavron Decl. ¶ 18.

26 Plaintiff further estimated the maximum potential PAGA penalties to be approximately
27 \$1,453,700, which is premised on \$100 per pay period penalty, which assumes that the Court
28 would not "stack" PAGA penalties for distinct violations of the Labor Code occurring in the

1 same pay period. *Id.* ¶ 19. If the Court did stack penalties, the value of the PAGA claim could
2 be higher, subject to the Court’s discretion to reduce the award, discussed below. Gavron
3 Decl. ¶ 19.

4 **2. Discount Factors & Evaluation**

5 Defendant presented several defenses that support the reasonableness of the proposed
6 settlement. First, Defendant argued that many of Plaintiff’s claims were not certifiable as class
7 claims. This is supported by the fact that Plaintiff only moved for class certification on
8 distinct theories of liability—namely, Defendant’s improper rounding of meal periods and the
9 unpaid wages and reimbursement associated with traveling to locations other than an
10 employee’s assigned location for work. Gavron Decl. ¶ 20. The damage calculations above
11 assume that Plaintiff would have obtained certification on all of her claims. However,
12 difficulty in obtaining certification on some of her claims, including, for example, her rest
13 period theory of liability, warrants a reduction in Defendant’s potential exposure.

14 Because employees were not required to clock in and out for rest periods, proving this
15 claim on a class basis is especially difficult. While Plaintiff argued that employees were
16 required to respond to calls during their rest periods, essentially rendering them “on-duty,”
17 Defendant disputed this claim. Defendant’s written rest period policy advised employees,
18 “Employees are not required to clock in and out for rest periods but since this time is counted
19 and paid as time worked, *you must not be absent from your workstation beyond the allotted*
20 *time.*” Plaintiff argued this would support her claim, but Defendant argued that employees were
21 free to leave their worksites and did not have to respond to calls during their breaks. These
22 factors warrant the estimated 25% violation rate. Gavron Decl. ¶ 25.

23 These risks on class certification are compounded by the California Supreme Court’s
24 holding in *Duran v. U.S. Bank Nat’l Ass’n*, 59 Cal. 4th 1 (2014). There, the plaintiffs obtained
25 class certification and subsequently prevailed at trial after eight years of litigation, but the
26 judgment and the certification ruling were reversed by the California Supreme Court after an
27 additional five years of litigation. The case was remanded to superior court where class
28 certification was denied and plaintiffs’ subsequent appeal also was denied.

1 Defendant stopped rounding employee's time and meal periods in January 2022. This
2 change in policy benefits the class members and also impacts the potential exposure on the
3 meal period and unpaid wages claims. Because of Defendant's revised practices, the rounding
4 claims end in December 2021. Review of the records produced by Defendant also
5 demonstrated a higher facial compliance rate for meal periods of 76% in 2023 after the policy
6 change. Defendant also claimed that it had compliant meal and rest period policies, which met
7 its obligations under the law to provide—but not police—meal periods. *See Brinker Rest.*
8 *Corp. v. Superior Ct.*, 53 Cal. 4th 1004, 1040 (2012) (“On the other hand, the employer is not
9 obligated to police meal breaks and ensure no work thereafter is performed.”). This too
10 warrants a discount to the maximum exposure addressed above. Gavron Decl. ¶ 23.

11 With respect to the travel time and reimbursement claim, Defendant's witnesses
12 testified that the only employees who traveled between locations were a small crew of
13 approximately twelve employees used to clean different facilities during the pandemic. The
14 possible limited scope of this claim is also not reflected in the estimated exposure above,
15 which assumed a ½ hour of unpaid time a workweek and \$10 a workweek in reimbursement
16 costs associated with using cellular phones for communication and mileage reimbursement for
17 the entire putative settlement class. Further post-certification discovery may have revealed
18 that Defendant's assertions regarding the limited scope of this claim were correct. If so, the
19 value of this claim would have been significantly reduced. Gavron Decl. ¶ 24.

20 Plaintiff also would have faced “good faith” defenses regarding the imposition of
21 waiting time penalties and wage statement penalties. In *Naranjo v. Spectrum Security*
22 *Services, Inc.*, __ Cal. Rptr. 3d __, 2023 WL 2261253 (Feb. 27, 2023), *review granted* 2023
23 WL 3745105 (May 31, 2023), the court upheld an employer's good faith defense to the
24 plaintiff's claim for waiting time penalties, pursuant to Labor Code § 203. The employer
25 argued that it had a viable legal defense, which precluded the imposition of waiting time
26 penalties because its acts were not “willful” within the meaning of the statute. *Naranjo* also
27 permitted a good faith defense to rebut the plaintiff's claim for penalties, pursuant to Labor
28 Code § 226. Gavron Decl. ¶ 25.

1 Here, Defendant would have argued that it was not liable for waiting time or wage
2 statement penalties because it acted in good faith. For example, in 2021, the California
3 Supreme Court's issued its opinion in *Donohue v AMN Services, LLC*, 11 Cal.5th 58 (2021),
4 which largely supported Plaintiff's rounding theories of liability. Defendant would have
5 argued that it revised its practices by the end of 2021 after *Donohue* clarified previously
6 ambiguous law regarding the propriety of rounding in the wage and hour context. *See, e.g.*
7 *See's Candy Shops, Inc. v. Superior Ct.*, 210 Cal. App. 4th 889, 900, 148 Cal. Rptr. 3d 690,
8 698 (2012) (permitting rounding of employee time). Gavron Decl. ¶ 26.

9 With respect to the PAGA penalties, trial courts have considerable discretion to reduce
10 the penalty award. Pursuant to Labor Code § 2699(f)(2) the Court can decline to award the full
11 amount of PAGA penalties where "if, based on the facts and circumstances of the particular
12 case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or
13 confiscatory." Indeed, as shown in the Court of Appeal's decision in *Carrington v. Starbucks*
14 *Corp.*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the
15 maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at
16 complying with the law. 30 Cal. App. 5th 504, 517 (2018). Upon review, the Court of Appeal
17 found such reduction to be proper and affirmed a judgment which only provided for a PAGA
18 penalty of \$5 per pay period. *Id.* at 539; *see O'Connor*, 2016 WL 4398271, at *17 (noting that
19 even if PAGA penalties amounted to \$1 billion, such award "could well be reduced, as a court
20 may reduce the penalty when to do otherwise would result in an award that is unjust, arbitrary
21 and oppressive, or confiscatory"); *c.f. Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th
22 Cir. 2021) ("Virgin was not notified by the Labor Commissioner or any court that it was
23 subject to the California Labor Code until the district court partially granted Plaintiffs' motion
24 for summary judgment. On this basis, we reverse the district court's holding that Virgin is
25 subject to heightened penalties for any labor code violation that occurred prior to that point.").
26 Gavron Decl. ¶ 27.

27 Courts routinely award far less than the statutory maximum amount of civil penalties,
28 even where an underlying violation of the Labor Code is found. In *Magadia v. Wal-Mart*

1 *Assocs., et al.*, while the trial court imposed substantial PAGA penalties upon the defendant,
2 such amount still represented reductions of 67% and 80% of the potential PAGA penalties at
3 issue. 2019 U.S. Dist. Lexis 91792 at *87-*100 (N.D. Cal. May 31, 2019). Moreover, this was
4 only after the plaintiff in *Magadia* had prevailed after trial. Thereafter, the Ninth Circuit
5 reversed the trial court’s ruling, which demonstrates the significant risk presented in moving
6 forward with litigation. *Magadia v. Wal-Mart Assocs., Inc.*, 999 F.3d 668, 677 (9th Cir. 2021).
7 Gavron Decl. ¶ 28.

8 Thus, the settlement for each Settlement Class Member is fair, reasonable, and
9 adequate, given the inherent risks of litigation and the costs of pursuing such litigation. The
10 settlement is the result of extensive arm’s length negotiations between the Parties and their
11 counsel and was facilitated by experienced and neutral mediators after participating in separate
12 mediation sessions. The proposed gross settlement of \$1,400,000 represents approximately
13 14% of the maximum class and PAGA penalties (\$1,400,000 / \$10,059,534). Gavron Decl. ¶
14 29.

15 Indeed, numerous courts have held that gross settlements approximating between only
16 8 and 25% of the defendant’s potential exposure are fair and reasonable. *See, e.g., In re Mego*
17 *Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement
18 recovering 16% of potential exposure was fair and reasonable; “[i]t is well-settled law that a
19 cash settlement amounting to only a fraction of the potential recovery does not per se render
20 the settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement
21 should be assessed relative to risks of pursuing the litigation to judgment”; noting that whether
22 the settlement is fair and adequate depends on the “the difficulties in proving the case”);
23 *Bellinghausen v. Tractor Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D.
24 Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of
25 the defendant’s potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist.
26 Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of wage and
27 hour class settlement which obtained *only 9.1%* of projected damages, given the risks of
28 continued litigation); *Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC,

2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of approximately 15% of the potential recovery was fair and reasonable). Here, the proposed settlement is approximately 14% of the potentially available penalties, which factors in the risks described above if the case were to proceed through litigation and appeals. Gavron Decl. ¶ 29.

Despite the asserted fairness of the settlement terms, as set forth in the Notice of Pendency of Class Action (“Notice”), should any Settlement Class Member wish to pursue his or her own case for the claims being released herein, each Settlement Class Member has the right to submit a request for exclusion (*i.e.*, opt-out) from the settlement. *See* Notice, attached as **Exhibit A** to the Settlement Agreement. Moreover, as set forth in the Notice, Settlement Class Members are advised of their right to attend the final approval hearing and/or object to any of the terms contained in the Stipulation. *Id.*

3. Amount and Manner of Distribution of the Compensation to be Provided to Settlement Class Members Including the Amount, or an Estimate, of What Each Settlement Class Member Will Receive

The Settlement Agreement provides for One Million Four Hundred Thousand Dollars and Zero Cents (\$1,400,000.00) as the Gross Settlement Amount. *See* Settlement Agreement ¶ 44.c. The Net Settlement Amount (calculated after deduction of Class Counsel’s attorneys’ fees (up to \$490,000.00), costs (up to \$30,000.00), Class Representative Service Payment (up to \$5,000.00), payment of PAGA penalties (\$50,000.00), and Settlement Administration Costs (up to \$14,000.00) is estimated to be approximately \$811,000.00. *See* Settlement Agreement ¶¶ 44.c-44.d.viii. Each Settlement Class Member that does not opt-out of the Settlement will receive their share of the Net Settlement Amount based upon the number of workweeks employed during the Class Period. *See* Settlement Agreement ¶ 44.d.i; Gavron Decl. ¶ 13.

Based on a raw average, each Settlement Class Member may recover approximately \$702.77. Gavron Decl. ¶ 14. The amount actually paid to each Settlement Class Member will increase or decrease depending on the actual number of workweeks he or she worked during the Class Period. *Id.* ¶ 14.

Finally, funds from any checks that have not been cashed within 180 days of issuance

shall be paid to the Watsonville Law Center as the *cy pres* beneficiary. *See* Settlement Agreement ¶ 44.d.iii. Class counsel do not have any conflicts of interest with the proposed *cy pres* recipient. Fitzpatrick Decl. ¶ 6; Gavron Decl. ¶ 15; Lee Decl. ¶ 9.

4. Whether, and Under What Circumstances, Amounts Available for Payment in Settlement Might Not Be Paid to Settlement Class Members or Might Revert to the Defendant

Any Settlement Class Member who validly excludes him/herself from this Settlement shall not be bound by this Settlement Agreement, except for the Released PAGA Claims, and shall not be entitled to any portion of the Net Settlement Amount. *See* Settlement Agreement ¶ 49. PAGA Group Members will still receive their portion of the PAGA Payment even if they opt out. None of the settlement funds will revert to Defendant.

5. Scope of the Release of Settlement Class Members' Claims

As a condition of participating in this class action settlement, Settlement Class Members shall release the following claims ("Released Claims"):

any and all claims, actions, or causes of action alleged in the Action, or that could have been alleged or raised in the Action based upon or arising out of the facts alleged therein, during the Class Period, except for those arising under PAGA

See Settlement Agreement ¶¶ 25, 55. Given that the release is tailored only to claims as pled in the Complaint and during the Class Period and nothing more, the release is appropriately limited.

In addition, regardless of whether a valid and timely Request for Exclusion is submitted, Settlement Class Members will also release the following claims ("Released PAGA Claims"):

claims during the PAGA Period arising under the California Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* predicated on violations of Labor Code §§ 201, 201.3, 202, 203, 204, 207, 208, 209, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 227.3, 246, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2800, and 2802, and which were alleged in the Action and/or could have been alleged in the Action based on the facts alleged in the Action and/or the notice(s) to the Labor and Workforce Development Agency ("LWDA").

See Settlement Agreement ¶¶ 26, 56.

1 With respect to and limited to solely the Plaintiff on condition of receiving a portion of
2 her Service Payment, the named Plaintiff further waives her rights afforded by California Civil
3 Code § 1542, which provides:

4 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
5 **THAT THE CREDITOR OR RELEASING PARTY DOES**
6 **NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
7 **FAVOR AT THE TIME OF EXECUTING THE RELEASE**
8 **AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
9 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
10 **WITH THE DEBTOR OR THE RELEASED PARTY.**

11 *See Settlement Agreement ¶ 57.*

12 **6. Tax Treatment of Settlement Amounts**

13 As Plaintiff's lawsuit sought unpaid wages, interest, and penalties, the Parties have
14 agreed that thirty percent (30%) of each Individual Settlement Payment shall be classified as
15 wages, subject to required withholdings and deductions, and the remaining seventy percent
16 (70%) shall be classified as interest, and other non-wage income. Settlement Agreement ¶
17 44.d.iii. One hundred percent (100%) of each Individual PAGA Payment shall be classified as
18 penalties. *Id.* ¶ 44.d.viii.1. The penalties, interest and non-wage portion of the payments shall
19 be deemed IRS Form 1099 income and not subject to withholdings and deduction. *Id.* ¶
20 44.d.ix.

21 **7. Affirmative Obligations to be Undertaken by Settlement Class**
22 **Members or Class Counsel and the Reasons for Any Such**
23 **Obligations**

24 Settlement Class Members do not need to do anything should they wish to receive their
25 share of the settlement funds. Because this is not a claims-made settlement, Settlement Class
26 Members will not be required to make a submission to participate in the settlement. Thus, this
27 substantially decreases the amount of burden each Settlement Class Member must bear to
28 receive their Individual Settlement Payment. If a Class Member does not wish to take part in
this settlement and be bound by the release, the Class Member must submit a request for
exclusion. *See Stipulation ¶¶ 51-52.*

D. Notice to Settlement Class Members

Should the Court grant the instant motion, Defendant will provide the Settlement

1 Administrator with a list containing each Settlement Class Member’s full name, last known
2 address, Social Security number, total number of workweeks employed during the Class
3 Period, and total number of pay periods employed during the PAGA Period (“Settlement Class
4 List”). Settlement Agreement ¶ 45. Upon receipt of the information and prior to mailing the
5 Notice to Settlement Class Members, the Settlement Administrator shall perform a search
6 based on the National Change of Address Database for information to update and correct for
7 any known or identifiable address changes. *Id.* ¶ 47. Within ten (10) calendar days of receipt
8 of the Settlement Class List from Defendant, the Settlement Administrator will mail the Notice
9 out to Settlement Class Members. *Id.* Any Notice returned to the Settlement Administrator as
10 non-deliverable on or before the opt-out deadline shall be sent via regular first-class U.S. mail
11 to the forwarding address affixed thereto. *Id.* If no forwarding address is provided, the
12 Settlement Administrator shall perform an advanced skip trace to locate the most current
13 address and resend the Notice within five (5) calendar days. *Id.*

14 As set forth in the Notice, Settlement Class Members will be allowed to opt out of the
15 settlement by a certain deadline, or object to the settlement. Settlement Agreement at Exhibit
16 A.

17 **E. Typicality and Adequacy of Representation**

18 **1. Class Representative’s Claims are Typical of the Settlement Class**

19 The commonality requirement is met when there are questions of law and fact common
20 to the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of
21 shared legal issues with divergent legal factual predicates is sufficient, as is a common core of
22 salient facts couple with disparate legal remedies within the class”). Commonality requires
23 only that some common legal or factual questions exist; the plaintiffs need not show that all
24 issues in the litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473
25 (1981). Defendant’s conduct is central to the commonality inquiry. *See City of San Jose v.*
26 *Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13
27 (1971). Where the employer’s conduct is uniformly directed at a class of employees, as it is
28 here, the class wide impact of the Defendant’s policies satisfies the commonality requirement.

1 *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

2 Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or
3 procedure violated the Labor Code by failing to provide off-duty meal and rest periods or pay
4 premium compensation in lieu thereof, failing to pay minimum, hourly, and overtime wages
5 owed, failed to provide accurate wage statements, failed to timely pay all wages when due and
6 upon separation of employment, and failed to reimburse business expenses. Jimenez Decl. ¶¶
7 3-7. In other words, Plaintiff contends that she was subjected to the same policy and practice
8 as other Settlement Class Members and that her claims are typical to those of the Settlement
9 Class.

10 Moreover, Plaintiff does not have any interests adverse to the Settlement Class, nor
11 have any such issues been raised or presented. Jimenez Decl. ¶ 8. Plaintiff has taken all
12 necessary steps to represent the interests of the Settlement Class by providing information and
13 documents to her counsel and sitting for her deposition. *Id.* ¶ 9. For such reasons, Plaintiff has
14 adequately represented the Settlement Class and will continue to do so.

15 **2. Class Counsel Have Adequately Represented the Settlement Class**
16 **and Have Experience with Wage and Hour Class Actions**

17 From the inception of the case, Class Counsel have zealously represented the interests
18 of the class. The settlement was obtained for the benefit of the Settlement Class, as opposed to
19 the individual Class Representative. Further, Class Counsel have been approved as class
20 counsel on a number of prior cases, have litigated numerous other class action cases, and are
21 competent to represent the class. Fitzpatrick Decl. ¶¶ 4-5; Lee Decl. ¶¶ 6-8; Gavron Decl. ¶¶
22 33-38.

23 **F. Costs and Fees**

24 **1. Attorneys' Fees and Costs**

25 California state and federal courts have recognized that an appropriate method for
26 determining award of attorneys' fees is based on a percentage of the total value of benefits to
27 class members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254
28 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472,

1 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). The purpose
2 of this equitable doctrine is to avoid unjust enrichment of counsel and to “spread litigation
3 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the
4 entire burden alone.” *Vincent*, 557 F.2d at 769.

5 The Common Fund doctrine is predicated on the principle of preventing unjust
6 enrichment. When a litigant’s efforts create or preserve a fund from which others derive
7 benefits, she may require the passive beneficiaries to compensate those who created the fund.
8 Both California state and federal courts have embraced this doctrine. *Serrano III*, 20 Cal. 3d at
9 35; *Vincent*, 557 F.2d at 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal.
10 4th 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine
11 has been applied “consistently in California when an action brought by one party creates a
12 fund in which other persons are entitled to share.” The reasons for applying the common fund
13 doctrine include: “fairness to the successful litigant, who might otherwise receive no benefit
14 because his recovery might be consumed by the expenses; correlative prevention of an unfair
15 advantage to the others who are entitled to share in the fund and who should bear their share of
16 the burden of its recovery; encouragement of the attorney for the successful litigant who will
17 be more willing to undertake and diligently prosecute proper litigation for the protection or
18 recovery of the fund if he is assured that he will be properly and directly compensated should
19 his efforts be successful.” *Id.*

20 Indeed, most recently, the California Supreme Court has also now held that the award
21 of attorneys’ fees in common fund wage and hour class action settlements should start with the
22 percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (“We join the
23 overwhelming majority of federal and state courts in holding that when class action litigation
24 establishes a monetary fund for the benefit of the class members, and the trial court in its
25 equitable powers awards class counsel a fee out of that fund, the court may determine the
26 amount of a reasonable fee by choosing an appropriate percentage of the fund created”).

27 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3
28 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that

1 required a multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is
2 “extraordinarily high or low [should] the trial court [] consider whether the percentage method
3 should be adjusted so as to bring the imputed multiplier within a justifiable range.” *Id.* at 505.

4 The Parties have agreed to a payment of a maximum of \$490,000.00, or 35% of the
5 Gross Settlement Amount for payment to Class Counsel as attorneys’ fees. Settlement
6 Agreement ¶ 44.d.vi. The Parties have agreed to a payment of the foregoing attorneys’ fees
7 and, thus, this payment should be presumed to be fair. Further, the Parties have agreed to
8 reimbursement of Class Counsel’s litigation costs up to \$30,000.00. *Id.* Class Counsel have, at
9 their own risk, expended costs, for example, to file this instant action, effectuate service of
10 process, pay mediation fees, and pay other litigation-related costs.

11 Based on the foregoing, the Court should preliminarily approve the attorneys’ fees and
12 costs being requested by the Parties, which will be further supported and discussed in
13 Plaintiff’s Motion for Final Approval, should the Court grant this Motion.

14 **2. Proposed Payment to the Class Representative**

15 The Class Representative requests a service payment of \$5,000.00. Settlement
16 Agreement ¶ 44.d.vii. The Class Representative met and conferred with Class Counsel on a
17 number of occasions to discuss the case, provided documents and information to Class
18 Counsel, sat for deposition, and reviewed the Settlement Agreement. As part of her duties as
19 Class Representative, Plaintiff provided invaluable information, evidence, and documents that
20 resulted in this settlement. Jimenez Decl. ¶ 9. Significantly, the Class Representative
21 prosecuted this action on behalf of other employees and was able to obtain exceptional
22 recovery and results for other class members. In addition to the invaluable services that she
23 provided, Plaintiff also took a significant risk, both professionally and monetarily, in acting as
24 the Class Representative and seeking benefits on behalf of the Settlement Class. Because the
25 claims alleged by the Class Representative involved the payment of costs to the prevailing
26 party, Plaintiff could have possibly faced paying the costs of Defendant, had she not prevailed
27 in this action.

28 Furthermore, Plaintiff believes that future employers are much less likely to hire

1 individuals who have filed suit against their prior employer, particularly cases of this nature,
2 so that Plaintiff may face prejudice in the future from other potential employers. Plaintiff took
3 this risk upon herself and the Settlement Class benefited from these risks taken by Plaintiff.
4 Settlement Class Members did not have to file individual lawsuits and bear the risks of
5 payment of costs if they did not prevail, nor did they have to face the potential for retaliation
6 and not getting future employment had they filed a public lawsuit.

7 **3. Settlement Administration Costs**

8 The Parties have agreed to an estimated payment of \$14,000.00 to the Settlement
9 Administrator, Phoenix Settlement Administrators, to send notices and to administer this
10 Settlement, which shall be paid out of the Gross Settlement Amount. Settlement Agreement ¶¶
11 31, 44.d.v. Phoenix is a well-recognized class action settlement administrator. The Parties
12 believe that the administration fee is reasonable and should be approved. Gavron Decl. ¶ 16,
13 **Ex. B** (Bid for Administration). The proposed cost for administration is approximately \$12
14 per class member and includes the notice being translated to Spanish. Gavron Decl. ¶ 16.

15 **III. PLAINTIFF PROVIDED NOTICE TO THE LWDA**

16 Concurrent with the filing of this Motion, Plaintiff provided notice to the Labor and
17 Workforce Development Agency. Gavron Decl. ¶ 42.

18 **IV. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR** 19 **PRELIMINARY APPROVAL**

20 Here, the proposed settlement is fair, adequate, and reasonable. It will result in both
21 substantial monetary benefits to Settlement Class Members; it is non-collusive; and it was
22 achieved as the result of informed, extensive, and arm's length negotiations conducted by
23 counsel for the respective parties who are experienced in wage and hour class action litigation.
24 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
25 approval of the proposed settlement, sign the proposed Order, approve and authorize mailing
26 of the proposed Notice, and set a date for a final approval hearing.

27 //

28 //

1 Dated: June 7, 2023

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP

3 By: 

4 B. James Fitzpatrick

Larry W. Lee

Max W. Gavron

Attorneys for Plaintiff,

YANNET JIMENEZ on behalf of herself and
all similarly situated employees

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3 STATE OF CALIFORNIA]
4]ss.
5 COUNTY OF LOS ANGELES]

6 I am employed in the County of Los Angeles, State of California. I am over the age of 18
7 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250,
8 Los Angeles, California 90071.

9 On June 7, 2023, I served the following document(s) described as:

- 10 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY**
APPROVAL OF CLASS ACTION SETTLEMENT; AND MEMORANDUM
OF POINTS AND AUTHORITIES IN SUPPORT
- 11 **2. DECLARATION OF B. JAMES FITZPATRICK IN SUPPORT OF**
PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT
- 12 **3. DECLARATION OF MAX W. GAVRON IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 13 **4. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 14 **5. DECLARATION OF YANNET JIMENEZ IN SUPPORT OF PLAINTIFF'S**
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT
- 15 **6. [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS**
ACTION SETTLEMENT AND SETTING A SETTLEMENT FAIRNESS
HEARING

16 on the interested parties in this action as follows:

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Keith Chrestionson	VIA ELECTRONIC SERVICE
Gabrielle E. Gordon	KChrestionson@FoxRothschild.com
Fox Rothschild LLP	GGordon@foxrothschild.com
345 California Street, Suite 2200	
San Francisco, CA 94104-2670	
<i>Attorneys for Defendant Sambrailo Packaging</i>	

1
2 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-
3 entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website
4 www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for
5 the above-entitled case. The service transmission was reported as complete and a copy of the
6 filing receipt/confirmation will be filed, deposited, or maintained with the original document(s)
7 in this office.

8
9 I declare under penalty of perjury under the laws of the State of California that the above
10 is true and correct. Executed on June 7, 2023, at Los Angeles, California.
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Erika Mejia