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SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

SEP 27 2022

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

TIFFANY GASTON and AMBER
TOMLINSON, individually, on behalf of other
members of the general public similarly
situated, and on behalf of aggrieved employees
pursuant to the Private Attorneys General Act
("PAGA");

Plaintiffs,

v.

ONRAD, INC., a Delaware corporation; and
DOES 1 through 100, inclusive;

Defendants.

Case No.: RIC2004221

Assigned for All Purposes to:
Honorable Craig Riemer
Department 1

CLASS ACTION

**ORDER OF FINAL APPROVAL AND
JUDGMENT**

Hearing Date: October 24, 2022
Hearing Time: 8:30 a.m.
Hearing Place: Department 1

Complaint Filed: October 20, 2020
FAC Filed: March 9, 2022
Trial Date: None Set

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September 20

On ~~October 24~~, 2022, at 8:30 a.m., Plaintiffs Tiffany Gaston and Amber Tomlinson

("Plaintiffs," "Plaintiff Gaston," "Plaintiff Tomlinson," or "Class Representatives") Motion for Final Approval of Class Action Settlement, Attorneys' Fees and Costs, and Class Representative Enhancement Payments came before the Court, in Department 1, for hearing pursuant to the Order Granting Preliminary Approval of the Class Action Settlement, dated May 12, 2022 ("Preliminary Approval Order"). Plaintiffs' Motion for Final Approval of Class Action Settlement, Attorneys' Fees and Costs, and Class Representative Enhancement Payment is based on the Parties' Joint Stipulation of Class Action Settlement ("Stipulation" or "Settlement") attached as **Exhibit 1** to the Declaration of Douglas Han in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement that was filed on March 8, 2022. Since full and adequate notice was given to the Class as required in the Court's Preliminary Approval Order, and the Court considered all the papers filed and proceedings held herein, it is ORDERED, ADJUDGED AND DECREED THAT:

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation, but not defined herein, shall have the same meanings as in the Stipulation.

2. This Court has jurisdiction over the subject matter of the Action and over all Parties to the Action, including all Class Members.

3. The Motion for final approval is granted. The Court approves the settlement as fair, reasonable, and adequate. Pursuant to this, the Court makes the following awards and approves the following payments:

- a. \$83,333 to Class Counsel as the attorneys' fees;
- b. \$16,455.50 to Class Counsel as the attorneys' costs;
- c. \$3,000 to Plaintiff Gaston and \$1,500 to Plaintiff Tomlinson as the Class Representative Enhancement Payments;
- d. \$3,000 to Simpluris, Inc. ("Simpluris"), the Settlement Administrator, as the Settlement Administration Costs; and

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e. \$7,500 to the California Labor and Workforce Development Agency (“LWDA”) (out of \$10,000 allocated to the claim under the Private Attorneys General Act of 2004 (“PAGA”) as the PAGA Payment).

4. Except for the payment due under the Stipulation, the Parties are each to bear their own costs and attorneys’ fees. The Court approves the Stipulation and Defendant Onrad, Inc. (“Defendant”) and the Released Parties are discharged from all Released Claims in accordance with the terms of the Stipulation.

5. In this wage-and-hour class action lawsuit, Plaintiffs sued Defendant for a variety of Labor Code violations. The operative complaints allege Defendant: (a) failed to pay overtime wages; (b) failed to pay meal period premiums; (c) failed to pay rest period premiums; (d) failed to pay minimum wages; (e) failed to pay final wages in a timely manner; (f) failed to provide compliant wage statements; (g) failed to keep requisite payroll records; (h) failed to reimburse business expenses; (i) failed to pay sick leave; (j) violated PAGA (Labor Code sections 2698, *et seq.*); and (k) violated Business & Professions Code sections 17200, *et seq.*

6. In California, the notice to class members must have “a reasonable chance of reaching a substantial percentage of the class members.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 251. More importantly, Plaintiffs need not demonstrate each member of the class received notice. If the notice had a “reasonable chance” of reaching a substantial percentage of class members, it should be found effective.

7. Simpluris is providing settlement administration services for this settlement. (Declaration of Lindsay Kline Regarding Notice and Settlement Administration (“Kline Decl.”), ¶¶ 1-3.) On May 3, 2022, Simpluris received the Court-approved Notice Packet. (*Id.* at ¶ 5.) On May 26, 2022, Defendant delivered to Simpluris the Class List that contained data for eighty (80) Class Members. (*Id.* at ¶ 6.) On June 13, 2022, Simpluris mailed Notice Packets to eighty (80) Class Members via regular First-Class U.S. Mail and indicated the Response Deadline was July 28, 2022. (*Id.* at ¶ 7.) Simpluris remailed returned Notice Packets using forwarding addresses affixed thereto or using an Accurint search/skip-trace to locate updated addresses. (*Id.* at ¶ 8.) Ultimately, there were no undelivered Notice Packets. (Kline Decl., *supra*, at ¶ 9.) Simpluris

1 received no disputes, no objections, and only one (1) request for exclusion. (*Id.* at ¶¶ 10-12.) The
2 Class Member who requested exclusion is Melissa Feemster. (*Id.* at ¶ 12.) The distribution of any
3 payment to Melissa Feemster under PAGA shall be accompanied by the following statement: “The
4 settlement check enclosed in this envelope is for the PAGA portion of the settlement, not for the
5 class portion of the settlement. Thus, cashing this settlement check will not bar you from
6 commencing a lawsuit for any alleged violations of the Labor Code against Defendant or for any
7 other claims you may have against Defendant.”

8 8. Based on the foregoing, the Court finds the notice provided to Class Members
9 conforms to due process requirements.

10 9. It is the duty of the Court, before finally approving the settlement, to conduct an
11 inquiry in the fairness of the proposed settlement. California Practice Guide, Civil Procedure
12 Before Trial, The Rutter Group, ¶ 14:139.12 (2012). The trial court has broad discretion in
13 determining whether a settlement is fair. In exercising that discretion, it normally considers the
14 following factors: (a) strength of the plaintiff’s case; (b) risk, expense, complexity, and likely
15 duration of further litigation; (c) risk of maintaining class action status through trial; (d) amount
16 offered in settlement; (e) extent of discovery completed and stage of the proceedings; (f)
17 experience and views of counsel; (g) presence of a governmental participant; and (h) reaction of
18 the class members to the proposed settlement. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
19 1794, 1801; *In Re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723. This list is not exclusive,
20 and the Court is free to balance and weigh the factors depending on the circumstances of the case.
21 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-245.

22 10. The proponent bears the burden of proof to show the settlement is fair, adequate,
23 and reasonable. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th
24 1135, 1165-1166; *Wershba, supra*, 91 Cal.App.4th at 245. There is a presumption a proposed
25 settlement is fair and reasonable when it is the result of arm’s-length negotiations. 2 Herbert
26 Newburg & Albert Conte, *Newburg on Class Actions* § 11.41 at 11-88 (3d ed. 1992); *Manual for*
27 *Complex Litigation (Third)* § 30.42.

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1 11. If the case had not settled, there would have been additional risks and expenses
2 associated with continuing to litigate. Procedural hurdles (*i.e.*, motion practice and appeals) are
3 also likely to prolong the litigation as well as any recovery by the Class Members.

4 12. There is always a risk of decertification. *Weinstat v. Dentsply Intern., Inc.* (2010)
5 180 Cal.App.4th 1213, 1226 (“Our Supreme Court has recognized that trial courts should retain
6 some flexibility in conducting class actions, which means, under suitable circumstances,
7 entertaining successive motions on certification if the court subsequently discovers that the
8 propriety of a class action is not appropriate.”)

9 13. As part of the Court’s analysis of this factor, the Court should consider the
10 admonition in *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. In *Kullar*,
11 objectors to a class settlement argued the trial court erred in finding the terms of the settlement to
12 be fair, reasonable, and adequate without any evidence of the amount to which class members
13 would be entitled if they prevailed in the litigation, and without any basis to evaluate the
14 reasonableness of the agreed recovery. The Court of Appeal agreed with the objectors that the trial
15 court bore the ultimate responsibility to ensure the reasonableness of the settlement terms.
16 Although many factors had to be considered in making that determination, and a trial court was
17 not required to decide the ultimate merits of class members’ claims before approving a proposed
18 settlement, an informed evaluation could not be made without an understanding of the amount in
19 controversy and the realistic range of outcomes of the litigation.

20 14. Defendant agreed to settle for the non-reversionary sum of \$250,000. Defendant
21 will have no obligation to pay any amount in connection with the Settlement apart from the
22 Maximum Settlement Amount and the employer’s share of payroll taxes due on the portion of
23 Individual Settlement Payments allocated to wages. Moreover, none of the Maximum Settlement
24 Amount will revert to Defendant. According to Simpluris’ calculations, the *average* gross
25 Individual Settlement Payment will be approximately \$1,549.66, the *highest* gross Individual
26 Settlement Payment will be about \$3,641.79, and the *lowest* gross Individual Settlement Payment
27 will be around \$5.78. (Kline Decl., *supra*, at ¶ 14.)

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1 15. Class Counsel's investigation included formal and informal discovery, reviewing
2 Defendant's policy records, reviewing a sampling of time and pay records, reviewing Plaintiffs'
3 personnel records, and forming a damage model based on all of these. (Declaration of Douglas
4 Han In Support of Plaintiffs' Motion For Preliminary Approval of Class Action Settlement filed
5 on March 8, 2022 ("Han Preliminary Decl."), ¶¶ 16-17.) The Parties also mediated this case with
6 Steve Rottman, a respected and highly experienced mediator in wage and hour class actions. In
7 connection with mediation and through discussions with counsel for Defendant, Class Counsel
8 also discussed all aspects of the case, including the risks of litigation and the risks to both Parties
9 of proceeding with a motion for class certification as well as the law relating to meal and rest
10 periods. (Declaration of Douglas Han In Support of Plaintiffs' Motion for Final Approval of Class
11 Action Settlement ("Han Final Decl."), ¶ 9.)

12 16. Class Counsel have extensive experience with wage-and-hour class litigation.
13 (Han Preliminary Decl., *supra*, at ¶¶ 3-10; Exhibit 2.) Class Counsel are of the opinion the
14 Settlement is in the best interest of the Class and provides substantial benefit to Class Members.
15 (Han Final Decl., *supra*, at ¶¶ 9-11.)

16 17. The Class reacted positively with participation rate of over ninety-eight percent
17 (98.75%). (Kline Decl., *supra*, at ¶ 12.)

18 18. On balance, this is a fair settlement that satisfies the *Dunk* factors such that final
19 approval is warranted.

20 19. Fees are sought pursuant to the percentage method. The determination of what
21 constitutes an appropriate percentage "is somewhat elastic and depends largely on the facts of a
22 given case, but certain factors are commonly considered. Specifically, the court may address the
23 percentage likely to have been negotiated between private parties in a similar case, percentages
24 applied in other class actions, the quality of class counsel, and the size of the award." *In re Ikon*
25 *Office Solutions, Inc., Securities Litigation* (E.D. Pa. 2000) 194 F.R.D. 166, 193.

26 20. These factors favor the requested attorneys' fees. As for the first factor, private
27 contingency fee agreements are routinely thirty percent (30%) to forty percent (40%) of the
28 recovery. (*In re Ikon Office Solutions, Inc., Securities Litigation, supra*, 194 F.R.D. at 194.) As

1 for the second factor, although the median percentage of attorney fees in class action is twenty-
2 five percent (25%), “most fees appear to fall in the range of nineteen to forty-five percent.” (*Ibid.*)
3 As for the third factor, Class Counsel have experience in class actions, including wage-and-hour
4 cases. Most importantly, Class Counsel achieved reasonable results for the Class as evidenced by
5 the Class Members’ reaction to the Settlement. As for the fourth factor, Class Counsel negotiated
6 a \$250,000 Maximum Settlement Amount. Applying the lodestar cross-check, Class Counsel
7 indicate they invested 345.2 of attorney time on this matter. (Han Final Decl., *supra*, at ¶ 23.) The
8 lodestar fees for Class Counsel are \$203,010. (*Ibid.*) The hourly rates appear to be reasonable for
9 attorneys with their respective years of experience, and the hours spent are reasonable for this case,
10 which has been pending for over one and one-half (1.5) years. It appears Class Counsel utilized
11 skill in litigating this case and have good reputations in the legal community. It also appears Class
12 Counsel spent appreciable time on the case, which time could have been spent on other meritorious
13 fee generating cases. Based on the \$203,010 lodestar fees, the request attorneys’ fees translates
14 into a negative multiplier of 0.43. (*Ibid.*) Because the requested attorneys’ fees is based on a
15 reasonable percentage of the settlement fund, is supported by the lodestar calculation, and did not
16 receive objections from the Class, the Court awards the requested attorneys’ fees. For these
17 reasons, the Court hereby grants final approval of the requested attorneys’ fees of \$83,333.

18 21. Class Counsel requested attorneys’ costs of up to \$20,000. (Han Final Decl.,
19 *supra*, at ¶ 33.) Class Counsel’s actual costs and expenses incurred total \$16,455.50 and consist of
20 filing fees, mediation fees, court appearances, copying, filing, and service. (*Ibid.*) These costs
21 appear reasonable and necessary to the conduct of the litigation. Furthermore, as with the requested
22 attorneys’ fees, the maximum cost request was disclosed to Class Members, and no objection were
23 submitted. (Han Final Decl., *supra*, at ¶ 33.) For these reasons, the Court hereby grants final
24 approval of the requested attorneys’ costs of \$16,455.50.

25 22. Simpluris requests Settlement Administration Costs of \$3,000. (Kline Decl.,
26 *supra*, at ¶ 16.) Based upon the work performed and yet to be performed, including the fact the
27 Class was provided notice of up to \$5,000 will be allocated as the Settlement Administration Costs
28 and none objected, the request for Settlement Administration Costs of \$3,000 is granted.

23. The Court approves the payment to the LWDA of \$7,500 as its portion of the
PAGA Payment (out of \$10,000 allocated to the claim under PAGA as the PAGA Payment).

24. Finally, Class Counsel seeks Class Representative Enhancement Payments of
\$3,000 to Plaintiff Gaston and \$1,500 to Plaintiff Tomlinson. The Court considers the following
factors, among others, in determining whether to pay an incentive or enhancement award to a class
representative: (a) whether an incentive was necessary to induce the class representative to
participate; (b) actions taken by the class representative to protect the interests of the class; (c)
degree to which the class benefited from those actions; (d) amount of time and effort the class
representatives expended in pursuing the litigation; (e) risk to the class representative in
commencing suit, both financial and otherwise; (f) notoriety and personal difficulties encountered
by the class representative; (g) duration of the litigation; and (h) personal benefit (or lack thereof)
enjoyed by the class representative as a result of the litigation. California Practice Guide, Civil
Procedure Before Trial, ¶ 14:146.10 (The Rutter Group 2012) (citing *Clark v American Residential
Services, LLC* (2009) 175 Cal.App.4th 785, 804; *Bell v. Farmers Ins. Exch.* (2004) 115
Cal.App.4th 715, 726; *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380,
1394; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412.
Plaintiffs devoted several hours to this litigation. (Declaration of Tiffany Gaston In Support of
Plaintiffs' Motion For Final Approval of Class Action Settlement ("Gaston Decl."), ¶¶ 6-10;
Declaration of Amber Tomlinson In Support of Plaintiffs' Motion For Final Approval of Class
Action Settlement ("Tomlinson Decl."), ¶ 6-10.) Plaintiffs assisted their attorneys by having
multiple conferences with them and by providing documents. (Gaston Decl., *supra*, at ¶¶ 6-9;
Tomlinson Decl., *supra*, at ¶¶ 6-9.) Plaintiffs also helped Class Counsel prepare for mediation and
made themselves telephonically available during the mediation. (Gaston Decl., *supra*, at ¶ 10;
Tomlinson Decl., *supra*, at ¶ 10.) Plaintiffs freely chose to champion the rights of the class,
accepted the risks and sacrifices associated with acting as the Class Representatives, and do not
have interests averse to the Class. (Gaston Decl., *supra*, at ¶¶ 11, 13-14; Tomlinson Decl., *supra*,
at ¶¶ 11, 13-15.) The Court grants the Class Representative Enhancement Payments of \$3,000 to
Plaintiff Gaston and \$1,500 to Plaintiff Tomlinson for the following reasons: (a) the significant

1 time Plaintiffs spent on this matter; (b) the benefits Plaintiffs' action conferred onto the Class; and
2 (c) the risks and sacrifices associated with serving as the Class Representatives that Plaintiffs
3 accepted.

4 25. All Parties, including each and all Class Members, are bound by this Order of Final
5 Approval and Judgment and by the Stipulation. All Class Members shall be deemed to have entered
6 the Stipulation and the releases provided therein. But this Order of Final Approval and Judgment
7 does not bar or otherwise enjoin Class Members from prosecuting the Released Claims, thereby
8 exposing them to potential contempt charges. Furthermore, Class Members shall not be deemed to
9 have agreed either (a) not to sue on any Released Claims or (b) to any other provision that may
10 expose them to potential liability for either breach of contract or misrepresentation.

11 26. The Court preliminarily certified the Action as a class action under Code of Civil
12 Procedure section 382 pursuant to Plaintiffs' motion for preliminary approval of the class action
13 settlement. The Class is defined as all current and former non-exempt or hourly paid employees of
14 Defendant who worked in California during the period from October 20, 2016 through the date of
15 December 28, 2021 (or if any such person is incompetent, deceased, or unavailable due to military
16 service, the person's legal representative or successor in interest evidenced by reasonable
17 verification). "Class Members" shall not include any person who submits a timely and valid
18 request for exclusion.

19 27. The certified Class continues to meet all the requirements of Code of Civil
20 Procedure section 382 and for the reasons set forth in the Court's Preliminary Approval Order.

21 28. Plaintiffs are the Court-appointed Class Representatives.

22 29. Douglas Han, Shunt Tatavos-Gharajeh, and Chancellor Nobles of Justice Law
23 Corporation are the Court-appointed Class Counsel.

24 30. Simpluris is hereby directed to mail the Individual Settlement Payments in
25 envelopes that bear the notation, "YOUR CLASS ACTION SETTLEMENT CHECK IS
26 ENCLOSED" and take all other actions in furtherance of the settlement administration.

27 31. As set forth in the Stipulation, any checks issued to Class Members will remain
28 negotiable for one hundred twenty (120) calendar days. Any check not cashed within one hundred

1 twenty (120) calendar days will be void. Any checks that, after an appropriate skip trace, are
2 undeliverable, shall become void. The funds from the uncashed checks shall be distributed by
3 Simpluris to the State Controller's Unclaimed Property Fund. No later than ten (10) calendar days
4 after the expiration of the 120-day period, Simpluris shall deposit the total amounts contained in
5 the settlement checks, and all interest that has accrued, to the State Controller's Unclaimed
6 Property Fund. Simpluris shall provide a declaration of deposit with the State Controller's
7 Unclaimed Property Fund, which will be served on Class Counsel and Defendant's Counsel within
8 ten (10) calendar days of payment of the residual. However, these uncashed checks shall remain
9 in Simpluris' Qualified Settlement Fund and not be distributed to the State Controller's Unclaimed
10 Property Fund until after the court has entered an amended judgment pursuant to Code of Civil
11 Procedure section 384(a).

12 32. Simpluris will mail reminder postcards to Class Members whose settlement checks
13 have not been negotiated within sixty (60) days after the date of mailing.

14 33. If any of the Class Members are current employees of Defendant and the
15 distribution mailed to those employees is returned to Simpluris as being undeliverable and
16 Simpluris is unable to locate a valid mailing address, Simpluris shall arrange with Defendant to
17 have those distributions delivered to the employees at their place of employment.

18 34. This Order of Final Approval and Judgment restricts Plaintiffs and Defendant from
19 offering the Settlement into evidence in actions between each other but shall not prevent other
20 parties from doing so. This extends to not predetermining the Settlement's admissibility in
21 litigation involving third parties.

22 35. Once the Court grants this Order of Final Approval and Judgment, Simpluris will
23 mail a notice of entry of judgment to Class Members alongside their Individual Settlement
24 Payment checks via first-class mail. The notice of entry of judgment will state, "The Superior
25 Court of California, County of Riverside, granted final approval of the *Tiffany Gaston v. Onrad,*
26 *Inc.* matter, Case Number RIC2004221, on ~~October 24~~ ^{September 26,} 2022. Pursuant to this, Simpluris has
27 enclosed your Individual Settlement Payment check alongside this notice of entry of judgment."
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36. Without affecting the finality of this Order in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of the Stipulation and any award or distribution of the Maximum Settlement Amount, including interest earned thereon; (b) disposition of the Maximum Settlement Amount; (c) hearing and determining applications for the Attorneys' Fees and Costs in the Action; and (d) all Parties hereto for the purpose of construing, enforcing, and administering the Stipulation.

37. There is no just reason for any delay in the entry of this Order of Final Approval and Judgment approving the Settlement. Pursuant to this, immediate entry by the Clerk of the Court is expressly directed.

38. Without affecting the finality of this Order of Final Approval and Judgment, the Court shall retain continuing jurisdiction over this Action and the Parties, including all Class Members and over all matters pertaining to the implementation and enforcement of the terms of the Settlement. Except as provided to the contrary herein, any disputes or controversies arising with respect to interpretation, enforcement, or implementation of the Settlement shall be presented by motion to the Court for resolution.

39. A hearing for Final Accounting/Review is scheduled for April 14, 2023 at 8:30 a.m., before this same court and department. The administrator's final report (CMO, § J) shall be filed no later than April 7, 2023.

40. This Order of Final Approval and Judgment is intended to be a final disposition of the above-captioned action in its entirety and is intended to be immediately appealable. Subject to the Court's continuing jurisdiction as set forth above, the Court directs the Clerk of the Court to enter Order of Final Approval and Judgment.

IT IS SO ORDERED.

DATED: September 26, 2022


HONORABLE CRAIG G. RIEMER
SUPERIOR COURT JUDGE

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PROOF OF SERVICE
1013A(3) CCP

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 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, California 91103 and my electronic service address is manderson@justicelawcorp.com.

On September 28, 2022, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **Gaston v. Onrad, Inc.**
LWDA/Court Case No.: **LWDA Case No.: LWDA-CM-846363-21**
Court Case No.: RIC2004221
Riverside County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

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

Executed on September 28, 2022, at Pasadena, California.



Mariah Anderson