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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF STANISLAUS

LISA LEFANTY, individually, and on behalf of all others similarly situated, Plaintiff, v. KAISER FOUNDATION HOSPITALS; DOES 1 to 20, inclusive, Defendant.	Case No. CV-21-004330 Assigned to the Hon. Sonny S. Sandhu; Dept. 24 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** Date: March 4, 2025 Time: 8:30 a.m. Dept.: 24 Complaint Filed: August 13, 2021

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 4, 2025, at 8:30 a.m., or as soon thereafter as the matter may be heard, before the Honorable Sonny S. Sandhu, judge presiding, in Department 24 of the above referenced Court, located at 801 10th Street, Modesto, CA 95354, Plaintiff Lisa Lefanty ("Plaintiff") will and hereby moves this Court for the following relief with respect to the Class and Representative Action Settlement Agreement ("Agreement" or "Settlement Agreement") entered into by Plaintiff and Defendant Kaiser Foundation Hospitals ("Defendant" or the "Hospital"):

1. That the Court approve the Agreement referenced above;

2. That the Court certify the following Class for settlement purposes: all persons who were employed by Defendant as Assistant Nurse Managers and/or Assistant Department Administrators under job codes 06017 and 949013 in the State of California at any time during the period of August 13, 2017 through November 5, 2024 (the "Class");

3. That Plaintiff Lisa Lefanty be appointed as the Class Representative;

4. That Timothy B. Del Castillo and Kent L. Bradbury of Castle Law, and Larry W. Lee and Kristen M. Agnew of Diversity Law Group, P.C., be appointed as Class Counsel;

5. That the Court preliminarily approve the Agreement and the Gross Settlement Amount in the amount of Eleven Million Dollars ($11,000,000);

6. That the Court finds on a preliminary basis that the 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 Class Members, that could ultimately be given final approval by this Court;

7. That the Court approve the mailing of the proposed Notice of Class Action Settlement and Hearing Date for Final Court Approval ("Class Notice") to be sent to Class Members;

8. That the Court appoint CPT Group as the Settlement Administrator; and

9. That the Court schedule the matter for a Final Fairness and Final Approval hearing.

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

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

This Motion will be based on the attached Memorandum of Points and Authorities, the Settlement Agreement and the proposed Notice, and the supporting Declarations of Kent L. Bradbury, Larry W. Lee, Kristen M. Agnew, Plaintiff Lisa Lefanty and Julie Green of CPT Group, upon the oral arguments of counsel (should there be any), and on the complete records and file herein.

DATED: January 24, 2025

DIVERSITY LAW GROUP, P.C.

By: ______________________________

Larry W. Lee
Kristen M. Agnew
Attorneys for Plaintiff
LISA LEFANTY

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a wage and hour class and representative PAGA action arising from Defendant Kaiser Foundation Hospitals' ("Defendant" or the "Hospital") alleged misclassification of Assistant Nurse Managers and/or Assistant Department Administrators (collectively, "ANMs") as exempt employees. Prior to the settlement of this Action, Plaintiff Lisa Lefanty ("Plaintiff") and Defendant (jointly referred to as the "Parties") thoroughly investigated the facts relating to the claims alleged in the operative Complaint against Defendant. The Parties each propounded and responded to written discovery, Plaintiff sat for a two-day deposition, and Defendant produced over five thousand pages of documents relating to the exempt status of the ANM role, including a sampling of emails sent to and/or received by ANMs, and documents tracking the workload of ANMs.

Thereafter, the Parties participated in a full day of private mediation and were ultimately able to reach the current settlement. Significantly, the entire Gross Settlement Amount is non-reversionary, such that no monies will revert to Defendant. The Parties believe that this amount is fair, adequate, and reasonable, especially given the risks and uncertainty of class certification and the merits of this case.

While Plaintiff and her counsel believe that they could prevail on class certification and on the merits of the claims at trial, they recognize the inherent risks in drawn-out litigation and the specific risk that Plaintiff could fail to establish liability or that certification is appropriate. Based on their own independent investigation and evaluation, the Parties and their respective counsel are of the opinion that the settlement for the consideration and on the terms set forth the Class and Representative Action Settlement Agreement ("Agreement" or "Settlement Agreement")[1] is fair, reasonable, and adequate and is in the best interests of the Class and Defendant in light of all 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.

[1] A true and correct copy of the Settlement Agreement is attached to the Declaration of Kristen Agnew as Exhibit 1.

II. PROCEDURAL HISTORY

A. The PAGA Notice and Initial Complaint.

On April 29, 2021, Plaintiff filed a written notice with the California Labor & Workforce Development Agency ("LWDA") alleging that Defendant violated Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 256, 510, 1174, 1194 and 1197.1, IWC Wage Order MW-2014, MW-2017; IWC Wage Order No. 5-2001, pursuant to Labor Code section 2699 ("PAGA Notice"). *See* Declaration of Kristen M. Agnew ("Agnew Decl.") ¶ 3, Exhibit 2. More specifically, Plaintiff alleged that Defendant misclassified Plaintiff and other ANM's as exempt, although their position did not qualify for any exemption under California law. *See id*. Subsequently, on or about Jan 12, 2022, Plaintiff filed Amended PAGA Notice with the LWDA. *See id*. at ¶ 4, Exhibit 3.

On August 13, 2021, Plaintiff initiated the Action against Defendant in Stanislaus County Superior Court. In the Complaint, Plaintiff alleges class and representative PAGA claims predicated on Defendant's alleged policy and practice of misclassifying ANMs as exempt employees. *See* Agnew Decl. ¶ 5. As a result of the alleged misclassification of ANMs, Plaintiff's original Unverified Class Action Complaint alleged that Defendant: (1) failed to pay minimum wages for all hours worked; (2) failed to provide meal and rest periods; (3) failed to provide accurate wage statements; (4) failed to pay all wages upon termination; (5) failed to pay overtime wages; and (6) engaged in unlawful business practices. *See id.* Plaintiff also asserted a claim for civil PAGA penalties predicated on the Labor Code violations set forth in the PAGA Notice. *See id*.

On September 22, 2021, Defendant filed its Answer to Plaintiff's Unverified Class Action Complaint, stating its general denial of all facts and allegations of the Complaint, and setting forth its affirmative defenses, including those predicated on the executive and administrative exemptions. *See* Agnew Decl. ¶ 6.

B. The Parties Engaged in Meaningful Discovery and Investigation.

As detailed in the Agnew Declaration, the Parties propounded and responded to written discovery, and stipulated to the production of the contact information of putative class members. *See* Agnew Decl. ¶¶ 7-10. Ultimately, Defendant produced over five thousand pages of documents, which included documents relevant to the asserted exemption defenses, such as job descriptions, a sampling of emails sent to and/or received by Assistant Nurse Managers, and documents tracking the patient workload of Assistant Nurse Managers. *See id*. at ¶ 10. Plaintiff also sat for a two-day deposition. *See id*. at ¶ 12.

In addition to formal discovery, Class Counsel extensively investigated the misclassification claims alleged in the Action. *See* Agnew Decl. ¶ 12. Class Counsel expended a significant amount of time and resources interviewing putative class members and obtained over one hundred declarations from ANMs. *See id*.

C. The Parties Participated in Private Mediation.

On or about February 5, 2024, the Parties agreed to participate in private mediation with Jeff Ross, an experienced wage and hour class action mediator. *See* Agnew Decl. ¶ 13. In advance of the mediation, Defendant provided data points regarding the size of the putative class and value of the claims, including, the number of putative class members, the number of putative class members who terminated employment, the aggregate number of pay periods worked by putative class members, the number of pay periods worked during the PAGA liability period, and the average salary of putative class members. *See id*.

On August 7, 2024, the Parties engaged in mediation with Mr. Ross. *See* Agnew Decl. ¶ 14. After the exchange of further information and extended negotiations following mediation, the Parties reached the present class-wide settlement, memorialized by a written Memorandum of Understanding ("MOU") fully executed on September 17, 2024. *See id*. The mediation and all subsequent settlement discussions were conducted at arms' length. *See id*. at ¶ 17.

D. The Operative First Amended Complaint.

As a condition of settlement, the Parties agreed to stipulate to the filing of a Second Amended PAGA Notice and First Amended Class Action Complaint for Damages ("Operative Complaint") for the purpose of ensuring that all claims covered by the settlement are alleged therein, including by adding claims under the Fair Labor Standards Act, adding claims under Labor Code section 2802, and expounding on the allegation supporting the off-the-clock and related unpaid wage claims. *See* Agnew Decl. ¶ 18. The Operative Complaint was filed on January 23, 2025. The allegations in the Operative

Complaint conform to the release discussed in Section III-H, *infra*. The Second Amended PAGA Notice was filed with the LWDA on January 17, 2025. *See* Agnew Decl. at ¶ 18, Exhibit 4.

III. THE PROPOSED TERMS OF THE SETTLEMENT.

A. Class and PAGA Employee Definitions.

The proposed Class consists of the following group of employees: "all persons who were employed by Defendant as Assistant Nurse Managers and/or Assistant Department Administrators under job codes 06017 and 949013 in the State of California at any time during the Class Period." *See* SA § 1.5. The Class Period (also referred to as the Settlement Period) is defined to mean the period from August 13, 2017 through November 5, 2024. *See id*. at § 1.6. Defendant has represented that there are approximately 2,725 individuals that comprise the Class. *See* Agnew Decl. ¶ 18.

The Settlement also resolves the claims of "Aggrieved Employees," which is defined to mean "all persons who were employed by Defendant as Assistant Nurse Managers and/or Assistant Department Administrators under job codes 06017 and 949013 in the State of California at any time during the PAGA Period." *See* SA § 1.4. The PAGA Period means the period from April 29, 2020 through November 5, 2024. *See id* at § 1.30.

B. The Gross Settlement Amount.

The Settlement Agreement requires the payment of Eleven Million Dollars ($11,000,000.00) as the Gross Settlement Amount. *See* SA § 1.21.[2] None of the Gross Settlement Amount will revert to Defendant. *See id*. at § 3.1. In addition to the Gross Settlement Amount, Defendant shall pay its share of any payroll taxes owed. *See id*.

C. Allocation to PAGA Penalties.

The Settlement allocates Three Hundred Thousand Dollars ($300,000.00) of the Gross Settlement

[2] The Gross Settlement Amount was calculated with, and is premised on, Defendant's representation that Class Members worked 350,101 workweeks from August 13, 2017 through June 23, 2024. *See* SA § 8. In the event the actual number of workweeks worked by Class Members during the Class Period exceeds 385,112 workweeks (i.e. increases by more than ten percent (10%)), the Gross Settlement Amount shall increase proportionately for the percentage increase over ten percent (10%). *See id.* The workweek value shall be calculated by dividing the Gross Settlement Amount by 350,101 workweeks. *See id.* Defendant may elect to not contribute more and keep the covered workweeks capped at 385,112. *See id.* Should Defendant elect to cap the workweeks at 385,112 and not contribute more to the Gross Settlement Amount, the Class Period will close on the date the workweeks reach 385,112. *See id*.

Amount shall be allocated to PAGA penalties (“PAGA Penalties”). *See* SA § 1.33. Seventy-Five percent (75%) of the PAGA Penalties —*i.e.* the sum of Two Hundred Twenty-Five Thousand Dollars ($225,000.00)— will be paid to the LWDA. *See id.* at §§ 1.26, 3.2.5. The remaining twenty-five percent (25%) —*i.e.* the sum of Seventy-Five Thousand Dollars ($75,000.00) —will be distributed to Aggrieved Employees. *See id*. at § 3.2.5.

D. Individual Settlement Payments.

The balance of the Gross Settlement Amount remaining after deduction of approved attorneys' fees and costs, the Class Representative Service Payment, payment of PAGA penalties to the LWDA and Aggrieved Employees, and Settlement Administration Costs, is the “Net Settlement Amount.” *See* SA § 1.27, 3.2.1, 3.2.2, 3.2.3, 3.2.5. Class Counsel estimates that the Net Settlement Amount will be at least $6,960,833.34. *See* Agnew Decl. ¶ 29.

The Net Settlement Amount will be available for distribution to Settlement Class Members (*e.g.* Class Members who do not opt-out of the settlement). *See* SA § 1.34.[3] Settlement Class Members will be entitled to receive a portion of the Net Settlement Amount on a *pro rata* basis, based upon the total number of pay periods each Settlement Class Member worked during the Class Period. *See id*. at § 3.2.4. This is fair, as it directly allocates greater recovery to individual Settlement Class Members who have allegedly suffered greater harm. *See* Agnew Decl. ¶ 24. On raw average, each Settlement Class Member may potentially recover approximately $2,554.43. *See id.* at ¶ 29. The amount actually paid to each Settlement Class Member may increase or decrease depending on the actual number of workweeks and pay periods worked during the Class Period and/or the number of timely Requests for Exclusion received. *See id*.

One-third (1/3) of each Settlement Class Member's Individual Class Payment will be allocated to settlement of wage claims and the remining two-thirds (2/3) of each payment will be allocated in equal portions to settlement of claims for interest and penalties. *See* SA § 3.2.4.1.

Separately, Aggrieved Employees will be entitled to receive twenty-five percent (25%) of the PAGA Penalties on a *pro rata* basis, based upon the total number of pay periods each Aggrieved Employee

[3] Class Members do not need to do anything should they wish to receive their share of the settlement funds. This substantially decreases the amount of burden each Class Member must bear in order to receive his/her settlement share. If a Class Member does not wish to take part in this settlement and be bound by the release of the class claims, he/she must submit an exclusion request. Such obligations are thoroughly identified in the Notice Packet. *See* SA, Exhibit A.

worked during the PAGA Period, regardless of whether the employee submits a timely and valid Request for Exclusion from the Settlement Agreement. *See* SA *See id*. at § 3.2.5.1.[4] The Individual PAGA Payments shall be allocated as 100% penalties. *See id*.

The funds represented by uncashed settlement checks will be paid out pursuant to California Code of Civil Procedure section 384 to the *cy pres* recipient, Lawyers' Committee for Civil Rights. *See* SA § 4.3.3. Neither Plaintiff nor Class Counsel maintains an interest in and/or relationship with the Lawyers' Committee for Civil Rights. *See* Agnew Decl. ¶ 31; Declaration of Larry W. Lee ("Lee Decl.") ¶ 3; Declaration of Kent Bradbury ("Bradbury Decl.") ¶ 17.

E. Attorneys' Fees and Reimbursement for Litigation Costs.

As part of the Settlement, Defendant does not object to Class Counsel's request for attorneys' fees in the amount of one-third of the Gross Settlement Amount, which is currently estimated to be Three Million Six Hundred Sixty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents ($3,666,666.66), and litigation costs up to Forty Thousand Dollars ($40,000.00), subject to the Court finally approving this Settlement. *See* SA § 3.2.2. Any portion of the requested attorneys' fees and/or costs not approved by the Court shall be added to the Net Settlement Amount. *See id*.

F. The Class Representative Service Payments to Plaintiff.

Plaintiff requests the payment of Class Representative Service Payment in the amount of Fifteen Thousand Dollars ($15,000.00). *See* SA § 3.2.1. This amount is intended to compensate Plaintiff for her effort and work in prosecuting this case, including meeting and communicating with Class Counsel, preparing for and attending a two-day deposition, reviewing the pleadings and documents in this case, including the PAGA Notice, Complaints and the Settlement Agreement. *See* Agnew Decl. ¶ 27. Moreover, in consideration for the Class Representative Service Payment, Plaintiff also executed a general release of all claims including a waiver under California Civil Code §1542, which other members of the Class did not have to do. *See* SA § 5.1.1. Any portion of the Class Representative Service Payment that is not approved by the Court shall become part of the Net Settlement Amount. *See id.* at § 3.2.1.

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[4] There is no right to opt-out of or object to the PAGA settlement under the Settlement Agreement. *See* SA § 5.3. Any Aggrieved Employee who opts out of the Settlement Agreement for purpose of the proposed class action settlement will still be bound by the release of the PAGA claims and receive a portion of the PAGA penalties.

G. Settlement Administration Costs.

Finally, the Settlement provides for the payment of the fees and expenses reasonably incurred by the Settlement Administrator. *See* SA § 3.2.3. The Parties have agreed to utilize CPT Group to administer the settlement, with the administration costs estimated to be $17,500.00. *See id*. at §§ 1.2, 1.3, 3.2.3; Declaration of Julie Green ("Admin. Decl.") ¶ 8, Exhibit B. Any portion of the settlement administration costs not used or approved by the Court shall be added to the Net Settlement Amount.

H. Scope of the Class and PAGA Release.

Upon the final approval of the Settlement, Plaintiff and all Settlement Class Members will provide a release to the Released Parties. Settlement Class Members will release the following claims:

> [A]ny and all claims, debts, liabilities, demands, obligations, penalties, premium pay, guarantees, costs, expenses, attorney's fees, damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, under any legal theory under federal and state law for any alleged failure to pay all wages due (including minimum wage and overtime wages), claims regarding misclassification, failure to pay for all hours worked (including off-the clock work), failure to provide meal and rest periods, short/late meal and rest periods, failure to relieve of all duties during meal and rest periods, combining of meal and rest periods, that Defendant's exemption permit from the Division of Labor Standards Enforcement is not valid or does not apply to Class Members, failure to timely pay wages and final wages, failure to properly calculate the regular rate of pay, failure to pay or properly calculate meal or rest period premiums, failure to pay or properly calculate paid sick leave, including paid sick leave under the Healthy Workplaces, Healthy Families Act, donning and doffing, pre or post-shift testing or inspections, health status related activities including testing, reporting, and queuing for testing, reporting time pay, failure to furnish accurate wage statements including claims derivative and/or related to these claims, liquidated damages, conversion of wages, that the Labor Code Section 514 exemption does not apply to Defendant's employees, pre and post-shift work and record-keeping violations, up to and including the date of preliminary approval by the Court. This Release shall include all claims and theories arising under the California Labor Code, wage orders, and applicable regulations, including Labor Code Sections 201, 202, 203, 204, 206, 218, 218.5, 226, 226.3, 226.7, 227, 245 *et seq.*, 510, 511, 512, 515, 517, 551, 552, 558, 1174, 1175, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, and 1199, all claims and theories arising under Labor Code Section 2802 as well as claims under Business and Professions Code section 17200 *et seq*. based on alleged violations of the above Labor Code provisions, as alleged in the Action.

See SA § 5.2. The temporal scope of the release shall correspond to the Class Period. *See id*.[5]

Additionally, upon the final approval of the Settlement, Plaintiff and all Aggrieved Employees will release the following claims:

> [A]ll claims under the PAGA premised on the facts and/or allegations in the Operative Complaint or PAGA Notices that arose during the PAGA Period.

See SA § 5.3. As shown, the scope of the release is narrow and is limited to the claims that were, or that could have been, asserted in the Operative Complaint.

IV. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE SETTLMENT

To prevent fraud, collusion, or unfairness to the class, the settlement of a class action requires court approval. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-01 (1996). In considering whether a settlement is reasonable, the trial court should consider relevant factors, which may include the strength of plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. *Kullar v. Foot Locker Retail, Inc*., 168 Cal. App. 4th 116, 128 (2008).

In order to approve a class action settlement, the court must satisfy itself that the class settlement is within the "ballpark" of reasonableness. *Kullar*, 168 Cal. App. 4th. at 133. The record need not contain an explicit statement of the maximum theoretical recovery. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 408-409 (2010).

As demonstrated in Sections II-A to II-C, the Settlement was reached through arm's length negotiations between experienced wage and hour attorneys. Agnew Decl. ¶¶ 14-17.

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[5] The release does not include any Labor Code section 2802 claims released by Class Members in connection with the following actions: *Jones, et al. v. Kaiser Foundation Hospitals, et al.* (Los Angeles Sup. Ct. Case No. 23STCV04104), *Uribe, et al. v. Southern California Permanente Medical Group* (Los Angeles Sup. Ct. Case No. 22STCV11259), and *LeDoux v. The Permanente Medical Group, Inc.* (Alameda County Sup. Ct. Case No. 22CV019164). *See* SA § 5.2.

A. The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of Litigation.

Although Plaintiff and Class Counsel believe in the merits of the Action, they also believe the Settlement is fair, reasonable, and adequate, given the inherent risks of litigation, including the substantial risks relative to class certification, the costs of pursuing such litigation, and the risks associated with the Court's discretion to reduce PAGA penalties. *See* Agnew Decl. ¶¶ 32-52; Bradbury Decl. ¶¶ 11-13; Lee Decl. ¶ 2. [6]

The core dispute in this Action is whether Defendant misclassified Assistant Nurse Managers as exempt employees under the executive exemption. The executive exemption applies to employees who spend more than one-half of their work time engaged in managerial work, such as supervising multiple employees, participating in personnel decisions and employee development. Defendant maintains that it complied with the law, had lawful and compliant practices. Defendant further maintains that based on the work performed by ANMs, Class Members are exempt from California's overtime laws. *See* Agnew Decl. ¶ 34.

Plaintiff contends that, on an individual and collective basis, ANMs spend only a small percentage of time engaging in duties that are typically thought of as being managerial tasks. Agnew Decl. ¶ 33. Plaintiff further contends that ANMs spend more than fifty percent of their workday performing direct patient care side-by-side with nurses and other hourly, non-exempt employees. *See id*.

Defendant maintains that the Hospital complied with the law, had lawful and compliant practices, and properly classified ANMs as exempt employees. *See* Agnew Decl. ¶ 34. Defendant contends that the primary function of an Assistant Nurse Manager is to supervise the delivery of nursing services and patient care. *See id*. Indeed, as argued by Defendant, the complexity of the work performed by ANMs, coupled with the number of employees under their supervision, precludes an ANM from primarily engaging in work related to direct patient care. *See id.* Defendant further contends that, to the extent that an individual

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

ANM occasionally performs direct patient care, it is incidental to managerial work, such as providing clinical supervision.

Class Counsel strongly believes that Plaintiff's claims are certifiable. *See* Agnew Decl. ¶ 35; *Jaimez v. Daiohs USA, Inc.*, 181 Cal.App.4th 1286, 1299 (2010) (holding trial court improperly denied class certification by "focusing on the potential conflicting issues of fact or law on an individual basis, rather than evaluating whether the *theory of recovery* advanced by the plaintiff is likely to prove amenable to class treatment"); *Metrow v. Liberty Mutual Managed Care LLC,* 2017 WL 4786093, at *12 (C.D. Cal., 2017) (granting class certification despite some variation in job duties because "the work each class member actually performs is sufficiently similar to determine whether or not it is primarily administrative"). Class Counsel, however, also appreciates the acute challenges presented at class certification. *See* Agnew Decl. ¶ 35. Actions asserting claims predicated on misclassification typically involve both common and individualized issues. *See Duran v. U.S. Bank National Assn.,* 59 Cal.4th 1, 27 (2014) ("Job requirements and employer expectations of how duties are to be performed may often be established by evidence relating to a group as a whole"); *Sav–on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 336-37 (2004) ("Any dispute over 'how the employee actually spends his or her time' [citation], of course, has the potential to generate individual issues).

Here, Class Counsel anticipated that, in opposition to class certification, Defendant will rely on declarations from putative class members that highlight the individual experiences of ANMs. *See* Agnew Decl. ¶ 37. In this respect, Defendant argues that the day-to-day experiences of ANM varied widely based on a variety of factors. *See id.* at ¶ 36. By way of example, Defendant argues that some ANMs worked in outpatient facilities. *See id.* In this setting, rarely, if ever, would there be an occasion for an ANM to provide direct patient care. *See id.* Relatedly, ANMs who have spent years working in an office setting may lack the clinical competency to provide direct patient care. *See id*. Even within the hospital setting, the experiences of ANMs may vary depending on their department, the level of care required by their patients, and influxes in staffing. *See id*. Thus, as argued by Defendant, even if the evidence establishes that some ANMs were misclassified, the evidence will also establish that other ANMs spent the majority of their shifts performing managerial work. *See id*.

Furthermore, Plaintiff's underlying claims also face unique challenges from Defendant. The off-the-clock and meal period claims are particularly susceptible to arguments concerning manageability. *See*

Agnew Decl. ¶¶ 40, 44, 45. Defendant argues that any claim for unpaid wages is not suitable to be adjudicated on a class-wide basis because the amount of overtime worked by ANMs will vary widely and require mini-trials inquiring into the circumstances of each individual's experience. *See* Agnew Decl. ¶ 40. Relatedly, with respect to meal periods, an employer's only obligation is to make the break available to employees – not to police them. *See Brinker Rest. Corp. v. Superior Ct.*, 53 Cal. 4th 1004, 1040, 273 P.3d 513, 537 (2012) ("On the other hand, the employer is not obligated to police meal breaks and ensure no work thereafter is performed"). As argued by Defendant, an adjudication of the alleged meal period violations would require individualized assessments as to the circumstances of each missed, delayed or interrupted break. *See* Agnew Decl. ¶ 45.

The derivative wage statement and waiting time penalties claims are vulnerable to merit based challenges at summary judgment. *See* Agnew Decl. ¶¶ 48, 51. As argued by Defendant, the derivative wage statement violation is vulnerable to a motion for summary judgment based on the weaknesses of the underlying primary claims. *See Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308 (2018) (finding that the employees did not suffer a violation under 226(a) where their wage statement cause of action was derived from an underlying wage and hour violation for overtime). Additionally, Plaintiff faces the additional burden of demonstrating that any alleged omission of information from the wage statements was a "knowing and intentional failure" by Defendant to comply with Labor Code section 226(a).

Furthermore, Defendant contends that it maintained a "good faith" belief that ANMs are properly classified as exempt, which precludes the imposition of Section 226 and waiting time penalties, and further undermines the certainty of recovering these damages even if Plaintiff prevailed on liability. *See Naranjo v. Spectrum Security Services, Inc*., 15 Cal.5th 1056, 1087 (2024) (employer's failure to include meal and rest period premium pay on the wage statements was not "knowing and intentional" because it had a good faith belief that it was not in violation of Labor Code section 226); *Hill v. Walmart, Inc.*, 32 F.4th 811 (9th Cir. 2022) (upholding good faith defense because defendant reasonably believed wages were not due and owing at time of separation of employment); *Chavez v. Converse, Inc.,* 2020 WL 1233919, at *l (N.D. Cal. 2020) (holding that an employer's failure to pay is not willful where there is uncertainty in the law or a "good faith mistaken belief that wages are not owed"); *Naranjo v. Spectrum Security Services, Inc.*, 88 Cal.App.5th 937, 948 (2023) (trial court properly declined to impose waiting time penalties where employer provided a "good faith" defense supported by the evidence).

B. The Settlement Effectuates PAGA's Objectives.

With respect to evaluating the reasonableness of the settlement of the PAGA claim, the Court's focus is not the amount that aggrieved employees will ultimately receive as a result of a settlement. Instead, "a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." *See Moniz v. Adecco USA, Inc*., 72 Cal.App.5th 56, 77 (2021); *see also Kang v. Wells Fargo Bank, N.A*., 2021 WL 5826230, at *15 (N.D.Cal., 2021) (evaluating a PAGA settlement under the standard of whether the settlement terms "are fundamentally fair, reasonable, and adequate in view of PAGA's public policy goals"). Here, the Settlement vindicates the rights of Aggrieved Employees who have experienced alleged violations of the Labor Code. *O'Connor v. Uber Technologies, Inc*., 201 F.Supp.3d 1110, 1134 (N.D. Cal. 2016) ("If the settlement for the Rule 23 class is robust, the purposes of PAGA may be concurrently fulfilled. By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of the class members as employees but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA"). The Settlement is also consistent with the State's public policy favoring resolution of disputes. "California law favors the settlement of disputes as our high court clarified in *Neary*[]. Settlement is efficient; it reduces costs, saves resources, and minimizes court congestion. [] The parties are best positioned to understand their interests and resolve a dispute in a mutually beneficial manner without court intervention into the settlement." *Consumer Advocacy Group, Inc. v. Kintetsu*, 141 Cal. App. 4th 46, 62-63 (2006) (citing *Neary v. Regents of Univ. of Cal*., 3 Cal. 4th 273, 277- 278 (1992).

C. Potential Estimated Value of the Class and Representative PAGA Claims.

1. The Estimated Class Damages and Penalties.

Based on the class data provided by Defendant and the declarations obtained from Class Members, Class Counsel estimates that Defendant could face potential maximum liability of up to approximately $41,498,454.25 for the class claims, if Plaintiff prevailed at class certification and on the merits. *See* Agnew Decl. ¶¶ 38, 39, 41, 43, 47, 50, 52.

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2. The Estimated Amount of PAGA Penalties.

Class Counsel further estimates that a finding in favor of the Aggrieved Employees could result in an award of approximately $10,944,300 in PAGA penalties. *See* Agnew Decl. ¶ 53. This assumes complete victory at trial and that the Court would award the maximum penalty of $100 per pay period, which is far from certain as discussed above. *See id*.

Even assuming Plaintiff ultimately prevailed on the PAGA claims, the Court still has discretion to reduce any PAGA penalties. Pursuant to Labor Code section 2699(e)(2), the Court can decline to award PAGA penalties where "if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Indeed, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law. *Id*. at 517. Upon review, the Court of Appeal found such a reduction to be proper. *Id*. at 539. Here, Defendant asserted that a substantial reduction in potential PAGA penalties was warranted because: (1) at a minimum, a good faith dispute exists as to whether ANMs may be properly classified as exempt employees; (2) any alleged violations of the Labor Code were inadvertent; and (2) Defendant maintains compliant wage and hour policies. *See* Agnew Decl. ¶ 55. Thus, even if Plaintiff was to successfully prove her claims at trial, there is a possibility that the Court may only award a small percentage of PAGA penalties, as the Court has discretion to do so.

3. The Gross Settlement Is a Reasonable Percentage of the Estimated Damages and Penalties at Issue.

Based on the amounts explained above, Class Counsel estimates that the total exposure for the class and PAGA claims amount to $52,442,754.25. *See* Agnew Decl. ¶ 57. The Gross Settlement is $11,000,000.00, and thus amounts to approximately 20.97% of Defendant's estimated maximum exposure. *See id*. However, this figure assumes that the Court would award $10,944,300 in civil PAGA penalties (which in turn presumes that the Court would award $100 per pay period at issue). *See id*. In the alternative, if the Court uses *Carrington* as a benchmark and assesses PAGA penalties of approximately 10% of the total maximum, a more realistic estimate of Defendant's maximum exposure is $42,592,884.25. *See id.* In this case, the Gross Settlement Amount is approximately 25.82% of the total estimated liability. *See id*. Numerous courts have held that **gross** settlements approximating between 8 and 25% of the defendant's potential exposure are fair and reasonable.[7]

D. The Court Should Preliminarily Approve the Proposed Class Representative Service Payment to Plaintiff.

Plaintiff respectfully requests the payment of Class Representative Service Payment in the amount of Fifteen Thousand Dollars ($15,000.00). *See* SA § 3.2.1. Plaintiff personally met with Class Counsel on various occasions to discuss the case, provide documents and information to Class Counsel, review and verify discovery responses, and review the Settlement Agreement. *See* Declaration of Lisa Lefanty ("Lefanty Decl.") ¶ 9. Plaintiff also prepared for, and appeared at, a two-day deposition. *See id*. In addition to the invaluable services that Plaintiff provided, she also took significant risks, both professionally and monetarily, in acting as the Class Representative and seeking benefits on behalf of the Class. *See id*. at ¶¶ 6, 7. Because the claims alleged by Plaintiff involved the payment of costs to the prevailing party, Plaintiff could have possibly faced paying the fees and costs of Defendant, had she not prevailed in this action. *See id*. at ¶ 7.

Further, given that future employers are much less likely to hire individuals who have filed suit against their prior employer, particularly cases of this nature, Plaintiff may face prejudice in the future from other potential employers. Plaintiff took this risk upon herself. *See* Lefanty Decl. ¶ 6. Class Members did not have to file individual lawsuits and bear the risks of payment of fees and costs if they did not

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[7] *See*, *e.g.*, *In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement recovering 16% of potential exposure was fair and reasonable; "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing the litigation to judgment"; noting that whether the settlement is fair and adequate depends on the "the difficulties in proving the case"); *Bellinghausen v. Tractor Supply Co*., No. 13-CV-02377-JSC, 2015 WL 1289342, at p.*6 (N.D. Cal. Mar. 20, 2015) (holding that class action settlement recovering between **8.5% and 25%** of the defendant's potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc*., U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (granting preliminary approval of wage and hour class settlement which obtained ***only 9.1%*** of projected damages, given the risks of continued litigation); *Villegas v. J.P. Morgan Chase & Co*., No. CV 09-00261 SBA EMC, 2012 WL 5878390, at p.*6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of approximately 15% of the potential recovery was fair and reasonable).

prevail, nor did they have to face the potential for retaliation and not getting future employment had they filed a public lawsuit.

Notably, courts have routinely granted approval of representative enhancements for far greater amounts than the $15,000.00 sought by Plaintiff in this case. *See*, *e.g.*, *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of $50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two incentive awards of $55,000, and three incentive awards of $35,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a $50,000 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) ($50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding $25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming $25,000 Incentive award to class representative in ERISA case). Here, Plaintiff requests an enhancement of $15,000, which is reasonable and consistent with case law.

E. The Requested Attorneys' Fees and Litigation Costs Are Reasonable, Fair, and Appropriate.

California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees is based on a percentage of the total value of benefits to Class Members by the settlement. *Wershba v. Apple Computer, Inc*., 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) ("*Serrano III*"); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc*., 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, 557 F.2d at 769.

Under California law, the award of attorneys' fees in common fund wage and hour class action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (Aug. 11, 2016) ("We 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"). Under the percentage of the fund method, the Court's objective remains to "mimic the market" in fixing a reasonable fee. *See Gaskill* *v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (J. Posner) ("When a fee is set by a court rather than by contract, the object is to set it at a level that will approximate what the market will set…The judge, in other words, is trying to mimic the market in legal services").

The results delivered by Class Counsel also support the requested percentage of the fund. Here, the Parties have agreed to a payment of a maximum of one-third of the Gross Settlement Amount for payment to Class Counsel as attorneys' fees, which is currently estimated to be Three Million Six Hundred Sixty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents ($3,666,666.66). *See* SA § 3.2.2. The Parties have agreed to a payment of the foregoing attorney's fees and, thus, this payment should be presumed to be fair.

Further, it is not uncommon for courts to award attorneys' fees as one-third or 33.3% of the settlement amount in wage and hour class action settlements. For example, in *McKinnon v. Best Buy Co., Inc.*, (Alameda Superior Court Case No. RG03082294), the court awarded over $9 million as attorneys' fees, which was 33% of the maximum settlement amount of $26.9 million. At the time of final approval, Class Counsel will also provide the court with declarations and time records to show that a payment of one-third of the recovery is justified and fair even under the lodestar method.

The Parties have also agreed to reimbursement of Class Counsel's litigation costs. Class Counsel have, at their own risk, expended costs, for example, to file this instant action, service of process, payment of mediation fees and other litigation related costs. Lee Decl. ¶ 4. Based on the foregoing, the court should preliminarily approve the attorney's fees and costs being requested by the Parties.

F. The Settlement Administrator's Fees are Reasonable.

The Parties request that CPT Group be appointed as the claims representative in this case. The Parties have agreed to an estimated payment of Seventeen Thousand Five Hundred Dollars ($17,500.00) to CPT Group to send notices and to administer this settlement. *See* SA §§ 1.2, 1.3, 3.2.3; Admin. Decl. ¶ 8. CPT Group is a well-recognized class action settlement administrator. *See* Admin. Decl. ¶ 6, Ex. A.

V. THE PROPOSED CLASS MEETS ALL CERTIFICATION REQUIREMENTS

A. The Class is Ascertainable and Sufficiently Numerous.

The Class that Plaintiff seeks to conditionally certify is ascertainable. "Class members are 'ascertainable' where they may be readily identified without unreasonable expense or time by reference to official records." *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1334 (2008). Defendant has determined that there are approximately 2,725 employees that comprise the Class. *See* Agnew Decl. ¶ 19. Thus, the Class is sufficiently numerous. *See Preston v. Porch.com, Inc*., 2022 WL 1214710, at *3 (S.D. Cal., 2022) (a "presumption of numerosity created by twenty-five to thirty members"); *Rannis v. Recchia*, 380 Fed.Appx. 646, 650 (9th Cir. 2010) (district court "did not abuse its discretion in determining that the class of 20 satisfies the numerosity requirement").

B. There are Common Questions of Law and Plaintiff' Claims are Typical of the Class.

The commonality requirement is met when there are questions of law and fact common to the class. *See Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1019 (1998) ("The existence of shared legal issues with divergent legal factual predicates is sufficient, as is a common core of salient facts couple with disparate legal remedies within the class"). Commonality requires only that some common legal or factual questions exist; the plaintiffs need not show that all issues in the litigation are identical. *See Richmond v. Dart Industries, Inc*., 29 Cal. 3d 462, 473 (1981). Defendant's conduct is central to the commonality inquiry. *See City of San Jose v. Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971). Where the employer's conduct is uniformly directed at a class of employees, as it is here, the class wide impact of the Defendant's policies satisfies the commonality requirement. *See Stephens v. Montgomery Ward & Co*., 193 Cal. App. 3d 411, 421 (1987). Here, Plaintiff alleges, in part, that Defendant, as a matter of its corporate policy, practice, or procedure violated the Labor Code by misclassifying ANM's as exempt, although their position did not qualify for any exemption under California law. *See* Lefanty Decl. ¶¶ 2-4. In other words, Plaintiff was allegedly subjected to the same policy and practice as other Class Members. Thus, Plaintiff's claims are typical to those of Class Members.

C. Plaintiff and Class Counsel Have Adequately Represented the Class.

The adequacy requirement is also met. "Adequacy of representation depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." *McGhee v. Bank of Am.*, 60 Cal. App. 3d 442, 450 (1976). Here, Plaintiff does not have any interests adverse to the Class, nor have any such issues been raised or presented. *See* Lefanty Decl. ¶ 8. Plaintiff has taken all necessary steps to represent the interests of the Class, by providing information and documents. *See id.* at ¶ 9. For such reasons, Plaintiff has adequately represented the Class Members and will continue to do so.

Further, as detailed in their declarations, Class Counsel are experienced and well-qualified class action litigators who have litigated many wage and hour class actions and have each been certified as class counsel in numerous other class actions, particularly wage and hour class actions. Agnew Decl. ¶¶ 59-65; Bradbury Decl. ¶¶ 3-8; Lee Decl. ¶¶ 5-8. From the inception of the case, Class Counsel have solely represented the interest of the Class. For example, Class Counsel expended significant time and resources propounding and responding to written discovery, preparing for and defending Plaintiff's deposition, exchanging informal discovery, drafting a mediation statement, and attending mediation. *See* Agnew Decl. ¶¶ 7-15. Finally, the mediation and settlement were also obtained for the benefit of the Class, not for the individual Plaintiff.

VI. NOTICE TO THE LWDA

Concurrently with the filing of this motion, Plaintiff submitted the Settlement Agreement and supporting documents to the LWDA. *See* Agnew Decl. ¶¶ 65, 66, Exhibit 4.

VII. CONCLUSION

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

Dated: January 24, 2025

DIVERSITY LAW GROUP, P.C.

By: ______________________________

Larry W. Lee
Kristen M. Agnew
Attorneys for Plaintiff and the Class

PROOF OF SERVICE

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

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

On January 24, 2025, I served the following document(s) described as:

1. **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**
2. **DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
3. **DECLARATION OF KRISTEN M. AGNEW IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
4. **DECLARATION OF KENT L. BRADBURY IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**
5. **DECLARATION OF LISA LEFANTY IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
6. **DECLARATION OF JULIE GREEN ON BEHALF OF CPT GROUP, INC.**
7. **[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

on the interested parties in this action as follows:

Christian J. Rowley Kerry Friedrichs SEYFARTH SHAW LLP 560 Mission Street, 31st Floor San Francisco, California 94105 crowley@seyfarth.com kfriedrichs@seyfarth.com *Attorneys for Defendant Kaiser Foundation Hospitals*	Kristen M. Peters SEYFARTH SHAW LLP 2029 Century Park East, Suite 3500 Los Angeles, California 90067-3021 kmpeters@seyfarth.com *Attorneys for Defendant Kaiser Foundation Hospitals*

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 24, 2025, at Los Angeles, California.

Erika Mejia