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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

09/02/2022 at 12:38:00 PM

Clerk of the Superior Court
By E- Filing, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

ALEXANDRA RIOS, as an individual and on
behalf of others similarly situated,

Plaintiff,

vs.

TSM CORPORATION, a Tennessee
corporation; TAD PGS, INC., a Delaware
corporation; XATOR CORPORATION, a
Virginia corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2021-00038991-CU-OE-CTL

*Assigned to the Hon. Timothy B. Taylor, Dept.
C-72*

**Notice of Order Approving PAGA
Settlement under Labor Code § 2699(1)(2)
and Entering Judgment**

Case Filed: September 13, 2021

1 TO THE COURT, THE CALIFORNIA LABOR AND WORKFORCE DEVELOPMENT
2 AGENCY (LWDA), ALL PARTIES, AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE
3 NOTICE THAT:

4 1. On August 25, 2022, Plaintiff Alexandra Rios, through counsel of record, filed a Joint
5 Stipulation Requesting Approval of PAGA Settlement; [Proposed] Order Approving PAGA
6 Settlement under Labor Code § 2699(l)(2) and Entering Judgment in this action entitled *Alexandra*
7 *Rios v. TSM Corporation et al.*

8 2. On August 29, 2022, the Honorable Timothy B. Taylor signed the proposed order, as
9 amended by the Court, which became the Order of the Court. The Court entered final judgment
10 according to its terms.

11 3. A true and correct copy of the **Joint Stipulation Requesting Approval of PAGA**
12 **Settlement; [~~Proposed~~] Order Approving PAGA Settlement under Labor Code § 2699(l)(2) and**
13 **Entering Judgment** is attached hereto as **Exhibit 1**.

14
15 Respectfully submitted,

16
17 Dated: September 2, 2022

Ferraro Vega Employment Lawyers, Inc.

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20 Nicholas J. Ferraro
21 Lauren N. Vega
22 Attorneys for Plaintiff Alexandra Rios
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Exhibit 1

1 Nicholas J. Ferraro (State Bar No. 306528)
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8 *Attorneys for Plaintiff Alexandra Rios*

9 *Additional counsel on next page*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN DIEGO**

12 ALEXANDRA RIOS, as an individual and
13 on behalf of others similarly situated,

14 Plaintiff,

15 vs.

16 TSM CORPORATION, a Tennessee
17 corporation; TAD PGS, INC., a Delaware
18 corporation; XATOR CORPORATION, a
19 Virginia corporation; and DOES 1
20 through 50, inclusive,

21 Defendants.

Case No. 37-2021-00038991-CU-OE-CTL

*Assigned to the Hon. Timothy B. Taylor
Dept. C-72*

**Joint Stipulation Requesting Approval of PAGA
Settlement; [Proposed] Order Approving PAGA
Settlement under Labor Code § 2699(1)(2) and
Entering Judgment**

Case Filed: September 13, 2021

TRC: June 2, 2023

Trial Date: June 16, 2023

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15
16 *Attorneys for Defendants TSM Corporation and Xator Corporation.*

1 **I. INTRODUCTION**

2 Plaintiff Alexandra Rios (“Plaintiff”) and Defendants TSM Corporation, TAD PGS, Inc.,
3 Xator Corporation (“Defendants”) (collectively, the “Parties”) have reached a settlement of
4 Plaintiff’s claims brought under the Private Attorneys General Act. On July 1, 2021, Plaintiff
5 provided notice to the LWDA and Defendants of the underlying alleged Labor Code violations. On
6 Sept. 13, 2022, Plaintiff filed this action in this Court. The Parties agreed to mediate the case on
7 July 11, 2022, but settled in advance of that date in principle, on June 2, 2022. The Parties fully
8 and finally executed a long-form settlement agreement on July 22, 2022.

9 The Parties now stipulate to the terms herein and request that the Court sign the Order
10 approving the PAGA settlement under Labor Code section 2699(1)(2) and enter judgment thereon.

11 **II. BACKGROUND**

12 Plaintiff was employed by Defendants as a Youth Monitor at emergency intake sites located
13 at the San Diego Convention Center and Pomona Fairplex from April 10, 2021 to July 1, 2021.
14 Plaintiff alleges that she is an aggrieved employee who experienced violations of California
15 employment law along with other current and former non-exempt employees of Defendants.
16 Plaintiff pled her case on behalf of a narrow group of employees who worked as youth care workers
17 for migrant children at various holding sites throughout California, including the San Diego
18 Convention Center where she worked.

19 According to her Representative Action Complaint, Plaintiff alleged employees were
20 required to arrive prior to their scheduled shift and wait in security lines without pay; prohibited
21 from leaving the sites for meal or rest periods; used personal cell phones for clocking in and out on
22 an app without reimbursement; and failed to provide the local paid sick leave amounts due.

23 **A. Case Background**

24 On July 1, 2021, Plaintiff submitted a notice to the Labor and Workforce Development
25 Agency (“LWDA”) asserting her claims for civil penalties under the PAGA on behalf of herself and
26 the Covered Employees. (Declaration of Nicholas J. Ferraro (Ferraro Decl.), ¶ 6.) On September 13,
27 2021, Plaintiff filed a PAGA representative action in San Diego Superior Court. (Ferraro Decl. ¶ 7.)
28 In her Complaint, Plaintiff requested civil penalties under California Labor Code section 2699 *et*

1 *seq.* based on the following claims: (1) Failure to Pay All Regular and Minimum Wages, (2) Failure
2 to Pay All Overtime Wages, (3) Meal Period Violations, (4) Rest Period Violations, (5) Untimely
3 Payment of Wages, (6) Wage Statement Violations, (7) Failure to Timely Pay All Wages Owed
4 Upon Separation, (8) Failure to Reimburse Business Expenses, (9) Recordkeeping Violations, and
5 (10) Paid Sick Leave Violations. (*See* Complaint.)

6 Plaintiff and the aggrieved employees worked for Defendants at the San Diego Convention
7 Center and at the Pomona Fairplex in connection with the emergency housing of unaccompanied
8 minors who crossed into the United States via the Southern Border. (Ferraro Decl. ¶ 12.) In her
9 Complaint, Plaintiff alleged: Defendants failed to pay all regular and minimum wages owed to the
10 aggrieved employees because of uncompensated time spent waiting in mandatory security lines
11 prior to the start of their shift and prior to being allowed to clock in; Plaintiff and the aggrieved
12 employees were prohibited from leaving the premises for unpaid meal periods; Defendants did not
13 provide timely, duty-free meal periods or make all required payments in lieu thereof; Defendants
14 did not authorize 10-minute duty-free rest periods or make all required premium payments in lieu
15 thereof; Plaintiff and other aggrieved employees used their personal cell phones for work-related
16 purposes, including communications with co-workers and clocking in and out via an app, without
17 reimbursement; Defendants violated paid sick leave law in numerous respects due to non-
18 compliant, deficient accrual rates, failure to permit immediate accrual of sick leave, the inability to
19 use paid sick leave, and, on information and belief, failure to maintain paid sick leave records; and
20 Defendants also committed derivative violations including failure to timely pay all wages, non-
21 compliant wage statements, waiting time penalties, and/or failure to maintain accurate records.
22 (Ferraro Decl. ¶ 19.)

23 In the Joint Stipulation “aggrieved employees” (referred to as “Covered Employees” in this
24 Joint Stipulation) is defined as:

25 **All current and former non-exempt employees of Defendants who**
26 **work or worked within the State of California at the Pomona and/or**
27 **San Diego emergency intake sites at any time during the Covered**
28 **Period.** (Joint Stipulation, § 1(c).)

1 On November 22, 2021, Plaintiff issued discovery to Defendant TSM Corporation. (Ferraro
2 Decl. ¶ 20.) On January 13, 2022, Plaintiff issued discovery to Defendants TAD PGS, Inc. and
3 Xator Corporation. (Ferraro Decl. ¶ 21.) The Parties agreed to mediate the matter on July 11, 2022,
4 with mediator Louis Marlin. (Ferraro Decl. ¶ 23.) In April and May 2022, the Parties engaged in
5 informal settlement discussions. (Ferraro Decl. ¶ 24.) In preparation for, and during the settlement
6 discussions, my office obtained all the policies and data necessary to conduct a liability exposure
7 analysis. (Ferraro Decl. ¶ 25.) On June 2, 2022, the Parties resolved the Litigation. (Ferraro Decl.
8 ¶ 26.) On July 22, 2022, the Parties fully executed the Settlement Agreement of Private Attorneys
9 General Act Claims ("Settlement Agreement"). (Ferraro Decl. ¶ 27.) A full copy of the Settlement
10 Agreement is attached to the accompanying Declaration of Nicholas J. Ferraro as **Exhibit 1**.
11 (Ferraro Decl., ¶ 4.)

12 Defendants maintained arbitration agreements with PAGA representative action waivers
13 similar to that at issue in the U.S. Supreme Court decision of *Viking River Cruises, Inc. v. Moriana*,
14 decided June 15, 2022. (Ferraro Decl. ¶ 16.)

15 C. Settlement Terms

16 The settlement covers **247 Covered Employees** who worked for Defendants from July 1,
17 2020, to the date the Court enters an order approving the Settlement Agreement, though the total
18 number of pay periods and employees will not increase in light of the fact that Defendants no
19 longer employ "Covered Employees" at the applicable sites. (Ferraro Decl., ¶ 29.) The number of
20 pay periods is **2,032**. (Ferraro Decl., ¶ 30.) The Parties agreed to settle the underlying PAGA claims
21 in exchange for a non-reversionary Gross Settlement Amount of **\$60,960**. Defendants TSM
22 Corporation and Xator Corporation will pay Thirty Six Thousand Three Hundred Sixty Dollars and
23 No Cents (\$36,360) and Defendant TAD PGS, Inc. will pay Twenty Four Thousand Six Hundred
24 Dollars and No Cents (\$24,600) of the Gross Settlement Amount of \$60,960. The Gross Settlement
25 Amount of \$60,960, is to be allocated as follows:

26 Gross Settlement Amount:	\$60,960
27 Plaintiff's Counsel Fees (33.33%) (minus):	(\$20,320)
28 Plaintiff's Counsel Actual Costs (minus):	(\$4,000)

1	Third Party Administration Costs (minus)	(\$2,750)
2	<u>Individual Enhancement to Named Plaintiff</u>	<u>(\$4,500)</u>
3	Remaining PAGA Payment	\$29,390.00
4	<i>To LWDA (75 percent)</i>	\$22,042.50
5	<i>To Covered Employees (25 percent)</i>	\$7,347.50

6 (Ferraro Decl., ¶ 31.) Each Covered Employee will receive a portion of the PAGA Payment payable
7 to the Covered Employees on a pro-rata basis based on workweeks worked during the PAGA
8 Period. (Settlement Agreement (“S.A.”), Sec. 6(c)(2)). Upon the Effective Date, Plaintiff, all
9 Covered Employees, and the State of California shall be deemed to have fully, finally, and forever
10 released, relinquished, and discharged each and all of the Released Parties from the Released
11 Claims. (S.A. section 10).

12 “Released Parties” means Defendants, their respective current and former, direct and
13 indirect owners, parents, subsidiaries, brother-sister companies, including but not limited to Adecco
14 USA, Inc., Adecco Government Solutions, each of their respective current and former partners,
15 officers, directors, employees, attorneys, agents, and other related parties. (S.A. section 1(k)).

16 “Released Claims” means any and all claims for relief under PAGA, of whatever kind or
17 nature, whether known or unknown, arising during the Covered Period, based on the facts alleged
18 by Plaintiff in the Litigation and Plaintiff’s notice letter to the LWDA including, but not limited to,
19 Labor Code sections 201-204, 204b, 210, 218, 218.6, 226, 226.3, 226.7, 246, 246.5, 247.5, 256,
20 510, 512, 516, 558, 558.1, 1174, 1174.5, 1175, 1182.12, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198,
21 2802, 2699, 2699.3, and the applicable IWC Wage Orders, and any resulting claim for attorney’s
22 fees and costs under PAGA. (S.A. section 1(j)).

23 No later than thirty (30) calendar days after the Effective Date, Defendants shall provide the
24 Settlement Administrator with a list of the Covered Employees. Such list shall include each
25 Covered Employee’s (1) first and last name, (2) last known address, (3) last known phone number,
26 (4) Social Security Number, and (5) the Settlement Pay Periods for each Covered Employee. (S.A.
27 section 6(a)(1)).

1 Within 10 calendar days of the Court approving the Settlement Agreement, Defendants will
2 deposit the Gross Settlement Amount with the Settlement Administrator via wire transfer(s). (S.A.
3 section 6, paragraph (b)(2)). Defendants TSM Corporation and Xator Corporation will deposit
4 Thirty Six Thousand Three Hundred Sixty Dollars and No Cents (\$36,360) and Defendant TAD
5 PGS, Inc. will deposit Twenty Four Thousand Six Hundred Dollars and No Cents (\$24,600) of the
6 Gross Settlement Amount. Within 20 calendar days of the transfer of the Gross Settlement Fund to
7 the Settlement Administrator, the Settlement Administrator shall distribute the Attorney's Fees
8 Payment, the Litigation Costs Payment, the Settlement Administration Fee, the LWDA Penalties
9 Payment, and the Individual Settlement Payment. (S.A. section 6, paragraph (b)(3)).

10 No later than twenty (20) calendar days after Defendants transfer the Gross Settlement Fund
11 to the Settlement Administrator, the Settlement Administrator shall mail payment to the Covered
12 Employees, along with a Covered Employee Cover Letter (the "Cover Letter," attached hereto as
13 **Exhibit 2**). (S.A. section 6, paragraph (b)(4)).

14 **C. Notice to LWDA**

15 On July 26, 2022, Plaintiff submitted Notice of Proposed Settlement of this PAGA action to
16 the LWDA electronically via the LWDA's online filing system. (Ferraro Decl. ¶ 8.)

17 **III. LEGAL STANDARD**

18 **A. The PAGA Settlement is Fair and Reasonable and Should be Approved.**

19 PAGA settlements require judicial review and approval. (Labor Code § 2699(l)(2).) The
20 criteria for review and approval is not well-developed. But when a PAGA claim is settled, the relief
21 provided for must be genuine and meaningful, consistent with the purpose of the statute to benefit
22 the public. (*See Haralson v. U.S. Aviation Services Corp.* (N.D. Cal. 2019) 383 F. Supp.3d 959,
23 971-972.)

24 Civil penalties sought under the PAGA are "inherently regulatory, not remedial, and are
25 intended to secure obedience to statutes and regulations validly adopted under the police power" of
26 the state. *Home Depot U.S.A, Inc. v. Superior Court* (2010) 191 Cal.App.4th 210, 225. This
27 settlement has thus met the fundamental aim of the legislation, to enforce compliance with
28 California's state wage and labor laws.

1 PAGA actions are not evaluated subject to the same requirements as class actions, though
2 courts like this one can and often do consider the factors applicable to class action settlements when
3 reviewing PAGA settlements. *See, e.g., Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
4 1801; *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 240; *Kullar v. Foot Locker Retail,*
5 *Inc.* (2008) 168 Cal.App.4th 116 (factors include the (1) strengths of plaintiffs' case; (2) risk,
6 expense, complexity, and duration of further litigation; (3) amount offered in settlement;
7 (4) discovery and investigation completed; (5) experience and views of counsel; and
8 (6) governmental participant involvement).

9 These factors support approval of the settlement. First, plaintiff had a strong case on many
10 discrete issues, but the fact that the employees worked across two different jobsites in San Diego
11 and Pomona, would have presented challenges for proving a common and uniform practice at trial
12 on issues of security check off-the-clock practices and meal and rest period violations. Second,
13 while the litigation could have proceeded with the aforementioned risks, the largest element of
14 damages would have likely been for statutory attorneys' fees as the prevailing party; therefore, the
15 remedial and enforcement mechanisms of the PAGA are better served through this settlement than
16 through additional litigation. Additional litigation would have been costly to Defendants and likely
17 reduced the amount of assets available to pay any future settlement or judgment. Third, the amount
18 offered in settlement is in line with other settlements at \$30 (gross) per pay period (\$60,960 / 2,032
19 pay periods). Fourth, the settlement was only after Plaintiff's counsel obtained all the policies and
20 data necessary to conduct a liability exposure analysis. The settlement was negotiated at arms-
21 length by counsel on both sides experienced in PAGA and wage and hour litigation. Fifth,
22 Plaintiff's counsel focuses entirely on labor and employment litigation, with a particular emphasis
23 on wage and hour litigation and PAGA cases. (Ferraro Decl. ¶ 3.) Plaintiff's counsel recommends
24 the settlement as fair and reasonable. There are no objections or intervenors and no related cases.
25 Sixth, the LWDA was duly notified upon filing of the PAGA notice in this case and has not
26 intervened nor stated intent to do so. The absence of LWDA intervention, as a governmental party,
27 supports approval of the settlement.

1 Courts routinely reduce PAGA penalties as permitted by California Labor Code section
2 2699(f)(2). *See Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th 504, 517 (approving trial
3 court's reduction of PAGA penalties by 90%). Collectively, the factors support approval of this
4 PAGA-only settlement.

5 **B. The Attorneys Fees Are Reasonable.**

6 The settlement proposed requests attorneys' fees represent one-third of the Gross Settlement
7 Amount. The purpose of the percentage method is to avoid unjust enrichment by spreading the
8 litigation costs proportionally among all the beneficiaries. (*See, e.g., Lealao v. Beneficial Cal., Inc.*
9 (2000) 82 Cal. App. 4th 19, 47.) This approach incentivizes lawyers to undertake risks of time and
10 resources to vindicate the public interest and protect the policies underlying the wage laws. In the
11 case of a common fund—like the one in this case where there is no reversion or claims process—
12 the percentage method is the preferred method:

13 The recognized advantages of the percentage method—including relative
14 ease of calculation, alignment of incentives between counsel and the class,
15 a better approximation of market conditions in a contingency case, and the
16 encouragement it provides counsel to seek an early settlement and avoid
17 unnecessarily prolonging the litigation ... —convince us the percentage
18 method is a valuable tool that should not be denied our trial courts.

19 (*Laffitte v. Robert Half International, Inc.* (2016) 1 Cal. 5th 480, 503 (citations omitted).)
20 “[R]egardless whether the percentage method or the lodestar method is used, fee awards in class
21 actions average around one-third of the recovery.” (*Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th
22 43, 66, n. 11.)

23 According to the Declaration of Nicholas J. Ferraro, Plaintiff's counsel's office has
24 expended more than 61 hours through the investigation, filing, discovery, negotiation, and
25 settlement of this case, not including additional hours worked for settlement, approval, or other
26 post-settlement tasks. (Ferraro Decl. ¶ 34.) Plaintiff's counsel Nicholas J. Ferraro and Lauren N.
27 Vega have been approved at a rate of \$500 on settlement approvals in San Diego Superior Court
28 and in the U.S. District Court for the Southern District of California, which demonstrates

1 reasonableness for purposes of a lodestar cross-check. (Ferraro Decl. ¶ 38.) Plaintiff's request for
2 costs reveals ordinary litigation costs that may be reimbursed upon settlement of this PAGA
3 action.¹

4 **IV. STIPULATIONS**

5 Plaintiff and Defendants, through their respective attorneys of record, hereby stipulate that,
6 based on the foregoing, the PAGA settlement in this PAGA-only case is fair and reasonable. The
7 Parties therefore respectfully request that this Court enter an order approving the entire settlement.

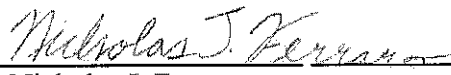
8 The Parties further stipulate and agree that Phoenix Settlement Administration will serve as
9 the Settlement Administrator in this case.

10 The Parties finally stipulate and agree that any amounts from checks issued in connection
11 with this settlement that remain unclaimed and/or uncashed after 180 days of issuance will be
12 disbursed to the California State Controller's Office's Unclaimed Property Division.

13 The Parties further stipulate, agree, and request that the Court enter judgment upon approval
14 of this PAGA settlement if and at the time it signs the accompanying Order.

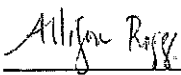
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16 Dated: Aug. 8, 2022

Ferraro Vega Employment Lawyers, Inc.

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19 Nicholas J. Ferraro
20 Lauren N. Vega
Attorneys for Plaintiff Alexandra Rios

21 Dated: August 15, 2022

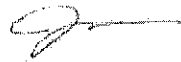
Gordon Rees Scully Mansukhani, LLP

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23 Mollie M. Burks
24 Allison R. Ross
25 Elizabeth Y. Mu
Attorney for Defendant TAD PGS, Inc.

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28 ¹ “[R]egardless whether the percentage method or the lodestar method is used, fee awards in class actions
average around one-third of the recovery.” (*Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, n. 11.)

1 Dated: August 15, 2022

Littler Mendelson, P.C.

2 

3 _____
Jon C. Yonemitsu

4 Erika D. Nettles

5 *Attorney for Defendant TSM Corporation*
6 *and Xator Corporation*

1 **PROPOSED ORDER**

2 The Court has reviewed the papers on file in this action, the Joint Stipulation Requesting
3 Approval of PAGA Settlement, the supporting Declaration of Nicholas J. Ferraro, and its exhibits,
4 including the Settlement Agreement of Private Attorneys General Act Claims.

5 **NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED AS**
6 **FOLLOWS:**

7 1. The Parties Joint Stipulation Requesting Approval of PAGA Settlement is
8 GRANTED and hereby APPROVED pursuant to Labor Code § 2699(1)(2). The gross settlement
9 shall be distributed as follows:

- 10 a. \$24,247.84 to the LWDA for PAGA penalties
11 ~~\$11,082.61~~
12 b. ~~\$8,082.61~~ to the Covered Employees
13 ~~\$1,500.00~~
14 c. ~~\$4,500.00~~ to Plaintiff as an enhancement payment
15 d. \$20,320.00 to Plaintiff's counsel for attorneys' fees
16 e. \$1,059.55 to Plaintiff's counsel for costs
17 f. \$2,750.00 to the Settlement Administrator

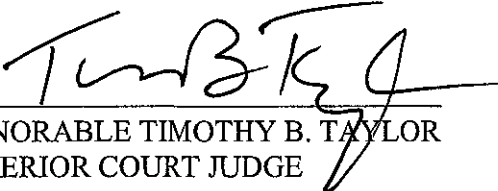
18 2. Plaintiff, Defendants, and the Settlement Administrator are ordered to carry out the
19 terms of the settlement in accordance with the Settlement Agreement and the Joint Stipulation.

20 **JUDGMENT**

21 Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc.,
22 § 668.5.) Plaintiff shall take from her complaint only the relief set forth in the settlement agreement
23 and this order and judgment. The Court retains jurisdiction over the parties to enforce the terms of
24 the settlement agreement and the final order and judgment.

25 **IT IS SO ORDERED.**

26 Dated: 8/29/22

27 
HONORABLE TIMOTHY B. TAYLOR
SUPERIOR COURT JUDGE

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2. On **September 2, 2022**, I served the following documents:

3. I served the abovementioned document(s) on the following person(s):

Mollie B. Burks – MBurks@grsm.com
Allison R. Ross – ARRoss@grsm.com

Gordon Rees Scully Mansukhani, LLP
101 W Broadway UNIT 2000
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Jon C. Yonemitsu – JYonemitsu@littler.com
Erika D. Nettles – ENettles@littler.com

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San Diego, CA 92101
Direct: (619) 515-1883 | Main: (619) 232-0441

By Email or Electronic Transmission. Based on a court order or agreement of the parties to accept service by email or electronic transmission under CRC 2.251(B), I electronically served the documents via email transmission to the individuals identified above.

5. This proof of service was executed on **September 2, 2022**, in San Diego, CA.

6. I declare under penalty of perjury under the laws of the United States of America and the State of California that the above is true and correct.

Nicholas J. Ferraro

Nicholas J. Ferraro