

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

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

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

AMY PHELAN, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

RLS-CMC, INC., a Delaware Corporation;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: CVRI2101907
*[Assigned to Hon. Harold Hopp, Dept 1, for all
purposes]*

**PLAINTIFF'S UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

*Filed Concurrently with Declarations in
Support Thereof and [Proposed] Order*

Hearing

Date: November 9, 2023

Time: 8:30 a.m.

Dept.: 1

Complaint filed: 4/13/2021

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on November 9, 2023 at 8:30 a.m., or as soon thereafter as
3 the matter may be heard by the Honorable Harold Hopp in Department 1 of the Riverside County
4 Superior Court, located at 4050 Main Street, Riverside, CA 92501, Plaintiff Amy Phelan,
5 individually and on behalf of all others similarly situated, will and hereby does move the Court
6 for entry of an Order preliminarily approving the Parties' class action settlement, including:

- 7 1. Certifying the class for purposes of settlement only;
- 8 2. Preliminarily appointing Plaintiff as class representative for settlement purposes;
- 9 3. Appointing Plaintiff's counsel as class counsel for purposes of settlement only;
- 10 4. Preliminarily approving the class action settlement as fair, adequate, and
11 reasonable, based upon the terms set forth in the Settlement Agreement;
- 12 5. Directing distribution of the Class Notice, including notice of the opportunity to
13 exclude oneself from, or object to, the settlement;
- 14 6. Setting a date for a final fairness hearing to determine, following dissemination of
15 the Class Notice, whether to grant final approval of the Settlement.

16 This motion is based upon this Memorandum of Points and Authorities in Support
17 thereof; the Declaration of Plaintiff's counsel (Brian Mankin and Peter Carlson); the Class and
18 PAGA Settlement Agreement and Release of Claims (the "Settlement Agreement"); the
19 proposed Order granting Preliminary Approval of the Settlement; all other records, pleadings,
20 and papers filed in this action; and upon such other evidence or argument as may be presented to
21 the Court at the hearing of this motion.

22
23 Dated: October 16, 2023

LAUBY, MANKIN & LAUBY LLP

24
25 BY:



26 Brian J. Mankin, Esq.
27 Attorneys for Plaintiff and the Class
28

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	2
A.	THE CLASS.....	2
B.	PROCEDURAL HISTORY	2
III.	SUMMARY OF THE PROPOSED SETTLEMENT.....	4
A.	SETTLEMENT CONSIDERATION AND ALLOCATION	4
B.	NOTICE PROCEDURES	4
C.	EXCLUSION AND OBJECTION PROCEDURES	5
D.	SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES	5
E.	TIMING OF SETTLEMENT DISBURSEMENTS.....	6
F.	TAX TREATMENT	7
G.	PARTICIPATING CLASS MEMBERS’ RELEASE OF CLAIMS	7
H.	AGGRIEVED EMPLOYEES’ RELEASE OF CLAIMS.....	7
IV.	PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE FOR PURPOSES OF SETTLEMENT	8
A.	ASCERTAINABILITY AND NUMEROSITY	9
B.	WELL-DEFINED COMMUNITY OF INTEREST	9
V.	THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE	10
A.	CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND APPROVAL UNDER THE CALIFORNIA RULES OF COURT.....	10
B.	THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE NEGOTIATIONS.....	11
C.	THE EXTENT OF THE INVESTIGATION WAS MORE THAN SUFFICIENT TO PERMIT PRELIMINARY APPROVAL OF THE SETTLEMENT	12
D.	THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS	12
E.	PLAINTIFF’S COUNSEL IS EXPERIENCED IN WAGE-AND-HOUR LITIGATION	13
F.	THE CLASS NOTICE CONFORMS TO ALL APPLICABLE STATUTES AND RULES.....	14
G.	THE NON-REVERSIONARY “CHECKS CASHED” DISTRIBUTION ENSURES MAXIMAL RECOVERY FOR CLASS MEMBERS.....	15
H.	THE ATTORNEY’S FEES AND COSTS ALLOCATION IS FAIR	15
I.	THE REQUESTED SERVICE AWARD REQUEST IS FAIR AND APPROPRIATE	16
VI.	THE COURT SHOULD APPOINT PHOENIX AS ADMINISTRATOR	17
VII.	TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING.....	17
VIII.	CONCLUSION.....	17

TABLE OF AUTHORITIES

Cases

<i>Amchem Prods., Inc. v. Windsor</i> (1997) 521 U.S. 591	8
<i>Archibald v. Cinerama Hotels</i> , (1976) 15 Cal.3d 853	14
<i>Arenas v. El Torito Rests., Inc.</i> (2010) 183 Cal.App.4th 723	9
<i>Barboza v. West Coast Digital GSM, Inc.</i> (2009) 179 Cal.App.4th 540	10
<i>Bond v. Ferguson Enterprises, Inc.</i> (E.D. Cal. 2011) 2011 WL 2648879.....	16
<i>Bush v. Superior Court</i> (1992) 10 Cal.App.4th 1374	10
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	8, 11
<i>Ellis v. Naval Air Rework Facility</i> (N.D. Cal. 1980) 87 F.R.D. 15	13
<i>Glass v. UBS Fin. Servs.</i> (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 8476.....	16
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116.....	12, 13
<i>Laffitte v. Robert Half Int’l Inc.</i> (2016) 1 Cal.5th. 480	15
<i>Local Joint Exec. v. Las Vegas Sands, Inc.</i> (9th Cir. 2001) 244 F.3d 1152.....	10
<i>Medraza v. Honda of N. Hollywood</i> (2008) 166 Cal.App.4th 89	9
<i>Officers for Justice v. Civil Service Com.</i> (9th Cir. 1982) 688 F.2d 615	8
<i>Reyes v. San Diego County Board of Supervisors</i> (1987) 196 Cal.App.3d 1263	9
<i>Ross v. US Bank National Association</i> (N.D. Cal. 2010) 2010 WL 3833922	16
<i>Stuart v. RadioShack Corp.</i> (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645.....	16
<i>Vasquez v. Coast Valley Roofing, Inc.</i> (E.D. Cal. 2010) 266 F.R.D. 4150.....	16
<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224.....	11, 12
<i>West v. Circle K Stores, Inc.</i> (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558.....	16

Statutes

Code of Civil Procedure § 382.....	2, 9
Labor Code § 2699(i).....	4

Rules

California Rules of Court, Rule 3.769	10
---	----

Treatises

Herbert B. Newberg & Alba Conte, <i>Newberg on Class Actions</i> (“Newberg”) § 3:13 (4th ed. 2002)	9, 11
<i>Manual For Complex Litigation</i> (Third) § 30.41 (1995).....	11

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Amy Phelan seeks preliminary approval of a \$250,000 class action settlement on
4 behalf of approximately 50 current and former nonexempt employees employed by Defendants
5 RLS-CMC, Inc., Roger Lee Sanchez, and Jasmine Bormann (“Defendants”) in California at any
6 time from April 13, 2017, through May 2, 2023 (the “Class Period”).

7 Under the terms of the Settlement Agreement,¹ Defendants will not oppose Plaintiff
8 Counsel’s application for a reasonable award of attorneys’ fees not to exceed \$83,333.33 (1/3 of
9 the Settlement Amount), litigation expenses not to exceed \$20,000, Settlement Administrator
10 Costs of \$6,000, PAGA penalties of \$10,000 (with 75% to the LWDA and 25% to the Aggrieved
11 Employees on a pro rata basis), and a Service Payment of \$5,000 to Plaintiff Amy Phelan (“Class
12 Representative”). (S.A. ¶ 54, *et seq.*)

13 After all Court-approved deductions from the Settlement Amount, it is estimated that
14 \$100,322.69 will be available to pay the Class Members, as follows:

15

<i>Settlement Amount</i>	\$ 250,000.00
Attorneys’ Fees (1/3)	\$ 83,333.33
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs	\$ 6,000.00
PAGA Penalties	\$ 10,000.00
Credit for Prior Payments made by Defendants	\$ 25,343.98
Class Representative Service Award	\$ 5,000.00
<i>Net Settlement Amount</i>	\$ 100,322.69

20

21 Assuming 50 Class Members, the average payment will be approximately \$2,006.45.
22 However, the actual payments will be calculated on a pro-rata basis according to the number of
23 Share Points and Weeks Worked by each Class Member during the Class Period. (*See* Mankin
24 Decl. ¶¶ 55-57 [description of high/low payments]). In addition, approximately 30 Aggrieved
25 Employees will receive a share of the \$2,500 PAGA Penalties (25% of the \$10,000 allocation),
26 calculated pro-rata based on Weeks Worked during the PAGA Period. (S.A. ¶ 54(h)).
27

28 ¹ The Class and PAGA Settlement Agreement and Release of Claims (the “Settlement Agreement” or “S.A.”) is attached as Exhibit A to the Decl. of Brian Mankin (“Mankin Decl.”).

1 Because the settlement is fair, reasonable, and negotiated at arm's length by experienced
2 counsel and an experienced mediator following a sufficient exchange of information and
3 documents prior to mediation, it should be preliminarily approved. Plaintiff respectfully requests
4 that the Court enter an order preliminarily approving the settlement, conditionally certifying the
5 Class under Code of Civil Procedure § 382 for settlement purposes, approving the proposed
6 Class Notice, appointing Plaintiff's counsel as class counsel, appointing Phoenix Class Action
7 Administration Solutions as the Administrator, and scheduling a hearing for final approval.

8 **II. BACKGROUND**

9 **A. THE CLASS**

The Class is defined as follows:

10 All current and former nonexempt employees employed by
11 Defendants in California at any time during the Class Period (which
12 is April 13, 2017, through May 2, 2023). (S.A. ¶¶ 4, 8).

13 **B. PROCEDURAL HISTORY**

14 Plaintiff Geoffrey Kinzel² submitted a letter to the Labor and Workforce Development
15 Agency ("LWDA") for civil penalties under the Private Attorneys General Act of 2004
16 ("PAGA"), and simultaneously sent a letter to RLS-CMC requesting the production of personnel
17 and timekeeping records to further evaluate his wage and hour claims. (Mankin Decl. ¶ 13).

18 On April 13, 2021, Mr. Kinzel filed this class action, alleging that Defendant RLS-CMC,
19 Inc. ("RLS") violated various sections of the Labor Code. Then, on August 19, 2021, Plaintiff
20 Geoffrey Kinzel filed a First Amended Complaint adding PAGA causes of action. And, by
21 August 31, 2021, the Parties had scheduled mediation for March 29, 2022. (Mankin Decl. ¶ 14).

22 However, in the lead-up to mediation, RLS-CMC contacted and obtained *Pick-Up Stix*
23 settlements from numerous class members. As a result, the mediation was cancelled, and
24 Plaintiff Kinzel moved forward with discovery to prepare for class certification and to challenge
25 and invalidate the releases obtained from class members. (Mankin Decl. ¶ 15).

26
27
28 ² Geoffrey Kinzel was the original Plaintiff in this action but, unfortunately, passed away during
litigation and was replaced by Plaintiff Amy Phelan (as discussed in more detail below).

1 On March 18, 2021, Mr. Kinzel added two new Defendants via Doe amendment: Roger
2 Lee Sanchez and Jasmine Bormann. However, on April 8, 2022, Defendants filed a Notice of
3 Removal, removing this action to the United States District Court for the Central District of
4 California. On June 7, 2022, the Hon. Jesus G. Bernal granted Plaintiff's Motion to Remand,
5 sending this action back to Riverside County Superior Court. (Mankin Decl. ¶ 16).

6 Plaintiff then resumed discovery and started the meet and confer process for several
7 discovery disputes. RLS then provided supplemental responses that resolved most of the
8 discovery disputes, and the Parties tabled any remaining disputes to attend mediation scheduled
9 for January 23, 2023. (Mankin Decl. ¶ 17).

10 Unfortunately, that mediation was cancelled after discovering that Mr. Kinzel passed
11 away on October 27, 2022. After that occurred, Plaintiff's counsel was retained by a former
12 employee, currently Plaintiff Amy Phelan, who wished to be added to continue litigating the
13 claims on behalf of the Class and under PAGA. Plaintiff's counsel met and conferred with
14 defense counsel about amending the operative complaint to substitute Amy Phelan in place of
15 Mr. Kinzel, as well as the effect of such amendment under the doctrine of "relation back."
16 Ultimately, the Parties agreed to attend mediation with Amy Phelan serving as the class/PAGA
17 representative. (Mankin Decl. ¶ 18).

18 In preparation for mediation, the Parties informally exchanged documents and
19 information that allowed both sides to calculate the potential damages and evaluate potential risk,
20 including policies and procedures pertaining to the claims, statistics relating to the number of
21 current and former employees, number of shifts, pay periods worked and other things, and a
22 sampling of payroll and timekeeping records for Class Members. This information enabled both
23 parties to take a deep dive into the claims. Additionally, during this process, Plaintiff and her
24 counsel analyzed, researched, and investigated the potential issues, including matters related to
25 the calculation of damages, trial, and appellate issues and risks. (Mankin Decl. ¶ 19).

26 On May 2, 2023, Plaintiff and Defendants participated in mediation before Phillip Cha,
27 Esq. a well-respected employment mediator. The matter resolved at mediation and the Parties
28 entered into the Settlement Agreement submitted herewith. As part of the settlement, the Parties

1 stipulated to substitute Ms. Phelan into the case in place of deceased Mr. Kinzel, and the
2 operative SAC reflecting that change was filed on May 22, 2023. The Parties now seek the
3 Court's preliminary approval of the Settlement. (Mankin Decl. ¶ 20).

4 **III. SUMMARY OF THE PROPOSED SETTLEMENT**

5 The following is a summary of the principal terms of the Settlement Agreement.

6 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

7 The \$250,000 Settlement Amount³ is non-reversionary and will be paid out to Class
8 Members without the need to submit a claim form or take any affirmative action. It includes (1)
9 Plaintiff's attorneys' fees and costs, as approved by the Court; (2) a service award of \$5,000 to
10 Plaintiff, subject to approval by the Court; (3) Administration Costs, not to exceed \$6,000; (4) a
11 \$10,000 PAGA award, 75% of which is to be paid to the LWDA pursuant to California Labor
12 Code § 2699(i) and 25% to the Aggrieved Employees; and (5) the aggregate of all Individual
13 Settlement Amounts of the Participating Class Members. (S.A. ¶ 54 and subparts). Defendants
14 will separately pay their share of employer payroll taxes and withholdings. (S.A. ¶ 54(a)).

15 **B. NOTICE PROCEDURES**

16 Here, the Parties will provide notice of this settlement in strict compliance with Court's
17 Class Action Case Management Order #1, issued on July 6, 2021 (the "CMO"). Thus, as
18 required by CMO ¶ G), the Parties will send each Class Member a Class Notice, a Request for
19 Exclusion Form, an Objection Form, and a Dispute Form. (S.A. ¶ 70), which are attached to the
20 Mankin Decl. as Exhibits B, C, D, and E, respectively.

21 Notably, the proposed Notice complies with CMO ¶ G(5) because it informs each Class
22 Member of the estimated recovery, the number of Weeks Works and Share Points that each Class
23 Members is credited with, and the applicable average payments, minimum, and high payments.
24 And because Defendants state that the typical Class Member is above the age of 18 and speaks,
25 understands, and writes English, the Class Notice will be only provided in English.

26
27 ³ The Settlement Amount is subject to increase if the "Escalator Clause" is triggered. S.A. ¶¶ 15,
28 54(a). If this clause is triggered, other figures will also shift upward along with the Settlement
Amount, such as attorneys' fees (but this is still constrained to 1/3 of the Settlement Amount)
along with increased Administration Costs (*see* S.A. ¶ 54(g)).

1 Within 14 calendar days after entry of the Preliminary Approval Order, Defendants shall
2 provide the Settlement Administrator with the “Class Data” consisting of Class Member names,
3 addresses, phone numbers, Social Security Numbers, and Weeks Worked during the applicable
4 periods. (S.A. ¶¶ 7, 68). Within 10 calendar days of receipt of the Class Data, the Settlement
5 Administrator shall calculate the numbers for each Class Member, populate the Notice, and send
6 each Class Member the Notice Packet via first-class, United States mail. (S.A. ¶ 70).

7 If a Notice is returned as undelivered by the U.S. Postal Service, the Settlement
8 Administrator shall perform a skip trace and seek an address correction for the Class Member(s),
9 and a second Notice will be sent to any new or different address obtained. (S.A. ¶ 71).

10 **C. EXCLUSION AND OBJECTION PROCEDURES**

11 Class Members who do not timely Opt-Out of the Settlement will be deemed to
12 participate in the Settlement and shall become a Participating Class Member without having to
13 submit a claim form or take any other action. To Opt-Out of the Settlement, the Class Member
14 must submit a written request to the Administrator no later than 45 days after being mailed by
15 the Settlement Administrator (“Response Deadline”). (S.A. ¶ 36). Any Opt-Out request that is
16 not postmarked by the Response Deadline will be invalid, unless a Notice was remailed in which
17 case the Class Member’s exclusion or objection must be returned by the later of the original
18 Notice Response Deadline or 15 calendar days after the remailing of the notice. (S.A. ¶¶ 71, 75).

19 The Class Notice shall inform Class Members of their right to object to the Settlement.
20 Any Participating Class Member who wishes to object to the Settlement must complete the
21 Objection Form in the Notice Packet. To be valid, any Objection Form must be mailed to the
22 Settlement Administrator and postmarked on or before the Response Deadline. (S.A. ¶ 75(c)).

23 **D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES**

24 The amount of each Class Member’s Individual Class Payment is tied to the number of
25 Weeks Worked by each Class Member for Defendants during the Class Period. However, there
26 are two additional factors here that require explanation.

27 *First*, given that the primary claim (salary misclassification, discussed below) was fixed
28 by Defendants changing their practice as of April 30, 2021, the Parties agreed to a Share Point

1 system under which; (1) each Week Worked by a Class Member from April 13, 2017, through
2 April 30, 2021, is credited with 4 Share Points, and (2) each Week Worked by a Class Member
3 from May 1, 2021, through May 2, 2023, is credited with 1 Share Point. (S.A. ¶ 39).

4 *Second*, the Parties also agreed that payments made by Defendants under the *Pick-Up Stix*
5 campaign (the “Prior Payments” totaling \$25,343.98 [*see* S.A. ¶ 30]) shall be credited toward the
6 Settlement Amount.

7 Therefore, Individual Class Payments will be calculated by multiplying each Class
8 Member’s Share Points by the Share Point Rate (which is defined by S.A. ¶ 40 as the value of
9 each individual Share Point, as calculated by dividing the Net Settlement Amount by the total of
10 all Share Points credited to Class Members). The Individual Class Payment will then be reduced
11 by any Prior Payment received by the Class Member (but in no instance shall the offset from the
12 Prior Payment cause an Individual Class Payment to drop below \$50.00). (S.A. ¶ 54(c)).

13 Additionally, each “Aggrieved Employee” will receive an Individual PAGA Payment, calculated
14 by dividing and distributing the \$2,500 on a pro-rata Weeks Worked basis. (S.A. ¶ 54(h)).

15 The Class Notice will inform Class Members of the number of Weeks Worked during the
16 relevant periods, the number of Share Points credited, Prior Payment received (if any), and the
17 estimated Individual Class and PAGA Payments. Class Members may dispute their Share Points
18 or Weeks Worked by timely submitting evidence to the Settlement Administrator. (S.A. ¶ 73).

19 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

20 Pursuant to the terms of the Settlement Agreement, Defendants are required to fund the
21 Settlement Amount, plus Defendants’ share of payroll taxes owed on the Individual Class
22 Payments, within 30 days of the Effective Date. (S.A. ¶ 76). Within 10 days after receiving the
23 funds, the Administrator shall issue payments to cover all court-approved payments. (S.A. ¶ 77).

24 Class Members will have 180 days to cash the settlement check. (S.A. ¶ 78). If a Class
25 Member fails to cash a check by the deadline, the Administrator shall issue unclaimed funds to
26 the California State Controller in the name of the Class Member/Aggrieved Employee. (*Id.*).

27 As required by CMO ¶ G(3)(c)(i), Plaintiff’s Counsel explains the reasoning for this method of
28 distribution at Mankin Decl. ¶¶ 62-67.

1 **F. TAX TREATMENT**

2 The Parties agree that one-third of the Individual Class Payments will be allocated as
3 wages subject to withholding of all applicable local, state and federal taxes and the remaining
4 two-thirds will be allocated for interest and penalties (pursuant to, *e.g.*, California Labor Code §§
5 203, 210, 226, 2699 etc.) from which no taxes will be withheld. (S.A. ¶ 54(d)). The Individual
6 PAGA Payments will be classified entirely as civil penalties and shall be reported as required on
7 an IRS Form 1099. (S.A. ¶ 54(h)).

8 **G. PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS**

9 In exchange for these payments, and in strict compliance with CMO ¶ G(3)(e), the
10 Settlement Agreement at ¶ 33 defines the “Released Class Claims” as follows:

11 all claims stated in the operative Complaint and those based solely
12 upon the facts in the Complaint, including: (1) failure to pay
13 minimum wages, (2) failure to pay overtime wages, (3) failure to
14 provide meal periods, (4) failure to provide rest breaks, (5) failure
15 to reimburse business expenses, (6) failure to timely pay wages each
16 period, (7) failure to timely pay final wages, (8) failure to provide
17 accurate itemized wage statements, and (9) unfair and unlawful
18 competition.

19 Additionally, as required by CMO ¶ G(3)(e)(iii), the time period governing the Released
20 Class Claims is the same as the Class Period. Moreover, pursuant to CMO ¶ G(3)(e)(i), the
21 “Released Parties” are limited to Defendant RLS-CMC, Inc., its officers, directors, employees
22 and agents, and Defendants Roger Lee Sanchez and Jasmine Bormann. (S.A. ¶ 33).

23 It is understood and agreed that the Settlement Agreement will not release any person, party
24 or entity from claims, if any, by Class Members for any other claims, including claims for vested
25 benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment
26 insurance, disability, social security, workers’ compensation, or claims based on facts occurring
27 outside the Class Period.

28 **H. AGGRIEVED EMPLOYEES' RELEASE OF CLAIMS**

 The Settlement Agreement at ¶ 34 also complies with CMO ¶¶ G(3)(e)(iv) and G(9)(d) as
it defines the “PAGA Released Claims” as follows:

all PAGA claims that Plaintiff alleged against the Released Parties based on the facts stated in the relevant LWDA notice letters and only to the extent that they are alleged in the operative Complaint, including all PAGA claims seeking civil penalties premised upon: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to timely pay wages each period, (7) failure to timely pay wages upon separation of employment, and (8) failure to provide accurate itemized wage statements, and (9) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in the LWDA notice letters and operative Complaint.

The CMO, at ¶¶ G(3)(e)(iv) and G(9)(d)(i), also requires that the “release of claims for PAGA penalties shall bind only the named plaintiff and the State of California.” The Settlement Agreement strictly complies with this requirement. (*See* S.A. ¶ 58 [“Plaintiff – in her individual capacity and on behalf of the State of California and LWDA – shall completely release and discharge the Released Parties from the PAGA Released Claims for the PAGA Period”]).

Moreover, even if an Aggrieved Employee requests exclusion from the Class settlement, that individual will still be subject to the PAGA Released Claims and will receive a pro-rata share of PAGA Penalties. (S.A. ¶ 59; CMO ¶ G(9)(c)).

IV. PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE FOR PURPOSES OF SETTLEMENT

California Rule of Court 3.769(d) provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts should use a “lesser standard of scrutiny” for determining the propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 at n.19; *Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F.2d 615, 633 (“[C]ertification issues raised by class action litigation that is resolved short of a decision on the merits must be viewed in a different light.”); *Amchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591, 620 (“Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial.”). As discussed below, for the

1 purposes of this settlement only, Plaintiff requests that this Court provisionally certify the Class,
2 as defined above, under Code of Civil Procedure § 382.

3 **A. ASCERTAINABILITY AND NUMEROSITY**

4 In determining whether a class is ascertainable, the court considers “(1) the class
5 definition, (2) the size of the class, and (3) the means available for identifying the class
6 members.” *Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263,
7 1271; *Medraza v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101 (proposed settlement
8 class is ascertainable if the class members can be objectively identified and given notice of the
9 litigation without unreasonable time or expense). Here, according to Defendants’ records, there
10 are approximately 50 Class Members that are easily identifiable and fall within the defined
11 Class. Thus, Plaintiff’s proposed Class meets the ascertainability and numerosity requirements.

12 **B. WELL-DEFINED COMMUNITY OF INTEREST**

13 **1. Commonality**

14 To justify certification, the class proponent must show that questions of law or fact
15 common to the class predominate over the questions affecting the individual members. *Arenas v.*
16 *El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732. Here, Plaintiff contends that the Class
17 was subjected to common policies and practices relating to payment of wages, meal/rest breaks,
18 and so on. While the Parties dispute whether a class would be appropriate if the litigation were to
19 continue, they agree to class certification for the purposes of this settlement only.

20 **2. Typicality**

21 Typicality “focuses on whether there exists a relationship between the Plaintiff’s claims
22 and the claims alleged on behalf of the class.” *See* Herbert B. Newberg & Alba Conte, *Newberg*
23 *on Class Actions* (“*Newberg*”) § 3:13 (4th ed. 2002). Again, the Parties dispute whether
24 Plaintiff’s claims are typical of the Class for the purposes of any continued litigation of the
25 Action, but agree for the purposes of this settlement only, that Plaintiff asserts claims regarding
26 Defendants’ pay policies, meal and rest break practices, wage statements, and the provisions
27 governing the timely and complete payment of wages, which are at the core of the lawsuit.
28

1 3. Adequacy of Representation

2 The proposed class representative must establish that he or she will adequately represent
3 the proposed class. *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546.
4 Specifically, Plaintiff is adequate to represent the class because she was employed by Defendants
5 during the Class Period, experienced the same wage and hour practices as the rest of the Class,
6 understood her duties as a Class Representative, has been willing to undergo the risks of
7 litigation, and has no conflict of interest. (Phelan Decl. ¶¶ 2-4).

8 Adequacy may be established by the fact that counsel are experienced practitioners. See
9 *Local Joint Exec. Bd. v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244 F.3d 1152, 1162. Here,
10 Plaintiff is represented by Class Counsel with extensive experience in wage and hour class
11 actions like this matter. (Mankin Decl. ¶¶ 2-6; Carlson Decl. ¶¶ 3-9).

12 4. Superiority

13 Certification of the Class for settlement purposes is superior here because there will be a
14 global resolution of all claims at once, which fosters judicial economy. Class certification for
15 settlement purposes is also vastly superior to litigation of numerous individual claims because
16 most of the claims are too small to litigate outside of the class context.

17 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT,**
18 **WHICH IS FAIR, ADEQUATE, AND REASONABLE**

19 **A. CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND**
20 **APPROVAL UNDER THE CALIFORNIA RULES OF COURT**

21 The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal.App.4th 1374. This is
22 particularly true in class actions where substantial resources can be conserved by avoiding the
23 time, cost, and rigors of formal litigation. However, a class action may not be dismissed,
24 compromised, or settled without the Court's approval. Cal. R. Ct. 3.769(a). The California Rules
25 of Court set forth the procedures for court approval of a class action settlement: (1) the Court
26 preliminarily approves the settlement; (2) class members receive notice as directed by the Court;
27 and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed
28 settlement. *See* Cal. R. Ct. 3.769(c), (e-g).

1 The decision to approve or reject a proposed settlement lies within the Court's sound
2 discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35. And the
3 Court's ultimate duty is to determine whether the settlement is fair, adequate, and reasonable.
4 *Dunk*, 48 Cal.App.4th at 1801 (setting forth the "fair, adequate, and reasonable" standard).

5 Thus, at the preliminary approval stage, the Court need only determine that the settlement
6 falls within the "range of possible judicial approval," so that notice to the class and the
7 scheduling of the fairness hearing are worthwhile. *See Newberg* § 11:25. Indeed, the Court
8 should grant preliminary approval if there are no "grounds to doubt its fairness or other obvious
9 deficiencies . . . and [the settlement] appears to fall within the range of possible approval."
10 *Manual For Complex Litigation* (Third) § 30.41 (1995); see *Dunk*, 48 Cal.App.4th at 1802. A
11 "presumption of fairness exists where: (1) the settlement is reached through arm's-length
12 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
13 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
14 is small." *Dunk, supra* (citing *Newberg* § 11:41). As shown below, the settlement falls well
15 within the range of approval because there are no grounds to doubt its fairness.

16 **B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE**
17 **NEGOTIATIONS**

18 The settlement was the product of extensive arm's length negotiations between counsel
19 and was facilitated by an experienced wage-and-hour class action mediator. Though cordial and
20 professional, the settlement negotiations were adversarial and non-collusive in nature. The
21 settlement reached is the product of substantial effort by the parties and their counsel. Although
22 Plaintiff and her counsel believed that there was a possibility of certifying the claims, they
23 recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable
24 decisions on class certification, summary judgment, at trial and/or on the damages awarded,
25 and/or on an appeal that can take several more years to litigate. In addition, if Defendants
26 prevailed on any of the defenses, the employees may not have received any monetary recovery.

27 ///

28 ///

1 **C. THE EXTENT OF THE INVESTIGATION WAS MORE THAN SUFFICIENT TO PERMIT**
2 **PRELIMINARY APPROVAL OF THE SETTLEMENT**

3 Plaintiff thoroughly investigated and evaluated the factual and legal strengths and
4 weaknesses of this case before reaching the settlement. As described above, the settlement was
5 reached after extensive investigation and research, thorough calculations and risk evaluation, and
6 a substantial exchange of information prior to mediation. *See Munoz v. BCI Coca-Cola Bottling*
7 *Co.* (2010) 186 Cal.App.4th 399, 410 (approving settlement where “considerable information
8 [exists] from which to assess the strength of the class claims” and litigation risks).

9 **D. THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS**

10 To evaluate a settlement, the parties must provide the trial court with “basic information
11 about the nature and magnitude of the claims in question and the basis for concluding that the
12 consideration being paid for the release of those claims represents a reasonable compromise.”
13 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.

14 However, *Kullar* does not require review of the outer reaches of possible exposure
15 without considering actual risks of certification, decertification, dispositive motions, and trial,
16 rather only a record which allows “an understanding of the amount that is in controversy and the
17 realistic range of outcomes of the litigation.” *Munoz*, 186 Cal.App.4th at 408-9. Thus, a
18 settlement is not judged against what might have been recovered had a plaintiff prevailed at trial,
19 nor does the settlement have to provide 100% of the damages sought to be fair and reasonable.
20 *Wershba*, 91 Cal.App.4th at 250 (“Compromise is inherent and necessary in [settlement] ... even
21 if the relief afforded by the proposed settlement is substantially narrower than it would be if the
22 suits were to be successfully litigated, this is no bar to a class settlement because the public
23 interest may indeed be served by a voluntary settlement in which each side gives ground in the
24 interest of avoiding litigation.”)

25 Here, Defendants raised significant legal and factual defenses that weigh in favor of the
26 reasonableness of the proposed Settlement. First, in addition to disputing the merits of Plaintiff’s
27 claims, Defendants strongly disputed that Plaintiff could obtain class certification, arguing a lack
28 of commonality of the legal claims and injuries. Defendants further argued that they complied

1 with the applicable law and that any purported deviations therefrom were individualized in
2 nature, thereby limiting Plaintiff's ability to certify the class. While Plaintiff asserts that this is a
3 suitable case for certification, she realizes that there is always a significant risk associated with
4 class certification proceedings, which could limit the claims that she could pursue on a class
5 basis.

6 Considering the uncertainties of protracted litigation, this negotiated settlement reflects
7 the best practicable recovery for the Class. While the total Settlement Amount is, of course, a
8 compromise figure, the potential risks and opportunities of both parties were effectively weighed
9 and considered by the parties, resulting in a fair and equitable settlement.

10 Based upon data obtained through formal and informal discovery, Plaintiff's counsel
11 estimated the following through mediation: (1) 50 Class Members, (2) 20 *former* Class Members
12 for purposes of Labor Code § 203, (3) 3,600 workweeks, (4) 16,200 shifts worked, and (4)
13 approximately 1,600 biweekly wage statements during the PAGA Period. (Mankin Decl. ¶ 30).

14 From these numbers, and by applying violations rates derived from analysis of extensive
15 documents and data from Defendants, Plaintiff calculated the following maximum amounts
16 assuming all claims were entirely successful at trial: class damages and penalties of \$1,152,100,
17 and PAGA penalties of \$694,900. (Mankin Decl. ¶ 54). Then, by applying risks at class
18 certification and on the merits, and when considering other factors (such as evidentiary burdens
19 of proof), Plaintiff calculated the risk-adjusted award at trial for the class claims to be \$472,824
20 and for PAGA as \$136,833. (Mankin Decl. ¶ 54). As required by CMO ¶ G(3)(a)(i and ii), the
21 full analysis of the maximum and risk-adjusted values is contained in the Mankin Decl. at ¶¶ 30-
22 54 (and, for the sake of brevity, that information is not duplicated in this Motion).

23 Thus, the reasonableness of the settlement is apparent from the fact that the proposed
24 settlement is 52.9% of the risk-adjusted class damages and penalties. And, for that reason and
25 the others discussed in this Motion, the Parties submit that this settlement is fair and reasonable.

26 **E. PLAINTIFF'S COUNSEL IS EXPERIENCED IN WAGE-AND-HOUR LITIGATION**

27 The view of attorneys conducting the litigation is entitled to significant weight deciding
28 whether to approve a settlement. *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D.

1 15, 18; *Kullar*, 168 Cal.App.4th at 128 (court must consider “the experience and view of
2 counsel”). Here, Plaintiff’s Counsel are highly experienced in Class/PAGA litigation, having
3 repeatedly been named “Super Lawyer” in employment litigation (a distinction awarded to only
4 5% of litigators), having achieved large settlements and verdicts, including one of the largest
5 PAGA awards in California’s history, collecting over \$250 million for its clients, having tried
6 class and PAGA cases against Fortune 100 companies, among other things. (Mankin Decl. ¶¶ 2-
7 6; Carlson Decl. ¶¶ 3-9). Plaintiff’s counsel, operating at arm’s length, weighed the strengths and
8 risks of this case, and are of the view that this is a fair and reasonable settlement considering the
9 nature of the claims, realistic risk adjusted value, the complexities of the case, state of the law,
10 and uncertainties of class certification and litigation.

11 **F. THE CLASS NOTICE CONFORMS TO ALL APPLICABLE STATUTES AND RULES**

12 The proposed Notice should be approved, as it fully informs the Class Members of the
13 nature of the lawsuit and each Class Member’s rights under terms of the Settlement Agreement
14 and applicable law. The manner in which the Class Notice shall be disseminated, as outlined
15 above, shall ensure that all or nearly all of the Class Members shall be properly notified of the
16 proposed settlement.

17 The proposed Notice and proposed plan for the Administrator to mail the Notice to the
18 last known address of all class members complies with all the requirements of Cal. Rule of Court
19 3.769(f) and 3.766(b). The proposed Notice includes: (1) the material terms of the settlement; (2)
20 the proposed attorneys’ fees, litigation expenses, and the costs of administration; (3) details
21 about the final fairness hearing and how class members may elect to exclude themselves or make
22 an objection; (4) how class members can obtain additional information; and (5) each Class
23 Members’ Individual Class PAGA Payments. *See* Class Notice (Exhibit B to Mankin Decl.).

24 The Court has wide discretion in approving the means of providing notice, so long as the
25 class representative “provide(s) meaningful notice in a form that should have a reasonable
26 chance of reaching a substantial percentage of class members.” *Archibald v. Cinerama Hotels*,
27 (1976) 15 Cal.3d 853, 861. Here, the Notice Packet will be disseminated directly to the Class
28 Members by first class mail by the Settlement Administrator, since Defendants have the last

1 known addresses of all class members and the Settlement Administrator will perform a skip trace
2 and update those addresses for any Notice Packets that are returned and re-send the same.

3 The Notice satisfies the requirements of Rule of Court 3.766 and affords Class Members
4 with all due process protections required by the U.S. Constitution. Moreover, the contents of the
5 Notice comply with Cal. R. Ct. 3.766(d), because the Notice includes, without limitation (1) a
6 detailed explanation of the case, including the basic contentions or denials of the parties; (2) a
7 statement that the court will exclude the member from the class if the member so requests by a
8 specified date; (3) a procedure for the member to follow in requesting exclusion from the class;
9 (4) a statement that the judgment, whether favorable or not, will bind all members who do not
10 request exclusion; and (5) a statement that any member who does not request exclusion may, if
11 the member so desires, enter an appearance through counsel. The 45-day deadline to opt-out or
12 object is also reasonable, as it provides Class Members sufficient time to do so and, if they so
13 choose, to seek independent legal advice in the interim. If a Class Member does not opt-out, he
14 or she will automatically be sent a settlement check.

15 **G. THE NON-REVERSIONARY “CHECKS CASHED” DISTRIBUTION ENSURES**
16 **MAXIMAL RECOVERY FOR CLASS MEMBERS**

17 The fact that each member who does not opt out of the Settlement shall be mailed a check
18 ensures that every Class Member will be paid unless they affirmatively act to exclude themselves.
19 Moreover, the Settlement Amount is non-reversionary, which means that no settlement funds
20 will revert to Defendants; instead, if any checks are uncashed by the deadline, the funds will be
21 transferred to the State Controller’s Office subject to approval of the Court. Such terms are
22 favored by Courts and demonstrate that there was no collusion between counsel for the parties
23 and that the Settlement is fair and favorable to the Class Members.

24 **H. THE ATTORNEY’S FEES AND COSTS ALLOCATION IS FAIR**

25 Under the terms of the Settlement Agreement, Class Counsel is seeking reimbursement
26 of up to \$20,000 in litigation costs, along with attorneys’ fees equal to one-third of the
27 Settlement Amount. See, e.g., *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving
28 1/3 fee in the amount of \$6.33 million at a 2.13 lodestar multiplier, and holding that when class

1 action litigation establishes a monetary fund for the benefit of the class members, the trial court
2 may determine the amount of a reasonable fee by choosing an appropriate percentage of the
3 fund created); *Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645
4 (approving fee 1/3 from settlement amount of \$4.5 million since 1/3 was “well within the range
5 of percentages which courts have upheld as reasonable in other class action lawsuits”).

6 Once the Court grants preliminary approval and Notice is disseminated, Plaintiff’s
7 counsel will submit a comprehensive request for attorneys’ fees and costs with final approval.

8 **I. THE REQUESTED SERVICE AWARD REQUEST IS FAIR AND APPROPRIATE**

9 The Settlement Agreement provides an incentive award payment of \$5,000 to the Class
10 Representative, which is reasonable given the large recovery Class Members will receive on
11 average, as well as the time and effort she devoted to this case. Her efforts included providing
12 factual background for the litigation; providing documents and information about Defendants’
13 compensation plan; participating in phone calls to discuss litigation and settlement strategy;
14 making herself available throughout the litigation to assist with analyzing the claims and
15 defenses; helping Class Counsel prepare for the mediation; and reviewing the settlement
16 documents. The Class Representative also assumed significant risk in bringing this litigation—
17 namely, had she lost, she could have been ordered to pay Defendant’s costs.

18 The requested service award falls within the range of incentive payments typically
19 awarded to Class Representatives in similar class actions. See, e.g., *Bond v. Ferguson*
20 *Enterprises, Inc.* (E.D. Cal. 2011) 2011 WL 2648879 (approving \$11,250 service awards in class
21 action); *Ross v. US Bank National Association* (N.D. Cal. 2010) 2010 WL 3833922, at *2
22 (approving \$20,000 enhancement award in California wage-and-hour class settlement); *Vasquez*
23 *v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 415, 493 (approving service awards of
24 \$15,000 from a \$300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores,*
25 *Inc.* (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558, at *28 (finding service awards “of \$ 15,000
26 each to be reasonable.”); *Glass v. UBS Fin. Servs.* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS
27 8476, at *52 (finding “requested payment of \$25,000 to each of the named Plaintiff is
28 appropriate” in wage and hour settlement).

1 **VI. THE COURT SHOULD APPOINT PHOENIX AS ADMINISTRATOR**

2 Subject to the Court's approval, the parties agreed to Phoenix Class Action
3 Administration Solutions serving as the Settlement Administrator. Phoenix is experienced in
4 administering class action settlements and has provided a flat-fee proposal to administer this
5 settlement for \$6,000. (Mankin Decl. ¶ 86; Decl. of Mike Moore of Phoenix and exhibits).

6 **VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING**

7 The last step in the approval process is the formal hearing, whereby proponents of the
8 Settlement may explain and describe its terms and conditions and offer argument in support of
9 approval, and Class Members or their counsel may be heard in support of or in opposition to the
10 settlement. Subject to the Court's approval, the Parties propose that the Court schedule a hearing
11 for final approval approximately 130 days after the Preliminary Approval Date, as follows:

12 November 9, 2023	Preliminary Approval (PA) hearing
13 December 4, 2023	<i>24 days after PA (+1 for Sunday):</i> Deadline for Administrator to 14 complete first mailing of the Notice Packet to all Class Members.
15 January 18, 2024	<i>45 days after mailing Notice:</i> Deadline for Class Members to submit Requests for Exclusion and Objections to the settlement.
16 16 court days before Final 17 Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval and application for award of fees, costs and service payments.
18 9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiff's Motion for Final Approval, or filing response to an objection.
19 5 court days before final 20 approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval
21 TBD – March 8, 2024	<i>Approx. 120 days after PA:</i> Final Approval Hearing

22
23 **VIII. CONCLUSION**

24 For all of the foregoing reasons, Plaintiff respectfully requests that the Court grant the
25 motion for preliminary approval of the settlement.

26 Dated: October 16, 2023

LAUBY, MANKIN & LAUBY LLP

27 BY:



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

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

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

On October 16, 2023, I caused to be served the foregoing document(s) described as follows:

PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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

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

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

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

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

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

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

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 16, 2023, Riverside, California.

☐ **Federal** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


Tracie Chiarito, Declarant

SERVICE LIST

John W. Fagerholm, Esq.

jfagerhorn@jwflawltd.com

M. Danton Richardson, Esq.

drichardson@jwflawltd.com

Stephanie Greenberg, Esq.

sgreenberg@jwflawltd.com

LAW OFFICES OF JOHN W. FAGERHOLM, LTD

725 S. Figueroa Street, #3065

Los Angeles, CA 90017

323-289-2260

323-642-5441-fax

Attorneys for Defendants RLS-CMC, INC., ROGER LEE SANCHEZ, JASMINE BORMANN
and SILVESTER MARTINEZ