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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JOEL ARELLANO, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

PACIFIC AWARD METALS, INC., a
California Corporation; and DOES 1
through 20, inclusive;

Defendants.

Case No.: 22STCV13489
*[Assigned to Hon. David S. Cunningham, III,
Dept 11, for all purposes]*

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

Hearing

Date: November 30, 2023

Time: 9:00 a.m.

Dept.: 11

Complaint filed: April 22, 2022

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 30, 2023, at 9:00 a.m. or as soon thereafter
as the matter may be heard by the Honorable David S. Cunningham, III, in Department 11 of the
Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, CA
90012, Plaintiff Joel Arellano, individually and on behalf of all others similarly situated, will and
hereby does move the Court for entry of an Order preliminarily approving the Parties' class
action settlement, including:

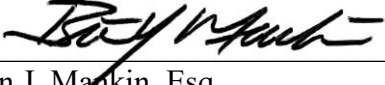
1. Certifying the class for purposes of settlement only;
2. Preliminarily appointing Plaintiff as class representative for settlement purposes;
3. Appointing Plaintiff's counsel as class counsel for purposes of settlement only;
4. Preliminarily approving the class action settlement as fair, adequate,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

This motion is based upon this Memorandum of Points and Authorities in Support thereof; the Declarations of (a) Plaintiff's counsel (Brian Mankin and Kristina Carlson); (b) Plaintiff Joel Arellano; (c) the Settlement Administrator (Mike Moore of Phoenix Settlement Administrators); and (d) Defendant's counsel (Chad Anderton); as well as the Class Action and PAGA Settlement Agreement (the "Settlement Agreement"); the proposed Order granting Preliminary Approval of the Settlement; all other records, pleadings, and papers filed in this action; and other evidence as may be presented to the Court at the hearing of this motion.

Dated: August 21, 2023

LAUBY, MANKIN & LAUBY LLP

BY:



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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Joel Arellano seeks preliminary approval of a \$995,000 wage-and-hour class
4 action settlement on behalf of all current and former nonexempt employees of Defendant Pacific
5 Award Metals, Inc., who worked for Defendant in California at any time from April 22, 2018,
6 through August 25, 2023 (the “Class Period”).

7 Under the terms of the Settlement Agreement, Defendant will not oppose Plaintiff
8 Counsel’s application for a reasonable award of attorney’s fees not to exceed \$331,666.66 (1/3 of
9 the Gross Settlement Amount), litigation expenses not to exceed \$20,000, Settlement
10 Administrator Costs of \$8,000, PAGA penalties of \$90,000 (with 75% to the LWDA and 25% to
11 the Aggrieved Employees on a pro rata basis), and a Service Payment of \$10,000 to Plaintiff Joel
12 Arellano (“Class Representative”). (S.A. ¶ 3.2 et seq.)

13 After all Court-approved deductions from the Settlement Amount, it is estimated that
14 \$535,333.34 will be available to pay the Class Members, as follows:

15

<i>Gross Settlement Amount</i>	\$ 995,000.00
Attorneys’ Fees (1/3)	\$ 331,666.66
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs (not to exceed)	\$ 8,000.00
PAGA Penalties	\$ 90,000.00
Class Representative Service Award	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 535,333.34

19

20 Assuming approximately 168 Class Members, the average payment to each class member
21 will be approximately \$3,186.51 (\$535,333.34 / 168). Of course, the actual payment will be
22 calculated on a pro-rata basis according to the number of Weeks Worked, with each Workweek
23 having a value of approximately \$29.74 (\$535,333.34 / 18,000 total Work Weeks). In addition,
24 the Aggrieved Employees will receive a share of the \$22,500 PAGA Penalties (25% of the total
25 \$90,000 PAGA allocation), calculated pro-rata based on approximate Weeks Worked during the
26 PAGA Period. (Settlement Agreement ¶ 3.2.5).

27 Because the settlement is fair and reasonable and was negotiated at arm’s length by
28 experienced counsel and an experienced mediator following a sufficient exchange of information

1 and documents prior to mediation, it should be preliminarily approved. Plaintiff respectfully
2 requests that the Court enter an order preliminarily approving the settlement, conditionally
3 certifying the Class under Code of Civil Procedure § 382 for settlement purposes, approving the
4 proposed Class Notice, appointing Plaintiff's counsel as class counsel, appointing Phoenix
5 Settlement Administrators as the Settlement Administrator, and scheduling a hearing for final
6 approval of the Settlement.

7 **II. BACKGROUND**

8 **A. THE SETTLEMENT CLASS**

9 The Class is defined as follows:

10 All current and former nonexempt employees of Pacific Award Metals, Inc., who
11 worked for Defendant in California at any time during the Class Period. (S.A. ¶
12 1.6).

13 **B. PROCEDURAL HISTORY**

14 Plaintiff submitted a letter to the Labor Workforce Development Agency (the "LWDA")
15 for civil penalties under the Private Attorney General Act of 2004 (the "PAGA"), and
16 simultaneously sent a letter to Defendant requesting the production of personnel and timekeeping
17 records in order to further evaluate his wage and hour claims. (Mankin Decl. ¶ 14).

18 On April 22, 2022, Plaintiff filed a class and representative PAGA action complaint in
19 the Court alleging claims for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime
20 Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Breaks; (5) Failure to
21 Timely Pay Final Wages; (6) Failure to Provide Accurate Itemized Wage Statements; (7) Unfair
22 and Unlawful Competition, and (8) related PAGA Claims. (Mankin Decl. ¶ 15).

23 Defendant retained counsel and immediately began to defend the case, including alleging
24 in the Joint Initial Status Conference Report that "Defendant generally denies Plaintiff's material
25 allegations and any alleged violations of the California Labor Code. Defendant also asserts that
26 the case is preempted by federal law due to the applicable Collective Bargaining Agreement and
27 that the case is not appropriate for class or representative treatment." Thereafter, Plaintiff served
28 formal written discovery, including special interrogatories, form interrogatories and request for

1 production of documents. Plaintiff also demanded the names and contact information of all class
2 members and aggrieved employees and provided a Belaire Notice to Defendant. However, prior
3 to contesting class certification, the Parties agreed to submit the matter to mediation. (Mankin
4 Decl. ¶ 16).

5 In preparation for the mediation, the Parties informally exchanged documents and
6 information that allowed both sides to calculate the potential damages and evaluate potential risk,
7 including policies and procedures pertaining to each claim alleged, and statistics relating to the
8 number of current and former employees, number of shifts, pay periods and weeks worked and
9 other things. Defendant also provided its written policies and practices and a robust sampling of
10 payroll and timekeeping records for Class Members. This information enabled both parties to
11 take a deep dive into the claims. Additionally, during this process, Plaintiff and his counsel
12 analyzed, researched, and investigated the potential issues, including matters related to the
13 calculation of damages, trial, and appellate issues and risks. Plaintiff also retained an expert
14 (Jarrett Gorlick of Berger Consulting Group) to perform a statistical analysis of the claims and
15 violations. (Mankin Decl. ¶ 17).

16 On April 25, 2023, Plaintiff and Defendant participated in mediation before Kelly
17 Knight, a highly regarded and experienced wage-and-hour class action mediator. The matter
18 resolved at mediation pursuant to a mediator's proposal, which was accepted by the Parties.
19 (Mankin Decl. ¶ 18). The Parties now seek the Court's preliminary approval of the Settlement.

20 **C. SUMMARY OF THE CLAIMS AND DEFENSES**

21 Defendant manufactures sheet metal products for use in various aspects of the
22 construction industry. Plaintiff alleged numerous wage and hour violations on behalf of the
23 Class Members, who operate machinery that manufactures and distributes a wide array of
24 products for construction. However, Defendant vigorously contested and denied Plaintiff's
25 material allegations on the merits and as to the propriety of a class action or PAGA
26 representative action.

27 One of the primary claims in this action is unpaid wage claims due to rounding and short
28 meal breaks. Plaintiff alleged that Defendant utilized an illegal rounding policy that resulted in

1 thousands of unpaid hours for Plaintiff and the Class. (Mankin Dec. ¶ 20). Plaintiff also alleged
2 meal and rest break violations, along with wage statement and derivative waiting time claims.
3 (Mankin Decl. ¶ 21).

4 Despite the disputed nature of the claims, the Parties concluded that further litigation of
5 the Action would be protracted and expensive, and that it is desirable that the Action be fully and
6 finally settled to limit further risk, expense, and protracted litigation.

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

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

9 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

10 The \$995,000 Settlement Amount is non-reversionary and will be paid out to Class
11 Members without the need to submit a claim form or take any affirmative action. It includes (1)
12 Plaintiff's attorneys' fees not to exceed one third of the Settlement Amount and costs not to
13 exceed \$20,000, as approved by the Court; (2) a service award of \$10,000 to Plaintiff, subject to
14 approval by the Court; (3) settlement administrator expenses, not to exceed \$8,000; (4) a \$90,000
15 PAGA award, 75 percent of which is to be paid to the LWDA pursuant to California Labor Code
16 § 2699(i) and 25 percent to the Aggrieved Employees; and (5) the aggregate of all Individual
17 Settlement Amounts of the Participating Class Members. (S.A. ¶ 3.2 and subparts). Defendant
18 will separately pay its share of employer payroll taxes and withholdings through the
19 Administrator. (S.A. ¶ 3.1).

20 **B. NOTICE PROCEDURES**

21 The proposed Class Notice (based on the model provided by the Court) will be provided
22 to the Class Members showing the estimated amount that each Class Member will receive and
23 the credited number of Weeks Worked during the Class and PAGA Period (Exhibit A to the
24 S.A.). Within 15 business days after entry by the Court of its Order of Preliminary Approval,
25 Defendant shall provide the Settlement Administrator with a list of Class Members containing
26 names, addresses, telephone numbers, Social Security Numbers, and the total Weeks Worked in
27 the Class and PAGA Periods (the "Class Data"). (S.A. ¶¶ 1.9 and 4.2).
28

1 Within 10 days of receipt of the Class Data, the Settlement Administrator shall calculate
2 the number of Weeks Worked for each Class Member, populate the Class Notice for each, and
3 send each Class Member the Class Notice via first-class, United States mail. (S.A. ¶ 8.4.2).

4 In the event that any Class Notice mailed to a Class Member is returned as having been
5 undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace
6 search and seek an address correction for such Class Member(s), and a second Class Notice will
7 be sent to any new or different address obtained. (S.A. ¶ 8.4.3).

8 **C. EXCLUSION AND OBJECTION PROCEDURES**

9 Class Members who do not timely Opt-Out of the Settlement will be deemed to
10 participate in the Settlement and shall become a Participating Class Member without having to
11 submit a claim form or take any other action. To Opt-Out of the Settlement, the Class Member
12 must submit a written request to the Settlement Administrator no later than 45 days after being
13 mailed by the Settlement Administrator (“Response Deadline”). (S.A. ¶¶ 1.45). Any Opt-Out
14 request that is not postmarked by the Response Deadline will be invalid. (S.A. ¶ 8.5.1).

15 The Class Notice shall inform the Class Members of their right to object to the
16 Settlement. Any Class Member who wishes to object to the Settlement may submit a written
17 objection to the Settlement Administrator no later than the Response Deadline or, in the
18 alternative, may appear in Court (or hire an attorney to appear in Court) to present verbal
19 objections at the Final Approval Hearing. (S.A. ¶ 8.7.2).

20 **D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES**

21 The amount of each Class Member’s Individual Class Payment is tied to the number of
22 Weeks Worked by each Class Member during the Class Period. Individual Class Payments are
23 calculated by (a) dividing the Net Settlement Amount by the total number of Weeks Worked by
24 all Participating Class Members during the Class Period, and (b) multiplying the result by each
25 Participating Class Member’s Weeks Worked. (S.A. ¶ 3.2.4).

26 Additionally, each “Aggrieved Employee” will receive a share of the PAGA Penalties
27 based on a pro-rata basis. Thus, the \$22,500 PAGA Penalties allocated to the Aggrieved
28 Employees will be divided and paid on a Weeks Worked basis. (S.A. ¶ 3.2.5).

1 The Class Notice will inform Class Members of the estimated share and the number of
2 Weeks he/she worked during the Class and PAGA Period. Class Members may dispute their
3 Weeks Worked if they feel they worked more in the Class or PAGA Periods than Defendant's
4 records show by timely submitting evidence to the Settlement Administrator. (S.A. ¶ 8.6).

5 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

6 Defendant is required to deposit the Settlement Amount, along with the employer's share
7 of payroll taxes owed, with the Settlement Administrator, within 15 calendar days after the
8 "Effective Date" and these funds will be used to pay: (1) the class attorney fees and expenses, as
9 approved by the Court; (2) the service awards, as approved by the Court; (3) administrative
10 expenses, as approved by the Court; (4) the PAGA award; and (5) the aggregate of all Individual
11 Class Amounts of Participating Class Members. Within 10 days after receiving the funds, the
12 Settlement Administrator shall issue payments to cover all court-approved payments. (S.A. ¶ 4.3
13 to 4.4).

14 Class Members will have 180 days to cash the settlement check. (S.A. ¶ 4.4.1). If a Class
15 Member fails to cash a check by the deadline, the Settlement Administrator shall issue unclaimed
16 funds to the California State Controller in the name of the Class Member. (S.A. ¶ 4.4.3).

17 **F. TAX TREATMENT**

18 The Parties agree that 30% of the Individual Class Payment will be allocated as wages
19 subject to withholding of all applicable local, state and federal taxes; and the remaining 70% will
20 be allocated as interest and penalties (pursuant to, e.g., California Labor Code sections 203, 210,
21 226, etc.) from which no taxes will be withheld. (S.A. ¶ 3.2.4.1). Additionally, the PAGA
22 Penalties payable to the Aggrieved Employees will be classified entirely as civil penalties and
23 shall be reported as required on an IRS Form 1099. (S.A. ¶ 3.2.4.1).

24 Defendant will separately pay its share of employer payroll taxes on the sum allocated to
25 wages. (S.A. ¶¶ 3.1).

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

27 In exchange for these payments, the Settlement Agreement at ¶ 6.2 provides that the
28 Participating Class Members will release the Released Parties of:

1 all claims that were alleged, or reasonably could have been alleged, based
2 on the facts stated in the Complaint, including all of the following claims
3 for relief: (a) failure to pay minimum wages, regular wages and/or overtime
4 pay; (b) failure to provide or pay premium payments for meal periods; (c)
5 failure to provide or pay premium payments for rest periods; (d) failure to
6 reimburse business expenses; (e) failure to provide complete and accurate
7 wage statements; (f) failure to pay wages upon termination; (g) violations
8 of the California Business & Professions Code §§ 17200 *et seq.* These
9 claims include, but are not limited to, California Labor Code sections 201,
10 202, 203, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800, and
11 2802 and all related provisions of the California Code of Regulations, the
12 California Industrial Wage Orders, the California Business & Professions
13 Code sections 17200 *et seq.* (“Released Class Claims”). The Released
14 Class Claims extend to all theories of relief regardless of whether the claim
15 is, was or could have been alleged under federal law, state law or common
16 law (including, without limitation, as violations of the California Labor
17 Code, the Wage Orders, applicable regulations, and California’s Business
18 and Professions Code section 17200), and includes all types of relief
19 available for the above-referenced claims, including, any claims for
20 damages, restitution, losses, penalties, fines, liens, attorneys’ fees, costs,
21 expenses, debts, interest, injunctive relief, declaratory relief, or liquidated
22 damages. The operative release period for the Released Class Claims is the
23 Class Period.

24 It is understood and agreed that the Settlement Agreement will not release any person,
25 party or entity from claims, if any, by Class Members for any other claims, including claims for
26 vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
27 unemployment insurance, disability, social security, workers’ compensation, or claims based on
28 facts occurring outside the Class Period. (S.A. ¶ 6.2.3).

29 **H. AGGRIEVED EMPLOYEES’ RELEASE OF CLAIMS**

30 The Settlement Agreement at ¶ 6.3 also defines the “Released PAGA Claims” as follows:

31 all claims for civil penalties under the Private Attorneys General
32 Act, Labor Code § 2698 *et seq.*, that Plaintiff alleged against the
33 Released Parties, on behalf of Aggrieved Employees and State of
34 California, based on the facts stated in the Complaint and in
35 Plaintiff’s PAGA Notice to the LWDA (including any amendments
36 thereto), or reasonably could have been alleged based on the
37 allegations, the facts, and/or legal theories under the PAGA
38 contained in the Complaint, including all of the following claims for
39 relief: (a) failure to pay minimum wages, regular wages and/or
40 overtime pay (including any theory of failure to pay any and all

wages for all time worked or earned); (b) failure to provide or pay premium payments for meal periods; (c) failure to provide or pay premium payments for rest periods; (d) failure to provide complete and accurate wage statements; (e) failure to pay wages upon termination (“Released PAGA Claims”). The Released PAGA Claims include, but are not limited to, California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802 and all related provisions of the California Code of Regulations, and the California Industrial Wage Orders. The time period governing the Released PAGA Claims shall be the entire time during the PAGA Period. The Released PAGA Claims do not release any potential claims for wages or statutory penalties.

Moreover, even if an Aggrieved Employee requests exclusion from the Class settlement, that individual will still be subject to the Released PAGA Claims to the fullest extent permitted by law and will receive a pro-rata share of PAGA Penalties. (S.A. ¶ 8.5.4).

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

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

1 **A. ASCERTAINABILITY AND NUMEROSITY**

2 In determining whether a class is ascertainable, the court considers “(1) the class
3 definition, (2) the size of the class, and (3) the means available for identifying the class
4 members.” *Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263,
5 1271; *Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101 (proposed settlement
6 class is ascertainable if the class members can be objectively identified and given notice of the
7 litigation without unreasonable time or expense). Here, according to Defendant’s records, there
8 are approximately 168 Class Members that are easily identifiable and fall within the defined
9 Class. Thus, the proposed Class meets the ascertainability and numerosity requirements.

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

11 1. Commonality

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

18 2. Typicality

19 Typicality “focuses on whether there exists a relationship between the Plaintiff’s claims
20 and the claims alleged on behalf of the class.” *See* Herbert B. Newberg & Alba Conte, *Newberg*
21 *on Class Actions* (“Newberg”) § 3:13 (4th ed. 2002). Again, the Parties dispute whether
22 Plaintiff’s claims are typical of the Class for the purposes of any continued litigation of the
23 Action, but agree for the purposes of this settlement only, that Plaintiff asserts claims regarding
24 Defendant’s pay policies, wage statements, and the provisions governing the timely and
25 complete payment of wages, which are at the core of the lawsuit.

26 3. Adequacy of Representation

27 The proposed class representative must establish that he or she will adequately represent
28 the proposed class. *See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540,

546. Specifically, Plaintiff is adequate to represent the class because he was employed by Defendant during the Class Period, experienced the same wage and hour practices as the rest of the Class, understood his duties as a Class Representative, has been willing to undergo the risks of litigation, and has no conflict of interest.

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

4. Superiority

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

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

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

The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal.App.4th 1374. This is particularly true in class actions where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. However, a class action may not be dismissed, compromised, or settled without the Court's approval. Cal. R. Ct. 3.769(a). The California Rules of Court set forth the procedures for court approval of a class action settlement: (1) the Court preliminarily approves the settlement; (2) class members receive notice as directed by the Court; and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed settlement. See Cal. R. Ct. 3.769(c), (e-g).

The decision to approve or reject a proposed settlement lies within the Court's sound discretion. See *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35. Nevertheless, in considering a potential settlement for approval, a court is not to turn the

1 approval hearing “into a trial or rehearsal for trial on the merits . . . [or] to reach any ultimate
2 conclusions on the contested issues of fact and law which underlie the merits of the dispute.”
3 *Officers for Justice*, 688 F.2d at 625.

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

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

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

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

25 At the preliminary approval stage, the Court need only determine that the settlement falls
26 within the “range of possible judicial approval,” so that notice to the class and the scheduling of
27 the fairness hearing are worthwhile. See *Newberg* § 11:25. Indeed, the Court should grant
28 preliminary approval if there are no “grounds to doubt its fairness or other obvious deficiencies .
.. and [the settlement] appears to fall within the range of possible approval.” *Manual For*

1 *Complex Litigation* (Third) § 30.41 (1995); see *Dunk*, 48 Cal.App.4th at 1802. A “presumption
2 of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2)
3 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
4 counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk*,
5 *supra* (citing *Newberg* § 11:41). As shown below, the settlement falls well within the range of
6 approval because there are no grounds to doubt its fairness.

7 **B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE**
8 **NEGOTIATIONS**

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

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

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

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

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

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

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

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

22 Based upon detailed data obtained through informal discovery and information
23 exchanges, Plaintiff’s counsel estimated the following data points through the date of mediation:
24 (1) 168 Class Members, (2) 17,354 workweeks during the Class Period, (3) 80,975 shifts worked
25 during the Class Period, and (4) approximately 3,667 bi-weekly wage statements during the
26 PAGA Period. (Mankin Decl. ¶ 22).

27 Here, there were several categories of claims alleged by Plaintiff, including but not
28 limited to: (1) unpaid wage claims under various theories, including rounding, (2) meal and rest

1 break violations, (3) derivative claims for waiting time and both direct and derivative wage
2 statement penalties due to the other alleged violations, and (4) PAGA claims. (Mankin Decl. ¶
3 23).

4 As to the unpaid wage claims, Plaintiff alleged various distinct theories of liability. First,
5 Plaintiff alleged that Defendant implemented an illegal rounding policy that resulted in
6 thousands of unpaid hours worked by Plaintiff and the Class Members. Second, Plaintiff alleged
7 that Defendant failed to provide compliant 30-minute meal periods, which again resulted in a
8 systematic underpayment to the Class, as the Class Members would be clocked out yet still
9 performing work for Defendant. In total, Plaintiff's counsel estimated the maximum value of
10 these unpaid wages to be \$721,605. (Mankin Decl. ¶ 24).

11 However, Defendant vehemently opposed these unpaid wage claims on the merits and as
12 to the propriety of class certification. For example, as to the rounding issues, Defendant argued
13 that it neutrally rounded time for the Class Members. Furthermore, Defendant argued that it had
14 compliant meal policies in place and provided compliant meal periods to the Class. Moreover, in
15 addition to its other defenses on the merits, Defendants argued that Plaintiff would be unable to
16 meet its evidentiary burden at summary judgment and/or trial because Plaintiff and the Class
17 would be unable to introduce evidence as to the amount of unpaid wages due to short lunches
18 (since the claims are not apparent from the timekeeping records alone), thus defeating liability.
19 (Mankin Decl. ¶ 25).

20 Due to these defenses and arguments, Plaintiff assigned a 20% risk for the unpaid wages
21 claim at the class certification stage. And, due to the defenses as to the merits, Plaintiff assigned
22 a 20% merits-based risk. In sum, Plaintiff's counsel calculated the risk-adjusted value of the
23 unpaid wage claims as \$461,827. (Mankin Decl. ¶ 26).

24 Plaintiff also alleged meal and rest break claims against Defendant. Given the total
25 number of shifts at issue (an estimate of 80,975), and when incorporating violation rates from
26 expert review of the timekeeping records and other evidence, Plaintiffs' counsel estimated a
27 76.1% violation rate for meal breaks and a 75% violation rate for rest breaks, leading to 61,622
28 alleged meal violations and 61,731 alleged rest break violations. This established a maximum

1 potential value for these claims of \$2,428,711 (122,353 violations multiplied by the average
2 hourly rate of \$19.85 as the applicable premium rate under § 226.7). (Mankin Decl. ¶ 27).

3 However, Defendant raised numerous arguments in response to this claim, including that
4 it maintained fully compliant written policies and specifically authorized the Class Members to
5 take meal and rest breaks, meaning that no one had a reason or cause to miss a break or take a
6 short/late break. Therefore, Defendant asserted that a fact-finder would have to determine for
7 each Class Member whether a break was missed and why, and why a break was noncompliant or
8 nonexistent, because if it was by the employee's choice, no liability attaches to Defendant.
9 These defenses are factored into Plaintiff's analysis in two ways. First, these issues raise
10 questions regarding whether the meal and rest break claims could be certified, and Plaintiff
11 placed a 20% risk at the class certification stage for meal periods and a 30% risk for rest breaks.
12 Second, these defenses also go toward the merits given the evidentiary question of proving the
13 number of meal and rest violations. As such, Plaintiffs placed a 15% risk on the merits for meal
14 breaks, and an additional 20% risk on the merits for rest breaks, setting the risk-adjusted value
15 for the combined meal and rest break claims at \$1,506,862. (Mankin Decl. ¶ 28).

16 Finally, Plaintiffs alleged claims for waiting time penalties and wage statement
17 violations, including failure to accurately state all applicable hourly rates and total hours worked.
18 Some of these claims were derivative of the claims above, meaning that they only had merit if
19 the claims for unpaid wages or meal/rest breaks were successful. The maximum values for these
20 claims were as follows: (1) \$413,396 for waiting time penalties [78 former employees x \$19.85
21 per hour x 8.5 hours per day x 30 days], and (2) \$360,700 for wage statement violations [3,667
22 wage statements at the \$50/\$100 formula under § 226(e)]. (Mankin Decl. ¶ 29).

23 But Defendant raised a variety of defenses to these derivative claims that impacted the
24 valuation. Namely, as to the wage statement violations, Defendant argued that its wage
25 statements did not violate Labor Code §§ 226, 212, and 213, and even if there was a "technical"
26 violation, that Plaintiffs would be unable to prove the required "knowing and intentional" and
27 "injury" elements. Based on these facts and defenses, Plaintiff placed a nominal 20% risk at
28 class certification and estimated another 10% risk the merits, leading to a risk-adjusted value of

1 \$259,704 for the wage statement claims. (Mankin Decl. ¶ 30).

2 Then, as to the waiting time penalty claim, Plaintiffs' valuation had to account for the
3 fact that this claim was derivative of the unpaid wage and meal/rest break claims (*e.g.*, the
4 unpaid wage premiums) and, if those claims failed at certification or on the merits, there would
5 be no waiting time penalties owed, so the same risks for those claims applied to this claim.
6 Furthermore, even if the unpaid wage and/or meal/rest claims succeeded at certification and on
7 the merits, Plaintiffs would have to prove that the violations (if any existed) were "willful" under
8 the meaning of Labor Code § 203. And, here, Defendant argued that there could not be a finding
9 of a "willful" violation since they had compliant written policies and any deviations therefrom
10 were inadvertent and unintentional. As a result of this analysis, Plaintiffs' counsel applied a 20%
11 risk at class certification and a 10% risk on the merits, leading to a risk-adjusted value of
12 \$297,645. (Mankin Decl. ¶ 31).

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

15	• Unpaid Wage Claims	\$ 461,827
16	• Meal and Rest Break Claims	\$ 1,506,862
17	• Wage Statement Claims	\$ 259,704
18	• Waiting Time Penalty Claims	<u>\$ 297,645</u>
19	• Total Risk Adjusted Penalties and Damages	\$ 2,526,038

20 The reasonableness of the settlement is apparent from the fact that the proposed
21 settlement is 39.3% of the risk-adjusted class damages and penalties. And while the PAGA
22 penalties had a maximum value in the low seven figures, this fails to acknowledge that courts
23 have wide latitude to reduce the civil penalties "based on the facts and circumstances of a
24 particular case" and if "to do otherwise would result in an award that is unjust, arbitrary and
25 oppressive, or confiscatory." Labor Code § 2699(e)(2). Moreover, Defendant argued against the
26 merits of the underlying claims and particularly that the "willfulness" standard and/or "good
27 faith" defenses mitigated the civil penalty claims and rendered any such penalties as uncertain.
28 Defendant also argued it is improper to stack civil penalty claims on top of underlying statutory

1 claims. For these reasons, the Parties submit that this settlement is fair and reasonable. (Mankin
2 Dec. ¶ 33).

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

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

8 Plaintiff’s Counsel is also highly experienced in Class/PAGA litigation, having been
9 named by the LA Times as one “Southern California Leading Lawyers” in the May 2023 issue of
10 Consumer Attorney’s of Southern California, being named as a “Super Lawyer” in employment
11 litigation (a distinction awarded to only 5% of litigators), having achieved large settlements and
12 verdicts, including one of the largest PAGA awards in California’s history, collecting over \$250
13 million for its clients, having tried class and PAGA cases against Fortune 100 companies, among
14 other things. (Mankin Decl. ¶¶ 2-6). Plaintiff’s counsel, operating at arm’s length, weighed the
15 strengths and risks of this case, and are of the view that this is a fair and reasonable settlement
16 considering the nature of the claims, realistic risk adjusted value, the complexities of the case,
17 state of the law, and uncertainties of class certification and litigation.

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

19 The proposed Class Notice should be approved, as it fully informs the Class Members of
20 the nature of the lawsuit and each Class Member’s rights under terms of the Settlement
21 Agreement and applicable law. The manner in which the Class Notice shall be disseminated, as
22 outlined above, shall ensure that all or nearly all of the Class Members shall be properly notified
23 of the proposed settlement.

24 The proposed Class Notice and proposed plan for the Settlement Administrator to mail
25 the Class Notice to the last known address of all class members complies with all the
26 requirements of California Rule of Court 3.769(f) and 3.766(b). The contents of the proposed
27 Class Notice includes (1) the material terms of the settlement; (2) the proposed attorneys’ fees,
28 litigation expenses, and the costs of administration; (3) details about the final fairness hearing

1 and how class members may elect to exclude themselves or make an objection; and (4) how class
2 members can obtain additional information. *See* Class Notice (Exhibit A to Settlement
3 Agreement). In addition, it will inform Class Members of their estimated settlement share.

4 The Court has wide discretion in approving the means of providing notice, so long as the
5 class representative “provide(s) meaningful notice in a form that should have a reasonable
6 chance of reaching a substantial percentage of class members.” *Archibald v. Cinerama Hotels*,
7 (1976) 15 Cal.3d 853, 861. Here, the parties’ notice plan is that notice of the Settlement will be
8 disseminated directly to the class members by first class mail by the settlement administrator,
9 since Defendant has the last known addresses of all class members and the Settlement
10 Administrator will perform a skip trace and update those addresses for any class notices that are
11 returned and re-send the notice.

12 The Class Notice satisfies the requirements of Rule of Court 3.766 and afford Settlement
13 Class Members with all due process protections required by the United States Constitution.
14 Moreover, the contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because
15 the Notice includes, without limitation (1) a detailed explanation of the case, including the basic
16 contentions or denials of the parties; (2) a statement that the court will exclude the member from
17 the class if the member so requests by a specified date; (3) a procedure for the member to follow
18 in requesting exclusion from the class; (4) a statement that the judgment, whether favorable or
19 not, will bind all members who do not request exclusion; and (5) a statement that any member
20 who does not request exclusion may, if the member so desires, enter an appearance through
21 counsel. The 45-day deadline for Class Members to exclude themselves is reasonable, as it
22 provides Class Members with sufficient time to do so and, if they so choose, to seek independent
23 legal advice in the interim. If a Class Member does not opt-out, then he or she will automatically
24 be sent a settlement check.

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

27 The fact that each member who does not opt out of the Settlement shall be mailed a check
28 ensures that every Class Member will be paid unless they affirmatively acts to exclude

1 themselves. Moreover, the Settlement Amount is non-reversionary, which means that no
2 settlement funds will revert to Defendant; instead, if any checks are uncashed by the deadline,
3 the funds will be transferred to the State Controller's Office subject to approval of the Court.
4 Such terms are favored by Courts and demonstrate that there was no collusion between counsel
5 for the parties and that the Settlement is fair and favorable to the Class Members.

6 **H. THE ATTORNEY'S FEES AND COSTS ALLOCATION IS FAIR**

7 Under the terms of the Settlement Agreement, Class Counsel is requesting \$331,666.66
8 in attorneys' fees, which is equal to one-third of the Settlement Amount. See, e.g., *Laffitte v.*
9 *Robert Half Int'l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of \$6.33 million at
10 a 2.13 lodestar multiplier, when class action litigation establishes a monetary fund for the
11 benefit of the class members, the trial court may determine the amount of a reasonable fee by
12 choosing an appropriate percentage of the fund created); see also *Stuart v. RadioShack Corp.*
13 (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645 (approving fee award of 1/3 of the total maximum
14 settlement amount of \$4.5 million) (the court noted that the fee award of 1/3 of the total
15 settlement was "well within the range of percentages which courts have upheld as reasonable in
16 other class action lawsuits"); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) 2010
17 WL 2196104, at *8 (approving fee award of 33.33% of the common fund); *Romero v.*
18 *Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007), 2007 WL 3492841, at *4 (awarding
19 fees of 1/3 of common fund in a wage and hour class action, noting: "[f]ee awards in class
20 actions average around one-third of the recovery."); *Martin v. FedEx Ground Package System,*
21 *Inc.* (N.D. Cal. Dec. 31, 2008) 2008 WL 5478576, at *8 (approving fees of 1/3 of common
22 fund).

23 Additionally, Plaintiff is seeking up to \$20,000 in litigation costs, pursuant to the
24 Settlement Agreement.

25 Once the Court grants preliminary approval, Plaintiff's counsel will submit a request for
26 attorneys' fees and costs with its final approval motion.

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28 ///

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

2 The Settlement Agreement provides an incentive award payment of \$10,000 to the Class
3 Representative, which is reasonable given the recovery Class Members will receive on average,
4 as well as the time and effort he devoted to this case. His efforts included providing factual
5 background for the Class and PAGA complaint; providing documents and information about
6 Defendant’s compensation plan; participating in phone calls to discuss litigation and settlement
7 strategy; making himself available throughout the litigation to assist with analyzing the claims
8 and defenses; helping Class Counsel prepare for the mediation; and reviewing the settlement
9 documents. The Class Representative also assumed significant risk in bringing this litigation—
10 namely, had he lost, he could have been ordered to pay Defendant’s costs.

11 Additionally, Plaintiff entered into a full release of all claims in exchange for the service award.

12 The requested service award falls within the range of incentive payments typically
13 awarded to Class Representatives in similar class actions. See, e.g., *Bond v. Ferguson*
14 *Enterprises, Inc.* (E.D. Cal. 2011) 2011 WL 2648879 (approving \$11,250 service award to each
15 of the two class representatives in a trucker meal break class action; *Ross v. US Bank National*
16 *Association* (N.D. Cal. 2010) 2010 WL 3833922, at *2 (approving \$20,000 enhancement award
17 to Class Representative in California wage-and-hour class action settlement); *Vasquez v. Coast*
18 *Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 4150, 493 (approving service awards in the
19 amount of \$15,000 each from a \$300,000 settlement fund in a wage/hour class action); *West v.*
20 *Circle K Stores, Inc.* (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558, at *28 (“the court finds
21 Plaintiff’s enhancement payments of \$ 15,000 each to be reasonable.”); *Glass v. UBS Fin. Servs.*
22 (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 8476, at *52 (finding “requested payment of \$25,000 to
23 each of the named Plaintiff is appropriate” in wage and hour settlement); *Louie v. Kaiser Found.*
24 *Health Plan, Inc.* (S.D. Cal. 2008) 2008 U.S. Dist. LEXIS 78314, at *18 (approving “\$25,000
25 incentive award for each Class Representative” in wage an hour settlement).

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1 **VI. THE COURT SHOULD APPOINT PHOENIX AS SETTLEMENT**
2 **ADMINISTRATOR**

3 Subject to the Court's approval, the parties stipulated to Phoenix serving as the
4 Settlement Administrator. Phoenix is experienced in administering class action settlements and
5 has provided a flat-fee proposal to administer this settlement for \$8,000. Additionally, Phoenix
6 has agreed to undertake the rules and responsibilities set forth in the new model agreement. (See
7 Decl. of Mike Moore). No party or counsel has any financial interest or ties to the proposed class
8 administrator. (See Mankin Decl. ¶ 7; Defense counsel Anderton's Decl. ¶ 2).

9 **VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING**

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

15 **VIII. CONCLUSION**

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

18 Dated: August 21, 2023

LAUBY, MANKIN & LAUBY LLP

20 BY:



Brian J. Mankin, Esq.

Kristina B. Carlson, Esq.

Attorneys for Plaintiff and the Proposed
Class

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 August 21, 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.

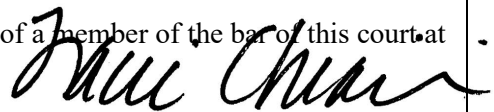
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service 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 August 21, 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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