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

EMILIO ROSAS, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

FURNITURE AVE, INC., a California
Corporation; FURNITURE AVE CITY, a
California Corporation; FURNITURE
CITY WEST, a California Corporation;
FARIS ESCHEIK, an individual; FAWZI
SAED, an individual; OMAR RAHMAN,
an individual; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: 30-2022-01284958-CU-OE-CXC
*[Assigned to Hon. Randall J. Sherman, Dept
CX105, 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: May 31, 2024

Time: 10:00 a.m.

Dept.: CX105

Reservation #: 74224572

Complaint filed: October 7, 2022

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 31, 2024 at 10 a.m., or as soon thereafter as the
matter may be heard by the Honorable Randall J. Sherman in Department CX105 of the Orange
County Superior Court, located at 751 W. Santa Ana Blvd., Santa Ana, CA 92701, Plaintiff
Emilio Rosas, 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 and PAGA

representative 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 and PAGA representative action settlement as fair, adequate, and reasonable, based upon the terms set forth in the Settlement Agreement;
5. Provisionally approving the appointment of Phoenix Settlement Administrators as settlement administrator;
6. Directing distribution of the Class Notice, including notice of the opportunity to exclude oneself from, or object to, the class settlement;
7. 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 unopposed by Defendants Furniture Ave, Inc., Furniture Ave City, Furniture City West, Faris Escheik, Fawzi Saed, and Omar Rahman ("Defendants"), and is based upon this Memorandum of Points and Authorities in Support thereof; the Declaration of Plaintiff and Plaintiff's Counsel (Brian Mankin and Misty Lauby); the Class Action and PAGA Representative Action Settlement Agreement and Release of Claims (the "Settlement Agreement"); the proposed Order granting Preliminary Approval of the Settlement; all other records, pleadings, and papers filed in this action; and upon such other evidence or argument as may be presented to the Court at the hearing of this motion.

Dated: February 7, 2024

LAUBY, MANKIN & LAUBY LLP

BY:



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 Emilio Rosas seeks preliminary approval of a \$408,000 wage-and-hour class
4 action settlement on behalf of approximately 272 current and former nonexempt employees
5 employed by Defendants Furniture Ave, Inc., Furniture Ave City, Furniture City West in
6 California during the Class Period (which is October 7, 2018, through January 8, 2024).

7 Defendants own and operate furniture store locations in Southern California that share
8 common policies, practices and owners. Plaintiff and each of the Class Members worked at one
9 or more of the store locations in Southern California.

10 Under the terms of the Settlement Agreement,¹ Defendants will not oppose Plaintiff
11 Counsel's application for a reasonable award of attorney's fees not to exceed 1/3 of the
12 Settlement Amount, litigation expenses not to exceed \$20,000, Administrator Costs of
13 \$11,000.00, PAGA penalties of \$40,000 (with 75% to the LWDA and 25% to the Aggrieved
14 Employees on a pro rata basis), and a Service Payment of \$7,500 to Plaintiff Emilio Rosas
15 ("Class Representative"). (S.A. ¶ 45, *et seq.*)

16 After all Court-approved deductions, it is estimated that \$183,500.00 (the "Net
17 Settlement Amount" or "NSA") will be available to pay the Class Members, as follows:

18

<i>Settlement Amount</i>	\$ 408,000.00
Attorneys' Fees (1/3)	\$ 136,000.00
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs	\$ 11,000.00
PAGA Penalties	\$ 40,000.00
Class Representative Service Award	\$ 7,500.00
<i>Net Settlement Amount</i>	\$ 183,500.00

22

23 Payment to Class Members will be calculated pro-rata basis according to the number of
24 Weeks Worked, with each workweek having a value of approximately \$19.89 (NSA / 9,228
25 estimated Work Weeks). The average payment to the 272 Class Members is \$674.63. In terms
26 of the potential high and low payments, there are 275 potential Workweeks in the Class Period,
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 so someone who worked the entire Class Period would receive an estimated highest payment of
2 \$5,469.75 (\$19.89 x 275 Workweeks), whereas a short term employee who only worked one
3 Workweek would receive \$19.89. In addition, the Aggrieved Employees will receive a share of
4 the \$10,000 PAGA Penalties (25% of \$40,000), calculated based on Weeks Worked during the
5 PAGA Period. (S.A. ¶ 45(h)).

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

14 **II. BACKGROUND**

15 **A. THE CLASS**

16 The Class is defined as follows:

17 All current and former nonexempt employees employed by Defendants
18 Furniture Ave, Inc., Furniture Ave City, Furniture City West in
19 California during the Class Period (which is October 7, 2018, through
January 8, 2024). (S.A. ¶¶ 6, 10).

20 **B. PROCEDURAL HISTORY**

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

25 On October 7, 2022, Plaintiff filed a putative class action in the Orange County Superior
26 Court and later amended the complaint to include representative PAGA claims. The operative
27 First Amended Complaint alleges Class Claims and PAGA Claims for: (1) failure to pay proper
28 minimum wages, (2) failure to pay proper overtime wages, (3) failure to provide compliant meal

1 periods, (4) failure to provide compliant rest breaks, (5) failure to timely pay all wages due and
2 owing upon separation of employment, (6) failure to provide accurate itemized wage statements,
3 (7) unfair and unlawful competition, and (8) related PAGA claims. (Mankin Decl. ¶ 13).

4 Defendants retained counsel and immediately began to defend the case. The Parties
5 exchanged extensive written discovery and a Belaire Notice as part of the process of obtaining
6 class contact information. However, prior to engaging in a contested class certification process,
7 the Parties agreed to attend private mediation. (Mankin Decl. ¶ 14).

8 In preparation for the mediation, the Parties informally exchanged documents and
9 information that allowed both sides to calculate the potential damages and evaluate potential risk,
10 including policies and procedures pertaining to each claim alleged, sample wage statements, and
11 statistics relating to the number of current and former employees, number of shifts, pay periods
12 worked, hourly rates, and other things. Notably, Defendant provided several excel files
13 containing data containing detailed payroll and timekeeping data for the putative Class Members.
14 This information enabled both parties to take a deep dive into the claims. Additionally, during
15 this process, Plaintiff and his counsel analyzed, researched, and investigated the potential issues,
16 including matters related to the calculation of damages, trial, and appellate issues and risks.
17 (Mankin Decl. ¶ 15).

18 On February 21, 2023, the Parties participated in mediation before the Hon. Jonathan
19 Cannon (Ret.), who previously served in Department CX102 for many years in this Court's
20 complex department handling these types of cases, and now works as a full time mediator. At the
21 conclusion of mediation, which involved extensive arms-length negotiations, the Parties reached
22 a settlement. The Parties then engaged in discussions on the specific terms of the long-form
23 Settlement Agreement, which was executed by all Parties. The Parties now seek the Court's
24 preliminary approval of the Settlement. (Mankin Decl. ¶ 16).

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

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

27 ///

28 ///

1 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

2 The \$408,000 Settlement Amount² is non-reversionary and will be paid out to Class
3 Members without the need to submit a claim form or take any affirmative action. It includes (1)
4 Plaintiff's attorneys' fees and costs, as approved by the Court; (2) a service award of \$7,500 to
5 Plaintiff, subject to approval by the Court; (3) Administration Costs, not to exceed \$11,000; (4) a
6 \$40,000 PAGA award, 75% of which is to be paid to the LWDA pursuant to California Labor
7 Code § 2699(i) and 25% to the Aggrieved Employees; and (5) the aggregate of all Individual
8 Settlement Amounts of the Participating Class Members. (S.A. ¶ 45 and subparts). Defendants
9 will separately pay its share of employer payroll taxes and withholdings. (S.A. ¶ 45(a)).

10 **B. NOTICE PROCEDURES**

11 The proposed Notice Packet (consisting of the Class Notice, Exclusion Form and
12 Objection Form) will be provided to the Class in English and Spanish, showing how each Class
13 Member's Individual Class Payment and, if applicable, Individual PAGA Payment will be
14 calculated, the number of Work Weeks credited as a Class Member and/or PAGA Settlement
15 Employee (*See* Exhibit B to Mankin Decl.). Within 20 calendar days after entry by the Court of
16 its Order of Preliminary Approval, Defendants shall provide the Administrator with the "Class
17 Data" consisting of Class Member names, addresses, Social Security Numbers, and Weeks
18 Worked during the Class/PAGA Period(s) (S.A. ¶¶ 9, 59).

19 Within 10 calendar days of receipt of the Class Data, the Administrator shall calculate the
20 numbers for each Class Member, populate the Notice, and send each Class Member the Notice
21 via first-class, United States mail. (S.A. ¶ 61).

22 If a Notice is returned as undelivered by the U.S. Postal Service, the Administrator shall
23 perform a skip trace search and seek an address correction for the Class Member(s), and a second
24 Notice will be sent to any new or different address obtained. (S.A. ¶ 62).

25 ///

26 ///

27 _____
28 ² The Settlement Amount is subject to increase if the "Escalator Clause" is triggered. S.A. ¶¶ 16,
45(a).

1 **C. EXCLUSION AND OBJECTION PROCEDURES**

2 Class Members who do not timely Opt-Out of the Settlement will be deemed to
3 participate in the Class Settlement and shall become a Participating Class Member without
4 having to submit a claim form or take any other action. To Opt-Out of the Class Settlement, the
5 Class Member must complete and submit a Request for Exclusion Form to the Administrator no
6 later than 45 days after being mailed by the Administrator (“Response Deadline”). (S.A. ¶¶ 34,
7 66(a)). Any Opt-Out request that is not postmarked by the Response Deadline will be invalid,
8 unless a Notice Packet was remailed in which case the Class Member’s exclusion or objection
9 must be submitted by the later of the original Response Deadline or 15 calendar days after the
10 remailing of the Notice Packet. (S.A. ¶¶ 62).

11 The Class Notice shall inform Class Members of their right to object to the Settlement.
12 Any Participating Class Member who wishes to object to the Settlement must submit the
13 Objection Form to the Administrator no later than the Response Deadline, or may object orally at
14 the final approval hearing. (S.A. ¶ 66(c)).

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

16 The amount of each Class Member’s Individual Class Payment is tied to the number of
17 Weeks Worked by each Class Member for Defendants during the Class Period. Individual Class
18 Payments are calculated by (a) dividing the Net Settlement Amount by the total number Weeks
19 Worked by all Participating Class Members during the Class Period, and (b) multiplying the
20 result by each Participating Class Member’s Weeks Worked. (S.A. ¶ 45(c)).

21 Additionally, each PAGA Settlement Employee will receive an Individual PAGA
22 Payment calculated in the same way; thus, the \$10,000 PAGA Penalties allocated to the
23 Aggrieved Employees will be divided and paid on a Weeks Worked basis. (S.A. ¶ 45(h)).

24 The Class Notice will inform Class Members of how his or her Individual Class Payment
25 and if applicable Individual PAGA Payment will be calculated, and the number of Weeks
26 Worked during the Class and/or PAGA Period(s). Class Members may dispute Weeks Worked
27 if they feel they worked more in the Class or PAGA Periods than Furniture Ave’s records show
28 by timely submitting evidence to the Administrator. (S.A. ¶ 64).

1 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

2 As a result of Defendants financial condition (whereby Defendants are closing stores and
3 slowing operations in California), the Parties and Judge Cannon (the mediator) developed a
4 payment plan that will allow Defendants to fund in the Settlement in three payments and
5 continue operations. Pursuant to the terms of the Settlement Agreement, Defendants are required
6 to fund the Settlement Amount, plus Defendant's share of payroll taxes owed on the Individual
7 Class Payments, in three equal installments on August 8, 2024, April 8, 2025 and December 8,
8 2025. (S.A. ¶ 67). Within 10 days after receiving each payment, the Administrator shall issue
9 payments to cover all court-approved payments. (S.A. ¶ 68).

10 Participating Class Member and/or Aggrieved Employee will have 180 days to cash each
11 settlement check. (S.A. ¶ 71). But if the first and/or second payment is not timely cashed, the
12 Administrator will hold these funds in its account, and the person may contact the Administrator
13 to request that the first and/or second payments be reissued at any time until 180 days after the
14 third and final check is mailed. However, for any and all checks that are not cashed within 180
15 days of the third and final payment, the checks will be void and a stop-payment will be issued,
16 and the Administrator shall issue the unclaimed funds to the California State Controller's Office
17 in the name of the Participating Class Member and Aggrieved Employee. (S.A. ¶ 71(a)-(b)).

18 **F. TAX TREATMENT**

19 The Parties agree that one-third of the Individual Class Payments will be allocated as
20 wages subject to withholding of all applicable local, state and federal taxes and the remaining
21 two-thirds will be allocated for interest and penalties (pursuant to, *e.g.*, California Labor Code §§
22 203, 210, 226, 2699 etc.) from which no taxes will be withheld. (S.A. ¶ 45(d)). The Individual
23 PAGA Payments will be classified entirely as civil penalties and shall be reported as required on
24 an IRS Form 1099. (S.A. ¶ 45(h)). Defendants will separately pay the share of employer payroll
25 taxes on the sum allocated to wages. (S.A. ¶ 45(a)).

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

27 In exchange for these payments, the Settlement Agreement at ¶ 30 provides that the
28 Participating Class Members will release the Released Parties of:

1 Any and all claims and/or causes of action that were or could have been pled
2 based on the facts alleged in the Complaint, including but not limited to, any
3 claim for: (a) failure to pay minimum wages, (b) failure to pay overtime wages;
4 (c) failure to provide meal periods, (d) failure to provide for rest breaks, (e)
5 failure to failure to timely pay final wages, (f) failure to provide accurate
6 itemized wage statements, (g) unfair and unlawful competition, and (h) all other
claims for statutory penalties based on the facts or claims alleged in the
operative complaint. The time period governing the Released Class Claims
shall be the Class Period.

7
8 It is understood and agreed that the Settlement Agreement will not release any person,
9 party or entity from claims by Class Members not covered by the release, including claims for
10 wrongful termination, violation of the Fair Employment and Housing Act, unemployment
11 insurance, disability, social security, or workers' compensation.

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

13 The Settlement Agreement at ¶ 31 also defines the "Released PAGA Claims" as follows:

14 Any and all PAGA claims and/or causes of action that were or could have been
15 pled based on the alleged facts and violations set forth in the Complaint and/or
16 the LWDA Notice, including all PAGA claims seeking civil penalties that
17 premised upon (a) failure to pay minimum wages, (b) failure to pay overtime
18 wages; (c) failure to provide meal periods, (d) failure to provide for rest breaks,
19 (e) failure to failure to timely pay final wages, (f) failure to provide accurate
20 itemized wage statements, and (g) all other claims for civil penalties
recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et*
seq. based on the facts or claims alleged in the operative complaint. The time
period governing the Released PAGA Claims shall be the PAGA Period.

21 Moreover, no PAGA Settlement Employee can request exclusion from the PAGA
22 settlement, and any individual who opts out of the Class settlement will still be subject to the
23 Released PAGA Claims to the fullest extent permitted by law and will receive a pro-rata share of
24 PAGA Penalties. (S.A. ¶ 49).

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

27 California Rule of Court 3.769(d) provides that the Court may make an order approving
28 certification of a provisional settlement class at the preliminary approval stage. In deciding

whether to approve a proposed class action settlement the Court must find a proposed settlement is “fair, adequate and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. The trial court considers all relevant factors, such as: “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, [] and the reaction of the class members to the proposed settlement.” *Id.* The Court determines whether the Settlement is the product of fraud, overreaching, or collusion, and, taken as a whole, is fair, reasonable and adequate to all concerned. *Id.* As discussed below, for the purposes of this settlement only, Plaintiff requests this Court provisionally certify the Class, as defined above, under CCP § 382.

A. ASCERTAINABILITY AND NUMEROSITY

In determining whether a class is ascertainable, the court considers “(1) the class definition, (2) the size of the class, and (3) the means available for identifying the class members.” *Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1271; *Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101 (proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense). Here, according to Defendants’ records, there are approximately 272 Class Members that are easily identifiable and fall within the defined Class. Thus, Plaintiff’s proposed Class meets the ascertainability and numerosity requirements.

B. WELL-DEFINED COMMUNITY OF INTEREST

1. Commonality

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

1 2. Typicality

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

9 3. Adequacy of Representation

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

16 Adequacy may be established by the fact that counsel are experienced practitioners. See
17 *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001)
18 244 F.3d 1152, 1162. Here, Plaintiff is represented by Class Counsel with extensive experience
19 in wage and hour class actions like this matter. (Mankin Decl. ¶¶ 2-6).

20 4. Superiority

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

25 ///

26 ///

27 ///

28 ///

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

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

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

13 The decision to approve or reject a proposed settlement lies within the Court's sound
14 discretion. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35. The
15 Court's ultimate duty is to determine whether the settlement is fair, adequate, and reasonable.
16 *See Dunk*, 48 Cal.App.4th at 1801 (setting forth the "fair, adequate, and reasonable" standard)
17 (citing *Officers for Justice, supra*).

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

1 **B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE**
2 **NEGOTIATIONS**

3 The settlement was the product of extensive arm's length negotiations between counsel
4 and was facilitated by a retired judge and experienced wage-and-hour class action mediator.
5 Courts favor "deference to the 'private consensual decision of the [settling] parties,' particularly
6 where the parties are represented by experienced counsel and negotiation has been facilitated by
7 a neutral party—in this instance, a private mediator." *Beck-Ellman v. Kaz USA, Inc.* (S.D. Cal.
8 2013) 2013 WL 1748729, *5-6 (quoting *Rodriguez v. West Pub. Corp.* (9th Cir. 2009) 563 F.3d
9 948, 965). Though cordial and professional, the settlement negotiations were adversarial and
10 non-collusive in nature. The settlement reached is the product of substantial effort by the parties
11 and their counsel. Although Plaintiff and his counsel believed that there was a possibility of
12 certifying the claims, they recognized the potential risk, expense, and complexity posed by
13 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
14 on the damages awarded, and/or on an appeal that can take several more years to litigate. In
15 addition, if Defendants prevailed on any of the defenses, the employees may not have received
16 any monetary recovery.

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

19 Plaintiff thoroughly investigated and evaluated the factual and legal strengths and
20 weaknesses of this case before reaching the settlement. As described above, the settlement was
21 reached after extensive investigation and research, thorough calculations and risk evaluation, and
22 a substantial exchange of information relating to the Class Members prior to mediation. See
23 *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 410
24 (approving settlement where "considerable information [exists] from which to assess the strength
25 of the class claims" and litigation risks).

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

27 To evaluate a settlement, the parties must provide the trial court with "basic information
28 about the nature and magnitude of the claims in question and the basis for concluding that the

1 consideration being paid for the release of those claims represents a reasonable compromise.”
2 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. *Kullar* does not require
3 review of the outer reaches of possible exposure without taking into account actual risks of
4 certification, decertification, dispositive motions, and trial, rather only a record which allows “an
5 understanding of the amount that is in controversy and the realistic range of outcomes of the
6 litigation.” *Munoz*, supra, at 408-9.

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

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

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

26 Based upon data obtained through informal discovery, Plaintiff’s counsel estimated the
27 following data through mediation: (1) 272 Class Members, (2) 203 *former* Class Members for
28 purposes of Labor Code § 203, (3) 9,228 workweeks, (4) 46,140 shifts; and (5) approximately

1 1,989 wage statements during the PAGA Period. (Mankin Decl. ¶ 18).

2 Here, there were several claims alleged by Plaintiff, including: (1) unpaid wage claims
3 under various theories, including: (a) illegally shaving hours of work by Class Members by
4 altering time clock records; and (b) auto-deducting meal periods that were not taken by Class
5 Members, (2) meal and rest break violations, and (3) derivative claims for waiting time and wage
6 statement penalties due to the other alleged violations. (Mankin Decl. ¶ 19).

7 1. The Risks Associated with the Unpaid Wage Claim

8 As to the unpaid wage claims, Plaintiff alleged two main theories of liability. First,
9 Plaintiff alleged that Furniture Ave, that early in the Class Period, Defendants had a system
10 where employees would punch a timecard but then Defendants' payroll department
11 would enter time into ADP that did not match the punch card records. Later,
12 Defendants switch to a system where employees entered time directly into ADP but
13 then the payroll department edited time to reduce the number of hours worked by
14 employees resulting in Class Members being paid for fewer hours than they worked.
15 Second, Plaintiff claimed that he and the Class Members and the Class Members were required
16 to perform off-the-clock work due to Defendants' policy and practice of auto-deducting meal
17 periods whether or not they were taken by Plaintiff and the Class Members resulting in unpaid
18 off-the-clock work.

19 In total, Plaintiff's counsel estimated the maximum value of these unpaid wages to be
20 \$830,520. However, Furniture Ave vehemently opposed these unpaid wage claims on the merits
21 and as to the propriety of class certification. For example, Defendants argued that there was no
22 policy or practice of shaving time from Class Members timekeeping and payroll records or auto-
23 deducting meal periods, and that this would defeat Plaintiff's claims on the merits. Additionally,
24 as to the "off-the-clock" claims, Defendants argued that it would be unmanageable and require
25 person-by-person individualized assessments to determine if this applied to each Class Member
26 and, if so, how frequently it occurred and for how long. Due to the defenses and arguments
27 raised, Plaintiff assigned a 40% risk for each respective unpaid wage claim at the class
28 certification stage and an additional 10% risk on the merits. In sum, Plaintiff's counsel calculated

1 the risk-adjusted value of the unpaid wage claims as \$448,481. (Mankin Decl. ¶ 20).

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

3 Plaintiff also alleged meal and rest break claims against Defendant. Given the total
4 number of shifts at issue (an estimate of 46,140), and when incorporating claimed meal period
5 violation rates from produced records and other evidence, Plaintiff's counsel estimated a 50%
6 violation rate for meal breaks and assumed a 25% violation rate for rest breaks based on
7 Defendants' arguably compliant written policies, leading to 23,070 alleged meal violations and
8 11,535 alleged rest break violations. This established a maximum potential value for these
9 claims of \$622,890 (34,605 violations multiplied by the average hourly rate of \$18 as the
10 applicable premium rate under § 226.7). (Mankin Decl. ¶ 21).

11 However, Furniture Ave raised numerous arguments in response to these claims,
12 including that it maintained fully compliant written policies and specifically authorized the Class
13 Members to take meal and rest breaks, and Defendants also contend that employees waived
14 certain meal periods when submitting. Therefore, Defendants asserted that a fact-finder would
15 have to determine for each Class Member whether a break was missed and why, and why a break
16 was noncompliant or nonexistent, because if it was by the employee's choice, no liability
17 attaches to Defendants. These defenses are factored into Plaintiff's analysis in two ways. First,
18 these issues raise questions regarding whether the meal and rest break claims could be certified,
19 and Plaintiff placed a 30% risk at the class certification stage for meal periods and a 50% risk for
20 rest breaks. Second, these defenses also go toward the merits given the evidentiary question of
21 proving the number of meal and rest violations. As such, Plaintiff placed a 30% risk on the
22 merits for meal breaks, and an additional 50% risk on the merits for rest breaks, setting the risk-
23 adjusted value for the combined meal and rest break claims at \$307,292. (Mankin Decl. ¶ 22).

24 3. The Risks Associated with the Waiting Time and Wage Statement Claims.

25 Finally, Plaintiff alleged claims for waiting time penalties and wage statement violations.
26 But these claims were entirely derivative of the claims above, meaning that they only had merit
27 if the claims for unpaid wages or meal/rest breaks were successful. The maximum values for
28 these claims were as follows: (1) \$876, 960 for waiting time penalties [203 former employees x

1 \$18 per hour x 8 hours per day x 30 days], and (2) \$185,300 for wage statement violations [1,989
2 wage statements for Class Members who worked during the applicable time period at the
3 \$50/\$100 formula of § 226(e)]. (Mankin Decl. ¶ 23).

4 But Furniture Ave raised a variety of defenses to these derivative claims that impacted
5 the valuation. Namely, Defendant argued that the wage statements did not violate Labor Code §
6 226 and, even if there were violations, given its factual and legal defenses, Plaintiff would be
7 unable to prove the required “knowing and intentional” and “injury” elements. See *Naranjo v.*
8 *Spectrum Sec. Servs., Inc.*, 88 Cal. App. 5th 937, 945-51 (2023), *review filed* (Apr. 7, 2023)
9 (holding that a good faith factual or legal defense precludes the imposition of penalties under
10 both Section 226 and Section 203). Based on these facts and defenses, Plaintiff placed a 30%
11 risk at class certification and estimated another 50% risk the merits, leading to a risk-adjusted
12 value of \$64,855 for the wage statement claims. (Mankin Decl. ¶ 24).

13 Then, as to the waiting time penalty claim, Plaintiff’s valuation had to account for the
14 fact that this claim was derivative of the unpaid wage and meal/rest break claims and, if those
15 claims failed at certification or on the merits, there would be no waiting time penalties owed, so
16 the same risks for those claims applied to this claim. Furthermore, even if the unpaid wage
17 and/or meal/rest claims succeeded at certification and on the merits, Plaintiff would have to
18 prove that the violations (if any existed) were “willful” under the meaning of Labor Code § 203.
19 And, here, Defendants argued there was no “willful” violation since they had compliant written
20 policies and good faith factual and legal defenses to the wage claims. As a result of this analysis,
21 Plaintiff’s counsel applied a 30% risk at class certification and a 50% risk on the merits, leading
22 to a risk-adjusted value of \$306,936. (Mankin Decl. ¶ 25).

23 4. The Risks Associated with the PAGA Claim

24 Plaintiff’s Counsel believed Defendants’ maximum exposure could theoretically reach
25 the low seven figures under Lab. Code § 2699(f). However, Defendant argued against the merits
26 of the underlying claims which would also be a defense to potential PAGA penalties. Defendant
27 also argued that it would be improper to “stack” civil penalties on top of statutory penalties for
28 the same violations. Also, courts have wide latitude to reduce PAGA penalties “based on the

facts and circumstances of a particular case” and if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(e)(2). Courts have often awarded significantly lesser amounts in cases when they assess a penalty. *See, e.g., Carrington v. Starbucks Corp.* (2017) 30 Cal. App. 5th 504, 669 (PAGA penalties reduced by 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 \$40,000 of the total Settlement Amount to civil penalties (which is approximately 10% of the total settlement amount). 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	\$	448,481
• Meal and Rest Break Claims	\$	255,385
• Wage Statement Claims	\$	64,855
• Waiting Time Penalty Claims	\$	306,936
• <u>PAGA Claim</u>	<u>\$</u>	<u>40,000</u>
• Total Risk Adjusted Penalties and Damages	\$	1,115,657

The reasonableness of the settlement is apparent from the fact that the proposed settlement is 37% 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.

///

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

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

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

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

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

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

1 Payment.

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

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

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

24 The fact that each member who does not opt out of the Settlement shall be mailed a check
25 ensures that every Class Member will be paid unless he or she affirmatively acts to exclude
26 himself or herself. Individual PAGA payments will be paid to all Aggrieved Employees,
27 regardless of whether they opt out of the Class Settlement. Moreover, the Settlement Amount is
28 non-reversionary, which means that no settlement funds will revert to Defendants; instead, if any

1 checks are uncashed by the final check cashing deadline, the funds will be paid submitted to the
2 Unclaimed Property Department care of the California State Controller's Office in the name of
3 the Class Member and/or Aggrieved Employee. Such terms are favored by Courts and
4 demonstrate that there was no collusion between counsel and that the Settlement is fair and
5 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 seeking reimbursement
8 of up to \$20,000 in litigation costs, along with attorneys' fees equal to one-third of the
9 Settlement Amount. See, e.g., *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th. 480 (approving
10 1/3 fee in the amount of \$6.33 million at a 2.13 lodestar multiplier, and holding that when class
11 action litigation establishes a monetary fund for the benefit of the class members, the trial court
12 may determine the amount of a reasonable fee by choosing an appropriate percentage of the
13 fund created); *Stuart v. RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645
14 (approving fee 1/3 of the total maximum settlement amount of \$4.5 million since 1/3 was "well
15 within the range of percentages which courts have upheld as reasonable in other class action
16 lawsuits"); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1, 2010) 2010 WL 2196104, at
17 *8 (approving fee award of 33.33% of the common fund); *Romero v. Producers Dairy Foods,*
18 *Inc.* (E.D. Cal. Nov. 14, 2007), 2007 WL 3492841, at *4 (awarding fees of 1/3 of common
19 fund, noting: "[f]ee awards in class actions average around one-third of the recovery.").

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

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

23 The Settlement Agreement provides an incentive award payment of \$7,500 to the Class
24 Representative, which is reasonable given the fair recovery Class Members will receive on
25 average, as well as the time and effort he devoted to this case. His efforts included providing
26 factual background for the Class and PAGA complaint; providing documents and information
27 about Defendant's compensation plan; participating in phone calls to discuss litigation and
28 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.”).

VI. THE COURT SHOULD APPOINT PHOENIX AS ADMINISTRATOR

Subject to the Court’s approval, the parties stipulated to Phoenix Settlement Administrators serving as the Administrator. Phoenix is experienced in administering class action settlements and has provided a flat-fee proposal to administer this settlement for \$11,000. (Mankin Decl. ¶ 38; Exhibit D to Mankin Decl. [Administrator’s bid]).

VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING

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

May 31, 2024	Preliminary Approval (PA) hearing
July 1, 2024 30 days after PA	Deadline for Administrator to complete first mailing of the Notice Packet to all Class Members.
August 15, 2024 45 days after mailing Notice	Deadline for Class Members to submit Requests for Exclusion and Objections to the settlement.

16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval and application for award of fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiff's Motion for Final Approval, or filing response to an objection.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval
October 26, 2024 <i>140 days after PA</i>	Proposed Final Approval Hearing.

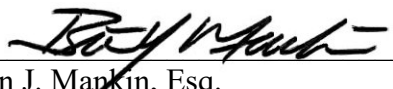
VIII. CONCLUSION

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

Dated: February 7, 2024

LAUBY, MANKIN & LAUBY LLP

BY:


 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, CA 92504.

On February 7, 2024, 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.

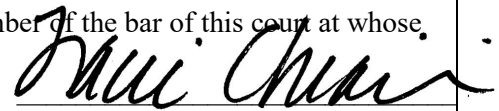
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service 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 February 7, 2024, 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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