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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

VESTENIA MAISONNEUVE, individually, and  
on behalf of all others similarly situated,

*Plaintiff,*

vs.

T.E.R.I., INC., a California corporation dba  
TERI, INC.; and DOES 1 through 10, inclusive,

*Defendants.*

Case No.: 37-2021-00048516-CU-OE-CTL

[Assigned to the Hon. Robert C. Longstreth,  
Department C-65]

CLASS AND REPRESENTATIVE ACTION

**PLAINTIFF'S NOTICE OF MOTION AND  
MOTION FOR FINAL APPROVAL OF  
CLASS AND REPRESENTATIVE ACTION  
SETTLEMENT; MEMORANDUM OF  
POINTS AND AUTHORITIES**

Date: November 22, 2024  
Time: 8:30 a.m.  
Courtroom: Dept. C-65  
Judge: Hon. Robert Longstreth

Action Filed: November 16, 2021  
Trial Date: Not Set

1 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on November 22, 2024, at 8:30 a.m., in Department C-65 of the  
3 above-captioned Court, Hall of Justice, located at 330 West Broadway, San Diego, CA 92101, Plaintiff  
4 Vestenia Maisonneuve (“Plaintiff”) will and hereby does move this Court for an order:

5 1. Granting class certification of the Class, solely for settlement purposes pursuant to  
6 Code of Civil Procedure § 382;

7 2. Finally approving the CLASS ACTION AND PAGA SETTLEMENT  
8 AGREEMENT AND CLASS NOTICE (“Settlement” or “Agreement”);

9 3. Appointing counsel for Plaintiff, Kane Moon, H. Scott Leviant, and Sandy Pham, of  
10 Moon Law Group, PC, as Class Counsel;

11 4. Appointing Plaintiff as the Class Representative;

12 5. Ruling that Settlement Class Members who did not timely submit requests for  
13 exclusion from the settlement as set forth in the Agreement have released their claims against  
14 Defendant and the other releasees as set forth in the Agreement;

15 6. Ruling that Settlement Class Members who did not timely object to the settlement  
16 pursuant to the terms set forth in the Agreement are barred from prosecuting or pursuing any  
17 appeal of the Court’s Order;

18 7. Awarding the sums requested in the Motion;

19 8. Entering a Final Judgment; and

20 9. Without affecting the finality of the final judgment, reserving continuing  
21 jurisdiction over the parties for the purposes of implementing, enforcing and/or administering  
22 the settlement as set forth in the Agreement or enforcing the terms of the Final Judgment.

23 Good cause exists to grant this Motion because: (1) the Class meets all of the requirements for  
24 class certification for settlement purposes under Code of Civil Procedure § 382; (2) the Settlement  
25 Agreement is a fair, adequate, and reasonable compromise of the disputed wage and hour claims asserted  
26 by Plaintiff; (3) Plaintiff and Class Counsel are adequate to represent the Class; and, (4) the notice  
27 procedures and related forms complied with California Rules of Court 3.766(d) and (e) and this Court’s  
28 Order granting preliminary approval of the Settlement, and adequately apprised Class Members of their

rights and fully comport with due process.

This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda.

TENTATIVE RULINGS: As a general practice, Department C-65 provides tentative rulings for the following types of matters:

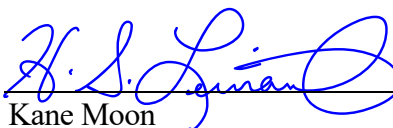
- In general, tentative rulings will only be issued for preliminary and final approval of settlements.
- The Court may also issue a tentative ruling if the parties need to clarify certain issues for the Court.

This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declarations of H. Scott Leviant, Plaintiff, and the Settlement Administrator in support thereof, all papers and pleadings on file with the Court in this action, all matters judicially noticeable, and on such oral and documentary evidence as may be presented in connection with the hearing on the Motion.

Respectfully submitted,

Dated: October 29, 2024

**MOON LAW GROUP, PC**

By:  \_\_\_\_\_

Kane Moon  
H. Scott Leviant  
Sandy Pham

Attorneys for Plaintiff

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1     **I.     INTRODUCTION**

2             Pursuant to California Rules of Court, Rules 3.769, Plaintiff Vestenia Maisonneuve (“Plaintiff”)  
3 requests that this Court finally approve the class and representative action settlement set forth in the  
4 CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE (“Settlement”  
5 or “Agreement”) with Defendant T.E.R.I., Inc. (“Defendant”).

6             After informal discovery, the exchange of documents and data, and an arm’s-length mediation  
7 session with mediator Hon. Carl West (ret.), Plaintiff and Defendant (collectively referred to herein as  
8 the “Parties”) reached a proposed class action settlement with a gross settlement amount (“GSA”) of  
9 **\$1,178,602.15** in compromise of disputed claims asserted on behalf of the below-defined Class  
10 consisting of **1,390** Class Members who worked a total of **134,970** Workweeks and below-defined  
11 PAGA Group of **928** aggrieved employees who worked **68,511** Pay Periods<sup>1</sup> Plaintiff believes this  
12 settlement is a fair, adequate, and reasonable compromise of disputed claims for alleged wage and hour  
13 violations and penalties asserted in this case.

14             Plaintiff now submits this Motion for Final Approval of Class Action Settlement, along with the  
15 Settlement (attached to the Declaration of H. Scott Leviant [“Leviant Decl.”], Exhibit 1 thereto). For the  
16 Court’s convenience, below, in Part III, is a summary of the key provisions of the Settlement.

17     **II.     THE NOTICE PROCESS IS UNDERWAY WITHOUT ISSUE**

18             Plaintiff and Defendant have thus far fulfilled the class notice procedures set forth in the  
19 Settlement. The Settlement Administrator, Phoenix Settlement Administrators (“Phoenix”), sent  
20 individual Notices to 1,392 Class Members on July 26, 2024. (Declaration of Kevin Lee, ¶ 5.) Eleven  
21 Notices were returned, and after an unsuccessful attempt to find new addresses through skip tracing, zero  
22 updated addresses were obtained (*Id.*, at ¶ 6.). Eleven Notices remain undeliverable. (*Id.*, at ¶ 7.) Thus  
23 far, there has been two requests for exclusion and **no** objections or workweek disputes received. (*Id.*, at  
24 \_\_\_\_\_

25             <sup>1</sup> At the time of preliminary approval, the estimated class size was 995 individuals who worked  
26 approximately 81,000 Workweeks, and the estimated PAGA group size was 553 individuals who  
27 worked roughly 13,805 Pay Periods. However, after all of the records were carefully examined, it was  
28 determined that the true class size count increased to 1,390 Class Members (after 2 individuals requested  
exclusion from the class) who worked 134,970 Workweeks, and the true PAGA group size increased to  
928 individuals who worked 68,511 Pay Periods. Defendant elected to extend the class period to June  
28, 2024, and increase the GSA from \$1,000,000.00 to \$1,178,602.15. (Leviant Decl., ¶ 11(c), ¶11(h).)

¶¶ 8-10.)

### III. THE MAJOR TERMS OF SETTLEMENT

The provisions of the proposed Settlement include the following:

- Defendant agrees not to oppose certification for purposes of Settlement. (Settlement, ¶ 12.1);
- Class: All current and former non-exempt employees of T.E.R.I. who worked in the State of California at any time during the Class Period (the “Class Period” is the period from November 16, 2017 to June 28, 2024). (Settlement, ¶¶ 1.5, 1.12; Declaration of Phoenix Settlement Administrators, Kevin Lee [“Lee Decl.”], Exh. B, ¶ 2);
- Settlement Amount: Defendant will pay a maximum of **\$1,000,000.00**, referred to as the Gross Settlement Amount (or GSA herein), subject to the escalator clause. (Settlement, ¶¶ 1.22, 8). The total Workweeks during the Class Period exceeded the Escalator Clause estimate by 53,970, and Defendant elected to increase the GSA to **\$1,178,602.15**, resulting in an estimated average *net* benefit per Class Member of approximately **\$478.59**. (Lee Decl., Exh. B, ¶¶ 12, 14; Leviant Decl., ¶ 17);
- Funding of Gross Settlement Amount: Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant’s share of payroll taxes by transmitting the funds to the Administrator no later than 30 days after the Effective Date. (Settlement, ¶ 4.3);
- Class Size: **1,390** individuals who worked **134,970** workweeks. (Settlement, ¶ 4.1; Lee Decl., Exh. B, ¶¶ 11, 12)<sup>2</sup>;
- PAGA Group Size: **928** individuals who worked **68,511** PAGA Pay Periods. (Settlement, ¶

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<sup>2</sup> At the time of preliminary approval, the estimated class size was 995 individuals who worked approximately 81,000 Workweeks. However, after all of the records were carefully examined, it was determined that the true class size count increased to 1,390 Class Members (after 2 individuals requested exclusion from the class) who worked 134,970 Workweeks.

4.1; Lee Decl., Exh. B, ¶ 15)<sup>3</sup>;

- PAGA Period: November 16, 2020 to June 28, 2024. (Settlement, ¶ 1.31; Lee Decl., Exh. B, ¶ 2);
- Escalator Clause: If the number of workweeks is more than 10% higher than the estimated 81,000 workweeks, then Defendant shall, in its sole discretion, have the option to either: (1) de-escalate the Settlement so that the Class Period ends on the date that the workweek count total an amount 10% higher than 81,000; or (2) permit the GSA to be increased proportionally by the workweeks worked in excess of 89,100, multiplied by the workweek value (Net Settlement Amount divided by the total number of Workweeks worked by all Participating Class Members during the Class Period). (Settlement, ¶ 8). The number of work weeks exceeded the escalator clause by 53,970 Workweeks, and Defendant elected to increase the Gross Settlement Amount to \$1,178,602.15. (Lee Decl., Exh. B, ¶ 12);
- Kullar/Munoz Analysis: Plaintiff addresses the claims analysis herein, at Part VI.B.3, and in the Declaration of Leviant, at Paragraph 18;
- No Reversion: The Settlement is a *non-reversionary* settlement. (Settlement, ¶ 3.1);
- Certification: Plaintiff addresses certification requisites herein, at Part VI.A;
- No Claim Form: No claim form is required. (Settlement, ¶ 3.1);
- Class Release: The Settlement will release wage-and-hour claims for Participating Class Members (those Class Members who do not opt out of the Settlement) all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint. (Settlement, ¶ 5.2);
- PAGA Release: Plaintiff, Aggrieved Employees and the LWDA will release all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, regardless of whether they opt out of the class portion of the Settlement. (Settlement, ¶ 5.3);

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<sup>3</sup> At the time of preliminary approval, the estimated PAGA group size was 553 individuals who worked roughly 13,805 Pay Periods. However, after all of the records were carefully examined, it was determined that the true PAGA group size increased to 928 individuals who worked 68,511 Pay Periods.

- Net Settlement Amount Available to the Class: After deducting Class Counsel’s attorneys’ fees and costs, service payment to Plaintiff, administration costs, and the PAGA penalty, the remainder will be available for distribution to Class Members who do not opt out, with each Class Member receiving a share based on the number of workweeks each Class Member worked for Defendant within the Class Period. (Settlement, ¶ 1.28.) The Net Settlement Amount is estimated to be at least **\$665,234.77**, resulting in an average *net* payment per Class Member of at least **\$478.59**, before any tax withholdings.<sup>4</sup> (Lee Decl., Exh. B, ¶¶ 13, 14);
- Tax Allocation: The amounts distributed to Class Members will be characterized as 30% alleged unpaid wages, 70% to interest and penalties, and PAGA Settlement Payments will be allocated as 100% penalties. (Settlement, ¶¶ 3.2.4.1, 3.2.5.2);
- Employer’s Portion of Payroll Taxes Paid Separately: Defendant’s portion of payroll taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that constitute wages will be paid separate and apart from the GSA. (Settlement, ¶ 3.1);
- Settlement Administrator: The notice portion of the Settlement will be administered by a third-party Administrator, Phoenix Settlement Administrators, with the costs of administration at a flat rate of up to **\$13,000.00**. Phoenix’s estimate for settlement administration services in the amount of \$13,000.00 was selected as the lowest bid from a competitive bidding process, and is below the Parties’ estimated cost of \$20,000.00. (Settlement, ¶ 3.2.3; Lee Decl., Exh. B, ¶ 17);
- Class Data for Administration: The Settlement Administrator will receive the Class Data within 14 calendar days of Preliminary Approval, use the National Change of Address (“NCOA”) database to update the Class Data, and then use skip tracing on returned Notices. (Settlement, ¶¶ 4.2; 1.10);
- Notice: The Notice will issue within 14 days of receipt of the Class List (Settlement, ¶

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<sup>4</sup> The Net Settlement Amount is higher than the estimate by Phoenix because the actual costs of Plaintiff’s counsel are well below the capped amount used for the estimate by Phoenix.

7.4.2). The Notice describes how to dispute workweeks, submit an objection in writing, in person, or through an attorney, or request exclusion. (Settlement, ¶¶ 7.5 – 7.7);

- Notice Language: Notice will issue in English with Spanish translation. (Settlement, ¶ 1.11; 7.4.2);
- Objections: Objections can be submitted in person, through an attorney, or in writing to the Settlement Administrator, with no pre-requisite to being heard. (Settlement, ¶¶ 7.7.1 – 7.7.3);
- Exclusion Requests: The procedure for exclusion requests, mailing a request to the Settlement Administrator, is the same as the procedure for submitting a written objection. (Settlement, ¶¶ 7.5.1 and 7.7.2);
- PAGA Allocation: From the GSA, **\$80,000.00** will be allocated to settle claims brought pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq.* (“PAGA”), and seventy-five percent (75%), or **\$60,000.00**, will be paid to the California Labor & Workforce Development Agency. (Settlement, ¶ 1.33; 3.2.5);
- Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is attached hereto as Exhibit 3;
- Enhancement/Service Award to Plaintiff: Defendant will not oppose the application for Class Representative Service Payment of up to **\$7,500.00** for Plaintiff, to be paid from the GSA. (Settlement, ¶ 3.2.1);
- Fees and Costs: Defendant will not oppose Class Counsel’s application for fees not to exceed 33.33% of the GSA (**\$333,333.33**) plus the amount triggered by the Escalator Clause (**\$59,534.05**), totaling **\$392,867.38**, and actual costs, in an amount not to exceed **\$20,000.00**, to be paid out of the GSA. (Settlement, ¶¶ 3.2.2, 8);
- Check Void Period: Settlement checks will be valid for 180 days. (Settlement, ¶ 4.4.1);
- Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed to the State Controller’s Office, Unclaimed Property Division in the name of the Class Member. (Settlement, ¶ 4.4.3);

- Judgment Notice: Judgment will be posted on the Settlement Administrator’s website after entry. (Settlement, ¶ 7.8.1);
- Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement with Class Members. (Settlement ¶ 12.2).

(Leviant Decl., ¶¶ 11-12 and Exhibit 1 thereto.)

#### IV. FACTUAL AND PROCEDURAL BACKGROUND

##### A. Plaintiff’s Claims

Plaintiff worked as a House Manager for Defendant, which provides various care services to individuals with autism and other developmental disabilities, including education, training, and residential programs. (Leviant Decl., ¶ 4.) On November 16, 2021, Plaintiff brought a putative class action against Defendant, asserting claims for (1) Failure to Pay Minimum and Regular Rate Wages (Labor Code §§ 204, 1194, 1194.2 and 1197); (2) Failure to Pay Overtime Compensation (Labor Code §§ 1194 and 1198); (3) Failure to Provide Meal Periods (Labor Code §§ 226.7 and 512); (4) Failure to Authorize and Permit Rest Breaks (Labor Code § 226.7); (5) Failure to Indemnify Necessary Business Expenses (Labor Code § 2802); (6) Failure to Timely Pay Final Wages at Termination (Labor Code §§ 201-203); (7) Failure to Provide Accurate Itemized Wage Statements (Labor Code § 226); and (8) California Business & Professions Code §§ 17200, *et. seq.* (unfair business competition). (*Id.*)

Plaintiff sent a letter to the Labor and Workforce Development Agency (“LWDA”), pursuant to California Labor Code § 2699.3, providing notice of her intent to seek civil penalties under the Private Attorneys General Act, California Labor Code § 2698, *et seq.* (“PAGA Letter”). (*Id.* at ¶ 5.) The LWDA did not indicate that it intended to investigate the alleged violations referenced in the letter, and the 65-day time period permitted for the LWDA to provide such a notification expired. (*Id.*) On January 21, 2022, Plaintiff filed a First Amended Complaint adding a cause of action for Private Attorneys General Act (“PAGA”) penalties under Labor Code § 2698, *et. seq.*, for the violations alleged in the complaint. (*Id.*)

##### B. Pre-Mediation Data Production and Analysis

The Parties conducted informal discovery and investigation of the facts and law. (*Id.* at ¶ 6.) Such investigation included, *inter alia*, the exchange of extensive data and discoverable information in

1 preparation for the mediation sessions, *including 100% of the employee time and payroll data in excel*  
2 *sheets.* (*Id.*) The Parties have analyzed payroll and other data pertaining to Plaintiff and the Class during  
3 the relevant Settlement Period, including but not limited to the numbers of former and current members  
4 of each purported subclass within the Class, average workweeks, and average rate of hourly pay. (*Id.*) In  
5 addition, Defendant also provided documents reflecting its wage and hour policies and practices during  
6 the Settlement Period and information regarding the total number of current and former employees in the  
7 Class. (*Id.*)

8 After reviewing documents regarding Defendant's wage and hour policies, as well as practices  
9 and other information obtained during the exchange of discovery, Class Counsel were able to evaluate  
10 the probability of class certification, success on the merits, and the reasonably obtainable maximum  
11 monetary exposure for all claims. (*Id.* at ¶ 7.) Class Counsel reviewed these records and prepared a  
12 damage analysis prior to mediation. (*Id.*) Class Counsel also investigated the applicable law regarding  
13 the claims and defenses asserted in the litigation. (*Id.*)

#### 14 C. Settlement

15 On September 21, 2022, the Parties participated in a mediation presided over by mediator Hon.  
16 Carl J. West, Ret., which led to the Agreement. (*Id.* at ¶ 8.) The Parties discussed, at length, the burdens  
17 and risks of continuing with the litigation as well as the merits of claims and defenses. (*Id.*) Class  
18 Counsel carefully considered the special risks associated with the limitations placed on the use of grant  
19 funds by this non-profit entity. (*Id.*) The Parties agreed to settle the action, and after the mediation,  
20 signed a long form settlement agreement (the "Agreement") (*Id.*)

21 Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish liability for  
22 the claims asserted in the action, both generally and in response to Defendant's defenses thereto. (*Id.* at ¶  
23 9.) Plaintiff and Class Counsel have also taken into account Defendant's agreement to enter into a  
24 Settlement that confers substantial relief upon the Class. (*Id.*)

25 Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth  
26 in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the Class.  
27 (*Id.* at ¶ 10.) Solely for the purpose of settling this case, the parties agree that the requirements for  
28 establishing class action certification with respect to this class have been met and are met. (*Id.*) If this

Settlement is not approved by the Court for any reason, Defendant reserves its right to contest class certification. (*Id.*) This Settlement, if approved, will result in the termination of the litigation through the entry of the Judgment and the release of all Released Claims for all Class Members, including all within the class definition who have not elected to exclude themselves from the Class. (*Id.*)

## V. CLASS DEFINITION

The Class is defined as follows:

All current and former non-exempt employees of T.E.R.I. who worked in the State of California at any time during the Class Period (the “Class Period” is the period from November 16, 2017 to June 28, 2024). (Settlement, ¶¶ 1.5, 1.12; Declaration of Phoenix Settlement Administrators, Kevin Lee [“Lee Decl.”], Exh. B, ¶ 2). “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Class portion of the Settlement. (Settlement, ¶ 1.35.)

(Leviant Decl., ¶ 11(b) and Exhibit 1.)

## VI. DISCUSSION

### A. Consistent with the Court’s Findings at the Time of Preliminary Approval, the Court Should Certify the Class for Settlement Purposes

Under Code of Civil Procedure § 382, class certification is warranted so long as there is a numerous and ascertainable class with a well-defined community of interest and that a “class action proceeding is superior to other means for a fair and efficient adjudication. For purposes of this Settlement *only*, Defendant stipulates to conditional certification. (Settlement ¶ 12.1.)

“The certification question is ‘essentially a procedural one that does not ask whether an action is legally or factually meritorious.’” *Id.*, at 326, quoting *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2000). The certification question asks whether the theory of recovery advanced by the plaintiff is likely to prove amenable to class treatment. *See, e.g., Jaimez v. Daiohs USA, Inc.*, 181 Cal. App. 4th 1286, 1298 (2010). As the court noted in *Dunk*, although certification requirements are intended “to protect the interests of the non-representative class members,” that concern is “protected by the trial court’s fairness review of the settlement.” *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996). In view of these standards, *as discussed more thoroughly as part of the preliminary approval motion*, the Settlement Class should be certified for settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

### B. The Court Should Approve the Settlement Because It Is a Fair, Adequate, and

## **Reasonable Compromise of Disputed Wage Claims**

California courts favor settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal. App. 3d 231, 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). This approval process consists of preliminary settlement approval, notice being given to class members, and a final fairness and approval hearing being held at which class members may be heard with respect to the settlement. *Id.* For the reasons discussed below, this Court should finally approve the Settlement and enter Judgment.

### **1. Class Action Settlements Are Subject to Review and Approval.**

Any settlement of class litigation must be reviewed and approved by the presiding court. Rules of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review and (2) a subsequent (final) review after notice has been distributed to the class members. The Preliminary Approval Hearing and Final Approval Hearing coincide with these two steps. The present motion seeks *final approval* and the entry of a Judgment.

To evaluate a settlement, a court must receive “*basic*” information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 133 (2008). But the record need *not* contain an explicit statement of the maximum theoretical recovery. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409 (2010).

### **2. The Parties Reached the Settlement Through Arms’ Length Negotiations Between Experienced Counsel with the Assistance of a Highly Qualified Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.**

A settlement is presumptively fair where it is reached through arms’ length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is experienced in similar litigation, and the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802; *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In exercising these powers, the overriding concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, at 1801,

1 quoting *Officers for Justice v. Civil Serv. Comm’n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

2 Relevant factors in making this determination, include, but are not limited to:

3 [T]he complexity and likely duration of further litigation, the risk of maintaining class  
4 action status through trial, the amount offered in settlement, the extent of discovery  
5 completed and the state of the proceedings, the experience and views of counsel, the  
6 presence of a governmental participant, and the reaction of the class members to the  
7 proposed settlement.

8 *Id.* These factors require balancing, are non-exhaustive, and, as such, trial courts should tailor the  
9 factors considered to each case and give due regard to “what is otherwise a private consensual agreement  
10 between the parties.” *Id.*

11 Here, the Settlement resulted from thorough, arms’ length negotiations between experienced  
12 counsel with the assistance of highly regarded mediator, the Hon. Carl J. West, Ret. (Leviant Decl., ¶ 8.)  
13 With respect to the claims at issue in this case, Plaintiff obtained data from Defendant and then carefully  
14 reviewed that information, *including 100% of the employee time and payroll data in excel sheets.* (*Id.* at  
15 ¶ 6). Counsel for Plaintiff also examined relevant policies and interviewed witnesses in detail about their  
16 work experiences and Defendant’s practices. (*Id.* at ¶ 6).

17 Based on that review, Plaintiff estimated potential exposure and then estimated risk factors to  
18 adjust the reasonable expected outcome. (*Id.*) The investigation that Plaintiff’s counsel conducted was  
19 sufficient to provide them with enough information to intelligently evaluate the estimated exposure for  
20 purposes of negotiating the Settlement in view of the risks discussed below and was sufficient to allow  
21 this Court to do the same. (*Id.*) *See, e.g., Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245  
22 (2001).

23 **3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise**  
24 **of Class Members’ Claims Based on Defendant’s Estimated Liability**  
25 **Exposure Given the Risks Continued Litigation Would Entail.**

26 A settlement is not judged against what might have been recovered had a plaintiff prevailed at  
27 trial and does not have to provide 100% of damages sought to be fair and reasonable. “In the context of a  
28 settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the  
complaint, but rather whether the settlement is reasonable under all of the circumstances.” *Wershba*, 91  
Cal. App. 4th at 250. Accordingly, because settlements involve compromise, even one that provides for

1 substantially narrower relief than would likely be obtained if the suit were successfully litigated can be  
2 reasonable given that “the public interest may indeed be served by a voluntary settlement in which each  
3 side gives ground in the interest of avoiding litigation.” *Id.*

4 With respect to the claims asserted on behalf of the Class in this case, there are serious risks that  
5 support this compromise amount. These risks include, but are not limited to: (i) the risk that Plaintiff  
6 would be unable to establish liability for unpaid wages, *see Duran v. US Bank Nat’l Ass’n*, 59 Cal. 4th 1,  
7 39 & n. 33 (2014) (“*Duran*”); (ii) the risk that Defendant’s meal and rest period policies might not  
8 ultimately support class certification or a class-wide liability finding; (iii) the risk that uncertainties about  
9 the ultimate legality of Defendant’s policies and practices could preclude class-wide awards of statutory  
10 penalties; (iv) the risk that individual differences between Class Members could be construed as  
11 pertaining to liability and not solely to damages; (v) the risk that any civil penalties award under PAGA  
12 could be reduced by the Court in its discretion; (vi) the risk that lengthy trial or appellate litigation could  
13 ensue; and, (vi) the risk that violation rate estimates could prove lower than expected. (Leviant Decl., ¶  
14 16.) These risks are non-exhaustive.

15 In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and  
16 reasonable recovery for the Class Members. (Leviant Decl. ¶¶ 13-20.) The settlement amount is, of  
17 course, a compromise figure. (*Id.* at ¶ 17.) By necessity, it took into account risks related to liability,  
18 damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class Member will be given the  
19 opportunity to opt-out of the Settlement, allowing those who feel they have claims that are greater than  
20 the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the  
21 approximately **1,390** members of the Class, the estimated average *net* recovery for each Class Member is  
22 approximately **\$478.59**, with approximately \$1,727.21 as the highest share for an individual class  
23 member and approximately \$4.95 as the lowest share. (*Id.*) Given that Defendant could challenge  
24 certification and liability, this is a significant sum to have achieved in settlement. (*Id.*) Moreover, a  
25 Class Member who worked a greater number of weeks will receive a larger Settlement share than a Class  
26 Member who worked for a shorter time during the class period. (*Id.*)

27 The maximum calculated exposure, after removing the *most* implausible or extreme estimated  
28 recoveries, is **\$8,211,900.88**, *including* PAGA penalties (which, nevertheless, includes a highly

optimistic view of what could be proven in this matter). (Leviant Decl., ¶ 18.) However, after analyzing the claims in this matter, Plaintiff has concluded that the Gross Settlement Amount of **\$1,178,602.15** is about 81.26% of the **\$1,450,469.86** estimate of *risk-adjusted* recovery (excluding interest) at this stage in the litigation. (*Id.*) This assessment is based on a carefully constructed model of the current fair value of the case, using estimated risks, average wage rates, numbers of employees, and the amount of time covered by the class period. (*Id.*)

- A reasonably estimated exposure for unpaid wages due to regular rate issues was calculated, with the assistance of an expert, to be approximately **\$33,594.50**. However, with the risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **\$14,109.69**, assuming certification probability of 70% and merits success at 60%.
- A reasonably estimated exposure for unpaid wages due to off-the-clock work caused by Covid-19 procedures was calculated, with the assistance of an expert, to be approximately **\$274,809.33**. However, with the risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **\$41,221.40**, assuming certification probability of 30% and merits success at 50%.
- A reasonably estimated exposure for rest break violations over the class period was calculated at **\$1,411,804.80**, but with chances of certification and proof of liability (20% and 40% respectively) for a risk-adjusted exposure of **\$112,944.38**. Plaintiff assumes that 100% of the Class missed one rest break per work week due to the demands of work assignments or a requirement to remain on premises, an aggressive assumption.
- A reasonably calculated exposure for meal break violations over the class period was calculated at **\$1,395,867.75**, with chances of certification and liability risks (30% and 30% respectively) resulting in a risk-adjusted exposure of **\$125,628.10**. The violations were based on time records. The assumption for settlement valuation is that all facial violations generate liability, but it is likely that many individuals may have taken non-compliant meal periods by choice, and not as a job requirement, so even the use of facial violations does not account for employee choice. In addition, meal period waivers likely eliminate many of the facial violations.
- Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties were estimated to be approximately **\$311,346.00** and **\$508,162.41**, respectively, on maximum exposures of **\$741,300.00** and **\$1,209,910.50**, respectively (with certification and merits success chances of 70% and 60% respectively, based on unpaid wage claims).
- Performing risk-adjusted valuations for all claims yields a total value in the range of **\$1,143,069.86**, excluding PAGA.<sup>5</sup>
- PAGA penalties were calculated as having a maximum realistic exposure of **\$3,074,000.00**,

<sup>5</sup> In a sense, it is nonsensical to assign specific percentages to future events, but it does provide a specific method for attempting to reduce the concept of "very high risk" or "high risk" to a quantifiable amount. Certification of a claim is typically a binary event. One does not obtain a 20% certification; a claim is either certified or it is not. But the current expected value is best quantified by applying a risk reduction, based on the total experience of counsel.

1 but a risk adjusted value of **\$307,400.00**, after factoring in risks of reduction in penalties  
2 pursuant to Court discretion and the high risk of the inability to prove violations for all  
aggrieved employees.

3 (*See*, Leviant Decl., ¶ 18.)

4 This result here is fully supportable as reasonable. First, it is important to recognize the  
5 wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. (Leviant Decl., ¶  
6 19.) Second, rest break and meal period claims have been challenging to certify for many years, even  
7 after *Brinker*. (Leviant Decl., ¶ 19.) The Judicial Council’s Class Certification in California: SECOND  
8 INTERIM REPORT FROM THE STUDY OF CALIFORNIA CLASS ACTION LITIGATION -  
9 FEBRUARY 2010 (“Second Interim Report”), at page 5, states that “less than a quarter of disposed  
10 cases in the study sample were certified, either through a litigated motion for certification or as part of a  
11 classwide settlement agreement.” *See*, Second Interim Report, at 5 (emphasis added).<sup>6</sup> That “*or*” is  
12 significant. The certification rates identified in the study of less than 25% includes *both* contested  
13 certifications and settlement certifications, which are the majority of certifications. In other words, one  
14 must assume in any wage and hour class action prior to certification that a contested certification motion  
15 will have a success rate of well under 25%, and probably closer to 10% as a starting point for risk  
16 evaluation. The facts of each case have significant bearing on these percentages. But it cannot be  
17 disputed that certification is an exceptionally difficult procedural hurdle to successfully overcome. Thus,  
18 it is not unreasonable to start from the proposition that a pre-certification settlement that is 10% to 15%  
19 of the maximum plausible exposure is a valid starting point for valuation. If roughly 10% of class  
20 actions are certified on a contested basis, then, on average, 90% of the time a class will not be certified  
21 and the result for the class is *zero* dollars.

22 Here, the estimated certification probabilities are *above* the average rate at which cases were  
23 certified in California over the study years, based upon data available through the California Courts  
24 websites. (Leviant Decl., ¶ 19.) And the recovery falls within the expected outcome under the likelihood  
25 of success metric. (*Id.*) It would also be appropriate to evaluate the result by examining only the  
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27 <sup>6</sup> The report is available at <https://www.courts.ca.gov/documents/classaction-certification.pdf> (last  
28 viewed March 12, 2024).

premium wages at issue (approximately \$3,116,076.38, *with no risk reduction*), excluding penalties and interest; the settlement is about one third of the premium wages (unpaid wages, meal period premiums, and rest break premiums) at maximum realistic exposure value.<sup>7</sup> This Settlement achieves the goals of the litigation.

#### 4. The Proposed Method for Allocating Settlement Funds Is Fair.

The proposed method of allocating the Settlement Fund to Class Members also is fair and reasonable. As noted, the parties agreed to allocate the Settlement Fund between all Class Members based on time worked by the Class Member during the Class Period, in relation to the total amount of time worked by all participating Class Members collectively during the class period. This proposed method is fair and reasonable because each Class Member's actual potential damages vary based on the number of workweeks he or she worked (e.g., Lab. Code § 226.7 provides for an extra hour of pay at the employee's regular rate of pay for each violation, resulting in a higher potential damage when a higher number of incidents occur). A Class Member who worked a greater number of weeks for Defendant will receive a larger payment under the Settlement than a Class Member who worked for a shorter amount of time during the relevant period. (Leviant Decl., ¶¶ 13, 17.)

#### 5. The Proposed Enhancement Award to Plaintiff Warrants Approval.

The proposed enhancement of \$7,500 to Plaintiff is intended to recognize substantial initiative and significant efforts on behalf of the Class. Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation, often in much higher amounts than that sought here. Factors considered when awarding an incentive include the actions the plaintiff has taken to protect the class, the degree to which the class has benefitted, the amount of time and effort the plaintiff expended in the litigation, the risk to the class representative in

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<sup>7</sup> The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in its discretion "may award a lesser amount than the maximum civil penalty amount specified by this part...")), and, second, courts evaluate the strength of a proposed settlement without taking potential penalties or interest into consideration. *See Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 955 (9th Cir. 2000); *see also Miller v. CEVA Logistics U.S.A., Inc.*, 2015 WL 729638, at \*7 (E.D. Cal. Feb. 19, 2015) (court utilized calculation of a defendant's exposure exclusive of interest and penalties to determine whether the settlement fell within the range of possible approval).

commencing suit (financial and otherwise), the notoriety and personal difficulties encountered, the duration of the litigation, and the personal benefit (or lack thereof) enjoyed by the plaintiff as a result of the litigation. *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 804 (2009). Here, Plaintiff contributed time to the prosecution of this matter, including assistance prior to the mediation with information and substantial time conferring with counsel over the course of this litigation and before it was filed. (Maisonneuve Decl., ¶¶ 5-21; Leviant Decl., ¶ 33.) The enhancement also recognizes risks Plaintiff took to be personally liable for costs regardless of the success of the litigation, as well as the personal risk of facing intrusive discovery and potential disclosure to future employers that Plaintiff sued an employer, making future employment less certain. Plaintiff's Declaration supports the requested enhancement.

**6. The Proposed Award of Attorneys' Fees and Costs Is Also Fair, Adequate, and Reasonable and Merits Final Approval.**

*a) Plaintiff's Counsel Should be Awarded Fees Based on a Percentage of the Fund Recovered, Consistent with the Common Fund Method*

The request for fees as a percentage of a settlement is supported by the "common fund theory," where "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." *Serrano v. Priest*, 20 Cal. 3d 25, 35 (1977). The common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995). The lodestar may be cross-checked against the percentage. *See In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-58 (2009).

"Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 47 n. 11 (2008). This is consistent with Plaintiff's counsel's experience in these cases.

Here, Plaintiff's Counsel requests attorneys' fees of **\$392,867.38** (33 1/3% of the GSA, including the amount triggered by the escalator clause), and costs of **\$14,449.72**, which includes payment for mediation, filing fees, and other expenses, including filing costs. (Leviant Decl., ¶ 32, Exh. 2.) Given the efforts and risks, and the results, these amounts warrant *final approval*.

b) *A Lodestar Cross Check Confirms that Class Counsel's Requested Attorneys' Fees Are Reasonable*

Plaintiff's fee application is also reasonable based on lodestar. Under the lodestar method, the court considers a compilation of the time spent and a reasonable hourly compensation of each attorney to evaluate the reasonableness of the fee. *Ramos v. Countrywide Home Loans, Inc.*, 82 Cal. App. 4th 615, 622 (2000). The moving party meets its burden by submitting "declarations evidencing the reasonable hourly rate for their services and establishing the number of hours spent working on the case" as "California case law permits fee awards in the absence of detailed time sheets." *Wershba*, 91 Cal. App. 4th at 254-55; *Dunk*, 48 Cal. App. 4th at 1810; *Nightengale v. Hyundai Motors America*, 31 Cal. App. 4th 99, 103 (1994). The hours spent and the reasonable hourly compensation are used to arrive at a "lodestar" figure which may then be augmented or diminished taking into account various "multiplier" factors. *See Ramos*, 82 Cal. App. 4th at 622 (citing *Serrano*, 20 Cal. 3d at 48-49).

Here, Class Counsel's *total* lodestar is **\$202,480.00**, billed at the attorneys' hourly rates (including about 10 hours of past and future time not billed by Mr. Leviant). (Leviant Decl., ¶ 32.) The billed lodestar to date is **\$192,730.00**, as reflected in Paragraph 32 of the Leviant Declaration. (Leviant Decl., ¶ 32.) The request for **\$392,867.38** in attorneys' fees, which is **1.94** times the estimated *total* lodestar, is reasonable under the lodestar method.

(1) Class Counsel's Hours Are Reasonable

In determining whether the number of hours was reasonable, the court must determine that "the time spent was reasonably necessary and that counsel made 'a good faith effort to exclude from the fee request hours that are excessive, redundant, or otherwise unnecessary.'" *Jordan v. Multnomah County*, 815 F.2d 1258, 1263 n.8 (9th Cir. 1987). The court should defer to the lawyer's judgment as to how much time he was required to spend on the case. *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008) ("[l]awyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee."). Here, Class Counsel expended a prudent amount of time to achieve the excellent result. (Leviant Decl., ¶ 32.)

(2) Class Counsel's Hourly Rates Are Reasonable

1 The reasonable hourly rate is that prevailing in the community for similar work. *PLCM Group,*  
2 *Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). “[I]n assessing a reasonable hourly rate, the trial court is  
3 allowed to consider the attorneys’ skill as reflected in the quality of work, as well as the attorneys’  
4 reputation and status.” *MBNA American Bank, N.A. v. Gorman*, 147 Cal. App. 4th 1, 3 (2006). The trial  
5 court may also “find hourly rates reasonable based on evidence of other courts approving similar rates.”  
6 *Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160, 1172 (C.D. Cal. 2010).

7 Class Counsel are experienced litigators who specialize in employment law, with a substantial  
8 wage and hour practice. (Leviant Decl., ¶¶ 21-27.) A number of courts, including this Court, have  
9 approved Class Counsel’s hourly rates. (*Id.* at ¶ 22.) Given the skill and experience of Class Counsel,  
10 and the excellent result achieved, Class Counsel’s hourly rates are reasonable.

11 *c) Class Counsel’s Costs Are Reasonable*

12 The Settlement Agreement provides for reimbursement of costs not to exceed \$20,000.00.  
13 (Settlement, ¶ 3.2.2.) Moon Law Group, PC seeks costs in the amount of \$14,449.72. (Leviant Decl., ¶  
14 32, Exh. 2.) These costs were reasonably incurred in prosecuting the action on behalf of the Class  
15 Members and should be approved by the Court. Accordingly, Class Counsel respectfully requests the  
16 Court approve total costs in the amount of \$14,449.72. (*Ibid.*)

17 **7. The Proposed Payment to the Administrator Is Fair and Reasonable**

18 Phoenix Settlement Administrators, which has been selected due to its competitive bid, estimates  
19 that administration can be performed for a flat rate of up to **\$13,000.00**. In counsel’s experience, based  
20 on similar wage-and-hour actions, a cost of **\$13,000.00** is a fair and reasonable amount for administration  
21 fees and should be finally approved, and it is well below the Parties’ estimated cost of \$20,000 to  
22 administer the Settlement. (Leviant Decl., ¶ 34; Lee Decl., ¶ 12.) Phoenix has also confirmed its  
23 capabilities and security protocols in the accompanying declaration. In the declaration filed herewith,  
24 Phoenix confirms that the administration process is underway, confirms it is performing as required, and  
25 confirms its bid.

26 **8. The PAGA Allocation is Reasonable**

27 The ultimate decision as to the amount of penalties is always up to the discretion of the Court.  
28 Labor Code § 2699(e)(2) states: “In any action by an aggrieved employee seeking recovery of a civil

1 penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil  
2 penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do  
3 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”

4 Prior to the issuance of *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources  
5 of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in  
6 federal court decisions. In their view, a PAGA allocation, even if a small portion of the total settlement,  
7 could be reasonable if the settlement of the wage and hour claims is robust and serves the deterrent  
8 purpose of PAGA. *O’Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016)  
9 (“By providing fair compensation to the class members as employees and substantial monetary relief, a  
10 settlement not only vindicates the rights of class members as employees, but may have a deterrent effect  
11 upon the defendant employer and other employers, an objective of PAGA.”). *Moniz* provided explicit  
12 confirmation that this was an appropriate yardstick by which to measure reasonableness of a PAGA  
13 settlement. *Moniz*, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with federal courts that have considered  
14 how to evaluate a PAGA settlement, concluded that the class action factors are appropriately considered,  
15 along with a consideration of whether the settlement furthers “PAGA’s purposes to remediate present  
16 labor law violations, deter future ones, and to maximize enforcement of state labor laws.”

17 As to the first set of elements (the class-type analysis), it is embodied in Plaintiff’s discussion of  
18 the adequacy of the settlement generally. Here, the expense, complexity and likely duration of future  
19 litigation was to some extent an unknown. However, what is certain is that to adequately establish the  
20 violations that would support a substantial penalty, tremendous time and expense would be invested.

21 The second element (the PAGA purposes element) is also satisfied here. As held by *Moniz*,  
22 PAGA’s purposes include (1) remediation of present labor law violations, (2) deterrence of future  
23 violations, and (3) maximization of enforcement of state labor laws. Here the allocation of a major  
24 portion of settlement funds to class members still advances the goal of labor law violation remediation.  
25 The allocation of a major portion of settlement funds to class members also deters future violations. This  
26 is a **\$1,178,602.15** settlement, not a trivial sum. Deterrence is fulfilled. Finally, allocation of a major  
27 portion of settlement funds to class members still advances the goal of enforcement of state labor law.  
28 This settlement is, by definition, a response to alleged violations of labor laws, balanced against risks.

1 In addition, there is no evidence that a court or a commissioner had informed Defendant that its  
2 conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008); *Willis v.*  
3 *Xerox Bus. Servs., LLC*, 2013 WL 6053831, \*7-8 (E.D. Cal. 2013). And in *Cotter*, the court found a  
4 significant reduction of the PAGA claim would be appropriate because “[t]his does not appear to be a  
5 case where a company has deliberately sought to evade the law.” *Cotter*, 176 F. Supp. 3d at 941.

6 Finally, the PAGA allocation is fair. The LWDA is receiving **\$60,000.00**. The Class is  
7 receiving, net, an estimated **\$670,785.05** for the releases of eight other claims (excluding the **\$20,000.00**  
8 as the aggrieved employees’ share of the PAGA Allocation). While the proportion is tipped in favor of  
9 the employees, the allocation is not unfair because it satisfies California’s wage and hour policies.

## 10 **VII. CONCLUSION**

11 For all the foregoing reasons, because the Class meets the requirements for certification, because  
12 the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and because the  
13 proposed notice procedure and forms comport with Rule 3.766 and due process, this Court should grant  
14 this Motion for Final Approval, adopt the [Proposed] Order and Judgment Granting Final Approval of  
15 Class Action Settlement submitted herewith.

16 Respectfully submitted,

17 Dated: October 29, 2024

**MOON LAW GROUP, PC**

18  
19 By: \_\_\_\_\_  
20 Kane Moon  
21 H. Scott Leviant  
22 Sandy Pham

23 Attorneys for Plaintiff

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**PROOF OF SERVICE**

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

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 725 S. Figueroa St., 31st Floor, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

MESSNER REEVES LLP  
Kathleen Carter  
Jeffrey Gillette  
650 Town Center Drive, Suite 700  
Costa Mesa, California 92626  
Facsimile: (949) 438-2304  
Email: kcarter@messner.com  
Email: jgillette@messner.com

*Counsel for Defendant*

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

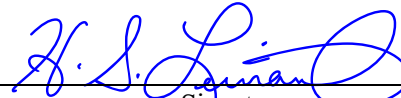
☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this **October 29, 2024**, at Los Angeles, California.

\_\_\_\_\_  
H. Scott Leviant  
Type or Print Name

\_\_\_\_\_  
  
Signature