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

EDWARD CRUZ, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

C T CORPORATION SYSTEM., a
Delaware Corporation; and DOES 1
through 20, inclusive;

Defendants.

Case No.: 30-2022-01261966-CU-OE-CXC
*[Assigned to Hon. Judge Peter Wilson, Dept
CX101, for all purposes]*

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

Hearing

Date: August 24, 2023

Time: 2:00 p.m.

Dept.: CX101

Complaint filed: May 25, 2022

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on August 24, 2023 at 2:00 p.m., or as soon thereafter as
3 the matter may be heard by the Honorable Peter Wilson in Department CX101 of the Orange
4 County Superior Court, located at 751 W. Santa Ana Blvd., Santa Ana, CA 92701, Plaintiff
5 Edward Cruz, individually and on behalf of all others similarly situated, will and hereby does
6 move the Court for entry of an Order preliminarily approving the Parties' class and PAGA
7 representative action settlement, including:

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

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

26 Dated: June 27, 2023

LAUBY, MANKIN & LAUBY LLP

27 BY:



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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Edward Cruz seeks preliminary approval of a \$950,000 wage-and-hour class
4 action settlement on behalf of approximately 200 current and former non-exempt employees
5 employed by Defendant C T Corporation System (“Defendant” or “CT Corp) in California at any
6 time from May 25, 2018, through May 22, 2023 (the “Class Period”).

7 Under the terms of the Settlement Agreement,¹ Defendant will not oppose Plaintiff
8 Counsel’s application for a reasonable award of attorney’s fees not to exceed 1/3 of the
9 Settlement Amount, litigation expenses not to exceed \$20,000, Administrator Costs of
10 \$7,000.00, PAGA penalties of \$90,000 (with 75% to the LWDA and 25% to the PAGA
11 Settlement Employees on a pro rata basis), and a Service Payment of \$7,500 to Plaintiff Edward
12 Cruz (“Class Representative”). (S.A. ¶ 47, *et seq.*)

13 After all Court-approved deductions, it is estimated that \$508,833.34 (the “Net
14 Settlement Amount” or “NSA”) will be available to pay the Class Members, as follows:

15

<i>Settlement Amount</i>	\$ 950,000.00
Attorneys’ Fees (1/3)	\$ 316,666.66
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs	\$ 7,000.00
PAGA Penalties	\$ 90,000.00
Class Representative Service Award	\$ 7,500.00
<i>Net Settlement Amount</i>	\$ 508,833.34

16
17
18
19

20 Payment to Class Members will be calculated pro-rata basis according to the number of
21 Weeks Worked, with each workweek having a value of approximately \$18.85 (NSA / 27,000
22 estimated Work Weeks). This results in an estimated highest payment of \$4,899.88 (someone
23 that worked the full Class Period), lowest payment of \$18.85 (someone that only worked one
24 week), and an average payment of \$2,544.16 (NSA / 200). In addition, approximately 100
25 PAGA Settlement Employees will receive a share of the \$22,500 PAGA Penalties (25% of
26 \$90,000), calculated based on Weeks Worked during the PAGA Period. (S.A. ¶ 47(h)).
27

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

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

9 **II. BACKGROUND**

10 **A. THE CLASS**

11 The Class is defined as follows:

12 All current and former non-exempt (hourly paid) employees employed
13 by Defendant in California at any time during the Class Period (which
14 is May 25, 2018, through May 22, 2023). (S.A. ¶¶ 5, 9).

15 **B. PROCEDURAL HISTORY**

16 Plaintiff submitted a letter to the Labor and Workforce Development Agency (the
17 "LWDA") for civil penalties under the Private Attorneys General Act of 2004 (the "PAGA"),
18 and simultaneously sent a letter to CT Corp requesting the production of personnel and
19 timekeeping records in order to further evaluate his wage and hour claims. (Mankin Decl. ¶ 12).

20 On May 25, 2022, Plaintiff filed a class and PAGA complaint against CT Corp, alleging:
21 (1) failure to pay minimum wages, (2) failure to pay overtime, (3) failure to provide meal
22 periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure
23 to pay vested vacation, (7) failure to timely pay final wages, (8) failure to provide accurate
24 itemized wage statements, (9) unfair and unlawful competition pursuant to California Bus. and
25 Prof. Code §§ 17200 *et seq.*, and (10)-(18) related PAGA claims (Mankin Decl. ¶ 13).

26 CT Corp retained counsel and immediately began to defend the case. Then, after early
27 discussions among counsel, the Parties agreed to attend private mediation. (Mankin Decl. ¶ 14).

28 In preparation for the mediation, the Parties informally exchanged documents and
information that allowed both sides to calculate the potential damages and evaluate potential risk,

1 including policies and procedures pertaining to each claim alleged, sample wage statements, and
2 statistics relating to the number of current and former employees, number of shifts, pay periods
3 worked, hourly rates, and other things. Notably, Defendant provided excel files containing over
4 218,000 rows of data containing detailed payroll and timekeeping data for 113 putative Class
5 Members. This information enabled both parties to take a deep dive into the claims.
6 Additionally, during this process, Plaintiff and his counsel analyzed, researched, and investigated
7 the potential issues, including matters related to the calculation of damages, trial, and appellate
8 issues and risks. (Mankin Decl. ¶ 15).

9 On February 21, 2023, Plaintiff and CT Corp participated in mediation before Eve
10 Wagner, Esq. a well-respected wage and hour mediator. At the conclusion of mediation, which
11 involved extensive arms-length negotiations, Ms. Wagner issued a mediator's proposal which
12 was ultimately accepted by the Parties. The Parties then engaged in discussions on the specific
13 terms of the long-form Settlement Agreement, which was executed by all Parties. The Parties
14 now seek the Court's preliminary approval of the Settlement. (Mankin Decl. ¶ 16).

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

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

17 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

18 The \$950,000 Settlement Amount² is non-reversionary and will be paid out to Class
19 Members without the need to submit a claim form or take any affirmative action. It includes (1)
20 Plaintiff's attorneys' fees and costs, as approved by the Court; (2) a service award of \$7,500 to
21 Plaintiff, subject to approval by the Court; (3) Administration Costs, not to exceed \$7,000; (4) a
22 \$90,000 PAGA award, 75% of which is to be paid to the LWDA pursuant to California Labor
23 Code § 2699(i) and 25% to the PAGA Settlement Employees; and (5) the aggregate of all
24 Individual Settlement Amounts of the Participating Class Members. (S.A. ¶ 47 and subparts).
25 Defendant will separately pay its share of employer payroll taxes and withholdings. (S.A. ¶
26 47(a)).

28 ² The Settlement Amount is subject to increase if the "Escalator Clause" is triggered. S.A. ¶¶ 16, 47(a). If this clause is triggered, the Settlement Amount will increase.

1 **B. NOTICE PROCEDURES**

2 The proposed Notice, which will be accompanied by separate Request for Exclusion and
3 Objection Forms (*see* S.A. ¶ 22) as required by this Court, will be provided to the Class showing
4 how each Class Member's Individual Class Payment and, if applicable, Individual PAGA
5 Payment will be calculated, the number of Work Weeks credited as a Class Member and/or
6 PAGA Settlement Employee (*See* Exhibit B to Mankin Decl.). Within 30 calendar days after
7 entry by the Court of its Order of Preliminary Approval, Defendant shall provide the
8 Administrator with the "Class Data" consisting of Class Member names, addresses, Social
9 Security Numbers, and Weeks Worked during the Class/PAGA Period(s) (S.A. ¶¶ 8, 61).

10 Within 10 calendar days of receipt of the Class Data, the Administrator shall calculate the
11 numbers for each Class Member, populate the Notice, and send each Class Member the Notice
12 via first-class, United States mail. (S.A. ¶ 63).

13 If a Notice is returned as undelivered by the U.S. Postal Service, the Administrator shall
14 perform a skip trace search and seek an address correction for the Class Member(s), and a second
15 Notice will be sent to any new or different address obtained. (S.A. ¶ 64).

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 Class Settlement and shall become a Participating Class Member without
19 having to submit a claim form or take any other action. There is no opt-out right as to the PAGA
20 settlement. To Opt-Out of the Settlement, the Class Member must complete and submit the
21 Request for Exclusion Form to the Administrator no later than 60 days after being mailed by the
22 Administrator ("Response Deadline"). (S.A. ¶¶ 35, 68(a)). Any Opt-Out request that is not
23 postmarked by the Response Deadline will be invalid, unless a Notice was remailed in which
24 case the Class Member's exclusion or objection must be returned by the later of the original
25 Notice Response Deadline or 15 calendar days after the remailing of the notice. (S.A. ¶¶ 64, 68).

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 must submit the
28 Objection form to the Administrator no later than the Response Deadline. (S.A. ¶ 68(c)).

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

2 The amount of each Class Member's Individual Class Payment is tied to the number of
3 Weeks Worked by each Class Member for CT Corp during the Class Period. Individual Class
4 Payments are calculated by (a) dividing the Net Settlement Amount by the total number Weeks
5 Worked by all Participating Class Members during the Class Period, and (b) multiplying the
6 result by each Participating Class Member's Weeks Worked. (S.A. ¶ 47(c)).

7 Additionally, each PAGA Settlement Employee will receive an Individual PAGA
8 Payment calculated in the same way; thus, the \$22,500 PAGA Penalties allocated to the PAGA
9 Settlement Employees will be divided and paid on a Weeks Worked basis. (S.A. ¶ 47(h)).

10 The Class Notice will inform Class Members of how his or her Individual Class Payment
11 and if applicable Individual PAGA Payment will be calculated, and the number of Weeks
12 Worked during the Class and/or PAGA Period(s). Class Members may dispute Weeks Worked
13 if they feel they worked more in the Class or PAGA Periods than CT Corp's records show by
14 timely submitting evidence to the Administrator. (S.A. ¶ 66).

15 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

16 Pursuant to the terms of the Settlement Agreement, Defendant is required to fund the
17 Settlement Amount, plus Defendant's share of payroll taxes owed on the Individual Class
18 Payments, within 30 days of the Effective Date. (S.A. ¶ 69). Within 10 days after receiving the
19 funds, the Administrator shall issue payments to cover all court-approved payments. (S.A. ¶ 70).

20 Class Members will have 180 days to cash the settlement check. (S.A. ¶ 71). If a Class
21 Member fails to cash a check by the deadline, the Administrator shall issue unclaimed funds to
22 *cy pres* Public Counsel in accordance with Code of Civil Procedure § 384.³ (*Id.*).

23 **F. TAX TREATMENT**

24 The Parties agree that 25% of the Individual Class Payments will be allocated as wages
25 subject to withholding of all applicable local, state and federal taxes and the remaining 75% will
26 be allocated for interest and penalties (pursuant to, *e.g.*, California Labor Code §§ 203, 210, 226,

27 _____
28 ³ See Mankin Decl. ¶ 40 (noting that, per CCP § 382.4, none of the attorneys herein have a
connection to or relationship with the *cy pres* beneficiary that could reasonably create the
appearance of impropriety)

2699 etc.) from which no taxes will be withheld. (S.A. ¶ 47(d)). The Individual PAGA Payments will be classified entirely as civil penalties and shall be reported as required on an IRS Form 1099. (S.A. ¶ 47(h)). Defendant will separately pay the share of employer payroll taxes on the sum allocated to wages. (S.A. ¶ 47(a)).

G. PARTICIPATING CLASS MEMBERS' RELEASE OF CLAIMS

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

any and all claims and/or causes of action that were or could have been pled based on the facts alleged in the Complaint and/or the LWDA Notice, including but not limited to, any claim for: (a) failure to pay minimum wages, (b) failure to pay overtime wages (including failure to include additional earned compensation in the calculations for the regular rate of pay), (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to reimburse business expenses, (f) failure to carry over (including due to forfeiture of unused PTO) or pay vested vacation/PTO, (g) failure to timely pay wages during or upon separation of employment, (h) failure to provide accurate itemized wage statements, (i) unfair and unlawful competition, and (j) all other claims for statutory penalties based on such alleged violations, claims based on such alleged facts that could have been brought under the Fair Labor Standards Act ("FLSA") or under any applicable California Industrial Welfare Commission Wage Order; related common law claims for conversion, other alleged tortious conduct, breach of contract, and misrepresentation; and any other derivative claims under California law including claims for liquidated damages, punitive damages, interest, attorneys' fees, litigation and other costs, expenses, restitution, and equitable and declaratory relief

It is understood and agreed that the Settlement Agreement will not release any person, party or entity from claims by Class Members not covered by the release, including claims for wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, or workers' compensation.

H. PAGA SETTLEMENT EMPLOYEES' RELEASE OF CLAIMS

The Settlement Agreement at ¶ 32 also defines the "Released PAGA Claims" as follows:

any and all PAGA claims and/or causes of action that were or could have been pled based on the alleged facts and violations set forth in the Complaint and/or the LWDA Notice, including all PAGA claims seeking civil penalties that premised upon (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to reimburse business expenses, (f) failure to carry over or pay vested vacation, (g) failure to timely pay wages during and upon separation of

1 employment, (h) failure to provide accurate itemized wage statements, and (i)
2 all other claims for civil penalties recoverable under PAGA based on the facts
3 or claims alleged in the Complaint. The time period governing the Released
PAGA Claims shall be any time during the PAGA Period.

4 Moreover, no PAGA Settlement Employee can request exclusion from the PAGA
5 settlement, and any individual who opts out of the Class settlement will still be subject to the
6 Released PAGA Claims to the fullest extent permitted by law and will receive a pro-rata share of
7 PAGA Penalties. (S.A. ¶ 51).

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

10 California Rule of Court 3.769(d) provides that the Court may make an order approving
11 certification of a provisional settlement class at the preliminary approval stage. In deciding
12 whether to approve a proposed class action settlement the Court must find a proposed settlement
13 is “fair, adequate and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.
14 The trial court considers all relevant factors, such as: “the strength of Plaintiff’s case, the risk,
15 expense, complexity and likely duration of further litigation, the risk of maintaining class action
16 status through trial, the amount offered in settlement, the extent of discovery completed and the
17 stage of the proceedings, the experience and views of counsel, [] and the reaction of the class
18 members to the proposed settlement.” *Id.* The Court determines whether the Settlement is the
19 product of fraud, overreaching, or collusion, and, taken as a whole, is fair, reasonable and
20 adequate to all concerned. *Id.* As discussed below, for the purposes of this settlement only,
21 Plaintiff requests this Court provisionally certify the Class, as defined above, under CCP § 382.

22 **A. ASCERTAINABILITY AND NUMEROSITY**

23 In determining whether a class is ascertainable, the court considers “(1) the class
24 definition, (2) the size of the class, and (3) the means available for identifying the class
25 members.” *Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263,
26 1271; *Medraza v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101 (proposed settlement
27 class is ascertainable if the class members can be objectively identified and given notice of the
28 litigation without unreasonable time or expense). Here, according to CT Corp’s records, there are

1 approximately 200 Class Members that are easily identifiable and fall within the defined Class.
2 Thus, Plaintiff's proposed Class meets the ascertainability and numerosity requirements.

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

4 **1. Commonality**

5 To justify certification, the class proponent must show that questions of law or fact
6 common to the class predominate over the questions affecting the individual members. *Arenas v.*
7 *El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732. Here, Plaintiff contends that the Class
8 was subjected to common policies and practices relating to the claims at issue that that created
9 liability as to Class Members. While Defendant disputes that class certification of any claims
10 would be appropriate if the litigation were to continue, the Parties agree to class certification for
11 the purposes of this settlement only.

12 **2. Typicality**

13 Typicality "focuses on whether there exists a relationship between the Plaintiff's claims
14 and the claims alleged on behalf of the class." See Herbert B. Newberg & Alba Conte, *Newberg*
15 *on Class Actions* ("Newberg") § 3:13 (4th ed. 2002). Again, the Parties dispute whether
16 Plaintiff's claims are typical of the Class for the purposes of any continued litigation of the
17 Action, but agree for the purposes of this settlement only, that Plaintiff asserts claims regarding
18 Defendant's pay policies, meal and rest break practices, wage statements, and the provisions
19 governing the timely and complete payment of wages, which are at the core of the lawsuit.

20 **3. Adequacy of Representation**

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

27 Adequacy may be established by the fact that counsel are experienced practitioners. See
28 *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 this matter. (Mankin Decl. ¶¶ 2-6; Carlson Decl. ¶¶ 2-9).

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. The Court's ultimate duty is to determine whether the settlement is fair, adequate, and reasonable. *See Dunk*, 48 Cal.App.4th at 1801 (setting forth the "fair, adequate, and reasonable" standard) (citing *Officers for Justice, supra*).

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

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

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

10 The settlement was the product of extensive arm’s length negotiations between counsel
11 and was facilitated by an experienced wage-and-hour class action mediator. Courts favor
12 “deference to the ‘private consensual decision of the [settling] parties,’ particularly where the
13 parties are represented by experienced counsel and negotiation has been facilitated by a neutral
14 party—in this instance, a private mediator.” *Beck-Ellman v. Kaz USA, Inc.* (S.D. Cal. 2013) 2013
15 WL 1748729, *5-6 (quoting *Rodriguez v. West Pub. Corp.* (9th Cir. 2009) 563 F.3d 948, 965).
16 Though cordial and professional, the settlement negotiations were adversarial and non-collusive
17 in nature. The settlement reached is the product of substantial effort by the parties and their
18 counsel. Although Plaintiff and his counsel believed that there was a possibility of certifying the
19 claims, they recognized the potential risk, expense, and complexity posed by litigation, such as
20 unfavorable decisions on class certification, summary judgment, at trial and/or on the damages
21 awarded, and/or on an appeal that can take several more years to litigate. In addition, if CT Corp
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. See

1 *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 410
2 (approving settlement where “considerable information [exists] from which to assess the strength
3 of the class claims” and litigation risks).

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

5 To evaluate a settlement, the parties must provide the trial court with “basic information
6 about the nature and magnitude of the claims in question and the basis for concluding that the
7 consideration being paid for the release of those claims represents a reasonable compromise.”
8 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. *Kullar* does not require
9 review of the outer reaches of possible exposure without taking into account actual risks of
10 certification, decertification, dispositive motions, and trial, rather only a record which allows “an
11 understanding of the amount that is in controversy and the realistic range of outcomes of the
12 litigation.” *Munoz*, supra, at 408-9.

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

20 Here, Defendant raised significant legal and factual defenses that weigh in favor of the
21 reasonableness of the proposed Settlement. First, in addition to disputing the merits of Plaintiff’s
22 claims, CT Corp strongly disputed that Plaintiff could obtain class certification, arguing a lack of
23 commonality of the legal claims and injuries. CT Corp further argued that it complied with the
24 applicable law and that any purported deviations therefrom were individualized in nature,
25 thereby limiting Plaintiff’s ability to certify the class. While Plaintiff asserts that this is a suitable
26 case for certification, he realizes that there is always a significant risk associated with class
27 certification proceedings, which could limit the claims that he could pursue on a class basis.

28 ///

1 Considering the uncertainties of protracted litigation, this negotiated settlement reflects
2 the best practicable recovery for the Class. While the total Settlement Amount is, of course, a
3 compromise figure, the potential risks and opportunities of both parties were effectively weighed
4 and considered by the parties, resulting in a fair and equitable settlement.

5 Based upon data obtained through informal discovery, Plaintiff's counsel estimated the
6 following data through mediation: (1) 190 Class Members, (2) 75 *former* Class Members for
7 purposes of Labor Code § 203, (3) 25,000 workweeks, (4) 115,000 shifts worked, and (4)
8 approximately 4,050 wage statements during the PAGA Period. (Mankin Decl. ¶ 18).

9 Here, there were several claims alleged by Plaintiff, including: (1) unpaid wage claims
10 under various theories, (2) meal and rest break violations, (3) failure to reimburse business
11 expenses, and (4) derivative claims for waiting time and wage statement penalties due to the
12 other alleged violations. (Mankin Decl. ¶ 19).

13 1. The Risks Associated with the Unpaid Wage Claim

14 As to the unpaid wage claims, Plaintiff alleged three theories of liability. First, Plaintiff
15 alleged that CT Corp paid bonuses to Class Members yet failed to include that additional
16 compensation in the regular rate for purposes of calculating overtime wages. Second, Plaintiff
17 claimed that he and the Class Members and the Class Members were required to perform off-the-
18 clock work due to a computer-based timekeeping system that was not accessible until employees
19 completed various boot-up tasks (at the beginning of shifts) and through which employees had to
20 clock out and then perform various shut down tasks (at the end of shifts). Third, Plaintiff alleged
21 that CT Corp failed to pay all vested vacation wages upon separation of employment, including
22 due to a practice of paying at the base rate of pay, rather than at the final rate of pay
23 (incorporating commission/bonus pay) as required by Labor Code § 227.3 ("all vested vacation
24 shall be paid to [the employee] as wages at his *final rate*").

25 In total, Plaintiff's counsel estimated the maximum value of these unpaid wages to be
26 \$250,000. However, CT Corp vehemently opposed these unpaid wage claims on the merits and
27 as to the propriety of class certification. For example, Defendant argued that it paid discretionary
28 bonuses to the Class, and that those sums did not need to be included in the regular rate or

overtime calculations, and that this would defeat Plaintiff's claims on the merits. Additionally, as to the "off-the-clock" claim, Defendant argued that time spent turning on a computer is not compensable and, moreover, that it would be unmanageable and require person-by-person individualized assessments to determine if this applied to each Class Member and, if so, how frequently it occurred and for how long. Finally, Defendant argued that the company was permitted under its vacation policy to set the terms including the rate at which it paid vested vacation to employees, including at termination. Due to the defenses and arguments raised, Plaintiff assigned a 20% risk for each respective unpaid wage claim at the class certification stage and an additional 20% risk on the merits. In sum, Plaintiff's counsel calculated the risk-adjusted value of the unpaid wage claims as \$160,000. (Mankin Decl. ¶ 20).

2. The Risks Associated with the Meal and Rest Break Claims

Plaintiff also alleged meal and rest break claims against Defendant. Given the total number of shifts at issue (an estimate of 115,000), and when incorporating claimed meal period violation rates from expert review of the timekeeping records and other evidence, Plaintiff's counsel estimated a 45.7% violation rate for meal breaks and assumed a 25% violation rate for rest breaks based on Defendant's compliant policies and the fact that Class Members worked from home during the majority of the Class Period, leading to 52,555 alleged meal violations and 28,750 alleged rest break violations. This established a maximum potential value for these claims of \$2,276,540 (81,305 violations multiplied by the average hourly rate of \$28 as the applicable premium rate under § 226.7). (Mankin Decl. ¶ 21).

However, CT Corp raised numerous arguments in response to these claims, including that it maintained fully compliant written policies and specifically authorized the Class Members to take meal and rest breaks, and that many Class members worked from home, meaning that no one had a reason or cause to miss a break or take a short/late break. Defendant also contended that employees attested that they received meal and rest periods when submitting their weekly time sheets. Therefore, Defendant asserted that a fact-finder would have to determine for each Class Member whether a break was missed and why, and why a break was noncompliant or nonexistent, because if it was by the employee's choice, no liability attaches to Defendant.

1 These defenses are factored into Plaintiff's analysis in two ways. First, these issues raise
2 questions regarding whether the meal and rest break claims could be certified, and Plaintiff
3 placed a 30% risk at the class certification stage for meal periods and a 50% risk for rest breaks.
4 Second, these defenses also go toward the merits given the evidentiary question of proving the
5 number of meal and rest violations. As such, Plaintiff placed a 30% risk on the merits for meal
6 breaks, and an additional 50% risk on the merits for rest breaks, setting the risk-adjusted value
7 for the combined meal and rest break claims at \$922,305. (Mankin Decl. ¶ 22).

8 3. The Risks Associated with the Expense Reimbursement Claim

9 Plaintiff also alleged claims for the failure to reimburse business expenses for Class
10 Members (including equipment and internet needed to perform their tasks). Plaintiff valued this
11 claim at an estimated \$250,000 (based on 10,000 violative workweeks and \$25 unreimbursed
12 expenses per week). However, leading up to mediation, Defendant provided documents and
13 policies showing that the Class Members were reimbursed for 50% of their monthly data
14 network costs, up to \$100 per month, with the ability to receive more reimbursement if requested
15 and supported by documentation. Thus, based on these policies, which Plaintiff's counsel cross-
16 checked and confirmed applied to Plaintiff, Plaintiff assigned a 80% risk of defeat at class
17 certification and another 80% risk of defeat on the merits, leading to a risk-adjusted value of
18 \$10,000 on the Labor Code § 2802. (Mankin Decl. ¶ 23).

19 4. The Risks Associated with the Waiting Time and Wage Statement Claims.

20 Finally, Plaintiff alleged claims for waiting time penalties and wage statement violations.
21 But these claims were entirely derivative of the claims above, meaning that they only had merit
22 if the claims for unpaid wages or meal/rest breaks were successful. The maximum values for
23 these claims were as follows: (1) \$504,000 for waiting time penalties [75 former employees x
24 \$28 per hour x 8 hours per day x 30 days], and (2) \$400,000 for wage statement violations [4,050
25 wage statements for 100 employees at the \$50/\$100 formula of § 226(e)]. (Mankin Decl. ¶ 24).

26 But CT Corp raised a variety of defenses to these derivative claims that impacted the
27 valuation. Namely, Defendant argued that the wage statements did not violate Labor Code § 226
28 and, even if there were violations, given its factual and legal defenses, Plaintiff would be unable

1 to prove the required “knowing and intentional” and “injury” elements. See *Naranjo v. Spectrum*
2 *Sec. Servs., Inc.*, 88 Cal. App. 5th 937, 945-51 (2023), *review filed* (Apr. 7, 2023) (holding that a
3 good faith factual or legal defense precludes the imposition of penalties under both Section 226
4 and Section 203). Based on these facts and defenses, Plaintiff placed a 30% risk at class
5 certification (mirroring the claims on which the wage statement claim was based) and estimated
6 another 50% risk the merits, leading to a risk-adjusted value of \$140,000 for the wage statement
7 claims. (Mankin Decl. ¶ 25).

8 Then, as to the waiting time penalty claim, Plaintiff’s valuation had to account for the
9 fact that this claim was derivative of the unpaid wage and meal/rest break claims and, if those
10 claims failed at certification or on the merits, there would be no waiting time penalties owed, so
11 the same risks for those claims applied to this claim. Furthermore, even if the unpaid wage
12 and/or meal/rest claims succeeded at certification and on the merits, Plaintiff would have to
13 prove that the violations (if any existed) were “willful” under the meaning of Labor Code § 203.
14 And, here, Defendant argued there was no “willful” violation since they had compliant written
15 policies and good faith factual and legal defenses to the wage claims. As a result of this analysis,
16 Plaintiff’s counsel applied a 30% risk at class certification and a 50% risk on the merits, leading
17 to a risk-adjusted value of \$176,400. (Mankin Decl. ¶ 26).

18 5. The Risks Associated with the PAGA Claim

19 Plaintiffs’ Counsel believed Defendant’s maximum exposure could theoretically reach
20 the low seven figures under Lab. Code § 2699(f). However, Defendant argued against the merits
21 of the underlying claims which would also be a defense to potential PAGA penalties. Defendant
22 also argued that it would be improper to “stack” civil penalties on top of statutory penalties for
23 the same violations. Also, courts have wide latitude to reduce PAGA penalties “based on the
24 facts and circumstances of a particular case” and if “to do otherwise would result in an award
25 that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(e)(2). Courts have
26 often awarded significantly lesser amounts in cases when they assess a penalty. *See, e.g.*,
27 *Carrington v. Starbucks Corp.* (2017) 30 Cal. App. 5th 504, 669 (PAGA penalties reduced by
28 90%); *Morales v. Bridgestone*, Case No. 30-2017-00900244 (Orange County Super. Ct.) (Aug.

2, 2018) (PAGA penalties reduced by 94%). Given these factors, Plaintiff allocated \$90,000 of the total Settlement Amount to civil penalties. Allocating less of the settlement to PAGA penalties is justified because it maximizes payments to class members and furthers the public policies underlying PAGA by providing a “robust” remedy for alleged violations of the Labor Code. See *Mejia v. Walgreen Co.* (E.D. Cal. Mar. 24, 2021) 2021 WL 1122390, at *5.

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

• Unpaid Wage Claims	\$	160,000
• Meal and Rest Break Claims	\$	922,305
• Expense Reimbursement Claim	\$	10,000
• Wage Statement Claims	\$	140,000
• Waiting Time Penalty Claims	\$	176,400
• <u>PAGA Claim</u>	<u>\$</u>	<u>90,000</u>
• Total Risk Adjusted Penalties and Damages	\$	1,488,705

The reasonableness of the settlement is apparent from the fact that the proposed settlement is 63.8% of the risk-adjusted class damages and penalties. See, e.g., *Hopson v. Hanesbrands Inc.* (N.D. Cal. 2009) 2009 WL 928133, *8 (“The settlement ... represents less than two percent of that amount,” but “may be justifiable ... given ... significant defenses that increase the risks of litigation.”); *Balderas v. Massage Envy Franchising* (N.D. Cal. 2014) 2014 WL 3610945 (settlement approved despite only 5% of projected maximum recovery). *Villegas v. J.P. Morgan Chase* (N.D. Cal. 2012) 2012 WL 5878390 (approved settlement that was 15% of potential recovery). Thus, 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 conducting the litigation is entitled to significant weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework* (N.D. Cal. 1980) 87 F.R.D. 15, 18; *Kullar, supra* at 128 (court must consider “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

1 5% of litigators), having achieved large settlements and verdicts, collecting over \$250 million for
2 its clients, having tried class and PAGA cases against Fortune 100 companies, among other
3 things. (Mankin Decl. ¶¶ 2-6; Carlson Decl. ¶¶ 2-9). Plaintiff's counsel, operating at arm's
4 length, weighed the strengths and risks of this case, and are of the view that this is a fair and
5 reasonable settlement considering the nature of the claims, realistic risk adjusted value, the
6 complexities of the case, state of the law, and uncertainties of class certification and litigation.

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

8 The proposed Notice should be approved, as it fully informs the Class Members of the
9 nature of the lawsuit and each Class Member's rights under terms of the Settlement Agreement
10 and applicable law. The manner in which the Class Notice shall be disseminated, ensures that all
11 or nearly all of the Class Members shall be properly notified of the proposed settlement.

12 The proposed Notice and proposed plan for the Administrator to mail the Notice to the
13 last known address of all class members complies with all the requirements of Cal. Rule of Court
14 3.769(f) and 3.766(b). The contents of the proposed Notice includes (1) the material terms of the
15 settlement; (2) the proposed attorneys' fees, litigation expenses, and the costs of administration;
16 (3) details about the final fairness hearing and how class members may elect to exclude
17 themselves or make an objection; and (4) how class members can obtain additional information.
18 See Class Notice (Exhibit B to Mankin Decl.). In addition, it will inform Class Members of their
19 estimated Individual Class Payment and Individual PAGA Payment.

20 The Court has wide discretion in approving the means of providing notice, so long as the
21 class representative "provide(s) meaningful notice in a form that should have a reasonable
22 chance of reaching a substantial percentage of class members." *Archibald v. Cinerama Hotels*,
23 (1976) 15 Cal.3d 853, 861. Here, the parties' notice plan is that notice of the Settlement will be
24 disseminated directly to the class members by first class mail by the Administrator, since CT
25 Corp has the last known addresses of all class members and the Administrator will perform a
26 skip trace and update addresses for any class notices that are returned and re-send the notice.

27 The Notice satisfies the requirements of Rule of Court 3.766 and affords Class Members
28 with all due process protections required by the U.S. Constitution. Moreover, the contents of the

1 Notice comply with Cal. R. Ct. 3.766(d), because the Notice includes, without limitation (1) a
2 detailed explanation of the case, including the basic contentions or denials of the parties; (2) a
3 statement that the court will exclude the member from the class if the member so requests by a
4 specified date; (3) a procedure for the member to follow in requesting exclusion from the class;
5 (4) a statement that the judgment, whether favorable or not, will bind all members who do not
6 request exclusion; and (5) a statement that any member who does not request exclusion may, if
7 the member so desires, enter an appearance through counsel. The 60-day deadline to opt-out or
8 object is also reasonable, as it provides Class Members sufficient time to do so and, if they so
9 choose, to seek independent legal advice in the interim. If a Class Member does not opt-out, he
10 or she will automatically be sent a settlement check.

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

13 The fact that each member who does not opt out of the Settlement shall be mailed a check
14 ensures that every Class Member will be paid unless he or she affirmatively acts to exclude
15 himself or herself. Individual PAGA payments will be paid to all PAGA Settlement Employees,
16 regardless of whether they opt out of the Class Settlement. Moreover, the Settlement Amount is
17 non-reversionary, which means that no settlement funds will revert to Defendant; instead, if any
18 checks are uncashed by the deadline, the funds will be paid to *cy pres* Public Counsel in
19 accordance with CCP § 384. Such terms are favored by Courts and demonstrate that there was no
20 collusion between counsel and that the Settlement is fair and favorable to the Class Members.

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

22 Under the terms of the Settlement Agreement, Class Counsel is seeking reimbursement
23 of up to \$20,000 in litigation costs, along with attorneys’ fees equal to one-third of the
24 Settlement Amount. See, *e.g.*, *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving
25 1/3 fee in the amount of \$6.33 million at a 2.13 lodestar multiplier, and holding that when class
26 action litigation establishes a monetary fund for the benefit of the class members, the trial court
27 may determine the amount of a reasonable fee by choosing an appropriate percentage of the
28 fund created); *Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645

(approving fee 1/3 of the total maximum settlement amount of \$4.5 million since 1/3 was “well within the range of percentages which courts have upheld as reasonable in other class action lawsuits”); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) 2010 WL 2196104, at *8 (approving fee award of 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007), 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund, noting: “[f]ee awards in class actions average around one-third of the recovery.”).

Once the Court grants preliminary approval and Notice is disseminated, Plaintiff’s counsel will submit a comprehensive request for attorneys’ fees and costs with final approval.

I. THE REQUESTED SERVICE AWARD REQUEST IS FAIR AND APPROPRIATE

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

The requested service award falls within the range of incentive payments typically awarded to Class Representatives in similar class actions. See, e.g., *Bond v. Ferguson Enterprises, Inc.* (E.D. Cal. 2011) 2011 WL 2648879 (approving \$11,250 service awards in trucker meal break class action); *Ross v. US Bank National Association* (N.D. Cal. 2010) 2010 WL 3833922, at *2 (approving \$20,000 enhancement award in California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 415, 493 (approving service awards of \$15,000 from a \$300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores, Inc.* (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558, at *28 (finding service awards “of \$ 15,000 each to be reasonable.”).

///

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

2 Subject to the Court's approval, the parties stipulated to Phoenix Class Action
3 Administration Solutions serving as the Administrator. Phoenix is experienced in administering
4 class action settlements and has provided a flat-fee proposal to administer this settlement for
5 \$7,000. (Mankin Decl. ¶ 39; Exhibit D to Mankin Decl. [Administrator's bid]).

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

7 The last step in the approval process is the formal hearing, whereby proponents of the
8 Settlement may explain and describe its terms and conditions and offer argument in support of
9 approval, and Class Members or their counsel may be heard in support of or in opposition to the
10 settlement. Subject to the Court's approval, the Parties propose that the Court schedule a hearing
11 for final approval approximately 140 days after the Preliminary Approval Date, as follows:

12 August 24, 2023	Preliminary Approval (PA) hearing
13 October 3, 2023 14 <i>40 days after PA</i>	Deadline for Administrator to complete first mailing of the Notice Packet to all Class Members.
15 December 2, 2023 16 <i>60 days after mailing Notice</i>	Deadline for Class Members to submit Requests for Exclusion and Objections to the settlement.
17 16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval and application for award of fees, costs and service payments.
18 9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiff's Motion for Final Approval, or filing response to an objection.
19 5 court days before final 20 approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval
21 January 11, 2024 22 <i>140 days after PA</i>	Final Approval Hearing.

23 **VIII. CONCLUSION**

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

26 Dated: June 27, 2023

LAUBY, MANKIN & LAUBY LLP

27 BY:


28 Brian J. Mankin, Esq.
Attorneys for Plaintiff and the 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 June 27, 2023, I caused to be served the foregoing document(s) described as follows:

**PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS AND
PAGA REPRESENTATIVE 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.

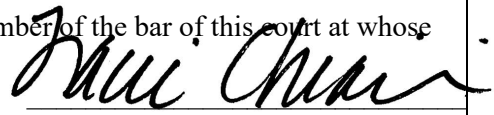
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service 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 June 27, 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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