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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

ASHLEY BOGUETT, on behalf of the State
of California as the Real Party In Interest;

Plaintiff,

vs.

AMERICAN WOODMARK
CORPORATION, a Virginia Corporation;
RSI HOME PRODUCTS, INC., a Delaware
Corporation; RSI HOME PRODUCTS
MANUFACTURING, INC., a Delaware
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVSB2222761

*[Assigned to Hon. Joseph T. Ortiz, Dept. S17,
for all purposes]*

**NOTICE OF MOTION AND MOTION
TO APPROVE SETTLEMENT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004**

*Filed Concurrently with: (1) [Proposed]
Order, (2) Declaration of Brian J. Mankin,
Esq. in Support Thereof, and (3) Declaration
of Peter J. Carlson, Esq., in Support Thereof*

Hearing

Date: June 3, 2024

Time: 1:30 p.m.

Dept.: S17

Complaint filed: 12/9/2022

FAC filed: 3/22/2024

1 TO THE HONORABLE COURT AND TO ALL PARTIES AND COUNSEL OF RECORD:

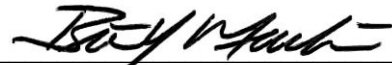
2 PLEASE TAKE NOTICE that on June 3, 2024, at 1:30 p.m. or as soon thereafter as the
3 matter may be heard by the Honorable Joseph Ortiz in Department S17 of the San Bernardino
4 County Superior Court, located at 247 West Third Street San Bernardino CA 92415, Plaintiff
5 Ashley Boguett will and hereby does move this Court for an order approving a settlement
6 pursuant to the Private Attorneys General Act of 2004, Labor Code § 2698 *et seq.* (the “PAGA”).

7 This unopposed motion is based upon this the Memorandum of Points and Authorities;
8 the Declaration of Plaintiff’s counsel (Brian Mankin and Peter Carlson) in support thereof; the
9 PAGA Settlement Agreement and Release of Claims (the “Settlement Agreement”); the
10 proposed Order granting Approval of the PAGA Settlement; all other records, pleadings, and
11 papers filed in this action; and upon such other evidence or argument as may be presented to the
12 Court at the hearing of this motion.

13 Dated: May 9, 2024

LAUBY, MANKIN & LAUBY LLP

14
15 BY:



16 Brian J. Mankin, Esq.
17 Attorneys for Plaintiff, on behalf of the State
18 of California as the Real Party In Interest
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In this PAGA-only action, Plaintiff Ashley Boguett – serving as the representative for the
4 State of California – and her counsel sought civil penalties against her former employers,
5 Defendants American Woodmark Corporation, RSI Home Products, Inc., and RSI Home
6 Products Manufacturing, Inc. (“Defendants”) under the Labor Code Private Attorneys General
7 Act of 2004, California Labor Code § 2698 *et seq.* (commonly referred to as “PAGA”).

8 A PAGA action is a form of qui tam action filed on behalf of the state to assist it with
9 labor law enforcement. *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380-
10 382. As such, the state is the real party in interest in a PAGA action. *Id.* at 382. The State of
11 California was timely served with a copy of the Settlement Agreement¹ and this Motion to
12 Approve the Settlement.

13 As brief background, Defendants employed the “Aggrieved Employees”² to carry out
14 their core business: manufacturing and installing kitchen and bath cabinetry. And Plaintiff
15 alleged that, in these roles, she and the Aggrieved Employees were subjected to various
16 violations of the California Labor Code. Although Defendants vehemently disputed the claims
17 and denied any such violations, the Parties agreed to mediation, paired with informal discovery
18 and a robust exchange of data and documents. Then, after extensive negotiations at mediation in
19 November 2023, the Parties reached a settlement of the PAGA claims alleged herein.

20 Now, with a comprehensive Settlement Agreement, Plaintiff seeks (and Defendants do
21 not oppose), this Court’s approval of a \$845,000 settlement. After payment of Plaintiff’s
22 attorneys’ fees of \$281,666.67 (1/3 of the settlement) and actual costs (\$16,501.62), as well as
23 the administration expenses (\$9,500), and a \$7,500 service award to Plaintiff, approximately
24 \$529,831.71 will remain as the Net Settlement Amount, with 75% paid to the LWDA
25 (\$397,373.78) and the remaining 25% (\$132,457.93) paid to the Aggrieved Employees.

26
27 ¹ The PAGA Settlement Agreement and Release of Claims (the “Settlement Agreement” or
28 “S.A.”) is attached as Exhibit C to the Declaration of Brian J. Mankin (“Mankin Decl.”).

² Defined at S.A. ¶ 1 as “all persons who were employed in an hourly-paid, non-exempt role by
Defendants in California at any time from October 5, 2021 through February 12, 2024.”

1 The settlement merits full approval because it fulfills the purpose of PAGA (*i.e.*, to deter
2 violations of the Labor Code and secure obedience of California’s labor laws; to end ongoing
3 violations of the Labor Code either through injunctive relief or a defendant’s voluntary changes
4 in light of a PAGA action; and to provide relief that is genuine, meaningful, and consistent with
5 California’s goal of benefitting the public through enforcement of labor laws).

6 The process for approving a PAGA settlement is straight-forward: “The superior court
7 shall review and approve any settlement of any civil action filed pursuant to this part.” (Labor
8 Code § 2699(1)(2).) Based on the California Supreme Court’s holdings in *Arias v. Superior*
9 *Court* (2009) 46 Cal.4th 969 and *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59
10 Cal.4th 348, there is no requirement under PAGA for Plaintiff to establish the requirements of
11 class certification (*i.e.*, numerosity, typicality, commonality, and adequacy) nor is there the usual
12 two-step preliminary and final approval process as found in class actions. Rather, this PAGA-
13 only settlement merely requires a one-step review and approval process.

14 For these reasons and those discussed below, the Parties seek Court approval of the
15 Settlement.

16 **II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

17 After retaining counsel, Plaintiff submitted an October 4, 2022, letter to the California
18 Labor & Workforce Development Agency (“LWDA”) and to Defendants regarding the alleged
19 violations. (Mankin Decl. ¶ 7; Exhibit A to Mankin Decl.). This notice is required under Labor
20 Code § 2699.3(a)(1)(A) as a prerequisite to bringing a PAGA claim against an employer. Then,
21 after the 65-day waiting period elapsed without the LWDA asserting jurisdiction, Plaintiff filed
22 this PAGA-only complaint on December 19, 2022.

23 Defendants retained counsel and vowed to vehemently oppose the claims. However, after
24 early discussions among counsel, the Parties agreed to attend mediation. In preparation for the
25 mediation, the Parties exchanged documents and information that allowed both sides to calculate
26 the potential damages and evaluate potential risk. During this process, Plaintiff and her counsel
27 analyzed, researched, and investigated the potential issues, including matters related to the
28 calculation of total penalties, trial, and appellate issues and risks. During this exchange of

1 information, pursuant to Plaintiff counsel's informal requests, Defendants produced documents
2 and pay records that enabled Plaintiff to conduct a full analysis of the alleged unpaid wage,
3 meal/rest break violations and other claims. During this investigative process, Plaintiff's counsel
4 discovered certain additional claims and a related party that should be named, RSI Home
5 Products Manufacturing, Inc.

6 On November 14, 2023, the Parties mediated with Kelly Knight, Esq., a highly regarded
7 mediator that is well-versed in wage-and-hour and PAGA litigation. After a full day mediation,
8 Mr. Knight issued a mediator's proposal that all Parties ultimately accepted, resulting in a
9 settlement of all PAGA claims alleged in this action, along with Plaintiff's separate individual
10 claims. The Parties executed a Memorandum of Understanding, and then memorialized the full
11 terms of the settlement in the long-form Settlement Agreement, which is now presented to this
12 Court for approval. (Mankin Decl. ¶ 9; Exhibit C to Mankin Decl.).

13 In furtherance of settlement, and based on Plaintiff's investigative process, Plaintiff
14 amended the relevant LWDA notice to add RSI Home Products Manufacturing, Inc. as a party
15 and to assert additional claims against Defendants (*see* Exhibit B to Mankin Decl.), and filed a
16 First Amended Complaint addressing the new claims and party. (Mankin Decl. ¶ 8).

17 **III. THE PAGA AND ITS REQUIREMENTS**

18 PAGA provides an enforcement method for California's Labor Code by enlisting
19 individual plaintiffs as private attorneys general to recover civil penalties for the state, with a
20 share also going to the individual plaintiffs and other employees. Prior to the enactment of
21 PAGA in 2003, the recovery of civil penalties for violations of certain Labor Code provisions
22 were solely within the province of the California Department of Labor. *Arias*, 46 Cal.4th at 980.

23 However, due to the lack of financing for California's agencies, and the substantial
24 number of Labor Code violations by California employers, the California Legislature found that
25 it was in the public interest to allow aggrieved employees to act as "private attorneys general" to
26 enforce and recover civil penalties on behalf of the State of California for Labor Code violations
27 committed by employers. *Id.* As the Legislature that adopted PAGA observed, "the only
28 meaningful deterrent to unlawful conduct is the vigorous assessment and collection of civil

1 penalties as provided in the Labor Code.” Stats. 2003 ch. 906, § 1(b). Moreover, the Labor
2 Code’s primary purpose is to “ensure employees are not required or permitted to work under
3 substandard unlawful conditions ... and to protect employers who comply with the law from
4 those who attempt to gain a competitive advantage at the expense of their workers by failing to
5 comply with minimum labor standards.” Labor Code § 90.5(a). Therefore, the Legislature
6 determined that “adequate financing of labor law enforcement was necessary to achieve
7 maximum compliance with state labor laws, that staffing levels for labor law enforcement
8 agencies had declined and were unlikely to keep pace with the future growth of the labor market,
9 and that it was therefore in the public interest to allow aggrieved employees, acting as private
10 attorneys general, to recover civil penalties for Labor Code violations, with the understanding
11 that labor law enforcement agencies were to retain primacy over private enforcement efforts.”

12 Penalties recovered under PAGA “shall be distributed as follows: 75 percent to the Labor
13 and Workforce Development Agency for enforcement of labor laws and education of employers
14 and employees about their rights and responsibilities under this code ...; and 25 percent to the
15 aggrieved employees.” Lab. Code § 2699(i).

16 Before filing a PAGA action, an aggrieved employee must first provide written notice to
17 the LWDA and the employer of the particular Labor Code violations the aggrieved employee
18 alleges the employer has violated. Labor Code § 2699.3(a)(1). This notice provides the LWDA
19 with the opportunity to investigate and prosecute the claim. The employee may only sue on the
20 state’s behalf if the LWDA fails to respond to the notice within 65 days, responds that it does not
21 intend to investigate, or investigates and does not issue a citation within 185 days. Labor Code
22 §§ 2699.3(a)(2), 2699(h). In this case, Plaintiff provided the LWDA with a notice letters
23 advising it of the alleged Labor Code violations, but the LWDA deferred the prosecution of these
24 violations to Plaintiff and her attorneys. (Mankin Decl. ¶ 7). Accordingly, the Settlement, and
25 the common fund created by it for the benefit of the State and Aggrieved Employees, is solely
26 the result of the work performed by Plaintiff and her attorneys on this case.

27 Any settlement of a PAGA action brought by an aggrieved employee must be approved
28 by the court. Lab. Code § 2699(1)(2). In 2009, the California Supreme Court considered the

PAGA approval process and, more specifically, whether an aggrieved employee needs to meet class certification requirements. *Arias*, 46 Cal.4th at 976. After review of the legislative history of PAGA, the Court held that an aggrieved employee's representative PAGA action *does not* need to meet the requirements for class certification nor does there need to be notice to the other employees. *Id.* at 975, 980-88. As the Court held, a plaintiff bringing suit under PAGA does so as the proxy or agent of California's labor law enforcement agencies. *Id.* at 986. Thus, the Court simply reviews the settlement and approves it if it is deemed to be fair and reasonable.

Accordingly, the Parties to this PAGA action have reached such an agreement and now seek this Court's approval of the settlement.

IV. THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES

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

A. TERMS OF THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES

The settlement provides that Defendants will pay a non-reversionary settlement amount of \$845,000 (the "Gross Settlement Fund"), inclusive of payments to the LWDA and Aggrieved Employees, any Service Award to Plaintiff, and attorneys' fees and litigation costs, as well as third party administrator ("Settlement Administrator") costs. (S.A. ¶¶ 7, 15). After payment of the attorneys' fees/costs and administration costs and any Service Award, the remainder of approximately \$529,831.71 will form the Net Settlement Amount and, pursuant to Labor Code § 2699(i), 75 percent shall be paid to the LWDA (which shall be used to assist in the enforcement of labor laws and education of employers and employees about their rights and responsibilities under the Labor Code), and the remaining 25 percent being paid to the Aggrieved Employees on a pro rata basis. (*Id.*)

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The following chart reflects the estimated payments from the Settlement Agreement:

Gross Settlement Fund	\$ 845,000.00
Attorneys' Fees (1/3)	\$ 281,666.67
Attorney Litigation Costs	\$ 16,501.62
Administrator Costs	\$ 9,500.00
PAGA Representative Service Award	\$ 7,500.00
Net Settlement Amount ("NSA")	\$ 529,831.71
75% of NSA Payable to LWDA	\$ 397,373.78
25% of NSA Payable to Aggrieved Employees	\$ 132,457.93

As such, the LWDA will receive approximately \$397,373.78 (75% of the Net Settlement Amount) and approximately 1,500 Aggrieved Employees will collectively share in and receive \$132,457.93 (the remaining 25% of the Net Settlement Amount), which will be paid on a pro-rata basis based on the number of pay periods worked during the PAGA Period. (S.A. ¶ 7).

B. PAYMENT AND THE NOTICE

Defendants will fund the Gross Settlement Fund within 10 business days after occurrence of the later of the following: (1) the Effective Date occurring,³ or (2) the establishment of the QSF and Defendants being provided wiring instructions for the same. (S.A. ¶ 33). Also, within 10 business days of the Effective Date, Defendants are required to provide the Settlement Administrator with the Aggrieved Employee "Database," which contains all information necessary for the Settlement Administrator to apportion and issue payments. (S.A. ¶ 38). The Settlement Administrator must then distribute all Court-approved payments no later than 10 calendar days after receipt of the Database and the Gross Settlement Fund. (S.A. ¶ 39). Aggrieved Employees will have 180 days to cash their checks; if for any reason a check is uncashed, then the check will be voided and the funds issued to the California State Controller in the name of the Aggrieved Employee who may claim the funds at a later date. (S.A. ¶ 40).

³ See S.A. ¶ 5 ("Effective Date" is "65 days after service of notice of entry of the Court's Order approving this Settlement and judgment thereon, or if an appeal is taken from any aspect of the Court's Order regarding approval of this Agreement and/or the judgment entered thereon, then 21 days after the later of either (i) the appeal being withdrawn or (ii) the exhaustion of all available appellate review and an appellate decision affirming the Order granting approval of the Settlement or judgment thereon becoming final and not subject to further appellate review").

1 A Notice informing the Aggrieved Employees of the nature of the payment will be
2 provided with the settlement check. (*See* Exhibit G to Mankin Decl.).

3 **C. SETTLEMENT ALLOCATION TO THE AGGRIEVED EMPLOYEES.**

4 As noted, 25% of the Net Settlement Amount (\$132,457.93) will be allocated and paid to
5 the Aggrieved Employees on a pro-rata basis according to the number of pay periods worked
6 during the Settlement Period. Based on data and information obtained from Defendants, Plaintiff
7 estimates that the 1,500 Aggrieved Employees will receive an average payment of \$88.30.
8 Moreover, based on an estimated 42,542 pay periods during the Settlement Period, Plaintiff
9 estimates that each pay period worked will have a value of \$3.11. (Mankin Decl. ¶ 12).

10 **D. THE RELEASE.**

11 The California Supreme Court has explained that a judgment in “a representative action
12 brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004
13 ... is binding not only on the named employee plaintiff but also on government agencies and any
14 aggrieved employee not a party to the proceeding.” *Arias*, 46 Cal. 4th at 985-986. The release in
15 the Settlement Agreement, at ¶ 48, narrowly binds the Aggrieved Employees for civil penalty
16 claims brought in this action, as follows:

17 Effective upon payment of the Gross Settlement Fund Amount into the QSF
18 established by the Settlement Administrator in accordance with its wire
19 transfer instructions provided to Defendants, Plaintiff, the LWDA, and all
20 Aggrieved Employees shall, for the entire Settlement Period, be deemed to
21 have fully released and discharged the Released Parties from any and all
22 Released Claims. Beyond the Gross Settlement Fund, aside from the
23 Release Payment, and as set forth in this Settlement Agreement, Defendants
24 shall not owe any further monies to Plaintiff, the LWDA, or the Aggrieved
Employees based upon the Released Claims. The release and discharge of
the Released Claims is not contingent upon any Aggrieved Employees
receiving or negotiating their settlement checks. Aggrieved Employees may
not opt-out of the Released Claims.

25 The Settlement Agreement, at ¶ 13, defines the “Released Claims” as follows:

26 any claim for civil penalties under the PAGA and all other related remedies
27 available under the PAGA for all allegations, claims, debts, rights,
28 demands, charges, complaints, actions, causes of action, guarantees,
interest, costs, expenses, attorneys’ fees, damages, obligations or liabilities
of any and every kind, contingent or accrued, that are, were or reasonably

1 could have been alleged or asserted based upon the facts and/or theories
2 alleged in the PAGA claims filed in the Lawsuit (including the First
3 Amended Complaint to be filed as a condition of this settlement), and/or in
4 any notice provided pursuant to PAGA by Plaintiff to the LWDA and
5 Defendant (including, without limitation, in Plaintiff's October 4, 2022
6 PAGA notice letter and her Amended PAGA Notice), arising out of, based
7 on or related to any violation of Labor Code §§ 200, 201, 202, 203, 204,
8 204.1, 208, 210, 218.6, 221-223, 226, 226.3, 226.7, 246, 256, 510, 512, 558,
9 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2699, and 2802 that
10 occurred, arose or accrued at any time during the Settlement Period.

11 As the release is narrowly related to the claims alleged, the Parties contend that the
12 release is proper and reasonable.

13 **V. THE SETTLEMENT IS FAIR, REASONABLE, AND WARRANTS COURT**
14 **APPROVAL**

15 In 2016, PAGA was amended to require the Court to "review and approve any settlement
16 of any civil action filed pursuant to this part." (Labor Code § 2699(1)(2).) The amendment also
17 required that the "proposed settlement shall be submitted to the agency at the same time that it is
18 submitted to the court." As such, the Settlement and this Motion have been concurrently
19 submitted to the LWDA in accordance with this section. (Mankin Decl. ¶ 29; Exhibit E to
20 Mankin Decl.).

21 **A. EVALUATION OF THE PAGA SETTLEMENT**

22 Although PAGA and its legislative history do not seem to require a Court to analyze a
23 PAGA settlement in comparison to the "value" of the claims, the penalties herein are reasonable
24 when considered in this context as well.

25 Here, Plaintiff obtained extensive data and information prior to mediation to investigate
26 the claims and negotiate an appropriate settlement. After evaluation of this information,
27 Plaintiff's counsel estimated that there were 38,478 pay periods worked by the Aggrieved
28 Employees. From this data, and when applying the various facts, violation rates, and considering
all of the risks and defenses to the claims herein, Plaintiff's counsel formulated detailed damage
models as discussed below. (Mankin Decl. ¶ 14)

1 For instance, Plaintiff's first damage model set the potential PAGA penalties against
2 Defendants as \$3,847,800 [38,478 pay periods multiplied by the default \$100 penalty under
3 PAGA]. Defendant took the position that Plaintiff would not be entitled to "stack" more than
4 one PAGA civil penalty per employee per pay period (regardless of whether there was one Labor
5 Code violation or five). Although Plaintiff argued that "stacking" is not a valid defense and that
6 PAGA civil penalties were available for each and every unique Labor Code violation, Plaintiff
7 agreed that a valuation of \$100 per pay period was reasonable to assess the claims for settlement
8 purposes. (Mankin Decl. ¶ 15).

9 Then, as to each claim, Plaintiff calculated the potential damages as follows. *First*,
10 Plaintiff alleged that she and the Aggrieved Employees were subjected to unpaid wage violations
11 in 76% of all pay periods due to Defendants' failure to pay all wages owed due to a rounding
12 policy, along with a failure to correctly calculate the "regular rate of pay" for overtime, sick pay,
13 and meal premium payments. *Second*, the sampling provided prior to mediation evidenced that
14 there were meal period violations during 83.9% of all pay periods worked. *Third*, because of the
15 hectic work schedule, Plaintiff alleged that the Aggrieved Employees were deprived of at least
16 one compliant rest break in 50% of pay periods. *Fourth*, Plaintiff alleged that Defendants
17 provided 15,293 wage statements to the Aggrieved Employees that did not state the employer's
18 address, in direct violation of Labor Code § 226(a)(8). Based on these metrics, along with other
19 smaller subsets of claims (such as failure to timely pay final wages to an estimated 600 departing
20 employees, leading to only 600 violations), Plaintiff estimated that there were potentially 97,058
21 distinct Labor Code violations for all claims combined (ignoring any "stacking" defense),
22 leading to maximum potential PAGA penalties of \$9,705,800 [97,058 x \$100]. (Mankin Decl. ¶
23 16).

24 But again, this maximum amount fails to take into account the various risks and defenses
25 to the claims herein, as well as Defendants' claim that "stacked" penalties is not recoverable.
26 For example, Defendants disputed that there were any unpaid wages and, further, that its
27 rounding policy was neutral in practice and applied, as required by *See's Candy*, resulting in no
28 liability. Then, as to the meal and rest break claims, Defendants argued it had fully complaint

1 written policies that specifically authorized its employees to take meal and rest breaks,
2 timesheets specifically showed that breaks occurred, and all employees had ample opportunity to
3 take compliant breaks. Therefore, Defendants asserted that a fact-finder would have to
4 determine for each employee whether a break was recorded on each employees timesheet or if it
5 was missed and why, and why a break was noncompliant or nonexistent, because if it was by the
6 employee's choice, no liability attaches to Defendants. (Mankin Decl. ¶ 17).

7 Additionally, Plaintiff was forced to consider another risk: even if the claims succeeded,
8 courts have wide latitude to (and often do) reduce the total civil penalties "based on the facts and
9 circumstances of a particular case" and if "to do otherwise would result in an award that is
10 unjust, arbitrary and oppressive, or confiscatory." Labor Code § 2699(h). (Mankin Decl. ¶ 18).

11 When considering these risks and defenses, Plaintiff contends that the Settlement, which
12 binds Defendants to pay a total Gross Settlement Fund of \$845,000 – the equivalent to almost
13 \$20 per pay period. Many class actions settle for less than \$20 per pay period, so to achieve this
14 result in a PAGA-only case is indeed a great result. Clearly, this settlement is fair, adequate, and
15 reasonable in light of the risks and uncertainties associated with the PAGA claims in this case,
16 and it is sufficient to accomplish the objectives of PAGA while not being unjust, arbitrary and
17 oppressive, or confiscatory. (Mankin Decl. ¶ 19).

18 **B. PLAINTIFF'S SEPARATE INDIVIDUAL SETTLEMENT IS PROPER**

19 Plaintiff separately resolved her individual, non-PAGA claims against Defendants in a
20 confidential settlement, as disclosed in ¶ 6 of the Settlement Agreement.

21 The California Labor Code specifically permits a Plaintiff to separately resolve claims for
22 individual damages, separate and distinct from a settlement of PAGA claims. *See* Labor Code §
23 2699(g)(1) ("[n]othing in this part shall operate to limit an employee's right to pursue or recover
24 ***other remedies available under state or federal law, either separately or concurrently with an***
25 ***action taken under this part***") (Emph. added). The rule permitting employees to pursue separate
26 individual claims while maintaining a PAGA claim aligns perfectly with the general
27 understanding that PAGA claims (which seek civil penalties on behalf of Aggrieved Employees)
28 are separate and distinct from individual claims for unpaid wages, statutory penalties, and other

1 individual claims.

2 The California Supreme Court explained this principal in the landmark *Iskanian* decision,
3 holding that “[t]he civil penalties recovered on behalf of the state under the PAGA **are distinct**
4 from the statutory damages to which employee may be entitled in their individual capacities.”
5 *Iskanian*, 59 Cal.4th at 381. In fact, *Iskanian* directly discussed the separation between
6 individual and PAGA claims, and held that when an employee pursues both types of cases, a
7 defendant must respond to **both** cases: “*Iskanian* must proceed with bilateral arbitration on his
8 individual damages claims, **and** CLS must answer the representative PAGA claims in some
9 forum.” *Id.* at 391. In the event of a bifurcation of individual and PAGA actions one case may
10 proceed first, while the other case is stayed. *Id.*

11 In addition, the California Supreme Court recently expounded upon this position in *ZB*,
12 *N.A. v. Superior Court* (2019) 8 Cal.5th 175. There, when discussing the difference between
13 statutory damages/penalties (for an individual) versus civil penalties (under PAGA), the court
14 clearly held that “[p]ursuing civil penalties does not prevent an employee from separately or
15 concurrently pursuing unpaid wages and other remedies already available to her.” *Id.* at 187.

16 The framework discussed in *Iskanian* is exactly what happened here. Plaintiff filed a
17 PAGA case, and while the PAGA case was pending, she prepared to file a separate individual
18 case pursuing separate and independent claims against some or all of the Defendants. However,
19 the Parties ultimately settled Plaintiff’s individual claims prior to litigation. Because Plaintiff is
20 permitted to resolve her individual claims and the PAGA claims separately, Plaintiff respectfully
21 submits that this Court should approve the Settlement Agreement.

22 **VI. THE REQUESTED ATTORNEYS’ FEES AND LITIGATION COSTS ARE FAIR**
23 **AND REASONABLE**

24 For their efforts and the risk they undertook in obtaining a common fund settlement that
25 benefits the LWDA and Aggrieved Employees, Plaintiff’s Counsel seeks \$281,666.67 for
26 reasonable attorneys’ fees, which is one third of the Gross Settlement Fund, which Defendants
27 do not oppose. These fees are warranted under the law and within the range of fees commonly
28 awarded in similar cases. Additionally, the Parties agreed Plaintiff’s Counsel could seek

1 reimbursement for their actual litigation costs.

2 **A. PLAINTIFF’S COUNSEL ARE ENTITLED TO RECOVER ATTORNEY’S FEES UNDER**
3 **THE COMMON FUND DOCTRINE IN THIS QUI TAM ACTION**

4 PAGA, at Labor Code § 2699(g)(1), provides that a Plaintiff is entitled to recover
5 reasonable attorneys’ fees, expenses, and costs: “Any employee who prevails in any action shall
6 be entitled to an award of reasonable attorney’s fees and costs.” Additionally, as discussed
7 below, in a qui tam action, reasonable attorney’s fees and costs are typically awarded under the
8 common fund doctrine where, as here, the litigation creates a common fund of money in a
9 specific amount for the benefit of others.

10 “A qui tam action is one brought under a statute that allows a private person to sue as a
11 private attorney general to recover damages or penalties, all or part of which will be paid to the
12 government.” *People ex rel. Stratham v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487,
13 491-492. “A qui tam action ‘is a type of private attorney general lawsuit’ [citation], in which ‘the
14 qui tam plaintiff stands in the shoes of the state or political subdivision [citation].’” *Id.* at p. 501.
15 As the name of the PAGA statute makes clear (e.g. “Labor Code Private Attorney General Act”),
16 a PAGA action is a qui tam action because the statute allows the employee plaintiff, acting as the
17 proxy of the state’s labor law enforcement agency, to sue his or her employer for Labor Code
18 violations and recover civil penalties that otherwise would have been assessed and collected by
19 the Labor and Workforce Development Agency (LWDA). *Iskanian*, 59 Cal.4th at 380. “A
20 PAGA representative action is therefore a type of *qui tam* action.” *Id.* at p. 382. Indeed, the
21 majority of the civil penalties recovered in a PAGA action are paid to the state, with a smaller
22 portion paid to the aggrieved employees (e.g. 75% paid to the state; 25% paid to the aggrieved
23 employees). See Lab. C. 2699(i).

24 As here, where a common fund is created in a qui tam action by the successful litigation
25 of a plaintiff and her attorneys, the plaintiff’s attorneys are entitled to recover their fees from the
26 common fund. *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-91. In *Bank of America*,
27 California taxpayers compelled the State Controller to enforce the Unclaimed Property Law
28 against banks who were retaining accounts that should have been turned over to the State.

1 Because of the success of the taxpayers' lawsuit, a common fund was created in favor of some
2 depositors and the State of California. *Id.* When the taxpayers' attorneys sought recovery of
3 their attorney's fees from the judgment under the common fund doctrine, the Controller opposed
4 the request. However, the Court of Appeal affirmed the trial court's fee award to the taxpayers'
5 counsel under the common fund doctrine holding, as stated at *Id.* at 91:

6 Those benefiting from the recovery of the fund, in this case some depositors
7 and eventually the People of the State of California, must bear their share
8 of the cost of litigation. Fees for taxpayers' attorneys will be deducted from
9 the judgment, and each claimant's share reduced proportionately. To the
extent the judgment relies upon section 1021.5 for recovery of attorney fees,
it must be modified to confine the award of fees to the common fund theory.

10 In this case, the PAGA Settlement created a common fund for the benefit of the
11 employees and the State of California. Thus, these beneficiaries must bear their share of the
12 costs and attorney's fees, which fees and costs must be deducted from the settlement amount
13 under the common fund theory. *Id.* Moreover, such fees are deducted as a percentage of the
14 settlement amount. *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478-482; *Six (6) Mexican*
15 *Workers v. Arizona Citrus Growers* (9th Cir. 1990) 904 F.2d 1301, 1311; *Williams v. MGM-*
16 *Pathe Communications Co.* (9th Cir. 1997) 129 F.3d 1026, 1027; *Staton v. Boeing Co.* (9th Cir.
17 2003) 327 F.3d 938, 967.

18 The California Supreme Court also upheld the use of the common fund theory of
19 recovery for attorney's fees in *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 506. In
20 *Laffitte*, the settlement created a common fund of \$19 million dollars. This ruling is consistent
21 with the Court's prior rulings recognizing that "when a number of persons are entitled in
22 common to a specific fund, and an action brought by ... plaintiffs for the benefit of all results in
23 the creation or preservation of that fund, such ... plaintiffs may be awarded attorneys' fees out of
24 the fund." *Serrano III v. Priest* (1977) 20 Cal.3d 25, 34; *Boeing Co. v. Van Gemert*, 444 U.S. at
25 478 ("[A] lawyer who recovers a common fund . . . is entitled to reasonable attorneys' fees from
26 the fund as a whole;" *Mills v. Electric Auto-Lite Co.* (1970) 396 U.S. 375, 393-394 [discussing
27 the acceptance of awarding attorneys' fees and expenses from a settlement where "litigation has
28 conferred a substantial benefit on the members of an ascertainable class"]; *see also Lealao v.*

1 *Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26 (“[f]ee spreading occurs when a
2 settlement or adjudication results in the establishment of a separate or so-called common fund for
3 the benefit of the class.”).).

4 Accordingly, the common fund doctrine allows a court to award attorneys’ fees based
5 upon a percentage of the total fund that is created for the satisfaction of beneficiaries’ claims
6 when the fund consists of a “certain or easily calculable sum of money.” *Dunk v. Ford Motor Co.*
7 (1996) 48 Cal.App.4th 1794, 1809; *Jutkowitz v. Bourns, Inc.* (1981) 118 Cal.App.3d 102, 110
8 [application of the percentage of the fund recovery depended on “[t]he critical point” that “a fund
9 was created from which attorneys’ fees could be paid”]; A. Conte & H. Newberg, *Newberg on*
10 *Class Actions*, § 14:6 (4th ed. 2002).

11 California law has long upheld, and continues to uphold, the percentage of the recovery
12 method for awarding attorneys’ fees where a fund is established. *See, e.g., Serrano*, 20 Cal.3d at
13 34; *Bell v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715, 726; *Chavez v. Netflix,*
14 *Inc.* (2008) 162 Cal.App.4th 43, 65-66 [“fees based on a percentage of the benefits are in fact
15 appropriate in large class actions...”]; *Sanders v. City of Los Angeles* (1970) 3 Cal.3d 252, 261,
16 263 [affirming award of attorneys’ fee based on percentage of recovery];; *see also Consumer*
17 *Cause, Inc. v. Mrs. Gooch’s Natural Food Markets, Inc.* (2005) 127 Cal.App.4th 387, 397 [the
18 common fund doctrine is “frequently applied in class actions when the efforts of the attorney for
19 the named class representatives produce monetary benefits for the entire class”]; *Wershba v.*
20 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 [“courts recognize two methods for
21 calculating attorney fees in class actions: the lodestar/multiplier method and the percentage of
22 recovery”].

23 Based on the foregoing, awarding attorneys’ fees of one-third of the Gross Settlement
24 Fund is fair and warranted in light of the PAGA settlement that was reached on behalf of the
25 State of California and Aggrieved Employees. Accordingly, awarding fees on this basis in this
26 amount is reasonable and appropriate.

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1 **B. THE PERCENTAGE FEE OF THE GROSS SETTLEMENT FUND IS FAIR AND**
2 **REASONABLE**

3 An award of fees from the gross settlement amount under the common fund doctrine
4 prevents unjust enrichment of those who benefit from the common fund created through the
5 successful efforts of plaintiff’s counsel and furthers the important goal of attracting competent
6 counsel to handle representative actions enforcing minimum labor standards. *Laffitte*, 1 Cal.5th
7 at 503. The California Supreme Court summarized the benefits of the percentage method of
8 recovery stating: “The recognized advantages of the percentage method—including relative ease
9 of calculation, alignment of incentives between counsel and the class, a better approximation of
10 market conditions in a contingency case, and the encouragement it provides counsel to seek an
11 early settlement and avoid unnecessarily prolonging the litigation [citations]—convince us the
12 percentage method is a valuable tool that should not be denied our trial courts.” *Id.*

13 Among the factors considered in determining whether the requested fee percentage is
14 reasonable are: (1) the results achieved; (2) the risk of further litigation; (3) the skill required of
15 plaintiff’s counsel and the quality of work performed by plaintiff’s counsel; (4) the contingent
16 nature of the fee and the financial burden carried by the plaintiff; and (5) awards made in similar
17 cases. *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-50.

18 All these factors support an award here of one-third of the common fund. First,
19 Plaintiff’s counsel achieved a good PAGA settlement in a case that involved highly contested
20 issues that were primarily related to small periods of time that were allegedly unpaid, as well as
21 meal and rest break violations and facially inaccurate wage statements. Second, Plaintiff faced
22 significant risks going forward with the litigation. As discussed above, Defendants raised various
23 defenses and, as such, Plaintiff faced risky issues going forward with this litigation, and it would
24 have taken significant time to realize any recovery in this action. Third, Plaintiff’s Counsel are
25 experienced representative action litigators, including having been selected as a “Super Lawyer”
26 in employment litigation, and have achieved some of the largest PAGA awards. (Mankin Decl.
27 ¶¶ 2-6). This experience and expertise, combined with the high quality of work performed in this
28 case by Plaintiff’s Counsel, resulted in the settlement achieved in this case. Fourth, as discussed

1 above and as set forth in the Declaration of Plaintiff's Counsel, the request for attorney's fees
2 falls well within the norms accepted by state and federal courts in California in comparable wage
3 and hour actions actually handled by Plaintiff's Counsel.

4 For all of the above reasons, a fee award in the amount of one-third of the Gross Settlement
5 Fund is fair and reasonable.

6 **C. A LODESTAR CROSS-CHECK CONFIRMS THE REASONABLENESS OF THE FEE**
7 **REQUEST**

8 Despite recognized limitations of the so-called lodestar method, some California and
9 federal courts acknowledge the utility of a lodestar "cross-check."⁴ (*Lealao*, 82 Cal.App.4th at
10 46-47.) Under the "lodestar multiplier" method of cross-checking the reasonableness of
11 attorneys' fees in class actions, the court ascertains Class counsel's total "lodestar" amount by
12 multiplying the number of hours reasonably expended by each attorney or legal staff member by
13 their hourly rates, and then enhances or reduces this lodestar figure by a "multiplier" to account
14 for a range of factors, such as the novelty or difficulty of the case, its contingent nature, and the
15 degree of success achieved. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-96;
16 *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322; *Lealao*, 82 Cal.App.4th at 43 [court has
17 discretion to use a multiplier to ensure that the "fee awarded is within the range of fees freely
18 negotiated in the legal marketplace in comparable litigation"]).

19 Historically, California courts have approved multipliers of 1.5 to 4. *See Coalition for*
20 *Los Angeles County Planning v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 251
21 **(multiplier of 2+ approved)**; *Sternwest Corp v. Ash* (1986) 183 Cal.App.3d 74, 75. The
22 multiplier requested by Plaintiff's Counsel below is within the range of multipliers found to be
23 appropriate by various federal and state courts in California. In *Sternwest Corp. v. Ash*, for
24 instance, the Court of Appeal remanded for a lodestar enhancement of **"two, three, four or**
25 **otherwise."** *Id.* at 76; *see also Wershba*, 91 Cal.App.4th at 255 (**"Multipliers can range from 2**

26
27 ⁴ In practice, the lodestar method is difficult to apply, time-consuming, inconsistent in result, and
28 capable of manipulation. In addition, the lodestar method creates inherent incentive to prolong
litigation until sufficient hours have been expended. Herr, David F., *Manual for Complex*
Litigation, § 14.121 (1988); *See also In re Activision* (N.D. Cal 1989) 723 F.Supp 1373.

1 **to 4 or even higher”**); *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78, 83
2 **(affirming 2.34 multiplier)**; *Coalition for Los Angeles County Planning in the Pub. Interest v.*
3 *Board of Supervisors*, 76 Cal.App.3d 241, 251 **(affirming multiplier of approximately 2)**;
4 *Craft v. County of Los Angeles* (C.D. Cal. Apr. 1, 2008) 2008 U.S. Dist. LEXIS 27526
5 **(applying 5.2 multiplier)**; *Steinder v. Am. Broadcasting Co., Inc.* (9th Cir. 2007) 248 Fed.Appx.
6 780, 783 **(approving multiplier of 6.85** and citing cases with comparable or higher multipliers);
7 *Vizcaino*, 290 F.3d at 1051 (finding no abuse of discretion in **awarding a multiplier of 3.65**);
8 *Torchia v. WW Grainger, Inc.* (E.D. Cal. 2014) 304 F.R.D. 256, 275-278 (approving attorneys’
9 fees of \$550,000 **constituting a 3.57 multiplier** on class counsel’s total lodestar).

10 As set forth in the declaration of Plaintiff’s Counsel submitted herewith, the actual
11 aggregated lodestar between the attorneys that worked on this case is approximately \$176,575
12 (see Mankin Decl. ¶¶ 24; Carlson Decl. ¶ 10). Thus, Plaintiff’s counsel’s request for attorneys’
13 fees equal to one-third of the Gross Settlement Fund requires only a very modest multiplier of
14 1.59, which clearly demonstrates that the requested fee is justified, reasonable, and appropriate.

15 Additionally, the hourly rates for Plaintiff’s counsel are comparable to those of other
16 attorneys with equal or similar experience, if not somewhat lower (*i.e.*, the Laffey Matrix at
17 www.laffeymatrix.com indicates that the benchmark rates are: \$777/hour for an 8–10-year
18 attorney and \$1,057/hour for a 20+ year attorney).

19 Moreover, the Wolters Kluwer 2023 Real Rate Report (“Real Rate Report”) provides
20 directly applicable information in this regard. The Real Rate Report is based on an enormous and
21 statistically significant compilation of data, comprising millions of billing entries from a hundred
22 thousand individual timekeepers who worked at thousands of law firms. The Real Rate Report
23 then compiles and analyzes this data to provide hourly rates for partners and associates in major
24 metropolitan areas. For the southern California area: (a) the rate for partners in Los Angeles is
25 between \$840 and \$1,159 per hour for the middle and upper quartiles, and (b) the rates for
26 associates with seven or more years of experience, the median rate is \$674 per hour, and the
27 upper quartile rate is \$888 per hour. And, perhaps most importantly, the information provided in
28 the Real Rate Report is not based on self-reported numbers, surveys, sampling, or reviews or

1 other publications – instead, the Real Rate Report is based on the actual hours and fees billed by
2 law firms, which makes it “a much better reflection of true market rates than self-reported rates
3 in all practice areas.” *Brown v. CVS Pharmacy, Inc.* (C.D. Cal. Apr. 24, 2017) 2017 U.S. Dist.
4 LEXIS 182309, at *21; *PLCM Group*, 22 Cal.4th at 1085 (holding that rates should be premised
5 upon precisely this form of independent, “objective” rate data that reflects “fair market” rates
6 actually billed to clients “in the community for similar work”). (Mankin Decl. ¶ 25).

7 Plaintiff’s Counsel are also highly experienced in Class/PAGA litigation, including
8 having been named by the LA Times as one “Southern California Leading Lawyers” in the May
9 2023 issue of Consumer Attorneys of Southern California (a recognition given to 17 employment
10 and labor law attorneys in 2023), having been selected as “Super Lawyer” in employment
11 litigation over the last 5 consecutive years, having achieved large settlements, having prevailed
12 at trial in PAGA-only actions and Class Action jury trials. (Mankin Decl. ¶¶ 2-6; Carlson Decl.
13 ¶¶ 3-9). Indeed, Plaintiff’s Counsel’s rates are typical of the rates charged by defense counsel
14 with similar experience doing similar employment law work in this region.

15 Thus, not only are Plaintiff’s Counsel’s rates reasonable and typical, but the attorneys’
16 fees are in line with the lodestar, which confirms that the fee request is fair and reasonable.

17 **D. THE REQUESTED LITIGATION COSTS ARE FAIR AND REASONABLE**

18 Plaintiff’s Counsel requests reimbursement of their actual out-of-pocket expenses
19 incurred to prosecute this action. These expenses were incidental and necessary to the effective
20 representation of the employees. *See Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19.
21 Plaintiff’s Counsel are permitted to recover their litigation costs and expenses under the common
22 fund doctrine. *See Serrano III*, 20 Cal.3d at 35 (common fund doctrine permits recovery of fees
23 and costs from the fund); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1424 n.6
24 (costs are recoverable from the common fund “[o]f necessity, and for precisely the same reasons
25 discussed above with respect to the recovery of attorneys’ fees by . . . [Plaintiffs’] attorneys”).
26 Furthermore, Plaintiff’s Counsel are entitled to recover “those out-of-pocket expenses that would
27 normally be charged to a fee-paying client.” *Harris*, 24 F.3d at 19.)
28

1 The Settlement Agreement authorized Plaintiff's Counsel to recover litigation costs up to
2 \$20,000. However, the actual costs through the approval hearing are projected to be \$16,501.62,
3 which is the amount requested. (Mankin Decl. ¶ 27; Exhibit D to Mankin Decl.). These costs are
4 reasonable, uncontested, and should be approved.

5 **VII. THE REQUESTED SERVICE AWARD IS FAIR AND REASONABLE**

6 Paragraph 15 of the Settlement Agreement permits Plaintiff to request a Service Award
7 of \$7,500 to Plaintiff, subject to Court approval, which is reasonable given the time and effort
8 she devoted to this case. Her efforts included providing factual background for the lawsuit;
9 providing documents and information about Defendants' compensation plan and other
10 policies/practices; participating in phone calls to discuss litigation and settlement strategy;
11 making herself available throughout the litigation to assist with analyzing the claims and
12 defenses; helping counsel prepare for the mediation; and reviewing the settlement documents.
13 Plaintiff also assumed significant risk in bringing this litigation; namely, had she lost, she could
14 have been ordered to pay Defendants' costs.

15 The requested service award falls within the range of incentive payments typically
16 awarded to class representatives in similar class actions. *See, e.g., Bond v. Ferguson Enterprises,*
17 *Inc.* (E.D. Cal. 2011) 2011 WL 2648879 (approving \$11,250 service awards in trucker meal
18 break class action); *Ross v. US Bank National Association* (N.D. Cal. 2010) 2010 WL 3833922,
19 at *2 (approving \$20,000 enhancement award in California wage-and-hour class action
20 settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 415, 493
21 (approving service awards of \$15,000 from a \$300,000 settlement fund in a wage/hour class
22 action); *West v. Circle K Stores, Inc.* (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558, at *28
23 (finding service awards "of \$15,000 each to be reasonable."); *Glass v. UBS Fin. Servs.* (N.D.
24 Cal. 2007) 2007 U.S. Dist. LEXIS 8476, at *52 (finding "requested payment of \$25,000 to each
25 of the named Plaintiff is appropriate" in wage and hour settlement).

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1 **VIII. SUBMISSION TO THE LWDA**

2 As set forth in the Mankin Declaration at ¶ 23, the settlement agreement and this motion
3 are concurrently being submitted to the LWDA in accordance with Labor Code § 2699(1)(2).
4 The proof of electronic submission is attached as Exhibit E to the Mankin Declaration.

5 **IX. THE SETTLEMENT ADMINISTRATOR**

6 Phoenix will serve as the Settlement Administrator and will be responsible for processing
7 and issuing the settlement payments and providing notice of the settlement payment to the
8 Aggrieved Employees. Phoenix provided an all-in bid to administrator the Settlement for
9 \$9,500, which is the amount that will be paid from the Settlement Amount. (Mankin Decl. ¶ 30;
10 Exhibit F to Mankin Decl. [Phoenix's bid]).

11 **X. CONCLUSION**

12 For the foregoing reasons, Plaintiff requests, and Defendants do not oppose, the Court's
13 approval of the Settlement under the PAGA.

14 Dated: May 9, 2024

LAUBY, MANKIN & LAUBY LLP

16 BY:



17 Brian J. Mankin, Esq.
18 Attorneys for Plaintiff, on behalf of the State
19 of California as the Real Party In Interest
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PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

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

On May 9, 2024, I caused to be served the foregoing document(s) described as follows:

**NOTICE OF MOTION AND MOTION TO APPROVE SETTLEMENT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT OF 2004**

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 May 9, 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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