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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF KERN**

| | |
|---|---|
| JOSE LOPEZ CUADRAS, individually, on behalf of all others similarly situated, and on behalf of the State of California and other aggrieved persons; OMAR LOPEZ CUADRAS and EDWIN LOPEZ CUADRAS, on behalf of the State of California and other aggrieved persons,<br><br>Plaintiffs,<br><br>v.<br><br>GUINN CORPORATION, a California corporation; and DOES 1 through 10, inclusive,<br><br>Defendants | Case No. BCV-21-101520<br><br>**CLASS ACTION**<br><br>[*Assigned for all purposes to Hon. Gregory Pulskamp, Dept. J]*<br><br>**PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES**<br><br>FINAL APPROVAL HEARING<br>Date: February 22, 2024<br>Time: 8:30 a.m.<br>Dept.: J<br><br>Complaint filed: July 2, 2021<br>FAC filed: January 6, 2022<br>Trial date: Not set |

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## NOTICE OF MOTION AND MOTION

**TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE** that on February 22, 2024 at 8:30 a.m., in Department J of the Kern County Superior Court, located at 1215 Truxton Avenue, Bakersfield, CA 93301, Plaintiffs Jose Lopez Cuadras, Omar Lopez Cuadras, and Edwin Lopez Cuadras (collectively, "Plaintiffs") will, and hereby do, move for an order as follows:

1. Certifying the Class for settlement purposes;
2. Approving the settlement as fair and reasonable and finding that class members were given notice of the settlement, and advised of their rights to participate in the settlement, object to the settlement, or exclude themselves from the settlement, in a reasonable manner;
3. Appointing Plaintiffs Jose Lopez Cuadras, Omar Lopez Cuadras, and Edwin Lopez Cuadras as Class Representatives for settlement purposes, and approving a Class Representative Service Award of $10,000 to each Plaintiff;
4. Appointing Plaintiffs' Counsel, Wilshire Law Firm, PLC, as Class Counsel for settlement purposes, and approving payment of $83,333.33 in attorney's fees, which is 33 1/3% of the Gross Settlement Amount;
5. Approving costs in the amount of $13,536.55 for litigating this action to Class Counsel;
6. Approving payment of administrative expenses to CPT Group, Inc. as the Settlement Administrator in the amount of $9,250; and
7. Directing that the clerk of the Court to enter the Court's order as a final judgment; and,
8. Without affecting the finality of the final judgment, reserving continuing jurisdiction over the parties for the purposes of implementing, enforcing and/or administering the Settlement or enforcing the terms of the judgment.

This motion will be based on the accompanying Memorandum of Points and Authorities, the Declarations of Justin F. Marquez and Jeremy Talavera, and such oral argument as may be heard by the Court, and all other papers on file in this action, including but not limited to the Declarations of Plaintiffs previously submitted in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

Dated: January 30, 2024

Respectfully submitted,

**WILSHIRE LAW FIRM, PLC**

By: ______________________________
Justin F. Marquez
Benjamin H. Haber

Attorneys for Plaintiffs and Putative Class

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# MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

Plaintiffs Jose Lopez Cuadras, Omar Lopez Cuadras, and Edwin Lopez Cuadras (collectively, "Plaintiffs") seek final approval of a proposed $250,000 non-reversionary, class and representative action settlement with Defendant Guinn Corporation ("Defendant", and collectively with the Plaintiffs, the "Parties"). The Settlement will provide substantial monetary payments to approximately 181 class members. And, as set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law.

The proposed settlement satisfies all the criteria for settlement approval under California law. A presumption of fairness exists as the Settlement was reached through extensive, mediated arm's-length negotiations, sufficient investigation and discovery allowed Class Counsel to act intelligently, and Class Counsel is experienced in similar wage-and-hour litigation. Upon the Court's approval of the settlement, participating class members will receive an ***average estimated individual <u>net</u> settlement payment of approximately $579.65***, with the ***highest individual <u>net</u> settlement payment to be paid of approximately $2,303.74***. (Declaration of Jeremy Talavera on Behalf of CPT Group, Inc. ["Talavera Decl."], ¶ 15.) As of filing this Motion, there are **no objections to the settlement, no workweek disputes,** and **only one request for exclusion**. (*Id.* at ¶¶ 11-13.) Thus, the proposed Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members.

Final approval of the settlement is warranted as it satisfies all the criteria for approval under California law. As demonstrated in the motion for preliminary approval the proposed Settlement provides excellent benefits to the class, particularly considering the complexities and risks of the case. Accordingly, Plaintiffs request that the Court grant final approval of the proposed Settlement.

## II. SUMMARY OF THE LITIGATION AND SETTLEMENT

### A. Plaintiffs' Claims

This is a wage and hour class action and PAGA representative action. Plaintiffs and putative Class Members worked in California as hourly-paid or non-exempt employees for

Defendant during the Class Period. Defendant is based in Bakersfield, California and operates in the general construction arena, specializing in earth moving and underground utility systems projects. (Declaration of Justin F. Marquez in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement ["Marquez Decl."], ¶ 2.)

Plaintiffs allege that Defendant's payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. Plaintiffs allege that Defendant failed to provide employees with legally compliant meal and rest periods, and Defendant has failed to reimburse business expenses. Based on these allegations, Plaintiffs assert related claims for failure to provide accurate wage statements, failure to pay all final wages at termination, unfair business practices, and civil penalties under PAGA. (*Id.* at ¶ 3.)

On July 2, 2021, Plaintiff Jose Cuadras Lopez filed a putative wage-and-hour class action complaint against Defendant for: (1) failure to pay minimum and straight time wages (Labor Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Labor Code §§ 1194 and 1198); (3) failure to provide meal periods (Labor Code §§ 226.7 and 512); (4) failure to authorize and permit rest periods (Labor Code §§ 226.7); (5) failure to provide accurate itemized wage statements (Labor Code § 226); (6) failure to indemnify employees for expenditures (Cal. Lab. Code § 2802); and (7) unfair business practices (Business and Professions Code § 17200 *et seq*.). On January 6, 2022, Plaintiff filed a First Amended Complaint against Defendant adding Plaintiffs Omar Lopez Cuadras and Edwin Lopez Cuadras and adding a claim for civil penalties under Private Attorneys General Act "PAGA" (Labor Code § 2698, *et seq*.). Plaintiffs sent a notice to Defendant and the California Labor & Workforce Development Agency ("LWDA") alleging similar wage and hour violations pursuant to the PAGA (Labor Code §§ 2699, *et seq.*) on July 2, 2021. (Marquez Decl., ¶ 4.)

**B. <u>Discovery and Investigation</u>**

Following the filing of the Complaint, the parties exchanged documents and information before mediating this action. Defendant produced a sample of time and pay records for Class Members. Defendant also provided documents of its wage and hour policies and practices during the Class Period, and information regarding the total number of current and former employees in

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its informal discovery responses. (*Id.* at ¶ 5.)

After reviewing documents regarding Defendant's wage and hour policies and practices, analyzing Defendant's timekeeping and payroll records, and interviewing Class Members, Class Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant's maximum monetary exposure for all claims. (*Id.* at ¶ 6.) Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Class Counsel reviewed these records and prepared a damage analysis prior to mediation. (*Id.*)

### C. Settlement Negotiations and Agreement

On November 10, 2022, the parties participated in private mediation with experienced class action mediator Kelly A. Knight, Esq. (*Id.* at ¶ 7.) The mediation was conducted via Zoom. The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. The parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiffs' claims and Defendant's defenses, the Parties reached a settlement the material terms of which are encompassed within the Settlement. (*Id.*, **Ex. 1** [Class Action and PAGA Settlement Agreement and Class Notice].)

Class Counsel has conducted a thorough investigation into the facts of this case. Based on the foregoing discovery and their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members in light of all known facts and circumstances, the risk of significant delay, the defenses that could be asserted by Defendant both to certification and on the merits, trial risk, and appellate risk. (*Id.* at ¶ 8.)

### D. Preliminary Approval and Overwhelming Support for the Settlement

The Court granted Plaintiffs' Motion for Preliminary Approval of the Settlement on August 31, 2023 and, on November 15, 2025, approved the Parties' stipulated order to modify the settlement schedule. (*Id.* at ¶ 9.) The deadline for class members to opt out or object to the

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Settlement was January 26, 2024. (*Id.*) The reaction of the Class to the settlement has been overwhelmingly positive. Indeed, as of the filing of this Motion, only one (1) Class Member has opted out of the settlement, and no Class Members have objected to the settlement. (*Id.*)

**E. Key Terms of the Proposed Settlement**

Under the Settlement Agreement, Defendant will pay $250,000 to resolve this litigation. The key terms include:

1. Settlement Class: For purposes of this Settlement Agreement only, Class "means all persons employed by Defendant in California and classified as nonexempt employees who worked for Defendant during the Class Period." (Marquez Decl., Exhibit 1, Class Action and PAGA Settlement Agreement and Class Notice [the "Settlement"], § 1.5.)

2. Class Period: "means the period from January 5, 2017 to January 10, 2023." (Settlement, § 1.11.)

3. Participating Class Members: "means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement." (Settlement, § 1.35.)

4. Aggrieved Employees: means a person employed by Defendant in California and classified as an hourly-paid or nonexempt employee who worked for Defendant during the PAGA Period from July 2, 2020 to January 10, 2023. (Settlement, §§ 1.4, 1.31.)

5. Gross Settlement Amount: This amount is $250,000, for all claims, including wages, interest, the Class Counsel Award, Litigation costs, Settlement Administration Costs, payment to the Labor and Workforce Development Agency ("LWDA") for the alleged PAGA penalties, all other penalties, Defendant's share of employer payroll taxes on the portion of Individual Class Member payments allocated to wages, and the Class Representative Service Award. (Settlement, § 1.21.)

6. Uncashed Checks: If a settlement check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace search and, if another address is identified, shall mail the check to the newly identified address. Any settlement checks remaining uncashed after one hundred and eighty (180) days shall be transmitted to the California Controller's

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Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (Settlement, § 4.4.3.)

7. Release: "All Participating Class Members, on behalf of themselves and their respective former and present spouses, family members, representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action including, but not limited to claims for (a) failure to pay minimum, straight-time, overtime, or double-time wages, and failure to pay other wages of any kind during employment; (b) failure to authorize and permit rest periods or pay rest period premiums; (c) failure to provide meal periods or pay meal period premiums; (d) failure to provide accurate and itemized wage statements; (e) failure to maintain accurate employment records; (f) failure to reimburse or indemnify all necessary business expenses; and (g) claims brought under Business & Professions Code section 17200, et seq., based on the aforementioned, including, but not limited to all claims for unfair, unlawful and harmful conduct to class members, the general public, and Defendant's competitors and claims of unlawfully gaining an unfair advantage over other businesses, and all damages, liquidated damages, interest, penalties, attorneys' fees, costs, and other amounts recoverable based on the aforementioned, to the extent permissible. This release includes, but is not limited to, claims for alleged violations of the California Labor Code sections 204, 210, 226, 226.7, 510, 512, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802 and the applicable Wage Orders. Excluded from this portion of the release are claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and Plaintiffs' PAGA Notice." (Settlement, § 5.3.) This Release will be deemed effective on the date when Defendant fully funds the entire Gross Settlement Amount. (Settlement, § 5.)

9. PAGA Allocation: The settlement includes $10,000 allocated to Plaintiff's claims under PAGA, with 75% ($7,500) being paid to the LWDA and 25% ($2,500) being paid to the Aggrieved Employees. (Settlement, § 1.34.) Class Counsel submitted the proposed settlement

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to the LWDA before filing this Motion. (Marquez Decl., ¶ 10.)

10. Net Settlement Amount: The "Net Settlement Amount" is the amount that remains and that shall be paid to Settlement Class Members after the following amounts are subtracted: (1) Class Counsel Fees and Litigation costs, (2) Administrative Costs, (3) enhancement to the Named Plaintiffs, (4) the penalties recoverable by the LWDA and Aggrieved Employees pursuant to the PAGA, and (5) Defendant's share of Employer Taxes. (Settlement, § 1.27.)

13. Class Representative Service Award: Subject to Court approval, Plaintiffs shall be paid an enhancement award not to exceed $10,000 each. (Settlement, § 3.2.1.) This amount is for Plaintiffs' time and effort in bringing and presenting the Action, and in exchange for a general release of all claims, known or unknown, pursuant to Civil Code Section 1542. (Settlement, § 5.1.) If the Court approves a lesser enhancement, then the unapproved portion or portions shall revert into the Net Settlement Amount to be distributed between the participating Settlement Class Members on a pro-rata basis. (Settlement, § 3.2.1.)

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14. Attorneys' Fees and Costs: The Settlement provides that Defendant will not oppose a fee application of up to 33 1/3% of the Gross Settlement Amount (i.e., ($83,333.33), plus out-of-pocket costs not to exceed $20,000. (Settlement, § 3.2.2.)

15. Notice of Proposed Class Action Settlement: The Notice set forth in plain terms, a statement of the case, the terms of the Settlement Agreement, the approximate amount of attorneys' fees, costs, and service awards being sought, and an explanation of how the settlement allocations are calculated. (Talavera Decl., Ex. A.) Class Members were notified by first-class mail of the Settlement. (*Id*., at ¶ 7.) The Settlement Administrator also undertook its best efforts to ensure that the Notice was provided to the current addresses of Class Members, including conducting a national change of address search and re-mailing notices to updated addresses when needed. (*Id*., at ¶¶ 6-9.)

## III. THE SETTLEMENT MERITS FINAL APPROVAL

The law favors the settlement of lawsuits, particularly in class actions and other complex cases. (*See e.g., Neary v. Regents of Univ. of California* (1992) 3 Cal.4th 272, 277-81.) Factors to be considered in evaluating a class action settlement include "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through proceedings, the experience and views of counsel, the presence of a government participant, and the reaction of the class members to the proposed settlement." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) A presumption that a settlement is fair and reasonable exists where, as here, the following four factors are present: "(l) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 245.)

Whether a class action settlement should be approved is a question committed to the trial court's broad discretion. (*Id.* at pp. 234-35.) In exercising its discretion, the Court should give "[d]ue regard ...to what is otherwise a private consensual agreement between the parties." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) "The inquiry 'must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Id*. [internal citations omitted].)

**A. <u>The Settlement Reflects a Reasonable Compromise</u>**

A settlement is not judged against what the plaintiff might recover had she prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Wershba, supra,* 91 Cal.App.4th at pp. 246, 250 ["Compromise is inherent and necessary in the settlement process…even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation."].)

The settlement obviates the significant risk that this Court may deny certification of all or some of Plaintiff's claims. (Marquez Decl., ¶ 11.) While Plaintiffs are confident in the merits of their claims, a legitimate controversy exists as to each cause of action. (*Id.*) Plaintiffs also recognize that proving the amount of wages due to each class member would be an expensive,



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time-consuming, and uncertain proposition. (*Id.*) Furthermore, even if Plaintiffs obtained certification of all or some of the claims, continued litigation would be expensive, involving a trial and possible appeals, and would substantially delay and reduce any recovery by the class. (*Id.*)

Because of the proposed Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. When considering the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, the probability of appeal of a favorable judgment, it is clear that the settlement amount of $250,000 is within the "ballpark" of reasonableness, and preliminary settlement approval is appropriate. (*Id.*) ***Indeed, each Settlement Class Member is eligible to receive an average benefit of approximately $579.65, and the highest estimated net payout is expected to be approximately $2,303.74.*** (Talavera Decl., ¶ 15.)

### B. <u>The Settlement was Reached After Arms-Length Negotiations Following Formal and Informal Discovery</u>

The Settlement was reached over the course of a full-day mediation with experienced employment mediator, Kelly Knight, Esq. (Marquez Decl. ¶ 7.) The settlement negotiations were at arm's length and, although conducted in a professional manner. (*Id.*) The parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their or its position through trial and appeal if a settlement had not been reached. (*Id.*)

Prior to reaching this settlement, Class Counsel conducted formal and informal discovery concerning the claims set forth in the Litigation, such as a sample of class member timekeeping and payroll records, Defendant's policies and procedures concerning the payment of wages, the provision of meal and rest breaks, issuance of wage statements, and providing all wages at separation, as well as information regarding the number of putative class members and the mix of current versus former employees, the wage rates in effect, and the amount of meal and rest period premium wages paid to class members. (*Id.* at ¶¶ 5-6.) In conjunction with their extensive factual investigation, Class Counsel investigated the applicable law regarding the claims and defenses asserted in the Litigation. (*Id.*) Thus, Plaintiffs and their counsel were able to act intelligently and

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effectively in negotiating the proposed Settlement. (*Id*.)

### C. Plaintiffs' Counsel Has Substantial Class Action Experience

Class Counsel also has considerable experience and has demonstrated competence with litigating wage and hour class actions. (Marquez Decl. at ¶¶ 26-38.) Class Counsel has substantial experience in all facets of litigation in state and federal court, including discovery, law and motion, trial, appeals, arbitration and mediation. Class Counsel has litigated numerous class actions on behalf of plaintiffs and have been lead counsel or otherwise exercised significant case handling responsibilities in numerous cases resulting in millions of dollars in class action settlements. (*Id*.)

Based on Class Counsel's experience as employment and class action attorneys, Class Counsel is eminently qualified to evaluate the strength of Plaintiffs' claims, the strength of Defendant's defenses against certification, the strength of Defendant's defenses on the merits, and the fairness of the Settlement. Their opinion that final approval of the Settlement would be in the best interests of class members in light of the significant risks of litigation is entitled to great weight. (*See Kullar, supra,* 168 Cal.App.4th at 129 ["The court undoubtedly should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arms' length transaction entered without self-dealing or other potential misconduct"].)

### D. Objections to the Settlement were Minimal

No class member has objected to the Settlement, and only one class members (representing only **0.5%** of the class members) has requested exclusion from the Settlement. (Talavera Decl., ¶ 13.) The overwhelmingly positive response of the class strongly supports final approval of the Settlement. (*See, e.g., In re Lifelock, Inc. Marketing and Sales Practices Litigation* (D. Ariz. 2010) 2010 WL 3715138, *6 [relatively few objections and requests for exclusion support approval].)

Factors to be considered in evaluating a class action settlement include "the reaction of the class members to the proposed settlement." (*Kullar, supra,* 168 Cal.App.4th at p. 128.) The reaction here has been overwhelmingly positive. Courts have approved class action settlements in lesser circumstances. (*See, e.g., Hughes v. Microsoft Corp.* (W.D.Wash. 2001) 2001 U.S. Dist. LEXIS 5976, 2001 WL 34089697, *8 [court found that the "class members overwhelmingly

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support[ed] the settlement" where there were over 37,000 notices sent out, 2,745 class members participated in the settlement, "only nine objections were submitted", and there were 86 timely opt-outs and over 20 additional defective or untimely opt-outs, "these indicia of the approval of the class of the terms of the settlement support a finding of fairness under Rule 23"], *citing Hanlon v. Chrysler Corp.* (9th Cir.1998) 150 F.3d 1011, 1027 [despite vigorous objections and appeal by objectors, the "fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness," and the court did not abuse its discretion in approving settlement].)

## IV. THE COURT SHOULD AWARD PLAINTIFFS THE REQUESTED AMOUNTS OF FEES, COSTS AND ENHANCEMENT PAYMENTS.

Under the Settlement, subject to the Court's approval, Defendant has agreed to pay Class Counsel reasonable attorneys' fees in the amount of $83,333.33, which is 33 1/3% of the Gross Settlement Amount, costs up to $20,000 for litigating this Action, and enhancement awards of $10,000 to each Plaintiff. Defendant has also agreed that it would not oppose an application for these payments addressed above, and no class member has objected to these amounts.

"In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion." (*Wershba, supra,* 91 Cal.App.4th at pp. 234-235.) "Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method." (*Id.* at p. 254; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.)

### A. Counsel Requests an Award of Fees Based on the "Common Fund" Method

California courts have long awarded attorneys' fees as a percentage of the benefit created by counsel in pursuing claims on behalf of a class. The California Supreme Court held that "when a number of persons is entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorneys' fees out of the fund." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34 [*quoting D'Amico v. Board of Medical Examiners* (1974) 11 Cal. 3d 1.)

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Class Counsel intends to seek an award of attorneys' fees on the "percentage of recovery/ common fund" theory. The purpose of the common fund/percentage approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1995) 15 Cal. 3d 162, 167, the California Supreme Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share."

The California Supreme Court affirmed in *Laffitte v. Robert Half Int'l Inc*. (2016), 1 Cal.5th 480, that, "when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." (*Id*. at p. 503.) The court explained: "The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts." (*Id*.)

Several courts have expressed frustration with the alternative "lodestar" approach for deciding fee awards, which usually involves wading through voluminous and often indecipherable time records. Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote: "This court is compelled to ask, 'Is this process necessary?' Under a cost-benefit analysis, the answer would be a resounding, 'No!'" (*In re Activision Securities Litigation* (N.D. Cal 1989) 723 F. Supp. 1373, 1375.) The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the

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litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*Id*. at pp. 1378-79.) The Ninth Circuit now routinely uses the percentage of the common fund approach to determine the award of attorney's fees. (*See*, *e.g. In re Pacific Enterprises Securities City and County of San Francisco Litigation* (9th Cir. 1994) 47 F.3d 373, 378-79 [approving attorney's fee of 33 1/3%].)

**1. The Standard Fee Award in Class Actions has Resolved Itself as One-Third of the Recovery in Common Fund Cases**

According to a leading treatise on class actions, "No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." (*See* Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 14.03.) Attorneys' fees at fifty percent of the fund are typically considered the upper limit, with ***thirty to forty percent*** commonly awarded in cases where the settlement is relatively small. (*See Id.*; *see also, Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most cases where 30-50% was awarded involved "smaller" settlement funds of under $10 million].)

The settled-for 33 1/3% fee award is consistent with the average fee award in class actions. Indeed, the custom and practice in class actions is to award approximately one-third of a fund as a fee award. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].) Thus, Plaintiffs' fee request is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards in California. Accordingly, Plaintiffs request that the Court approve the attorneys' fees requested herein.

**2. This Matter Involves A "Fee-Shifting" Provision of the Labor Code.**

Class Counsel is entitled to recover fees under Labor Code § 1194, which provides, in part:

> [A]ny employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime



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> compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

(Cal. Lab. Code § 1194.)

As this litigation culminated in a settlement that provided for a recovery of unpaid wages, including unpaid minimum wages and overtime compensation, Plaintiffs are entitled to recover reasonable attorneys' fees and costs under the California Labor Code.

Class Counsel is also entitled to a fee award under California's private attorney general statute, Code of Civil Procedure § 1021.5. "The award of attorneys' fees is proper under Section 1021.5 if '(1) plaintiffs' action 'has resulted in the enforcement of an important right affecting the public interest,' (2) 'a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons' and (3) 'the necessity and financial burden of private enforcement are such as to make the award appropriate.'" (*Press v. Lucky Stores* (1983) 34 Cal.3d 311, 317-318.) The fundamental objective of the statute is "to encourage suits enforcing public policies by providing substantial attorneys' fees to successful litigants in such cases." (*Graham v. DaimlerChrysler Corp*. (2004) 34 Cal.4th 553, 565.)

This action resulted in the enforcement of an important right affecting the public interest, as Plaintiffs sought to enforce Settlement Class Members' rights to recover statutory wages arising from Defendant's failure to pay all wages and failure to provide meal and rest breaks. (*See Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1113 [noting that "health and safety concerns" are what motivated the Industrial Wage Commission to adopt mandatory meal and rest periods].)

This action also conferred a significant benefit on a large class of persons. Notice was sent to 182 Settlement Class Members, and only one Settlement Class Member requested exclusion. The Settlement provides a significant monetary benefit, in that it permits all persons who worked for Defendant during the applicable class period to obtain compensation for unpaid wages and missed meal and rest periods.

Finally, the necessity and financial burden of private enforcement render an award appropriate. Without the incentive of an attorneys' fee award, Plaintiffs could not have afforded to hire counsel to pursue this case, as the cost of litigating this matter far outweighed Plaintiffs'

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potential recovery. (*See Ryan v. California Interscholastic Federation* (2001) 94 Cal.App.4th 1033, 1044 ["As to the necessity and financial burden of private enforcement, an award is appropriate where the cost of the legal victory transcends the claimants' personal interest; in other words, where the burden of pursuing the litigation is out of proportion to the plaintiff's individual stake in the matter."].)

**3. This Matter Involves A "Fee-Shifting" Provision of the Labor Code.**

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Class Counsel possesses considerable expertise in litigating class action matters. Class Counsel has been involved as lead counsel or co-counsel in dozens of class actions resulting in a multitude of beneficial results to class members in California. Because it is reasonable to compensate class counsel commensurate with their skill, reputation and experience, a fee award of 33 1/3% of the Gross Settlement Amount, a percentage considered within the norm in class action practice, is certainly justified here.

Class Counsel's experience in wage and hour class actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of class action litigation. Based on these and other factors, Class Counsel has frequently received fee awards amounting to 33 1/3% of the recovery for the class. Therefore, the requested fee award is reasonable and fair.

**B. <u>While the Lodestar Method is Not Necessary in Common Fund Cases, Courts May Perform a Cross-Check to Award Fees.</u>**

Although California supports the common fund doctrine, the lodestar method can be used to cross-check fee awards. "It may be appropriate in some cases, assuming the class benefit can be monetized with a reasonable degree of certainty, to "cross-check" or adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation." (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.)

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Applying the lodestar method requires a two-step process. The first step is to multiply the number of hours reasonably expended by a reasonable hourly rate. The second step is to apply a multiplier to the lodestar to take into account various factors. "The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services." (*Id.* at pp. 556-57.) "Under certain circumstances, a lodestar calculation may be enhanced on the basis of a percentage-of-the-benefit analysis." (*Id.* at p. 557.)

Class Counsel's lodestar is at least $96,925 based on at least 130 hours of work performed thus far. (Marquez Decl., ¶ 18.) Accordingly, the requested fee of $83,333.33 is reasonable and fair as it is based on a negative multiplier of 0.9. To be sure, trial courts have substantial discretion in adjusting the lodestar to account for various factors. (*See Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26, 39-45; *see also Serrano*, *supra,* 20 Cal.3d at p. 49.) In addition, it has been held that "[m]ultipliers can range from 2 to 4 or even higher." (*See Wershba*, 91 Cal.App.4th at p. 255; *see also Van Vranken*, *supra,* 901 F. Supp. At p. 298 ["[m]ultipliers in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation."] Larger multipliers have also been found to be reasonable for Class Counsel. (*See, e.g., Moreno v. Pretium Packaging, L.L.C.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-SB, 2021 WL 3673845, *3 [finding Wilshire Law Firm's multiplier of 2.57 reasonable "in light of the contingent nature of recovery, the complexity of the issues, and the result obtained"].)

**1. Class Counsel's Rates Have Been Approved by Several Courts.**

Class Counsel provides a declaration to support their lodestar hourly rates. "Affidavits of the plaintiffs' attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a rate for the plaintiffs' attorney, are satisfactory evidence of the prevailing market rate." (*United Steelworkers of America v. Phelps Dodge Corp.* (9th Cir. 1990) 896 F.2d 403, 407.) Class Counsel has received final approval of their hourly rates in other wage and hour class action settlements.

For example, Mr. Marquez' hourly rates were recently approved in *Suarez v. Bank of*



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*America, N.A.* (N.D. Cal. Jan. 11, 2024), No. 18-cv-01202-LB, 2024 WL150721. There, the court held that "[a]s for the lodestar cross-check, the billing rates are normal and customary for timekeepers with similar qualifications and experience in the relevant market." (*Id.* at p. *3.)

These rates are also not opposed or challenged.

**2. The Lawsuit Provided a Public Benefit.**

Class Counsel's choice to litigate this matter provided a public benefit to approximately 181 California employees. Moreover, the California Supreme Court stated that "Labor Code section 1194 confirms "a clear public policy … that is specifically directed at the enforcement of California's minimum wage and overtime laws for the benefit of workers." [citation omitted]." (*Sav-on Drug Stores, Inc. v. Super. Ct*. (2004) 34 Cal.4th 319, 340.) Given the financial risks and numerous attorney hours attendant to the litigation of Plaintiffs' claims, this factor supports Class Counsel's fee request and encourages the private enforcement of legal rights for the general good.

**3. Applying a Positive Multiplier Is Appropriate.**

Once this lodestar figure has been determined, the Court may take into account other "enhancement" factors to adjust the lodestar award. While Plaintiffs seek a negative multiplier of 0.9 here, the overall reasonableness of Plaintiffs' request is underscored by the fact that a significantly higher multiplier would be justified under applicable law.

Contingency fees should be higher than fees for the same legal services paid concurrently with the provision of the services. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-33.) "A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases." (*Id.* at p. 1133.) Application of that rule is particularly appropriate where the case is brought to redress important rights of vulnerable persons. (*Id.*) A risk enhancement is "earned compensation; unlike a windfall, it is neither unexpected nor fortuitous. Rather it is intended to approximate market-level compensation for such services which typically pay a premium for the risk of nonpayment or delay in payment of attorney's fees." (*Id*. at p. 1138.)

"Multipliers can range from 2 to 4 or even higher." (*Wershba*, *supra,* 91 Cal.App.4th at

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p. 255; *see also Sutter Health Uninsured Pricing Cases* (2009) 171 Cal. App. 4th 495, 512 [applying a 2.52 multiplier on a cross-check in an antitrust class action]; *Chavez, supra,* 162 Cal. App. 4th at p. 60 [applying a 2.5 multiplier on a lodestar cross-check]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 n.6 ["most" common fund cases apply a multiplier of 1.0-4.0]; *Been v. O.K. Industries Inc.* (E.D. Okla. 2011) 2011 WL 4478766, *11 [citing a study "reporting [an] average multiplier of 3.89 in survey of 1,120 class action cases" and finding that a multiplier of 2.43 would be "per se reasonable"].) The intermediate court in *Laffitte*, after finding that "2 to 4" is a reasonable range for multipliers on a cross-check, affirmed a 2.13 multiplier. (*Laffitte v. Robert Half Int'l* (2014) 231 Cal. App. 4th 860, 881-82.) The intermediate court opinion was affirmed in full by the California Supreme Court in its new decision guiding lower courts on assessing fees.

Factors considered in determining whether a lodestar multiplier is appropriate generally include: (1) the risks presented by the contingent nature of the case; (2) the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly; (3) the nature of the opposition; (4) the preclusion of other employment by the attorney due to acceptance of the case; and (5) the result obtained and the importance of the lawsuit to the public. (*Serrano, supra,* 20 Cal. 3d at pp. 48-49.) All of these factors favor approval of a multiplier along the lines of those approved in the cases above.

The major consideration in determining the necessity of a multiplier is the contingent nature of the award. (*Ketchum, supra,* 24 Cal.4th at pp. 1132-33.) Further, the possibility of no recovery is only one of the uncertainties involved in taking on such a case. Other uncertainties are the amount that will be recovered, uncertainty as to the cost, both in effort and expenses, and uncertainty about how much time will pass before the recovery is obtained. (*Id.* at pp. 1132-1133, 1138.) Here, Class Counsel have been the only counsel to represent Class Members in this matter and have borne the entire risk and costs of litigation purely on a contingency basis. Class Counsel's outlay of time and money in this case has been significant.

The other factors are also present here. Class Counsel are skilled attorneys who have had success in wage-and-hour class actions. This case required experienced and competent

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lawyers and expertise in the issues presented herein. Defendant's contentions underscore the risk of prevailing at class certification and trial, and any of these obstacles could have prevented recovery completely. Further, proceeding to trial would have added years to the resolution of this case because of the difficult legal and factual issues raised and the likelihood of appeals. Despite these risks, Class Counsel took this case on a contingency basis. Yet, there are only so many cases that Class Counsel can take at any one time. Consequently, there were other meritorious cases presented to Class Counsel that would have generated substantial fees, but were declined, during the pendency of this action in order to devote the attention necessary to achieve favorable results. (Marquez Decl., ¶ 23.) Considered against the risks of continued litigation, and the importance of the employment rights and a speedy recovery, the relief provided under the Settlement represents a very strong result for the Class.

### C. <u>Costs Are Reasonable.</u>

As of the date of filing this Motion, Class Counsel has incurred around $13,236.55 in costs, and anticipate incurring at least $300 in additional costs up to the time the Court enters a judgment in this action and schedules a fairness hearing on distribution. (Marquez Decl., ¶ 25.) Accordingly, Class Counsel respectfully requests reimbursement of up to $13,536.55 in costs. Notably, Defendant has agreed that it will not oppose any cost award request up to $20,000. The categories of costs are set forth in the accompanying Declaration of Justin Marquez, and these costs are easily seen to be both reasonable and necessary.

Counsel can recover "out-of-pocket expenses that 'would normally be charged to a fee paying client'" including costs for "service of summons and complaint, service of trial subpoenas, fee for defense expert at deposition, postage, investigator, copying costs, hotel bills, meals, messenger service and employment record reproduction." (*Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19.) Such costs are properly recoverable on motions for settlement approval. (*See Nunez v. BAE Sys. San Diego Ship Repair Inc.* (S.D. Cal. 2017) 292 F. Supp. 3d 1018, 1057; *Rutti v. Lojack Corp.* (C.D. Cal. July 31, 2012) No. CV 06–00350 DOC, 2012 WL 3151077, at *12 ["Expenses such as reimbursement for travel, meals, lodging, photocopying, long-distance telephone calls, computer legal research, postage, courier service, mediation,



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exhibits, documents scanning, and visual equipment are typically recoverable."].)

**D. <u>The Enhancement Payment to the Plaintiffs Are Reasonable.</u>**

Named plaintiffs in class action lawsuits "are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz, supra,* 86 Cal.App.4th at p. 412.) Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which are necessary to provide incentive to represent the class, and are appropriate given the benefit the class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp*. (9th Cir. 2009) 563 F.3d 948, 958-59.) The California Supreme Court has also noted that "retaliation against employees for asserting statutory rights under the Labor Code is widespread," despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460-61.) Plaintiffs should therefore be rewarded for assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

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Under the settlement agreement, subject to the Court's approval, Defendant agreed to pay a Service Award in the amount of $10,000 to each Plaintiff. This amount is also in exchange for Plaintiffs' general release of all claims against Defendant. Plaintiffs have submitted declarations demonstrating their devotion to this case, including their efforts assisting counsel in the case, communicating with counsel frequently for litigation, preparing for mediation, and reviewing case-related documents. (*See, generally,* Declarations of Plaintiffs previously submitted with Plaintiffs' Motion for Preliminary Approval.)

When compared with the amounts awarded in typical class action cases, the amount requested here is particularly reasonable. Indeed, a **<u>2006</u>** study examining the average incentive award given to class action plaintiffs from **<u>1993 to 2002</u>** found that the "average award per class representative was $15,992 and the median award per class representative was $4,357." (Theodore Eisenberg & Jeffrey P. Miller, "Incentive Awards to Class Action Plaintiffs: An Empirical Study", 53 UCLA L. Rev. 1303, 1308 (2006).)

"Since without a named plaintiff there can be no class action, such compensation as may be necessary to induce him to participate in the suit." (*Clark v. Am. Residential Services LLC*

(2009) 175 Cal. App. 4th 785, 804.) "[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class." (Id. at 806.) "An incentive award is appropriate 'if it is necessary to induce an individual to participate in the suit."' (*Cellphone Term. Fee Cases* (2010) 186 Cal. App. 4th 1380, 1394, quoting *Clark*, *supra*, 175 Cal. App. 4th at 804.) The "criteria courts may consider in determining whether to make an incentive award include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation." (*Id.* at pp. 1394–95.)

Here, Plaintiffs have the right to move the Court for incentive awards of up to $10,000 each in light of their risk in pursuing this case, time and effort devoted to this case, and the benefit received for the other class members.

### E. <u>Administration Expenses Should be Approved.</u>

CPT Group, Inc., the Settlement Administrator, estimates that it will incur a total of $9,250 in costs associated with the administration of this Settlement. (Talavera Decl., ¶ 16.) These expenses are reasonable, based upon the size of the class, claim and exclusion tracking, and Class Member payment processing.

## V. <u>CONCLUSION</u>

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the proposed settlement.

Dated: January 30, 2024

Respectfully submitted,

**WILSHIRE LAW FIRM, PLC**

By: ______________________

Justin F. Marquez
Benjamin H. Haber

Attorneys for Plaintiff



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# PROOF OF SERVICE

*Lopez Cuadras, et al. v. Guinn Corporation, et al.*
BCV-21-101520

STATE OF CALIFORNIA )
) ss
COUNTY OF LOS ANGELES )

I, Min Jee Kim, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is minjee@wilshirelawfirm.com.

On **January 30, 2024**, I served the foregoing **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES,** on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

John T. Egley (SBN 232545)
jegley@calljensen.com
Ellen Connelly Cohen (SBN 276458)
ecohen@calljensen.com
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Newport Beach, California 92660
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*Attorneys for* Defendant

(X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.

(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this **January 30, 2024** at Los Angeles, California.

| Min Jee Kim | |
|---|---|
| Type or Print Name | Signature |