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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

ASTRID OROZCO, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

DELPHON INDUSTRIES, LLC, a
Delaware Limited Liability Company; and
DOES 1 through 20, inclusive;

Defendants.

Case No.: 22CV006597
*[Assigned to Hon. Judge Evelio Grillo, Dept. 21,
for all purposes]*

**PLAINTIFF'S UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT;
DECLARATIONS IN SUPPORT
THEREOF; [PROPOSED] ORDER**

Hearing

Date: February 8, 2023

Time: 10:00 a.m.

Dept.: 21

Complaint filed: February 4, 2022

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on February 8, 2023, at 10:00 a.m., or as soon thereafter
3 as the matter may be heard by the Honorable Evelio Grillo in Department 21 of the Alameda
4 County Superior Court, located at 1221 Oak Street, Oakland, CA 94612, Plaintiff Astrid Orozco,
5 individually and on behalf of all others similarly situated, will and hereby does move the Court
6 for entry of an Order preliminarily approving the Parties' class action settlement, including:

- 7 1. Certifying the class for purposes of settlement only;
- 8 2. Preliminarily appointing Plaintiff as class representative for settlement purposes;
- 9 3. Appointing Plaintiff's counsel as class counsel for purposes of settlement only;
- 10 4. Preliminarily approving the class action settlement as fair, adequate, and reasonable,
11 based upon the terms set forth in the Settlement Agreement;
- 12 5. Directing distribution of the Class Notice, including notice of the opportunity to
13 exclude oneself from, or object to, the settlement;
- 14 6. Setting a date for a final fairness hearing to determine, following dissemination of the
15 Class Notice, whether to grant final approval of the settlement.

16 This motion is based upon this Memorandum of Points and Authorities in Support
17 thereof; the Declaration of Plaintiff's counsel (Brian Mankin and Peter Carlson); the Class
18 Action and PAGA Settlement Agreement and Release of Claims (the "Settlement Agreement");
19 the proposed Order granting Preliminary Approval of the settlement; all other records, pleadings,
20 and papers filed in this action; and upon such other evidence or argument as may be presented to
21 the Court at the hearing of this motion.

22
23 Dated: January 17, 2023

LAUBY, MANKIN & LAUBY LLP

24
25 BY:



26 Brian J. Mankin, Esq.
27 Attorneys for Plaintiff and the Proposed
28 Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Orozco seeks preliminary approval of a \$775,000 (“Gross Settlement Amount”
4 or “GSA”) wage-and-hour class action settlement on behalf of approximately 225 current and
5 former non-exempt employees employed by Defendant Delphon Industries, LLC (“Defendant”)
6 in California at any time from February 4, 2018, through the Preliminary Approval Date or
7 February 13, 2023, whichever is earlier (the “Class Period”).

8 Under the terms of the Settlement Agreement,¹ Defendant will not oppose Plaintiff’s
9 Counsel’s application for a reasonable award of attorney’s fees not to exceed \$258,333.33 (1/3 of
10 the Gross Settlement Amount), litigation expenses not to exceed \$20,000, Settlement
11 Administrator Costs of \$8,000.00, PAGA penalties of \$75,000 (with 75% to the LWDA and 25%
12 to the Aggrieved Employees on a pro rata basis), and a Service Payment of \$7,500 to Plaintiff
13 Astrid Orozco (“Class Representative”). (S.A. ¶ 49).

14 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
15 that \$406,166.67 will be available to pay the Class Members, as follows:

16

<i>Gross Settlement Amount</i>	\$ 775,000.00
Attorneys’ Fees (1/3)	\$ 258,333.33
Litigation Expenses (not to exceed)	\$ 20,000.00
Settlement Administrator Costs	\$ 8,000.00
PAGA Penalties	\$ 75,000.00
Class Representative Service Award	\$ 7,500.00
<i>Net Settlement Amount</i>	\$ 406,166.67

20

21 Assuming 225 Class Members, the average payment to each Class Member will be
22 approximately \$1,805.18 (\$406,166.67 / 225). However, the actual payment will be calculated
23 on a pro-rata basis according to the number of Weeks Worked by each Class Member during the
24 Class Period, with each Work Week having a value of approximately \$14.50 (\$406,166.67 /
25 28,000 estimated Work Weeks). In addition, approximately 205 Aggrieved Employees will
26 receive a share of the \$18,750 PAGA Penalties (25% of the total \$75,000 allocation), calculated
27

28

¹ The Class Action and PAGA Settlement Agreement and Release of Claims (the “Settlement Agreement” or
“S.A.”) is attached as Exhibit 1 to the Declaration of Brian Mankin (“Mankin Decl.”).

1 pro-rata based on Pay Periods Worked during the PAGA Period. (S.A. ¶ 49(h)).

2 Because the settlement is fair and reasonable and was negotiated at arm's length by
3 experienced counsel and an experienced mediator following a sufficient exchange of information
4 and documents prior to mediation, it should be preliminarily approved. Plaintiff respectfully
5 requests that the Court enter an order preliminarily approving the settlement, conditionally
6 certifying the Class under Code of Civil Procedure § 382 for settlement purposes, approving the
7 proposed Class Notice, appointing Plaintiff's counsel as class counsel, appointing Phoenix Class
8 Action Administrators as the Settlement Administrator, and scheduling a hearing for final
9 approval of the settlement.

10 **II. BACKGROUND**

11 **A. THE SETTLEMENT CLASS**

12 The Class is defined as follows:

13 All current and former non-exempt employees employed by
14 Defendant in California at any time during the Class Period (which
15 is February 4, 2018, through the Preliminary Approval Date or
February 13, 2023, whichever is earlier). (S.A. ¶ 38).²

16 **B. PROCEDURAL HISTORY**

17 Plaintiff submitted a letter to the Labor Workforce Development Agency (the "LWDA")
18 for civil penalties under the Private Attorney General Act of 2004 (the "PAGA"), and
19 simultaneously sent a letter to Defendant requesting the production of personnel and timekeeping
20 records in order to further evaluate her wage and hour claims. (Mankin Decl. ¶ 11).

21 On February 4, 2022, Plaintiff filed a complaint alleging class action causes of action
22 against Defendant for (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3)
23 failure to provide meal periods; (4) failure to provide rest breaks; (5) failure to timely pay final
24 wages; (6) failure to provide accurate itemized wage statements; and (7) unfair and unlawful
25 competition. On April 14, 2022, Plaintiff filed a first amended complaint adding PAGA claims
26 (the operative first amended complaint shall be referred to as the "Complaint"). (S.A. ¶ 41).

27
28

² "Defendant" means Delphon Industries, LLC. [S.A. ¶ 10]; "Class Period" means the period from February 4, 2018, through the Preliminary Approval Date or February 13, 2023, whichever is earlier [S.A. ¶ 6].

1 Defendant retained counsel and immediately began to defend the case. Then, after early
2 discussions among counsel, the Parties agreed to attend private mediation. (Mankin Decl. ¶ 13).

3 In preparation for the mediation, the Parties informally exchanged documents and
4 information that allowed both sides to calculate the potential damages and evaluate potential risk,
5 including policies and procedures pertaining to each claim alleged, and statistics relating to the
6 number of current and former employees, number of shifts, pay periods worked and other things.
7 Defendant also provided their written policies and practices and a robust sampling of payroll and
8 timekeeping records for Class Members. This information enabled both parties to take a deep
9 dive into the claims. Additionally, during this process, Plaintiff and her counsel analyzed,
10 researched, and investigated the potential issues, including matters related to the calculation of
11 damages, trial, and appellate issues and risks. (Mankin Decl. ¶ 14).

12 On November 15, 2022, Plaintiff and Defendant participated in mediation before David
13 Phillips, Esq., a well-respected wage-and-hour mediator. The matter resolved at mediation
14 pursuant to a mediator's proposal which was accepted by both Parties. (Mankin Decl. ¶ 15). The
15 Parties now seek the Court's preliminary approval of the Settlement.

16 **III. SUMMARY OF THE PROPOSED SETTLEMENT**

17 The following is a summary of the principal terms of the Settlement Agreement.

18 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

19 The \$775,000 Gross Settlement Amount is non-reversionary and will be paid out to Class
20 Members without the need to submit a claim form or take any affirmative action. It includes (1)
21 Plaintiff's attorneys' fees and costs, as approved by the Court; (2) a service award of \$7,500 to
22 Plaintiff, subject to approval by the Court; (3) settlement administrator expenses, not to exceed
23 \$8,000; (4) a \$75,000 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to
24 California Labor Code § 2699(i) and 25 percent to the Aggrieved Employees; and (5) the
25 aggregate of all Individual Settlement Amounts of the Participating Class Members. (S.A. ¶ 49
26 and subparts). Defendant will separately pay its share of employer payroll taxes and
27 withholdings due on the wage portions of the Individual Settlement Payments, which shall be
28 reported through the Settlement Administrator. (S.A. ¶ 49(a)).

1 **B. NOTICE PROCEDURES**

2 The proposed Class Notice will be provided to the Class Members showing the estimated
3 amount that each Class Member will receive, the number of Work Weeks credited as a Class
4 Member and the number of Pay Periods Worked as an Aggrieved Employee (Exhibit A to the
5 S.A.). Within 14 calendar days after entry by the Court of its Order of Preliminary Approval,
6 Defendant shall provide the Settlement Administrator with a list containing Class Member
7 names, addresses, phone numbers, Social Security Numbers, Weeks Worked during the Class
8 Period and Pay Periods Worked during the PAGA Period (the “Class Data”). (S.A. ¶¶ 5, 67).

9 Within 10 calendar days of receipt of the Class Data, the Settlement Administrator shall
10 calculate the numbers for each Class Member, populate the Class Notice, and send each Class
11 Member the Class Notice via first-class, United States mail. (S.A. ¶ 68).

12 In the event that any Class Notice mailed to a Class Member is returned as having been
13 undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace
14 search and seek an address correction for such Class Member(s), and a second Class Notice will
15 be sent to any new or different address obtained. (S.A. ¶ 69).

16 **C. EXCLUSION AND OBJECTION PROCEDURES**

17 Class Members who do not timely Opt-Out of the Settlement will be deemed to
18 participate in the Settlement and shall become a Participating Class Member without having to
19 submit a claim form or take any other action. To Opt-Out of the Settlement, a Class Member
20 must submit a written request to the Settlement Administrator no later than 60 days after being
21 mailed by the Settlement Administrator (“Notice Response Deadline”). (S.A. ¶¶ 19). Any Opt-
22 Out request that is not postmarked by the Notice Response Deadline will be invalid, unless a
23 Notice was remailed in which case the Class Member’s exclusion or objection must be returned
24 by the later of the original Notice Response Deadline or 15 calendar days after the remailing of
25 the notice. (S.A. ¶ 69).

26 The Class Notice shall inform Class Members of their right to object to the Settlement.
27 Any Participating Class Member who wishes to object to the Settlement may submit a written
28 objection to the Settlement Administrator no later than the Notice Response Deadline. (S.A. ¶

72(c)).

D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES

The amount of each Settlement Class Member's Individual Class Payment is tied to the number of Weeks Worked by each Class Member for Defendant during the Class Period. Individual Class Payments are calculated by (a) dividing the Net Settlement Amount by the total number Weeks Worked by all Participating Class Members during the Class Period, and (b) multiplying the result by each Participating Class Member's Weeks Worked. (S.A. ¶ 49(c)).

Additionally, each "Aggrieved Employee" will receive a share of the PAGA Penalties based on a pro-rata basis. Thus, the \$18,750 PAGA Penalties allocated to the Aggrieved Employees will be divided and paid on a Pay Periods Worked basis. (S.A. ¶ 49(h)).

The Class Notice will inform Class Members of the estimated share and the number of Weeks Worked during the Class Period, as well as number of Pay Periods Worked during the PAGA Period. Class Members may dispute Weeks Worked and/or Pay Periods Worked if they feel they worked more in the Class or PAGA Periods than Defendant's records show by timely submitting evidence to the Settlement Administrator. (S.A. ¶ 70).

As noted, assuming 225 Class Members, the average payment to each Class Member will be approximately \$1,805.18 (\$406,166.67 / 225). However, the actual payment will be calculated on a pro-rata basis according to the number of Weeks Worked by each Class Member during the Class Period, with each Work Week having a value of approximately \$14.50 (\$406,166.67 / 28,000 estimated Work Weeks). In addition, approximately 205 Aggrieved Employees will receive a share of the \$18,750 PAGA Penalties allocation based on Pay Periods Worked during the PAGA Period.

E. TIMING OF SETTLEMENT DISBURSEMENTS

Defendant is required to deposit the Settlement Amount, along with the employers' share of payroll taxes owed, with the Settlement Administrator, within 15 calendar days after the "Effective Date" and these funds will be used to pay: (1) the class attorney fees and expenses, as approved by the Court; (2) the service award, as approved by the Court; (3) administrative expenses, as approved by the Court; (4) the PAGA award; and (5) the aggregate of all Individual

1 Settlement Amounts of Participating Class Members. Within 10 calendar days after receiving the
2 funds, the Settlement Administrator shall issue payments to cover all court-approved payments.
3 (S.A. ¶ 74).

4 Class Members will have 180 days to cash the settlement check. If a Class Member fails
5 to cash a check by the deadline, the Settlement Administrator shall issue unclaimed funds to the
6 California State Controller in the name of the Class Member. (S.A. ¶ 75).

7 **F. TAX TREATMENT**

8 The Parties agree that one-third (1/3) of the Individual Settlement Payments will be
9 allocated as wages subject to withholding of all applicable local, state and federal taxes and the
10 remaining two-thirds (2/3) will be allocated for interest and penalties (pursuant to, *e.g.*,
11 California Labor Code sections 203, 210, 226, etc.) from which no taxes will be withheld. (S.A.
12 ¶ 49(d)). Additionally, the PAGA Penalties payable to the Aggrieved Employees will be
13 classified entirely as civil penalties and shall be reported as required on an IRS Form 1099.
14 (S.A. ¶ 49(h)). These allocations are in line with the claim valuations in the *Kullar* analysis
15 discussed below (*i.e.*, the penalty claims [§§ 203 and 226] comprise the majority of risk-adjusted
16 value). Defendant will separately pay its share of employer payroll taxes on the wages portions
17 of the Individual Settlement Payments. (S.A. ¶ 49(a)).

18 **G. PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS**

19 In exchange for these payments, the Settlement Agreement at ¶ 31 provides that the
20 Participating Class Members will release the Released Parties of:

21 the claims stated in the Complaint or those claims which could have
22 been asserted in the Complaint based upon the facts in the
23 Complaint, including: (a) failure to pay wages or minimum wages
24 (including for off the clock claims and rounding claims), (b) failure
25 to pay overtime wages (including for off the clock, regular rate,
26 invalid alternative work weeks, or rounding claims), (c) failure to
27 provide meal periods, (d) failure to provide rest breaks, (e) failure to
28 timely pay wages, including upon separation of employment, (f)
failure to provide accurate itemized wage statements, (g) unfair and
unlawful competition, and (i) all other claims for statutory penalties
based on the above.

1 It is understood and agreed that the Settlement Agreement will not release any person,
2 party or entity from claims, if any, by Class Members for any other claims, including claims for
3 vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
4 unemployment insurance, disability, social security, workers' compensation, or claims based on
5 facts occurring outside the Class Period.

6 **H. AGGRIEVED EMPLOYEES' RELEASE OF CLAIMS**

7 The Settlement Agreement at ¶ 24 also defines the "PAGA Released Claims" as follows:

8 the PAGA claims that Plaintiff alleged against the Released Parties,
9 on behalf of the Aggrieved Employees and the State of California,
10 based on the facts stated in the Complaint and in the relevant LWDA
11 notice letter or that could have been asserted based on those facts,
12 including all PAGA claims seeking civil penalties premised upon:
13 (a) failure to pay wages or minimum wages (including for off the
14 clocking or rounding), (b) failure to pay overtime wages (including
15 for off the clock, regular rate, invalid alternative work weeks, or
16 rounding), (c) failure to provide meal periods, (d) failure to provide
17 rest breaks, (e) failure to timely pay wages each period and upon
18 separation of employment, (f) failure to provide accurate itemized
19 wage statements, and (g) all other claims for civil penalties
20 recoverable under the Private Attorneys General Act, Labor Code
21 §§ 2698 *et seq.* based on the facts or claims alleged in the LWDA
22 Notice and the Complaint

23 Moreover, even if an Aggrieved Employee requests exclusion from the Class settlement,
24 that individual will still be subject to the PAGA Released Claims to the fullest extent permitted
25 by law and will receive a pro-rata share of PAGA Penalties. (S.A. ¶ 58).

26 **IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS IS**
27 **APPROPRIATE FOR PURPOSES OF SETTLEMENT**

28 California Rule of Court 3.769(d) provides that the Court may make an order approving
certification of a provisional settlement class at the preliminary approval stage. It is well-
established that trial courts should use a "lesser standard of scrutiny" for determining the
propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor*
Co. (1996) 48 Cal.App.4th 1794, 1807 at n.19; *Officers for Justice v. Civil Service Com.* (9th Cir.
1982) 688 F.2d 615, 633 ("[C]ertification issues raised by class action litigation that is resolved
short of a decision on the merits must be viewed in a different light."); *Amchem Prods., Inc. v.*

1 *Windsor* (1997) 521 U.S. 591, 620 (“Confronted with a request for settlement-only class
2 certification, a district court need not inquire whether the case, if tried, would present intractable
3 management problems . . . for the proposal is that there be no trial.”). As discussed below, for the
4 purposes of this settlement only, Plaintiff requests that this Court provisionally certify the Class,
5 as defined above, under Code of Civil Procedure § 382.

6 **A. ASCERTAINABILITY AND NUMEROSITY**

7 In determining whether a class is ascertainable, the court considers “(1) the class
8 definition, (2) the size of the class, and (3) the means available for identifying the class
9 members.” *Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263,
10 1271; *Medraza v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101 (proposed settlement
11 class is ascertainable if the class members can be objectively identified and given notice of the
12 litigation without unreasonable time or expense). Here, according to Defendant’s records, there
13 are approximately 225 Class Members that are easily identifiable and fall within the defined
14 Class. Thus, Plaintiff’s proposed Class meets the ascertainability and numerosity requirements.

15 **B. WELL-DEFINED COMMUNITY OF INTEREST**

16 **1. Commonality**

17 To justify certification, the class proponent must show that questions of law or fact
18 common to the class predominate over the questions affecting the individual members. *Arenas v.*
19 *El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732. Here, Plaintiff contends that the Class
20 was subjected to common policies and practices relating to payment of wages, meal/rest breaks,
21 and so on. While the Parties dispute whether a class would be appropriate if the litigation were to
22 continue, they agree to class certification for the purposes of this settlement only.

23 **2. Typicality**

24 Typicality “focuses on whether there exists a relationship between the Plaintiff’s claims
25 and the claims alleged on behalf of the class.” See Herbert B. Newberg & Alba Conte, *Newberg*
26 *on Class Actions* (“Newberg”) § 3:13 (4th ed. 2002). Again, the Parties dispute whether
27 Plaintiff’s claims are typical of the Class for the purposes of any continued litigation of the
28 Action, but agree for the purposes of this settlement only that Plaintiff asserts claims regarding

1 Defendant's pay policies, meal and rest break practices, wage statements, and the provisions
2 governing the timely and complete payment of wages, which are at the core of the lawsuit.

3 3. Adequacy of Representation

4 The proposed class representative must establish that he or she will adequately represent
5 the proposed class. See *Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540,
6 546. Plaintiff is adequate to represent the class because she was employed by Defendant during
7 the Class Period, experienced the same wage and hour practices as the rest of the Class,
8 understood her duties as a Class Representative, has been willing to undergo the risks of
9 litigation, and has no conflict of interest.

10 Adequacy may be established by the fact that counsel are experienced practitioners. See
11 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)
12 244 F.3d 1152, 1162. Here, Plaintiff is represented by Class Counsel with extensive experience
13 in wage and hour class actions like this matter. (Mankin Decl. ¶¶ 2-6; Carlson Decl. ¶¶ 3-9).

14 4. Superiority

15 Certification of the Class for settlement purposes is superior here because there will be a
16 global resolution of all claims at once, which fosters judicial economy. Class certification for
17 settlement purposes is also vastly superior to litigation of numerous individual claims because
18 most of the claims are too small to litigate outside of the class context.

19 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT,**
20 **WHICH IS FAIR, ADEQUATE, AND REASONABLE**

21 **A. CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND**
22 **APPROVAL UNDER THE CALIFORNIA RULES OF COURT**

23 The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal.App.4th 1374. This is
24 particularly true in class actions where substantial resources can be conserved by avoiding the
25 time, cost, and rigors of formal litigation. However, a class action may not be dismissed,
26 compromised, or settled without the Court's approval. Cal. R. Ct. 3.769(a). The California Rules
27 of Court set forth the procedures for court approval of a class action settlement: (1) the Court
28 preliminarily approves the settlement; (2) class members receive notice as directed by the Court;

1 and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed
2 settlement. *See* Cal. R. Ct. 3.769(c), (e-g).

3 The decision to approve or reject a proposed settlement lies within the Court’s sound
4 discretion. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35.

5 Nevertheless, in considering a potential settlement for approval, a court is not to turn the
6 approval hearing “into a trial or rehearsal for trial on the merits . . . [or] to reach any ultimate
7 conclusions on the contested issues of fact and law which underlie the merits of the dispute.”
8 *Officers for Justice*, 688 F.2d at 625.

9 The Court’s ultimate duty is to determine whether the settlement is fair, adequate, and
10 reasonable. *See Dunk*, 48 Cal.App.4th at 1801 (setting forth the “fair, adequate, and reasonable”
11 standard) (citing *Officers for Justice, supra*); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177
12 Cal.App.4th 734, 742-43 (a trial court must approve a class action settlement agreement, but only
13 after determining that it is ““fair, adequate and reasonable,”” considering factors such as the
14 ““risk, expense, [and] complexity”” of continued litigation) (citations omitted). The Court enjoys
15 broad discretion in making its fairness determination, and should consider factors including, but
16 not limited to:

17 [T]he strength of Plaintiff’s case, the risk, expense, complexity and likely duration
18 of further litigation, the risk of maintaining class action status through trial, the
19 amount offered in settlement, the extent of discovery completed and the stage of
20 the proceedings, the experience and views of counsel . . . and the reaction of the
class members to the proposed settlement.

21 *Dunk, supra* (detailing non-exhaustive list of factors for court’s consideration at final approval).

22 The above factors are not exclusive “and the court is free to engage in a balancing and
23 weighing of factors depending on the circumstances of each case.” *Wershba*, 91 Cal.App.4th at
24 245. However, in doing so, the Court must give “[due] regard to what is otherwise a private
25 consensual agreement between the parties.” *Id.* The inquiry must be limited “to the extent
26 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
27 overreaching by, or collusion between, the negotiating parties.” *Id.* (citation and internal
28 quotation marks omitted).

1 At the preliminary approval stage, the Court need only determine that the settlement falls
2 within the “range of possible judicial approval,” so that notice to the class and the scheduling of
3 the fairness hearing are worthwhile. *See Newberg* § 11:25. Indeed, the Court should grant
4 preliminary approval if there are no “grounds to doubt its fairness or other obvious deficiencies .
5 . . and [the settlement] appears to fall within the range of possible approval.” *Manual For*
6 *Complex Litigation* (Third) § 30.41 (1995); see *Dunk*, 48 Cal.App.4th at 1802. A “presumption
7 of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2)
8 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
9 counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk*,
10 *supra* (citing *Newberg* § 11:41). As shown below, the settlement falls well within the range of
11 approval because there are no grounds to doubt its fairness.

12 **B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE**
13 **NEGOTIATIONS**

14 The settlement was the product of extensive arm’s length negotiations between counsel
15 and was facilitated by an experienced wage-and-hour class action mediator. Though cordial and
16 professional, the settlement negotiations were adversarial and non-collusive in nature. The
17 settlement reached is the product of substantial effort by the parties and their counsel. Although
18 Plaintiff and her counsel believed that there was a possibility of certifying the claims, they
19 recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable
20 decisions on class certification, summary judgment, at trial and/or on the damages awarded,
21 and/or on an appeal that can take several more years to litigate. In addition, if Defendant
22 prevailed on any of the defenses, the employees may not have received any monetary recovery.

23 **C. THE EXTENT OF THE INVESTIGATION WAS MORE THAN SUFFICIENT TO PERMIT**
24 **PRELIMINARY APPROVAL OF THE SETTLEMENT**

25 Plaintiff thoroughly investigated and evaluated the factual and legal strengths and
26 weaknesses of this case before reaching the settlement. As described above, the settlement was
27 reached after extensive investigation and research, thorough calculations and risk evaluation, and
28 a substantial exchange of information relating to the Class Members prior to mediation.

1 **D. THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS**

2 To evaluate a settlement, the parties must provide the trial court with “basic information
3 about the nature and magnitude of the claims in question and the basis for concluding that the
4 consideration being paid for the release of those claims represents a reasonable compromise.”
5 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.

6 However, a settlement is not judged against what might have been recovered had a
7 plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought
8 to be fair and reasonable. *Wershba*, 91 Cal.App.4th at 250 (“Compromise is inherent and
9 necessary in [settlement] ... even if the relief afforded by the proposed settlement is substantially
10 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
11 settlement because the public interest may indeed be served by a voluntary settlement in which
12 each side gives ground in the interest of avoiding litigation.”)

13 Of particular relevance to the reasonableness of the proposed Settlement is the fact that
14 significant legal and factual grounds for defending this action exist. First, in addition to
15 disputing the merits of Plaintiff’s claims, Defendant strongly disputed that Plaintiff could obtain
16 class certification, arguing a lack of commonality of the legal claims and injuries. Defendant
17 further argued that it complied with the applicable law and that any purported deviations
18 therefrom were individualized in nature, thereby limiting Plaintiff’s ability to certify the class.
19 While Plaintiff asserts that this is a suitable case for certification, she realizes that there is always
20 a significant risk associated with class certification proceedings, which could significantly limit
21 the claims that she could pursue on a class basis.

22 In light of the uncertainties of protracted litigation, this negotiated settlement reflects the
23 best practicable recovery for the Class. While the total settlement amount is, of course, a
24 compromise figure, the potential risks and opportunities of both parties were effectively weighed
25 and considered by the parties, resulting in a fair and equitable settlement.

26 Based upon detailed data obtained through informal discovery and information
27 exchanges, Plaintiff’s counsel estimated the following data points through the date of mediation:
28 (1) 224 class members, (2) 75 class members that separated from employment during the 3-year

1 lookback for Labor Code § 203, (3) 26,456 workweeks, (4) 121,007 shifts worked, and (5)
2 approximately 5,232 wage statements during the PAGA Period. (Mankin Decl. ¶ 17).

3 Here, there were three categories of claims alleged by Plaintiff: (1) unpaid wage claims
4 under various theories, (2) meal and rest break violations, and (3) derivative claims for waiting
5 time and wage statement penalties due to the other alleged violations. (Mankin Decl. ¶ 18).

6 As to the unpaid wage claims, Plaintiff alleged three distinct theories of liability. First,
7 Plaintiff alleged that Defendant utilized a rounding policy that was not neutral in application, as
8 it resulted in a systematic underpayment to the Class. Second, Plaintiff alleged that Defendant
9 implemented a pre-shift COVID-19 screening program that subjected Class Members to
10 uncompensated work. Third, Plaintiff also alleged that Defendant paid Class Members on an
11 alternative workweek schedule (with four 10-hour shifts per week) but failed to pay proper
12 overtime because Defendant did not have a valid alternative workweek election. In total,
13 Plaintiff's counsel estimated the maximum value of these unpaid wages to be \$635,852. (Mankin
14 Decl. ¶ 19).

15 However, Defendant vehemently opposed these unpaid wage claims on the merits and as
16 to the propriety of class certification. For example, as to the rounding claim, Defendant argued
17 that its policy was neutral on its face and in application, in compliance with California law.
18 Then, as to the COVID-19 screening claim, Defendant argued that time spent in pre-shift
19 COVID-19 screenings is not compensable because this time was not under Defendant's control
20 and, moreover, the requirement was enforced by the government and was not enacted by
21 Defendant's choice or for its benefit and, thus, the time was not compensable. Moreover, in
22 addition to its other defenses on the merits, Defendant argued that Plaintiff would be unable to
23 meet its evidentiary burden at summary judgment and/or trial because Plaintiff and the Class
24 would be unable to introduce evidence as to the amount of unpaid wages (since the claims are
25 not apparent from the timekeeping records), thus defeating liability. Furthermore, as to the
26 alternative workweek claims, Defendant provided evidence that it had a valid alternative
27 workweek election under the name of an entity that it acquired decades ago (GEL-PAK, LLC)
28 and that acts as a complete bar to any such claims. (Mankin Decl. ¶ 20).

1 Due to these defenses and arguments, Plaintiff assigned a 20% risk for each respective
2 unpaid wage claim at the class certification stage. And, due to the defenses as to the merits,
3 Plaintiff assigned the following merits-based risk to each claim: 20% risk on the rounding claim,
4 30% risk on the COVID-19 screening claim, and a 60% risk on the alternative workweek claim.
5 In sum, Plaintiff's counsel calculated the risk-adjusted value of the unpaid wage claims as
6 \$295,089. (Mankin Decl. ¶ 21).

7 Plaintiff also alleged meal and rest break claims against Defendant. Given the total
8 number of shifts at issue (an estimate of 121,007), and when incorporating violation rates from
9 expert review of the timekeeping records and other evidence, Plaintiff's counsel estimated a
10 10.1% violation rate for meal breaks and a 50% violation rate for rest breaks, leading to 12,221
11 alleged meal violations and 60,504 alleged rest break violations. This established a maximum
12 potential value for these claims of \$1,710,492 (72,725 violations multiplied by the average
13 hourly rate of \$23.52 as the applicable premium rate under § 226.7). (Mankin Decl. ¶ 22).

14 However, Defendant raised numerous arguments in response to this claim, including that
15 it maintained fully compliant written policies and specifically authorized the Class Members to
16 take meal and rest breaks, meaning that no one had a reason or cause to miss a break or take a
17 short/late break. Therefore, Defendant asserted that a fact-finder would have to determine for
18 each Class Member whether a break was missed and why, and why a break was noncompliant or
19 nonexistent, because if it was by the employee's choice, no liability attaches to Defendant.
20 These defenses are factored into Plaintiff's analysis in two ways. First, these issues raise
21 questions regarding whether the meal and rest break claims could be certified, and Plaintiff
22 placed a 40% risk at the class certification stage for meal periods and a 60% risk for rest breaks.
23 Second, these defenses also go toward the merits given the evidentiary question of proving the
24 number of meal and rest violations. As such, Plaintiff placed a 40% risk on the merits for meal
25 breaks, and an additional 60% risk on the merits for rest breaks, setting the risk-adjusted value
26 for the combined meal and rest break claims at \$331,166. (Mankin Decl. ¶ 23).

27 Finally, Plaintiff alleged claims for waiting time penalties and wage statement violations.
28 But these claims were entirely derivative of the claims above, meaning that they only had merit

1 if the claims for unpaid wages or meal/rest breaks were successful. The maximum values for
2 these claims were as follows: (1) \$423,360 for waiting time penalties [75 former employees x
3 \$23.52 per hour x 8 hours per day x 30 days], and (2) \$512,950 for wage statement violations
4 [5,232 wage statements at the \$50/\$100 formula under § 226(e)]. (Mankin Decl. ¶ 24).

5 But Defendant raised a variety of defenses to these derivative claims that impacted the
6 valuation. Namely, as to the wage statement violations, Defendant argued that its wage
7 statements did not violate Labor Code § 226 and, even if there was a “technical” violation, that
8 Plaintiff would be unable to prove the required “knowing and intentional” and “injury” elements.
9 Based on these facts and defenses, Plaintiff placed a nominal 20% risk at class certification
10 (mirroring the claims on which the wage statement claim was based) and estimated another 20%
11 risk the merits, leading to a risk-adjusted value of \$328,288 for the wage statement claims.
12 (Mankin Decl. ¶ 25).

13 Then, as to the waiting time penalty claim, Plaintiff’s valuation had to account for the
14 fact that this claim was derivative of the unpaid wage and meal/rest break claims (*e.g.*, the
15 unpaid wage premiums) and, if those claims failed at certification or on the merits, there would
16 be no waiting time penalties owed, so the same risks for those claims applied to this claim.
17 Furthermore, even if the unpaid wage and/or meal/rest claims succeeded at certification and on
18 the merits, Plaintiff would have to prove that the violations (if any existed) were “willful” under
19 the meaning of Labor Code § 203. And, here, Defendant argued that there could not be a finding
20 of a “willful” violation since they had compliant written policies and any deviations therefrom
21 were inadvertent and unintentional. As a result of this analysis, Plaintiff’s counsel applied a 20%
22 risk at class certification and a 20% risk on the merits, leading to a risk-adjusted value of
23 \$270,950. (Mankin Decl. ¶ 26).

24 In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiff estimates
25 the risk-adjusted class recovery as follows:

26	• Unpaid Wage Claims	\$ 295,089
27	• Meal and Rest Break Claims	\$ 331,166
28	• Wage Statement Claims	\$ 328,288

- Waiting Time Penalty Claims \$ 270,950
- **Total Risk Adjusted Penalties and Damages** \$ **1,225,493**

The reasonableness of the settlement is apparent from the fact that the proposed settlement is 63.2% of the risk-adjusted class damages and penalties. And while the PAGA penalties had a maximum value in the low seven figures, this fails to acknowledge that courts have wide latitude to reduce the civil penalties “based on the facts and circumstances of a particular case” and if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(e)(2). Moreover, Defendant argued against the merits of the underlying claims and particularly that the “willfulness” standard and/or “good faith” defenses mitigated the civil penalty claims and rendered any such penalties as uncertain. Defendant also argued it is improper to stack civil penalty claims on top of underlying statutory claims. For these reasons, the Parties submit that this settlement is fair and reasonable.

E. PLAINTIFF’S COUNSEL IS EXPERIENCED IN WAGE-AND-HOUR LITIGATION

The view of the attorneys actively conducting the litigation is entitled to significant weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18; *Kullar*, 168 Cal.App.4th at 128 (court must take into account “the experience and view of counsel”).

Plaintiff’s Counsel is also highly experienced in Class/PAGA litigation, having repeatedly been named “Super Lawyer” in employment litigation (a distinction awarded to only 5% of litigators), having achieved large settlements and verdicts, including one of the largest PAGA awards in California’s history, collecting over \$250 million for its clients, having tried class and PAGA cases against Fortune 100 companies, among other things. (Mankin Decl. ¶¶ 2-6; Carlson Decl. ¶¶ 3-9). Plaintiff’s counsel, operating at arm’s length, weighed the strengths and risks of this case, and are of the view that this is a fair and reasonable settlement considering the nature of the claims, realistic risk adjusted value, the complexities of the case, state of the law, and uncertainties of class certification and litigation.

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1 **F. THE CLASS NOTICE CONFORMS TO ALL APPLICABLE STATUTES AND RULES**

2 The proposed Class Notice should be approved, as it fully informs the Class Members of
3 the nature of the lawsuit and each Class Member's rights under terms of the Settlement
4 Agreement and applicable law. The manner in which the Class Notice shall be disseminated, as
5 outlined above, shall ensure that all or nearly all of the Class Members shall be properly notified
6 of the proposed settlement.

7 The proposed Class Notice and proposed plan for the Settlement Administrator to mail
8 the Class Notice to the last known address of all class members complies with all the
9 requirements of California Rule of Court 3.769(f) and 3.766(b). The contents of the proposed
10 Class Notice includes (1) the material terms of the settlement; (2) the proposed attorneys' fees,
11 litigation expenses, and the costs of administration; (3) details about the final fairness hearing
12 and how class members may elect to exclude themselves or make an objection; and (4) how class
13 members can obtain additional information. *See* Class Notice (Exhibit A to S.A.). In addition, it
14 will inform Class Members of their estimated settlement share.

15 The Court has wide discretion in approving the means of providing notice, so long as the
16 class representative "provide(s) meaningful notice in a form that should have a reasonable
17 chance of reaching a substantial percentage of class members." *Archibald v. Cinerama Hotels*,
18 (1976) 15 Cal.3d 853, 861. Here, the Parties' notice plan is that notice of the settlement will be
19 disseminated directly to the class members by first class mail by the settlement administrator,
20 since Defendant has the last known addresses of all class members and the Settlement
21 Administrator will perform a skip trace and update those addresses for any class notices that are
22 returned and re-send the notice.

23 The Class Notice satisfies the requirements of California Rule of Court 3.766 and affords
24 Settlement Class Members with all due process protections required by the U.S. Constitution.
25 Moreover, the contents of the Class Notice comply with California Rule of Court 3.766(d),
26 because the Notice includes, without limitation (1) a detailed explanation of the case, including
27 the basic contentions or denials of the parties; (2) a statement that the court will exclude the
28 member from the class if the member so requests by a specified date; (3) a procedure for the

1 member to follow in requesting exclusion from the class; (4) a statement that the judgment,
2 whether favorable or not, will bind all members who do not request exclusion; and (5) a
3 statement that any member who does not request exclusion may, if the member so desires, enter
4 an appearance through counsel. The 60-day deadline to opt-out or object is also reasonable, as it
5 provides Class Members sufficient time to do so and, if they so choose, to seek independent legal
6 advice in the interim. If a Class Member does not opt-out, he or she will automatically be sent a
7 settlement check.

8 **G. THE NON-REVERSIONARY “CHECKS CASHED” DISTRIBUTION ENSURES**
9 **MAXIMAL RECOVERY FOR CLASS MEMBERS**

10 The fact that each member who does not opt out of the settlement shall be mailed a check
11 ensures that every Class Member will be paid unless he or she affirmatively acts to exclude
12 himself or herself. Moreover, the Settlement Amount is non-reversionary, which means that no
13 settlement funds will revert to Defendant; instead, if any checks are uncashed by the deadline,
14 the funds will be transferred to the State Controller’s Office subject to approval of the Court.
15 Such terms are favored by Courts and demonstrate that there was no collusion between counsel
16 for the parties and that the settlement is fair and favorable to the Class Members.

17 **H. THE ATTORNEY’S FEES AND COSTS ALLOCATION IS FAIR**

18 Under the terms of the Settlement Agreement, Class Counsel is seeking reimbursement
19 of up to \$20,000 in litigation costs, along with \$258,333.33 in attorneys’ fees (one-third of the
20 Gross Settlement Amount). See, e.g., *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480
21 (approving 1/3 fee in the amount of \$6.33 million at a 2.13 lodestar multiplier, and holding that
22 when class action litigation establishes a monetary fund for the benefit of the class members,
23 the trial court may determine the amount of a reasonable fee by choosing an appropriate
24 percentage of the fund created); *Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) 2010 WL
25 3155645 (approving fee 1/3 of the total maximum settlement amount of \$4.5 million since 1/3
26 was “well within the range of percentages which courts have upheld as reasonable in other class
27 action lawsuits”); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) 2010 WL
28 2196104, at *8 (approving fee award of 33.33% of the common fund); *Romero v. Producers*

1 *Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007), 2007 WL 3492841, at *4 (awarding fees of 1/3 of
2 common fund, noting: “[f]ee awards in class actions average around one-third of the
3 recovery.”); *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal. Dec. 31, 2008) 2008 WL
4 5478576, at *8 (approving fees of 1/3 of common fund).

5 Once the Court grants preliminary approval of the Settlement Agreement and Class
6 Notice is disseminated, Plaintiff’s counsel will submit a comprehensive request for attorneys’
7 fees and costs with its final approval motion.

8 **I. THE REQUESTED SERVICE AWARD REQUEST IS FAIR AND APPROPRIATE**

9 The Settlement Agreement provides an incentive award payment of \$7,500 to the Class
10 Representative, which is reasonable given the large recovery Class Members will receive on
11 average, as well as the time and effort she devoted to this case. Her efforts included providing
12 factual background for the Class and PAGA complaint; providing documents and information
13 about Defendant’s compensation plan; participating in phone calls to discuss litigation and
14 settlement strategy; making herself available throughout the litigation to assist with analyzing the
15 claims and defenses; helping Class Counsel prepare for the mediation; and reviewing the
16 settlement documents. The Class Representative also assumed significant risk in bringing this
17 litigation—namely, had she lost, she could have been ordered to pay Defendant’s costs.

18 The requested service award falls within the range of incentive payments typically
19 awarded to Class Representatives in similar class actions. See, e.g., *Bond v. Ferguson*
20 *Enterprises, Inc.* (E.D. Cal. 2011) 2011 WL 2648879 (approving \$11,250 service awards in
21 trucker meal break class action); *Ross v. US Bank National Association* (N.D. Cal. 2010) 2010
22 WL 3833922, at *2 (approving \$20,000 enhancement award in California wage-and-hour class
23 action settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 4150, 493
24 (approving service awards of \$15,000 from a \$300,000 settlement fund in a wage/hour class
25 action); *West v. Circle K Stores, Inc.* (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558, at *28
26 (finding service awards “of \$ 15,000 each to be reasonable.”); *Glass v. UBS Fin. Servs.* (N.D.
27 Cal. 2007) 2007 U.S. Dist. LEXIS 8476, at *52 (finding “requested payment of \$25,000 to each
28 of the named Plaintiff is appropriate” in wage and hour settlement); *Louie v. Kaiser Found.*

Health Plan, Inc. (S.D. Cal. 2008) 2008 U.S. Dist. LEXIS 78314, at *18 (approving “\$25,000 incentive award for each Class Representative” in wage an hour settlement).

VI. THE COURT SHOULD APPOINT PHOENIX AS SETTLEMENT ADMINISTRATOR

Subject to the Court’s approval, the parties stipulated to Phoenix Settlement Administrators (“Phoenix”) serving as the Settlement Administrator. Phoenix is experienced in administering class action settlements and has provided a flat-fee proposal to administer this settlement for \$8,000. (Mankin Decl. ¶ 39; Exhibit 2 to Mankin Decl. [Phoenix’s bid]).

VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING

The last step in the approval process is the formal hearing, whereby proponents of the settlement may explain and describe its terms and conditions and offer argument in support of approval, and Class Members or their counsel may be heard in support of or in opposition to the settlement. Subject to the Court’s approval, the Parties propose that the Court schedule a hearing for final approval approximately 120 days after the Preliminary Approval Date, as follows:

February 8, 2023	Preliminary Approval (PA) hearing
March 6, 2023 (<i>24 days after PA</i>)	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement Class Members.
May 5, 2023 (<i>60 days after mailing Class Notice</i>)	Deadline for Settlement Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval and application for award of attorneys’ fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiff’s Motion for Final Approval, or filing any response to an objection to the settlement.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval
TBD (Approximately June 9, 2023 - 120 days after Preliminary Approval)	Final Approval Hearing.

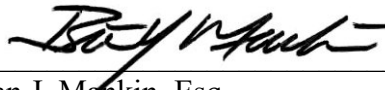
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1 **VIII. CONCLUSION**

2 For all of the foregoing reasons, Plaintiff respectfully requests that the Court grant the
3 motion for preliminary approval of the settlement.

4 Dated: January 17, 2023

LAUBY, MANKIN & LAUBY LLP

5
6 BY: 
7 Brian J. Mankin, Esq.
8 Attorneys for Plaintiff and the Proposed
9 Class
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PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, California 92504.

On January 17, 2023, I caused to be served the foregoing document(s) described as follows:

PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; DECLARATIONS IN SUPPORT THEREOF; [PROPOSED] ORDER

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

☐ **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

☐ **By Overnight Service** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

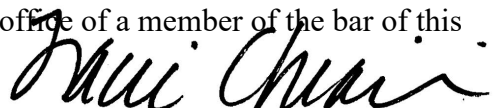
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

☐ **By Certified Mail-Return Receipt Requested** I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California

☐ **By Personal Service** I caused said document(s) to be personally served by hand on the parties listed on the attached service list

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 17, 2023, Riverside, California.

☐ **Federal** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


Tracie Chiarito, Declarant

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