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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

REGINALD ANTONIO CHAVIS JR., an
individual, on behalf of himself and others
similarly situated,

PLAINTIFF,

v.

GROCERY OUTLET INC.; and DOES 1 thru
50, inclusive,

DEFENDANTS.

CASE NO. 34-2021-00309003

[Case Assigned for All Purposes to Dept. 28]

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

*[Filed concurrently with Declaration of Kelsey
M. Szamet and Proposed Order]*

Date: February 17, 2023

Time: 9:00 a.m.

Dept.: 28

Reservation Number: 2702097

Complaint Filed: September 29, 2021

FAC Filed: December 7, 2021

Trial Date: None Set

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on February 17, 2023 at 9:00 a.m. in Department 28 of
3 the above-entitled court, Plaintiff REGINALD ANTONIO CHAVIS JR. will move the Court for
4 an Order of Preliminary Approval of the Joint Stipulation of Class Action and PAGA Settlement
5 and Release (“Stipulation of Settlement”), a copy of which is filed concurrently herewith.

6 Plaintiff requests that the Court:

7 (1) Grant preliminary approval of the fully-executed Joint Stipulation of Class Action
8 and PAGA Settlement and Release (“Settlement” or “Stipulation of Settlement”). A true and
9 correct copy of the Stipulation of Settlement is attached hereto as Exhibit “A”;

10 (2) Approve the proposed Notice to Class Members, a copy of which is attached to the
11 Stipulation of Settlement as Exhibit “1,” and direct that the Notice be sent to Class Members in
12 the manner set forth in the Stipulation of Settlement;

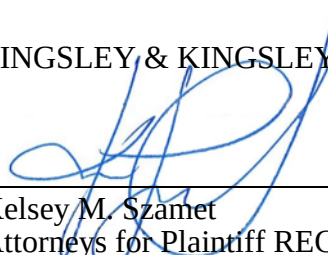
13 (3) Schedule a hearing on final approval of the proposed Settlement and Plaintiff’s
14 counsel’s application for an award of attorney’s fees and litigation costs at which Class Members
15 may be heard (“Final Approval Hearing”).

16 The Motion will be made on the grounds that the proposed Stipulation of Settlement is fair,
17 adequate, reasonable, and in the best interest of the Settlement Class and the Parties.

18 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
19 and Authorities, the Declaration of Kelsey M. Szamet, the Stipulation of Settlement and Release,
20 all other papers and records on file in this action, and on such oral and documentary evidence as
21 may be presented at the hearing on this Motion.

22
23 DATED: January 25, 2023

KINGSLEY & KINGSLEY, APC

24
25 By: 

26 Kelsey M. Szamet
27 Attorneys for Plaintiff REGINALD ANTONIO
28 CHAVIS JR. and the proposed class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff REGINALD ANTONIO CHAVIS JR. (“Plaintiff”) submits this Memorandum of
4 Points and Authorities in support of Plaintiff’s Motion for Preliminary Approval of the Joint
5 Stipulation of Class Action and PAGA Settlement and Release reached between Plaintiff and
6 Defendant GROCERY OUTLET INC. (“Defendant”) (Plaintiff and Defendant together, the
7 “Parties”).

8 By this Motion, Plaintiff requests that the Court:

9 (1) Grant preliminary approval of the fully-executed Joint Stipulation of Class Action
10 and PAGA Settlement and Release (“Settlement” or “Stipulation of Settlement”). A true and
11 correct copy of the Stipulation of Settlement is attached hereto as Exhibit “A”;

12 (2) Approve the proposed Notice to Class Members, a copy of which is attached to the
13 Stipulation of Settlement as Exhibit “1,” and direct that the Notice be sent to Class Members in
14 the manner set forth in the Stipulation of Settlement;

15 (3) Schedule a hearing on final approval of the proposed Settlement and Plaintiff’s
16 counsel’s application for an award of attorney’s fees and litigation costs at which Class Members
17 may be heard (“Final Approval Hearing”).

18 **II. FACTUAL BACKGROUND**

19 A. Litigation Overview and Procedural History

20 On September 29, 2021, Plaintiff filed a class action complaint, individually and on behalf
21 of other similarly situated, in the Sacramento County Superior Court alleging claims of failure to
22 pay wages pursuant to Labor Code sections 510, 1194, and 1199, failure to provide rest breaks
23 pursuant to Labor Code section 226.7, violation of Labor Code section 226(a), and violation of
24 Business and Professions Code section 17200, against Defendant under Case No. 34-2021-
25 00309003 (the “Action”). (Declaration of Kelsey M. Szamet (“Szamet Decl.”) ¶4.) On December
26 7, 2021, Plaintiff filed a First Amended Class Action and Representative Action Complaint, which
27 asserted the same claims as the Action and added a claim for penalties for wage and hour
28 violations under the California Private Attorneys’ General Act (“PAGA”). (*Id.*)

1 On December 20, 2022, Plaintiff filed a Second Amended Class Action and Representative
2 Action Complaint that: (1) defines the putative class as all persons currently and formerly
3 employed by Defendant as non-exempt employees at Defendant's Regional Fulfillment Centers in
4 California from September 29, 2017 to trial; (2) omits Plaintiff's cause originally pled cause of
5 action for failure to provide rest breaks pursuant to Labor Code section 226.7; (3) adds a cause of
6 action for failure to pay wages at termination in violation of Labor Code section 203; and (4)
7 includes all claims released by this Settlement. (Szamet Decl. ¶5.)

8 B. The Discovery Process and Mediation

9 The Parties have yet to engage in formal discovery, instead focusing their efforts on
10 resolving this case through early mediation. (Szamet Decl. ¶6.) The Parties scheduled a private
11 mediation with Russ J. Wunderli, Esq. on May 24, 2022. In preparation for mediation, Defendant
12 informally produced multiple documents and provided other information necessary to evaluate
13 settlement. (Szamet Decl. ¶7.) This included Plaintiff's personnel file and time and pay records,
14 sample wage statements, and the total number of Class Members and relevant work weeks at issue.
15 (Szamet Decl. ¶8.) As such, the Parties engaged in extensive informal discovery to properly assess
16 their strength and weakness in this lawsuit. (Szamet Decl. ¶9.) After the substantial production,
17 the Parties engaged in direct negotiations and, ultimately, were able to arrive at the proposed
18 settlement now presented to the Court for preliminary approval. (Szamet Decl. ¶10.)

19 Defendant denies any liability or wrongdoing of any kind associated with the claims
20 alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends
21 that, for any purpose other than settlement, Plaintiff's claims are not appropriate for class or
22 representative action treatment. (Szamet Decl. ¶11.) Defendant contends, among other things,
23 that, at all times, it has complied with the California Labor Code, and the Industrial Wage
24 Commission Orders. (*Id.*)

25 Based on their own independent investigation and evaluation, Class Counsel is of the
26 opinion that the Stipulation of Settlement with Defendant is fair, reasonable and adequate, and in
27 the best interest of the settlement classes in light of all known facts and circumstances, including
28 the risk of significant delay, defenses asserted by Defendant, uncertainties regarding a class and

representative action trial on the merits, and numerous potential appellate issues. (Szamet Decl. ¶12.) Although Defendant denies any liability, Defendant is agreeing to this Stipulation of Settlement solely to avoid the cost of litigation. (*Id.*) Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action on the terms set forth here. (*Id.*)

III. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES

Originally creatures of equity, class actions have been statutorily embraced by the Legislature whenever “the question [in a case] is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court” (Code Civ. Proc. § 382; *see, e.g., Fireside Bank v. Sup. Court* (2007) 40 Cal.4th 1069, 1078.) They serve an important function by “establishing a technique whereby the claims of many individuals can be resolved at the same time” thereby “eliminat[ing] the possibility of repetitious litigation and provid[ing] small claimants with a method of obtaining redress.” (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 469.) Public policy supports the use of class actions to enforce wage and overtime laws for the benefit of workers. (*See Sav-on Drug Stores, Inc. v. Sup. Court* (2004) 34 Cal.4th 319, 340.)

The certification question is “essentially a procedural one that does not ask whether an action is legally or factually meritorious.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439–440.) A court ruling on a certification motion must determine “whether . . . the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.” (*Collins v. Rocha* (1972) 7 Cal.3d 232, 238.)

The California Supreme Court has identified three certification requirements: (1) “the existence of an ascertainable and sufficiently numerous class”; (2) “a well-defined community of interest”; and, (3) “substantial benefits from certification that render proceeding as a class superior to the alternatives.” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.) The “community of interest” requirement includes three additional requirements: (1) common

1 questions of law or fact predominant over individual questions; (2) the class representatives have
2 claims or defenses typical of the class; and (3) the class representatives can adequately represent
3 the class. (*Ibid*, citing *Fireside Bank*, *supra*, 40 Cal.4th at 1089.)

4 Class certification for settlement purposes is proper in this case as the proposed Settlement
5 Class satisfies each of the requirements under Code of Civil Procedure § 382. Accordingly, this
6 Court should certify the putative settlement class.

7 A. Plaintiff Contends That Proposed Class Is Ascertainable and Sufficiently
8 Numerous

9 1. Ascertainability

10 Putative class members are deemed “ascertainable” when they may be “readily identified
11 without unreasonable expense or time by reference to official records.” (*Rose v. City of Hayward*
12 (1981) 126 Cal.App.3d 926, 932.) In determining whether a class is ascertainable, a court
13 scrutinizes the class definition, the size of the class and the means of identifying class members.
14 (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.)

15 Here, Plaintiff maintains that the proposed Settlement Class is ascertainable for several
16 reasons: First, Defendant has agreed in the Stipulation of Settlement to provide a class list to the
17 Settlement Administrator containing the name, last known mailing address, last known telephone
18 number, social security number, and hire and termination dates for all putative class members after
19 issuance of the preliminary approval order. (Szamet Decl. ¶13; Ex. A at ¶19(a).) Second, Class
20 Member consist of Defendant’s employees, and Defendant is required to keep records of its
21 employees’ names, home addresses, and social security numbers. (*See* Wage Order 7-2001,
22 subsection 7(c); Szamet Decl. ¶14.) Third and finally, Defendant informally produced Plaintiff’s
23 personnel file and sampling pay data and wage statements for Class Members containing class
24 member contact information, which confirms that all Class Member may be readily identified
25 based on Defendant’s records. (Szamet Decl. ¶15.)

26 2. Numerosity

27 There is no set number that is required as a matter of law to maintain a class action. (*See*,
28 *e.g.*, *Rose v. City of Hayward*, *supra*, 126 Cal.App.3d at p. 934.) Here, the proposed Settlement

1 Class contains, based upon information and belief, approximately 489 employees in the State of
2 California. Therefore, Plaintiff is confident he will be able to establish that the proposed Settlement
3 Class is ascertainable and sufficiently numerous. (Szamet Decl. ¶16.)

4 B. Plaintiff Contends That There Is a Well-Defined Community of Interest

5 1. There Are Predominant Questions of Law and Fact

6 In deciding whether questions of common or general interest predominate, a court must
7 determine whether “the issues which may be jointly tried, when compared with those requiring
8 separate adjudication, are so numerous or substantial that the maintenance of a class action would
9 be advantageous to the judicial process and to the litigants.” (*Collins v. Rocha* (1972) 7 Cal.3d
10 232, 238; accord, *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) As a
11 general matter, if the defendant’s liability can be determined by facts common to all members of
12 the class, a class will be certified even if the members must individually prove their damages.”
13 (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916, 107; accord, *Knapp v.*
14 *AT & T Wireless Services, Inc.* (2011) 195 Cal.App.4th 932, 941.)

15 Here, Plaintiff argues that there are questions of law and fact common to the proposed
16 Settlement Class that predominate over any questions affecting only individual Class Members.
17 (Szamet Decl. ¶17.) These common questions include:

- 18 1) Whether Defendant failed to pay all wages and/or overtime compensation;
- 19 2) Whether Defendant failed to provide accurate itemized wage statements;
- 20 3) Whether Defendant failed to pay compensation due and owing upon termination
- 21 of employment;
- 22 4) Whether Defendant engaged in unfair competition; and,
- 23 5) Whether Defendant violated § 2699, et seq. of the Labor Code by engaging in the
- 24 acts previously alleged.

25 (Szamet Decl. ¶18.)

26 Plaintiff’s challenge to Defendant’s uniform policies and practices involves common
27 factual and legal issues that are amenable to class treatment. (Szamet Decl. ¶19.) As the California
28 Supreme Court has emphasized, “[c]aims alleging that a uniform policy consistently applied to a

1 group of employees is in violation of the wage and hour laws are of the sort routinely, and properly,
2 found suitable for class treatment.” (*Brinker, supra*, 53 Cal.4th at 1033; *see also Bradley v.*
3 *Networkers International, LLC* (2012) 211 Cal.App.4th 1129, 1141-1146.) Moreover, a class of
4 similarly situated employees may be certified based on common questions of fact or law, even if
5 each employee has to establish the amount of his or her damages. (*See Bell v. Farmers Ins. Exch.*
6 (2004) 115 Cal.App.4th 715, 741; *Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th
7 at 340.)

8 Here, Plaintiff contends that the proposed Class Members suffered the same injuries, in the
9 same manner: (1) Class Members were not properly paid all wages/overtime; (2) Class Members
10 were not provided accurate itemized wage statements; and (3) Class Members were not paid all
11 wages owed upon termination/resignation. (Szamet Decl. ¶20.) Plaintiff alleges that Class
12 Members worked in the same capacity for the same employer and were subject to the same
13 employment policies and practices, the questions of fact and claims regarding the status of these
14 employees are the same for each member of the Settlement Class. Accordingly, for purposes of
15 settlement, certification for settlement purposes is appropriate. (Szamet Decl. ¶21.)

16 2. The Plaintiff Has Claims Typical of the Proposed Class

17 A putative class representative’s claim must be “typical,” but not necessarily identical, to
18 the claims of other class members. The test of typicality “is whether other members have the same
19 or similar injury, whether the action is based on conduct which is not unique to the Class
20 Representatives, and whether other class members have been injured by the same course of
21 conduct.” (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus, it is sufficient
22 that the representative is similarly situated so that he or she will have the motive to litigate on
23 behalf of all class members. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus,
24 it is sufficient that the representative is similarly situated so that he or she will have the motive to
25 litigate on behalf of all class members. (*See, e.g., Classen v. Weller* (1983) 145 Cal.App.3d 27,
26 45.) It is not necessary that the class representative have personally incurred all of the damages
27 suffered by each of the other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91
28 Cal.App.4th 224, 238.)

1 Plaintiff worked as an “hourly employee” for Defendant from approximately February
2 2021 through April 2021. (Szamet Decl. ¶22.) Plaintiff alleges that he: (1) worked without being
3 paid all wages and/or overtime; (2) worked without being provided accurate itemized wage
4 statements; and (3) worked without being paid all wages due upon separation. He also alleges that
5 he experienced derivative claims for unfair business competition (B&P Code §17200) and Labor
6 Code §2699, et seq. (Szamet Decl. ¶23.) Plaintiff also contends that his claims are typical of those
7 of the Settlement Class. (Szamet Decl. ¶24.)

8 3. Plaintiff Contends That As The Plaintiff He Has and Will Fairly Represent
9 the Interests of the Class Members

10 A putative class representative must show that he can adequately represent the class.
11 (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.App.4th 1096, 1104.) The representative,
12 through qualified counsel, must be capable of “vigorously and tenaciously” protecting the interests
13 of the class members. (*Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 846.)

14 Plaintiff believes that he is capable of fairly representing and adequately protecting the
15 interests of the proposed Class Members. (Szamet Decl. ¶25.) Plaintiff’s interests in this litigation
16 are coextensive with the interests of the proposed Class Members. The members of the proposed
17 Settlement Class all worked for Defendant during the relevant time period and incurred the same
18 type of alleged damages with regard to Defendant’s alleged violations of the law. (Szamet Decl.
19 ¶26.) Moreover, Plaintiff has agreed to serve as Plaintiff and has retained qualified Counsel who
20 is experienced in prosecuting wage and hour class actions. (Szamet Decl. ¶27.) This demonstrates
21 his commitment to bringing about the best possible results for the benefit of the proposed
22 Settlement Class. (Szamet Decl. ¶28.) Plaintiff has provided his Counsel with all necessary and
23 pertinent information. (Szamet Decl. ¶29.) He has been a very active participant in the litigation
24 including having frequent contact with Class Members, and working closely with Class Counsel
25 to develop the theories of liability. (Szamet Decl. ¶30.) Plaintiff has provided his Counsel with all
26 necessary and pertinent information. (Szamet Decl. ¶31.) He also was informed of and involved in
27 all of the Settlement negotiations. Therefore, Plaintiff believes that he has and will continue to
28 adequately represent the proposed Class Members. (Szamet Decl. ¶32.) Plaintiff has provided his

1 Counsel with all necessary and pertinent information. (Szamet Decl. ¶33.)

2 C. Plaintiff Contends That The Class Action Vehicle Is Superior to the Alternatives

3 “The ultimate question in every case of this type is whether . . . the issues which may be
4 jointly tried, when compared with those requiring separate adjudication, are so numerous or
5 substantial that the maintenance of a class action would be advantageous to the judicial process
6 and to the litigants.” (*Lockheed Martin, supra*, 29 Cal.App.4th at 1104–1105.) The California
7 Supreme Court has directed the courts to utilize the class action device to fashion “an effective
8 and inclusive group remedy.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 469.)
9 Normally, in making its class certification decision, the Court must determine that a class action
10 would be superior to alternate means for a fair and efficient adjudication. If the causes of action
11 may be adjudicated in a single proceeding, thereby saving time, reducing waste, and limiting
12 duplication of effort, class certification is superior to individual litigation. (*See, e.g., Vasquez v.*
13 *Superior Court* (1971) 4 Cal.3d 800, 816.) Since the Parties agreed to a settlement in principal
14 and now seek Court approval of that Settlement, Plaintiff submits that there is not as much need
15 as there would be in an ordinary motion for class certification for the Court to determine that the
16 case can be manageably tried.

17 Plaintiff maintains that class treatment would be the superior method of managing this case.
18 A class action is superior to individual litigation “when numerous parties suffer injury of
19 insufficient size to warrant individual action and when denial of class relief would result in unjust
20 advantage to the wrongdoer.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) In
21 cases such as this, where individual damages may be small, the class action device is the most
22 feasible method of recovery. (*See, e.g. Lockheed Martin, supra*, 29 Cal.4th at 1131.) In this regard,
23 the superiority of class treatment is evident here because individual pursuit of class members’
24 claims may not be economically viable. (Szamet Decl. ¶34.) The only alternative to certification
25 would be to force over 480 employees to join this action, file individual, uniform actions, or
26 abandon their legal rights altogether. (Szamet Decl. ¶35.) Plaintiff maintains that this economic
27 reality would result in a windfall for Defendant if this case were not certified. (Szamet Decl. ¶36.)

28 ///

1 **IV. THE PROPOSED SETTLEMENT**

2 A. The Settlement Class

3 For purposes of Stipulation of Settlement, the settlement class is defined as: “all persons
4 currently and formerly employed by Defendant as non-exempt employees at Defendant’s Regional
5 Fulfillment Centers in California from September 29, 2017 to December 31, 2022.” (“Class
6 Members” or “Settlement Class”) (Szamet Decl. ¶37; Stipulation of Settlement, Ex. A at ¶6.)

7 The Class Period is September 29, 2017 through December 31, 2022. (Szamet Decl. ¶38;
8 Ex. A at ¶4.) Based on documents and other information produced by Defendant, there are
9 approximately 489 Class Members and 46,055 workweeks at issue. (Szamet Decl. ¶39.)

10 B. Maximum Settlement Amount

11 As detailed fully in the Stipulation of Settlement, the Settlement provides for Defendant to
12 pay a Maximum Settlement Amount of \$450,000.00, which includes the sum of the individual
13 Settlement Awards, the Plaintiff service award, the Class Counsel Award, PAGA Payment, and
14 the Settlement Administration Costs. (Szamet Decl. ¶40; Ex. A at ¶15(c).)

15 The Net Settlement Amount is the Maximum Settlement Amount, less all Class Counsel’s
16 attorneys’ fees and litigation costs, the enhancement award to the class representative, the PAGA
17 penalty payment to the LWDA as described further below, and settlement administration expenses.
18 (Szamet Decl. ¶41; *Ibid.*)

19 The Parties estimate the amount of the Net Settlement Amount as follows:

20	Maximum Settlement Amount:	\$	450,000.00
21	Less Plaintiff Enhancement:	\$	7,500.00
22	Less Class Counsel’s Fees:	\$	150,000.00
23	Less Class Counsel’s Costs:	\$	15,000.00
24	Less PAGA Payment:	\$	20,000.00
25			<i>(\$15,000.00 to the LWDA and</i>
26			<i>\$5,000.00 to remain in the Net</i>
27			<i>Settlement Amount)</i>
28	<u>Less Settlement Administrator Costs:</u>	\$	<u>\$11,500.00</u>
	Anticipated Net Settlement Amount	\$	251,000.00

(Id.)

27 C. Individual Settlement Payments

28 The amount of each participating Class Member’s individual Settlement Award is an

1 individualized amount that is based on the number of compensable workweeks worked by the
2 participating Class Member during the Class Period. (Ex. A at ¶15(c)(i); *see also* Ex. 1 to the
3 Stipulation of Settlement at pp. 2-3 [Class Notice].) This individual amount shall be determined
4 according to the settlement payment formula set forth in the Stipulation of Settlement. (*Ibid.*) The
5 Stipulation of Settlement provides for a specific and detailed work week dispute process. (*Ibid.*)

6 D. Process for Administering Settlement after Preliminary Approval

7 The detailed Notice Procedure established by the Stipulation of Settlement will efficiently
8 and accurately ensure that Notice is provided to the Class Members. (Ex. A at ¶¶16, 19, 20-23.)
9 The Parties have agreed to use a reputable third-party claims administrator, Xpand Legal, to
10 administer the Stipulation of Settlement.

11 F. Process for Class Members to Respond to Class Notice

12 As detailed in the Stipulation of Settlement, Class Members will have an opportunity to
13 request exclusion from the Stipulation of Settlement (i.e. opt out) and to object to the Stipulation
14 of Settlement at the Final Approval Hearing. (*See* Ex. A at ¶¶22-23; *see also* Ex. 1 to the Stipulation
15 of Settlement at pp. 1-4 [Class Notice].) The Stipulation of Settlement and Class Notice contain
16 details about the process to request exclusion or object. (*Id.*)

17 G. The Release

18 The Released Claims are defined as: “all claims under state, federal and local law alleged
19 in the Action and that reasonably could have been alleged in the Action based on the factual
20 allegations contained in the operative Complaint in the Action and any amendments thereto, as to
21 the Class Members, including but not limited to California Labor Code sections 200, 201, 202,
22 203, 226, 226.2, 226.3, 226.6, 510, 558, 558.1, 1194, 1199, 2698, *et seq.*, California Business and
23 Professions Code section 17200, *et seq.*, class and representative claims, the applicable Wage
24 Order(s), and all claims for or related to alleged unpaid wages, overtime or double time wages,
25 regular rate of pay, timely payment of wages at separation, itemized wage statements, unfair
26 competition, unfair business practices, unlawful business practices, fraudulent business practices,
27 injunctive relief, declaratory relief, accounting, liquidated damages, penalties of any nature
28 (including but not limited to civil penalties, waiting-time penalties, and PAGA penalties), interest,

1 fees, costs, as well as all other claims, allegations, and damages alleged in the Action, from
2 September 29, 2017 through December 31, 2022 (collectively “Released Claims”). Expressly
3 excluded from the release are claims for retaliation, discrimination, unemployment insurance,
4 disability, workers’ compensation, and claims outside the Released Claims.” (Ex. A at ¶24.)

5 **V. ARGUMENT**

6 **A. Plaintiff Requests Approval of This Class Action Settlement**

7 The case of *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, set forth
8 several factors that the Court should analyze in determining whether to approve a class action
9 settlement. These factors include: (1) the strength of plaintiff’s case; (2) the risk, expense,
10 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
11 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage
12 of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
13 participant; and (8) the reaction of the class members to the proposed settlement.

14 The proposed settlement satisfies each of these factors. Class Counsel conducted extensive
15 informal discovery before entering into meaningful settlement negotiations in this matter. (*Id* at
16 Szamet Decl. ¶¶6-12.) This discovery permitted Class Counsel to fairly evaluate the strength of
17 the case and the risks associated with ongoing litigation. (Szamet Decl. ¶42.) Class Counsel is
18 experienced in handling wage and hour class actions and, after weighing all of the following
19 factors, supports this Stipulation of Settlement. (Szamet Decl. ¶43.)

20 **1. The Strength of Plaintiff’s Case**

21 **a) The Risks Associated with Overtime Claim**

22 “Under state and federal law, overtime compensation is based on an employee’s ‘regular
23 rate’” of pay. (*Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal.App.4th 893, 902.)
24 “California Labor Code section 510, subdivision (a) provides, as relevant here, [that] an employee
25 is entitled to overtime pay at one and one-half times the ‘regular rate’ for work in excess of eight
26 hours in one day and twice the ‘regular rate’ for work in excess of 12 hours in one day.” (*Ibid.*)
27 For hourly employees, the regular rate is generally the employee’s straight-time hourly rate.
28 (*Huntington, supra*, 131 Cal.App.4th at p. 905.) However, in any pay period where an hourly

1 employee earns other includable compensation in addition to hourly wages—such as a non-
2 discretionary bonus, commission, or shift differential—her or his regular rate is computed by
3 dividing the employee’s total compensation in the period in which the other compensation is
4 earned by the total hours worked in that period. (*Marin v. Costco Wholesale Corp.* (2008) 169
5 Cal.App.4th 804, 807.)

6 Here, Plaintiff maintains that he and other Class members earned premium pay at \$1 per
7 hour during certain pay periods. (Szamet Decl. ¶44.) Plaintiff alleges that Defendant failed to
8 include this premium pay in the regular rate calculation for Class Members in pay periods that they
9 were paid premium pay and also paid overtime. (Szamet Decl. ¶45.) As a result of this alleged
10 failure to properly blend, Plaintiff maintains that Defendant underpaid Plaintiff and Class Members
11 whenever they worked overtime and earned premium pay in the same pay period. (Szamet Decl.
12 ¶46.) Because this claim can be readily analyzed from Defendant’s time and pay records, Plaintiff
13 felt confident that this claim was certifiable and that he would likely prevail on the merits at trial.
14 However, Defendant argued that Plaintiff did not work any daily or weekly overtime during his
15 short period of employment, and therefore would argue that he was not owed any wages and could
16 not be an adequate or typical class representative because he suffered no injury. This argument
17 posed meaningful risk to recovery that Plaintiff had to acknowledge in reaching the resolution now
18 presented to the Court. (Szamet Decl. ¶47.)

19 b) The Risks Associated with the Wage Statement Claim

20 California Labor Code §226(a) requires Defendant to provide its employees with an
21 accurate, itemized written wage statement that shows, in relevant part, all applicable hourly rates
22 and the corresponding number of hours worked. An employee “suffering injury,” like Plaintiff
23 and Class Members, can recover penalties for an employer’s “knowing and intentional failure” to
24 comply with Labor Code §226(a). See Labor Code § 226(e)(1). Under the statute, an employee
25 is deemed to “suffer injury” if the employer does not provide accurate and complete information
26 required by Labor Code § 226(a) and the employee cannot “promptly and easily determine” from
27 the wage statement alone the amount of gross wages or net wages paid to the employee or other
28 information specified by Labor Code § 226(a). See Labor Code § 226(e)(2)(B).

1 Plaintiff maintains that Defendant issued wage statements that allegedly violate Labor
2 Code §§ 226(a)(2) and (9). (Szamet Decl. ¶48.) Labor Code § 226(a) specifically requires that the
3 employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her
4 employees, an accurate itemized statement in writing showing all applicable hourly rates in effect
5 during the pay period and the corresponding number of hours worked at each hourly rate by the
6 employee. Plaintiff alleges that he and Class Members are issued wage statements that do not
7 accurately show the applicable overtime rate and the number of hours *worked* at the corresponding
8 rate based on Defendant’s alleged failure to blend discussed above. (Szamet Decl. ¶49.) However,
9 Plaintiff has to recognize that this is a derivative claim. (Szamet Decl. ¶50.) Plaintiff does not
10 argue that Defendant failed to show required information on the paystubs it issued to Class
11 Members, only that the paystubs do not accurately show the information. (Szamet Decl. ¶51.)
12 While plaintiff believes this claim is easily certifiable, Plaintiff has to acknowledge that this is a
13 more difficult argument to prevail on when it comes to assessing liability. (Szamet Decl. ¶52.)

14 c) The Risks Associated with the Waiting Time Penalty Claim

15 As a result of the wage claim described above, Plaintiff maintains that Defendant failed to
16 pay all wages due and owing upon termination or resignation. Labor Code § 203(a) provides:

17 If an employer willfully fails to pay ... any wages of an employee
18 who is discharged or who quits, the wages of the employee shall
19 continue as a penalty from the due date thereof at the same rate until
20 paid or until an action therefor is commenced; but the wages shall
21 not continue for more than 30 days.

22 Under Labor Code § 203, a “‘willful’ failure to pay wages ... occurs when an employer
23 intentionally fails to pay wages to an employee when those wages are due.” Cal. Code Regs., tit.
24 8, § 13520; *see also Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859 (“willful”
25 simply means that “the employer intentionally failed or refused to perform an act which was
26 required to be done[.] Willful ... does not necessarily imply anything blameable, or any malice or
27 wrong toward the other party”).

28 Here, Plaintiff contends that Defendant failed to properly pay overtime for any work in
excess of eight (8) hours per day and/or any work in excess of forty (40) hours per week based on
the alleged failure to blend as discussed above. (Szamet Decl. ¶53.) As such, the risk analysis for

1 the section 203 claim flows from the risk analysis for the underlying wage claim discussed above.
2 (Szamet Decl. ¶54.) If Defendant could prove, that class members were properly paid for all hours
3 worked at the appropriate overtime rate, there would be no recovery of wages and no waiting time
4 penalties that flow therefrom at all. (Szamet Decl. ¶55.)

5 Further, to establish liability for waiting time penalties, Plaintiff would have to establish
6 not only that the underlying violations occurred, but also that Defendant's conduct was "willful."
7 Labor Code § 203. (Szamet Decl. ¶56.)

8 d) The Risks Associated with the PAGA Claim

9 California's Private Attorneys General Act ("PAGA"), Labor Code § 2698, *et seq.*, permits
10 private litigants to recover civil penalties for violations of the Labor Code. PAGA provides that
11 plaintiffs may recover previously established civil penalties (section 2699(a)) or, if none were
12 established, plaintiffs may recover default penalties provided in section 2699(f) in the amount of
13 \$100 per employee per pay period for the initial violation and \$200 for subsequent violations.

14 The Parties discounted the PAGA claim for multiple reasons. First, the aggrieved
15 employees' PAGA claims are derivative of all the foregoing class claims. Second, a court has
16 discretion to award less than the maximum penalty. Labor Code § 2699(e)(2) ("a court may award
17 a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts
18 and circumstances of the particular case, to do otherwise would result in an award that is unjust,
19 arbitrary and oppressive, or confiscatory"). *See e.g., Carrington v. Starbucks Corporation* (2018)
20 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA
21 penalty). Finally, the Settlement Class is arguably compensated for these violations in the
22 proposed Stipulation of Settlement, and thus any PAGA recovery for these same violations would
23 be duplicative. As such, the Stipulation of Settlement's contemplated PAGA payment of
24 \$20,000.00 is appropriate. (Szamet Decl. ¶57.) *See Nordstrom Commissions Cases*, 186
25 Cal.App.4th 576, 589 (2010) (affirming settlement allocating \$0 of \$6.4 million settlement to
26 PAGA penalties).

27 2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

28 There is significant expense associated with the class certification process, which the

1 Parties can avoid by entering into the contemplated Stipulation of Settlement now. (Szamet Decl.
2 ¶58.) If the Court did eventually certify class, trial of a case involving approximately 489 Class
3 Members would require the retention of expensive expert witnesses, the accrual of extensive
4 litigation costs, and a significant time overlay by the parties. (Szamet Decl. ¶59.) Moreover, given
5 the complexity and unsettled nature of the issues in this case it is likely that any outcome at trial
6 would have resulted in a lengthy and costly appeal. (Szamet Decl. ¶60.) An appeal would result
7 in further delay for the Class Members who are waiting for a resolution in this matter. (*Id.*)

8 3. The Risk of Maintaining Class Action Status through Trial

9 This case has not been certified to be tried as a class action. (Szamet Decl. ¶61.) While
10 Plaintiff believes there is strong evidence to support certification of several possible subclasses,
11 certification is always hard fought and subject to judicial discretion. Moreover, in class actions,
12 decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need
13 to conduct multiple depositions, including of the Plaintiff and of several person(s) most
14 knowledgeable regarding Defendant's wage policies. (*Id.*) There is a risk for both sides as to what
15 these depositions will reveal and whether they will support class certification to the extent
16 expected. (*Id.*)

17 4. The Amount Offered in Settlement

18 It was very difficult for the Parties to reach this Settlement of \$450,000.00. (Szamet Decl.
19 ¶62.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations.
20 (Szamet Decl. ¶63.) The Parties arrived at it after extensive investigation and discovery, careful
21 evaluation of the law, risks, and all information substantiating the amount of penalties reasonably
22 likely to be awarded to the class were the trier of fact to find Defendant liable, and the assistance
23 of an experienced mediator, Russ J. Wunderli, Esq.. (*Id.*)

24 a) Plaintiff's Assessment of Defendant's Maximum Exposure

25 Plaintiff assessed full value of the Minimum Wage/Overtime claim, without any discount,
26 at approximately \$54,000. (Szamet Decl. ¶64.) This calculation was based upon a 10% data
27 sample and included all pay codes that allegedly should have been blended into the regular rate to
28 determine the correct overtime rate. (Szamet Decl. ¶65.) That analysis found that allegedly

1 \$5,402.35 was underpaid as a result of the allegations that Defendant failed to blend correctly and
2 was then extrapolated to the entire Class for the duration of the Class Period resulting in exposure
3 of approximately \$54,000. (Szamet Decl. ¶66.)

4 Plaintiff valued the Wage Statement Claim, without discount, at \$1,956,000. (Szamet Decl.
5 ¶67.) Labor Code §226(e)(1) provides for a \$50 penalty for the initial wage statement and \$100
6 thereafter for each wage statement but puts a \$4,000 cap on wage statement penalties per
7 employee. (Szamet Decl. ¶68.) Thus, assuming that each Class Member was entitled to penalties
8 for each and every workweek during the Section 226(a) statutory period, which is likely very
9 overstated due to employee turnover, the exposure maximum is \$1,956,000 (489 Class Members
10 x \$4,000) (Szamet Decl. ¶69.) 70. Plaintiff determined that a steep discount of this claim was
11 fair for settlement purposes due to the risk that liability would not attach; as discussed in detail
12 above, Plaintiff did not allege a standalone claim for Section 226(a) penalties, but only a derivative
13 claim that because the overtime rates allegedly were not blended correctly, the paystubs were
14 therefore not accurate. This can be a very difficult claim to prove because Plaintiff does not dispute
15 that the paystubs show all the required information, just the information was not correct as a result
16 of the alleged failure to blend. (Szamet Decl. ¶70.)

17 Plaintiff valued the Waiting Time Claim, tied to the Wage/Overtime claim, at \$1,500,000.
18 (Szamet Decl. ¶71.) Considering the derivate nature of Labor Code §203 and the dispute over
19 whether class members were owed any wages as a result of the alleged failure to blend, Plaintiff
20 determined that accepting a discount on this claim was appropriate. (Szamet Decl. ¶72.)

21 Finally, Plaintiff calculated the maximum value of the PAGA claim at \$4,340,800 for Class
22 Members (using \$100 per pay period x 43,408 pay periods). However, it must be noted this figure
23 is arguably overstated as most employers pay bi-weekly, but Defendant pays weekly so there are
24 far more pay periods as a result. If this number was cut in half, it would be reduced to \$2,170,400.
25 (Szamet Decl. ¶73.) The main risk taken into account with PAGA is the discretionary nature of
26 the penalty award. (Szamet Decl. ¶74.) A judge can award the statutory maximum of \$100 for the
27 initial violation and \$200 thereafter or – in theory – one cent per wage statement. (Szamet Decl.
28 ¶75.) 76. While there is a dearth of available authority, in Plaintiff’s view, there is significant

1 risk that were he to succeed on any of the underlying Labor Code violations, it is not likely that a
2 Judge would also award a large amount of civil penalties on top of any damages recovered.
3 (Szamet Decl. ¶76.)

4 Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the Class
5 Members' claims was approximately \$5,680,400 based on the figures as set forth above. (Szamet
6 Decl. ¶77.) However, Plaintiff has to acknowledge the vast majority of this amount is penalties
7 (Labor Code Sections 226(a), 203, and 2699.). Looking realistically at just the core alleged regular
8 rate liability of \$54,000 and when considered in context with the forgoing risks on the merits, Class
9 Counsel believes the Maximum Settlement Amount of \$450,000.00 is fair and reasonable. (Szamet
10 Decl. ¶78.)

11 5. The Experience and Views of Counsel

12 Finally, counsel's experience and success in similar class actions also weigh in favor of
13 preliminary approval. *See Wershba, supra*, 91 Cal.App.4th at 245. Kingsley & Kingsley, APC is
14 very experienced in prosecuting complex employment litigation, and the firm has focused its
15 practice since the year 2000 on complex wage, hour, and working condition violations. (Szamet
16 Decl. ¶¶79-80.) The firm is well versed in class action litigation and has diligently and aggressively
17 pursued this action. (*Id.*) Kingsley & Kingsley, APC currently serves as Class Counsel for dozens
18 of pending class action lawsuits in Northern, Central, and Southern California. (*Id.*) A list of
19 representative cases that Kingsley & Kingsley, APC has handled is included in the accompanying
20 declaration of Kelsey M. Szamet. (*Id.*) After factoring in the risks explained above, Class Counsel
21 believes that the proposed settlement is fair and reasonable. (Szamet Decl. ¶82.)

22 6. The Proposed Plan of Allocation Is Fair and Reasonable

23 Plans of allocation are subject to the same standard of review as class action settlements;
24 they must be "fair, adequate and reasonable." (*See, e.g., Officers for Justice v. Civil Service*
25 *Comm'n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
26 compensates Class Members pro rata based on the number of compensable Work Weeks worked
27 by the Class Member during the Class Period. The lump sum payment to each Class Member not
28 excluding him/ herself will be determined on an individualized basis based upon the compensable

1 Work Weeks worked by the Class Member. (Ex. A at ¶15(c)(i).) This allocation distributes
2 Stipulation of Settlement funds proportionally to each class member’s potential damages and
3 should therefore be approved as fair, adequate, and reasonable. (Szamet Decl. ¶82.)

4 7. The Proposed Notice Fairly Apprises the Class Members of the Terms of
5 the Settlement and of the Class Members’ Rights under the Settlement

6 Plaintiff requests that the Court approve the proposed plan and form of Class Notice. The
7 standard for determining the adequacy of notice is whether the notice has “a reasonable chance of
8 reaching a substantial percentage of the class members.” (*Cartt v. Superior Court* (1975) 50
9 Cal.App.3d 960, 974.) Pursuant to the Stipulation of Settlement, the Notice will be sent to the last
10 known address of all Class Members, or to an updated address if one is located in the National
11 Change of Address Database. (Ex. A at ¶19(a).) If any Notices are returned as undeliverable, the
12 Settlement Administrator will undertake another reasonable address verification measure to locate
13 a valid mailing address and will promptly send the Notice to the new address. (Ex. A at ¶19(b).)
14 As such, the Notice is likely to reach most, if not all, Class Members.

15 With respect to the contents of the Notice, the “notice given to the class must fairly apprise
16 the class members of the terms of the proposed compromise and of the options open to dissenting
17 class members.” (*Trotsky v. L.A. Fed. Sav. & Loan Ass’n* (1975) 48 Cal.App.3d 134, 151–52.)
18 The purpose of a class notice is to give class members sufficient information to decide whether
19 they should accept the benefits offered, opt out and pursue their own remedies, or object to the
20 settlement. (*Ibid.*)

21 Here, the Notice clearly explains the proposed Stipulation of Settlement and the options to
22 opt out of the Settlement or object to it at the Final Approval Hearing. (Ex. A at ¶¶19(c); 22-23;
23 *see also* Ex. 1 to the Stipulation of Settlement at pp. 1-4 [Class Notice].) In short, the Court should
24 approve the proposed Class Notice because it describes the proposed settlement with enough
25 specificity to allow Class Members to make an informed choice regarding whether to participate.

26 **VI. THE SERVICE AWARD TO THE NAMED PLAINTIFF**

27 The Plaintiff is entitled to an enhancement for his valiant effort and time expended in this
28 matter. (Szamet Decl. ¶83.) The time spent by REGINALD ANTONIO CHAVIS JR. is significant

1 and includes researching and retaining competent counsel; providing information to Class Counsel
2 regarding the nature of the work at Defendant; compiling relevant documents; working closely
3 with Class Counsel to develop the theories of liability and martial relevant evidence; regularly
4 discussing the status of the case with Class Counsel; discussing the case via telephone with many
5 Class Members; and responding promptly to Class Counsel's communications regarding
6 settlement. (*Id.*) Thus, in addition to the sums paid to Class Members, Plaintiff requests a proposed
7 litigation enhancement in the amount of \$7,500.00, to be paid from the Maximum Settlement
8 Amount. (Ex. A at ¶115(c)(vi).) As set forth in the Stipulation of Settlement, Plaintiff will also be
9 entering into a general release of liability pursuant to Civil Code Section 1542. (Szamet Decl. ¶84;
10 Ex. A at ¶25.)

11 Class Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl. ¶85.)
12 The enhancement takes into consideration the time, effort, and expense incurred by Plaintiff in
13 coming forward to litigate this matter on behalf of all Class Members. (*Id.*) Plaintiff will provide
14 a detailed declaration with the Final Approval Motion detailing his participation and further
15 justification for the enhancement. (*Id.*)

16 **VII. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY**

17 As indicated on the Proof of Service, Plaintiff's Motion for Approval of Class Action
18 Settlement ("Motion") will be concurrently uploaded to the Labor and Workforce Development
19 Agency's ("LWDA") website on the date this Motion is filed as required by statute. Proof of
20 submission of Plaintiff's Motion, all related documents, and copy of the email from the LWDA
21 confirming receipt is attached to the Declaration of Kelsey M. Szamet as Exhibit "B." (Szamet
22 Decl. ¶86.)

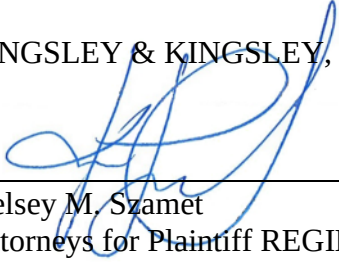
23 **VIII. CONCLUSION**

24 Plaintiff respectfully submits that the proposed Stipulation of Settlement is fair, adequate,
25 reasonable, and in the best interest of the Class Members. Therefore, the Parties respectfully
26 request that the Court (1) grant preliminary approval of the Joint Stipulation of Class Action and
27 PAGA Settlement and Release, and all of its terms; (2) approve the proposed form of notice, and
28 direct that the Notice be sent to Class Members in the manner set forth in the Joint Stipulation of

1 Class Action and PAGA Settlement and Release; and (3) schedule a hearing on final approval of
2 the Stipulation of Settlement and Class Counsel's application for an award of attorney's fees and
3 litigation costs.

4
5 DATED: January 25, 2023

KINGSLEY & KINGSLEY, APC

6
7 By: 

8 Kelsey M. Szamet
9 Attorneys for Plaintiff REGINALD ANTONIO
10 CHAVIS JR. and the proposed class
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(PROOF OF SERVICE)

[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On January 25, 2023, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

JACKSON LEWIS P.C.

Cary G. Palmer

cary.palmer@jacksonlewis.com

Erika M. Barbara

erika.barbara@jacksonlewis.com

400 Capitol Mall, Suite 1600

Sacramento, CA 95814

DAVTYAN LAW FIRM, INC.

Emil Davtyan

emil@davtyanlaw.com

400 N. Brand Blvd., Suite 700

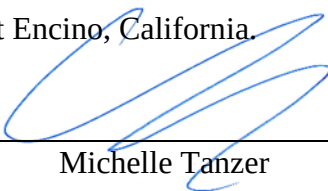
Glendale, CA 91203

[] **(BY MAIL):** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the 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.

[XX] **(BY ELECTRONIC MAIL TRANSMISSION):** I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the above email address(es).

[XX] **(STATE):** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 25, 2023, at Encino, California.



Michelle Tanzer