

1 **BOKHOUR LAW GROUP, P.C.**
2 Mehrdad Bokhour, Esq. (CA Bar No. 285256)
3 mehrdad@bokhourlaw.com
4 1901 Avenue of the Stars, Suite 450
5 Los Angeles, California 90067
6 Tel: (310) 975-1493; Fax: (310) 675-0861

5 **FALAKASSA LAW, P.C.**
6 Joshua S. Falakassa, Esq. (CA Bar No. 295045)
7 josh@falakassalaw.com
8 1901 Avenue of the Stars, Suite 450
9 Los Angeles, California 90067
10 Tel: (818) 456-6168; Fax: (888) 505-0868

11 Attorneys for Plaintiff and the Putative Class

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF CONTRA COSTA**

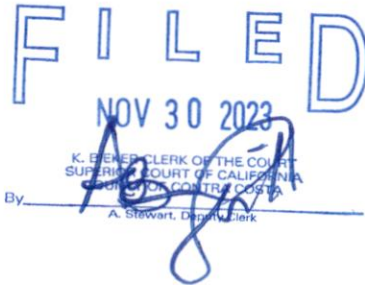
14 KIM GRANT, on behalf of himself and all others
15 similarly situated,

16 Plaintiff,

17 v.

18 RODD & GUNN USA RETAIL, INC., a
19 Delaware Corporation; and DOES 1-50,
20 inclusive.

21 Defendants.



CASE NO.: MSC21-02113

Assigned to the Hon. Charles S Treat

**~~[PROPOSED]~~ ORDER GRANTING
FINAL APPROVING OF CLASS
ACTION SETTLEMENT AND FINAL
JUDGEMENT**

HEARING INFO

Date: November 2, 2023
Time: 9:00 a.m.
Dept.: 12

Action Filed: October 7, 2021
Trial Date: No Trial Set

1 This matter having come for hearing on November 2, 2023, regarding the unopposed Motion
2 for Final Approval of Class Action Settlement on the terms set forth in the Class Action and PAGA
3 Settlement Agreement (the "Settlement"). In conformity with California Rules of Court, rule 3.769,
4 with due and adequate notice having been given to Class Members (as defined in the Settlement), and
5 having considered the Settlement, all of the legal authorities and documents submitted in support
6 thereof, all papers filed and proceedings had herein, all oral and written comments received regarding
7 the Settlement, and having reviewed the record in this litigation, and good cause appearing, the Court
8 **GRANTS** final approval of the Settlement and orders and makes the following findings and
9 determinations and enters final judgment as follows: *See full ruling of the Court attached as Exhibit A.*

10 1. All terms used in this order shall have the same meaning given as those terms are used
11 and/or defined in the parties' Settlement Agreement and Plaintiff's Motion for Order Granting Final
12 Approval of Class Action Settlement. A copy of the Settlement is attached to the Declaration of
13 Mehrdad Bokhour in Support of Plaintiff's Motion for Final Approval of Class Action and is made a
14 part of this order.

15 2. The Court has personal jurisdiction over the Parties to this litigation and subject matter
16 jurisdiction to approve this Settlement and all exhibits thereto.

17 3. For settlement purposes only, the Court finally certifies the Class, as defined in the
18 Settlement and as follows: all persons who performed work in any non-exempt position for Defendant
19 in California at any time during the Class Period," which is the period from October 7, 2017, through
20 October 17, 2022.

21 4. The Court deems this definition sufficient for the purpose of rule 3.765(a) of the
22 California Rules of Court, and solely for the purpose of effectuating the Settlement.

23 5. The Court finds that an ascertainable class of 175 class members exists and a well-
24 defined community of interest exists on the questions of law and fact involved because in the context
25 of the Settlement: (i) all related matters, predominate over any individual questions; (ii) the claims of
26 the Plaintiff is typical of claims of the Class Members; and (iii) in negotiating, entering into and
27 implementing the Settlement, Plaintiff and Class Counsel have fairly and adequately represented and
28 protected the interest of the Class Members.

1 6. The Court is satisfied that ILYM Group, Inc., which was appointed as the Settlement
2 Administrator, completed the distribution of Class Notice to the Class in a manner that complies with
3 California Rule of Court 3.766. The Class Notice informed 175 prospective Class Members of the
4 Settlement terms, their rights under the settlement and receive their settlement share, their rights to
5 submit a request for exclusion, their rights to comment on or object to the Settlement, and their rights
6 to appear at the Final Approval and Fairness Hearing and be heard regarding approval of the
7 Settlement. Sufficient period of time to respond and to act were provided by each of these procedures.
8 No Class Members filed written objection to the Settlement as part of this notice process, and no
9 Class Members filed a written statement of intention to appear at the Final Approval and Fairness
10 Hearing, and only one individual submitted a request for exclusion. This individual will not be bound
11 by the Settlement and will not receive any portion of the Net Settlement Amount.

12 7. The Court hereby approves the terms set forth in the Settlement Agreement and finds
13 that the Settlement Agreement is, in all respects, fair, adequate, and reasonable, consistent, and
14 compliant with all applicable requirements of the California Code of Civil Procedure, the California
15 and United States Constitutions, including the Due Process clauses, the California Rules of Court,
16 and any other applicable law, and in the best interests of each of the Parties and Class Members.

17 8. The Court directs the Parties to effectuate the Settlement Agreement according to its
18 terms and declares the Settlement Agreement to be binding on all 175 Participating Class Members.

19 9. The Court finds that the Settlement Agreement has been reached as a result of
20 informed and non-collusive arm's-length negotiations. The Court further finds that the Parties have
21 conducted extensive investigation and research, and their attorneys were able to reasonably evaluate
22 their respective positions.

23 10. The Court also finds that the Settlement now will avoid additional and potentially
24 substantial litigation costs, as well as delay and risks of the Parties were to continue to litigate the
25 case. Additionally, after considering the monetary recovery provided as part of the Settlement in
26 light of the challenges posed by continued litigation, and Court concludes that Class Counsel secured
27 significant relief for Class Members.

1 11. The Settlement Agreement is not an admission by Defendant, nor is this order a
2 finding of the validity of any allegations or of any wrongdoing by Defendant.

3 12. The Court appoints Plaintiff Kim Grant as Class Representative and finds him to be
4 adequate.

5 13. The Court appoints Joshua Falakassa of Falakassa Law, P.C. and Mehrdad Bokhour
6 of Bokhour Law Group, P.C. as Class Counsel and finds each of them to be adequate, experienced,
7 and well-versed in class action litigation.

8 14. The terms of the Settlement Agreement, including the Gross Settlement Amount of
9 \$450,000 and the individual settlement shares, are fair, adequate, and reasonable to the Class and to
10 each Class Member, and the Courts grants final approval of the Settlement set forth in the Settlement
11 Agreement, subject to this order.

12 15. The Court approves the following allocations, which fall within the ranges stipulated
13 by and through the Settlement Agreement:

14 A. The Court awards \$6,000.00 to ILYM Group, Inc., the Settlement
15 Administrator, and finds this amount to be fair and reasonable. The Court
16 grants final approval of it and orders the Parties to make the payment to the
17 Settlement Administrator in accordance with the Agreement.

18 B. The Court awards \$150,000 to Class Counsel as attorneys' fees and finds this
19 amount to be fair and reasonable in light of the benefit obtained for the Class.
20 The Court grants final approval of, awards, and orders the Class Counsel fees
21 payment to be made in accordance with the Settlement Agreement.

22 C. The Court awards \$12,711 to the Bokhour Law Group, P.C. in litigation costs,
23 an amount which the Court finds to be reflective of the reasonable costs
24 incurred. The Court grants final approval of and orders the Class Counsel
25 litigation expenses payment in this amount to be made in accordance with the
26 Settlement Agreement.

27 D. The Court awards \$10,000 to the class representative as payment requested
28 by Plaintiff and finds this amount to be fair and reasonable. The Court grants

1 final approval of and orders the class representative payment to be made in
2 accordance with the Settlement Agreement.

3 E. The Court approves the \$10,000 allocation for penalties under the Labor Code
4 Private Attorneys General Act of 2004, and orders 75% thereof (i.e., \$7,500)
5 to be paid to the California Labor and Workforce Development Agency in
6 accordance with the terms of the Settlement Agreement and the remainder to
7 the Class.

8 16. The Court orders that 5% of the awarded Attorneys' Fees be kept in the Settlement
9 Administrator's trust fund until the completion of the distribution process and Court approval of a
10 final accounting.

11 17. The Court orders the Parties to comply with and carry out all terms and provisions of
12 the Settlement, to the extent that the terms thereunder do not contradict with this Order, in which case
13 the provisions of this order shall take precedence and supersede the Settlement.

14 18. Nothing in the Settlement or this order purports to extinguish or waive Defendant's
15 rights to continue to oppose the merits of the claims in this Action or class treatment of these claims
16 in this case if the Settlement fails to become final or effective, or in any other case without limitation.

17 19. All 175 Participating Class Members shall be bound by the Settlement and this order,
18 including the release of claims as set forth in the Settlement Agreement.

19 20. The Parties shall bear their own respective attorneys' fees and costs except as
20 otherwise provided in this order and the Settlement Agreement.

21 21. All checks mailed to the Class Members must be cashed within one hundred and eighty
22 (180) days after mailing. If a Class Member fails to cash his/her check by the deadline, then the
23 Settlement Administrator shall submit such funds to the State of California's Unclaimed Property
24 Fund in the name of the Class Member.

25 22. Within 10 days of this order, the Settlement Administrator shall give notice of
26 judgment to Settlement Class Members pursuant to California Rules of Court, rule 3.771(b) by
27 posting a copy of this order and final judgment on its website.

1 23. The Court retains continuing jurisdiction over the Action and the Settlement, including
2 jurisdiction pursuant to rule 3.769(h) of the California Rules of Court, solely for purposes of
3 (a) enforcing the Settlement Agreement, (b) addressing settlement administration matters, and
4 (c) addressing such post-judgment matters as may be appropriate under court rules or applicable law.

5 24. Plaintiff shall file with the Court a report regarding the status of distribution within
6 one hundred and twenty (120) days after all funds have been distributed.

7 25. The Court hereby sets a hearing date of October 24, 2024 at 9:00 a.m. for a hearing on
8 the final accounting and distribution of the settlement.

9 26. This final judgment is intended to be a final disposition of the above-captioned action
10 in its entirety and is intended to be immediately appealable. This final judgment resolves and
11 extinguishes all claims released by the Settlement Agreement against Defendant and the Released
12 Parties as set forth in the Agreement.

13

14 **IT IS SO ORDERED.**

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16 DATED: NOV 29 2023

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HONORABLE CHARLES S. TREAT

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EXHIBIT “A”

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Iskanian and subsequent decisions of the Courts of Appeal following *Iskanian* made PAGA claims not subject to mandatory arbitration based on an employee's pre-dispute arbitration agreement. In the first paragraph of the Arbitration Agreement, the parties expressly agreed that the Arbitration Agreement was "not intended to require arbitration" of those claims. The PAGA claims were also one of the claims expressly excepted from arbitration under the fourth paragraph of the agreement based on the "current" law when the Arbitration Agreement was made. These provisions mean that the parties expressly agreed PAGA claims would not be subject to arbitration based on the law as it existed when the agreement was made.

Plaintiff's Evidentiary Objections

The Court rules as follows on Plaintiff's evidentiary objections:

A. Objections to Labon Declaration

Obj. Nos. 1, 2, 3, and 8 - **Overruled**. As to Exh. A (Obj. No. 8), the Court accepts Exhibit A as a business record of San Pablo which came from Plaintiff's personnel file as to which the declarant has attested she is a custodian of records, but not based on the authenticity of the signature on the agreement (see ruling on Obj. Nos. 5-7 below).

Obj. Nos. 4, 5, 6, 7 – **Sustained**.

B. Objections to Okonkwo Declaration

Obj. Nos. 9, 10 – **Overruled**. As to Obj. No. 10, as Director of Staff Development, the declarant may describe the process for document review by new employees, at least as of the time she became employed in that position.

Obj. Nos. 11-17 – **Sustained**.

12. 9:00 AM CASE NUMBER: MSC21-02113
CASE NAME: GRANT VS RODD & GUNN USA RETAIL, INC.
HEARING IN RE: FINAL APPROVAL OF CLASS ACTION SETTLEMENT
FILED BY:
TENTATIVE RULING:

Plaintiff Kim Grant moves for final approval of her class action and PAGA settlement with defendant Rodd & Gunn USC Retail, Inc. She also moves for approval of her attorney's fees, litigation costs, administration costs, and representative payment. The motion is **granted**.

Since preliminary approval was granted, the administrator has mailed notices to 175 class members. 32 packets were returned by the post office. Follow up resulted in 15 new addresses, leaving 17 non-deliverable. No objections or requests to opt out have been received.

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A. Background and Settlement Terms

Despite its clever name, Rodd & Gunn is not a sporting goods business but a retail seller of men's casual clothing. Plaintiff was employed there as a stylist in the summer of 2021.

The original complaint was filed on October 17, 2021. A PAGA claim was added by amendment in December 2021.

The settlement will create a gross settlement fund of \$450,000. The class representative payment to the plaintiff will be \$10,000. Attorney's fees will be \$150,000 (one-third of the settlement). Litigation costs are \$12,711, somewhat less than estimated at preliminary approval. The settlement administrator's costs are \$6,000. PAGA penalties will be \$10,000, resulting in a payment of \$7,500 to the LWDA. The net amount paid directly to the class members will be about \$264,289. The fund is non-reversionary. There are 175 class members. Based on the estimated class size, the average net payment for each class member is approximately \$1,493, not including distribution of PAGA penalties. The individual payments will vary considerably, however, because of the allocation formula prorating payments according to the number of weeks worked during the relevant time. The number of aggrieved employees for PAGA purposes is smaller, because the starting date of the relevant period is later.

The entire settlement amount will be deposited with the settlement administrator within 21 days after the effective date of the settlement, and checks mailed out within 7 days thereafter.

The proposed settlement will certify a class of all current and former non-exempt employed at Defendants' California facilities between October 7, 2017, and October 7, 2022. For PAGA purposes, the period covered by the settlement is October 5, 2020 to October 7, 2022.

The class members will not be required to file a claim. Class members may object or opt out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.) Funds will be apportioned to class members based on the number of workweeks worked during the class period.

A list of class members will be provided to the settlement administrator within 15 days after preliminary approval. The administrator will use skip tracing as necessary. Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. Settlement checks not cashed within 180 days will be cancelled, and the funds will be directed to the Controller's unclaimed property fund.

The settlement contains release language covering all claims and causes of action, alleged or which could have reasonably been alleged based on the allegations in the operative pleading, including a number of specified claims. Under recent appellate authority, the limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ("A court cannot release claims that are outside the scope of the allegations of the complaint.") "Put another way, a release of claims that goes beyond the scope of the allegations in the operative complaint' is impermissible." (*Id.*, quoting *Marshall v. Northrop Grumman Corp.* (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

Formal discovery was undertaken, resulting in the production of substantial documents. The matter

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settled after arms-length negotiations, which included a session with an experienced mediator.

Counsel also has provided an analysis of the case, and how the settlement compares to the potential value of the case, after allowing for various risks and contingencies. Plaintiff's principal claim was that defendant's practice of time-rounding resulted in both unpaid work time and non-payment of overtime. Defendant responded, however, that its rounding system was neutral. Moreover, analysis of time records established that any error due to rounding was minimal. Beyond that, plaintiff asserted that employees were denied full meal and rest breaks. Defendant, however, contended that its policies concerning breaks were fully compliant, and that it was neither able or required to detect any spot deviations from those policies. Defendant also contended that there would be difficulties in obtaining class treatment for any such claims.

The potential liability needs to be adjusted for various evidence and risk-based contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they derive from other violations, they include "stacking" of violations, the law may only allow application of the "initial violation" penalty amount, and the total amount may be reduced in the discretion of the court. (See Labor Code § 2699(e)(2) (PAGA penalties may be reduced where "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory.")). Moreover, recent decisions may make it difficult for PAGA plaintiffs to recover statutory penalties, as opposed to actual missed wages. (See, e.g., *Naranjo v. Spectrum Security Services, Inc.* (2023) 88 Cal.App.5th 937; but see *Gola v. University of San Francisco* (2023) 90 Cal.App.5th 548, 566-67.)

Counsel attest that notice of the proposed settlement was transmitted to the LWDA concurrently with the filing of the motion.

E. Legal Standards

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, including "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction ... to the proposed settlement." (See also *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal.App.5th 521.)

Because this matter also proposes to settle PAGA claims, the Court also must consider the criteria that apply under that statute. Recently, the Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees." (*Id.*, at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th

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273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, “the court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter.” (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because “where the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutatory purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

F. Attorney Fees and Other Costs

Plaintiffs seek one-third of the total settlement amount as fees, relying on the “common fund” theory, or \$150,000. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: “If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment.” (*Id.*, at 505.)

Accordingly, plaintiffs have provided information concerning the lodestar fee amount. They estimate the lodestar at \$122,850, representing an implied multiplier of 1.22. They based this amount on a total of 200 hours, at hourly rates of \$600 to \$625. No adjustment from the one-third fee is necessary. The attorney’s fees are reasonable and are approved.

The requested representative payment of \$10,000 for the named plaintiff was deferred until this final approval motion. Criteria for evaluation of such requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Plaintiff has provided a declaration in support of her request. She points out that she executed a broader release than the class as a whole, but does not identify any particular claims of value that she may have. She also risks damage to her reputation and more difficulty in obtaining employment. The representative payment is approved.

Litigation costs of \$12,711 (mostly mediation and filing fees) are reasonable and are approved.

The settlement administrator’s costs of \$6,000 are reasonable and are approved.

G. Discussion and Conclusion

The moving papers sufficiently establish that the proposed settlement is fair, reasonable, and adequate to justify final approval. The allocation of PAGA penalties among the aggrieved employees (based on pay periods) is reasonable.

The motion is granted.

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Counsel are directed to prepare an order reflecting this entire tentative ruling and the other findings in the previously submitted proposed order and a separate judgment.

The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented, to be determined in consultation with the Department's clerk by phone. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. Five percent of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.

13. 9:00 AM CASE NUMBER: MSC21-02363
CASE NAME: HALL VS. AMERICAN AUTOMOBILE ASSOCIATION
*HEARING ON MOTION IN RE: TO VACATE ORDER COMPELLING ARBITRATION AND REOPEN THE CASE
FILED BY: HALL, KEATON
TENTATIVE RULING:

Plaintiff Keaton Hall moves pursuant to Code of Civil Procedure § 1281.90 to vacate the order compelling arbitration, reopen the case, and impose monetary and evidentiary sanctions against American Automobile Association of Northern California, Nevada & Utah, Inc.

For the following reasons, the motion is **granted**.

Legal Standard

"In an employment or consumer arbitration that requires, either expressly or through application of state or federal law or the rules of the arbitration provider, that the drafting party pay certain fees and costs during the pendency of an arbitration proceeding, if the fees or costs required to continue the arbitration proceeding are not paid within 30 days after the due date, the drafting party is in material breach of the arbitration agreement, is in default of the arbitration, and waives its right to compel the employee or consumer to proceed with that arbitration as a result of the material breach." (CCP § 1281.98(a)(1).) "If the drafting party materially breaches the arbitration agreement and is in default under subdivision (a), the employee or consumer may unilaterally elect to ... [w]ithdraw the claim from arbitration and proceed in a court of appropriate jurisdiction." (*Id.*, subd. (b)(1).)

"If the employee or consumer withdraws the claim from arbitration and proceeds in a court of appropriate jurisdiction pursuant to paragraph (1) of subdivision (b), both of the following apply: (1) The employee or consumer may bring a motion, or a separate action, to recover all attorney's fees and all costs associated with the abandoned arbitration proceeding. The recovery of arbitration fees, interest, and related attorney's fees shall be without regard to any findings on the merits in the underlying action or arbitration. (2) The court shall impose sanctions on the drafting party in accordance with Section 1281.99." (CCP § 1281.98(c).)

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of eighteen
4 years and not a party to the within action; my business address is 1901 Avenue of the Stars, Suite 450,
Los Angeles, California 90067.

5 On November 20, 2023, I served the following document(s) described as **[PROPOSED]**
6 **ORDER GRANTING FINAL APPROVING OF CLASS ACTION SETTLEMENT AND**
7 **FINAL JUDGEMENT** on the interested parties in this action by placing true copies thereof enclosed
in sealed envelopes addressed as follows:

8 Heather M. Sager, Esq.
9 HSager@perkinscoie.com
Matthew L. Goldberg, Esq.
10 MGoldberg@perkinscoie.com
11 PERKINS COIE, LLP
505 Howard Street, Suite 1000
San Francisco, California 94105

12 **Counsel for defendant Rodd & Gunn USA Retail, Inc.**

13 **BY ELECTRONIC SERVICE:** I transmitted the above-referenced document(s) via
14 electronic service provider First Legal to the person(s) identified above at the email address(es)
indicated and did not, within a reasonable time after transmission, receive any message or
15 communication indicating that delivery failed or that any other error had occurred which would delay
or caused failure in transmission and delivery of the document and/or any attachments thereto.

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

18 Executed on November 20, 2023, at Los Angeles, California.

19 
20 _____
Carlos Garcia