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

ESTEBAN ALDANA, individually, on a  
representative basis, and on behalf of all  
others similarly situated;

Plaintiff,

vs.

CORESLAB STRUCTURES (L.A.) INC., a  
California Corporation; and DOES 1 through  
20, inclusive;

Defendants.

Case No.: CVRI2300287  
*[Assigned to Hon. Harold Hopp, Dept 1, for  
all purposes]*

**NOTICE OF MOTION AND MOTION  
FOR FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT;  
DECLARATIONS IN SUPPORT  
THEREOF; AND [PROPOSED] FINAL  
ORDER AND JUDGMENT**

Hearing  
Date: July 12, 2024  
Time: 8:30 a.m.  
Dept: 1

Complaint filed: January 19, 2023

TO THE COURT AND PARTIES OF RECORD:

PLEASE TAKE NOTICE THAT on July 12, 2024, at 8:30 a.m., or as soon thereafter as  
this matter may be heard by the Honorable Harold Hopp in Department 1 of the Riverside  
County Superior Court located at 4050 Main Street, Riverside, CA 92501, Plaintiff Esteban  
Aldana respectfully moves this Court for an Order granting final approval of the class action  
settlement between Plaintiff and Defendant Coreslab Structures (L.A.) Inc., which was  
preliminarily approved by the Court. This Motion, which is supported and unopposed by  
Defendant, seeks final approval and entry of judgment of a \$775,000.00 settlement on behalf of

1 457 Participating Class Members.

2 Specifically, Plaintiff will and hereby does move the Court to grant final approval of the  
3 Class and PAGA Settlement Agreement and Release of Claims (the “Settlement Agreement”),  
4 and enter the proposed order and final judgment filed concurrently herewith:

5 1. Finally certifying the Class, as defined in the Settlement Agreement and the  
6 Court’s Order Granting Preliminary Approval of the Settlement;

7 2. Finally appointing Plaintiff as Class Representative for purposes of settlement;

8 3. Finally appointing Brian Mankin and Peter Carlson of Lauby Mankin Lauby LLP  
9 as Class Counsel for purposes of settlement;

10 4. Finding that the Class Notice Packet was properly provided to the Class in  
11 accordance with the Court’s Order granting Preliminary Approval;

12 5. Finally approving the settlement as fair, adequate, and reasonable, based upon the  
13 terms set forth in the Settlement Agreement;

14 6. Binding Participating Class Members, Aggrieved Employees, Plaintiff and the  
15 State of California to the terms of the Settlement Agreement, including the Released Class  
16 Claims and PAGA Released Claims specified therein; and

17 7. Retaining jurisdiction to enforce the Settlement Agreement.

18 This Motion will be based upon this notice; the attached memorandum of points and  
19 authorities; the Declarations of the Settlement Administrator (Joseph Flood of Phoenix  
20 Settlement Administrators), Class Counsel (Brian Mankin and Peter Carlson) and Plaintiff  
21 Esteban Aldana filed concurrently herewith; the records and files in this action; and any other  
22 further evidence or argument that the Court may receive at or before the hearing.

23 Dated: June 18, 2024

LAUBY, MANKIN & LAUBY LLP

24  
25 BY:



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

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1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2   **I.       SUMMARY OF ARGUMENT AND ESSENTIAL POINTS**

3           Pursuant to California Rules of Court, Rule 3.769 (d) and (e), Plaintiff Esteban Aldana  
4 respectfully requests that this Court grant final approval of the Class and PAGA Settlement  
5 Agreement and Release of Claims (the “Settlement Agreement” or “S.A.”), which is supported  
6 and unopposed by Defendant Coreslab Structures (L.A.) Inc., and enter the proposed order and  
7 final judgment in this matter.

8           There are several essential reasons why this settlement should be approved, and judgment  
9 entered accordingly, as follows:

- 10           • After considerable work, the Parties reached a \$775,000 settlement on behalf of
- 11           460 Class Members with the assistance of an experienced class action mediator;
- 12           • The Class Members were deemed to participate in the Settlement, and were not
- 13           required to submit a Claim Form to receive funds;
- 14           • There is no reversion to Defendant;
- 15           • There were zero objections and three opt-outs to the Settlement, meaning 99.3%
- 16           of the Class is participating in the Settlement;
- 17           • The Class Members will receive a maximum payment of \$5,634 and an average of
- 18           \$940.21, although each Class Member’s Individual Class Payment will be
- 19           allocated pro rata based on the percentage of weeks worked, whereby each Class
- 20           Member will receive approximately \$21.18 for each week worked during the
- 21           Class Period.

22           In accordance with the analysis and law set forth herein, the Settlement should be  
23 approved, and judgment entered based on the determination that the Settlement is fair,  
24 reasonable, adequate, and in the best interests of the Class. (Declaration of Class Counsel, Brian  
25 J. Mankin [“Mankin Decl.”] ¶¶ 13, 34).

26   **II.       SUMMARY OF THE SETTLEMENT**

27           Defendant is in the business of manufacturing precast concrete slabs for use on  
28 commercial, residential, and industrial projects. Plaintiff and the Class Members included all

1 current and former nonexempt (hourly paid) employees employed by Defendant Coreslab  
2 Structures (L.A.) Inc in California at any time during the Class Period of January 19, 2019,  
3 through February 2, 2024. The primary claims (which Defendant vehemently disputed) involved  
4 allegations that Defendant failed to pay the Class all wages owed, failed to provide compliant  
5 meal and rest breaks, as well as wage statement violations, waiting time penalties, and PAGA  
6 penalties arising from the same underlying conduct.

7 The Settlement includes 457 Participating Class Members (excluding the 3 opt-outs), and  
8 the following is a breakdown of how the funds are allocated under the Settlement Agreement  
9 (Flood Decl. ¶ 11):

|                                    | Total Amount         |
|------------------------------------|----------------------|
| <i>Gross Settlement Amount</i>     | \$ 775,000.00        |
| Attorneys' Fees (1/3)              | \$ 258,333.33        |
| Litigation Costs                   | \$ 17,670.82         |
| Administrator Costs                | \$ 9,000.00          |
| PAGA Penalties                     | \$ 50,000.00         |
| Class Representative Service Award | \$ 7,500.00          |
| <i>Net Settlement Amount</i>       | <b>\$ 432,495.85</b> |

15  
16 The Participating Class Members were deemed to participate and did not need to submit a  
17 Claim Form to receive payment. (S.A. ¶ 25). Each Participating Class Member will receive an  
18 Individual Class Payment which will be calculated and apportioned from the Net Settlement  
19 Amount based on the number of Weeks Worked by each Class Member during the Class Period.  
20 (S.A. ¶ 49(c)).

21 Assuming all of the amounts in the Settlement are approved by the Court, the highest  
22 payment to Participating Class Members is estimated to be \$5,635.44, the average payment is  
23 estimated to be \$940.21 and the lowest is \$21.18 for a short term employee who only worked  
24 one week during the Class Period. (Flood Decl. ¶ 12).

25 In addition, the 293 Aggrieved Employees will share in the \$12,500 PAGA Payment  
26 based on Weeks Worked, who will receive \$42.66 each on average. (Flood Decl. ¶ 13).

27 The Individual Settlement Payments to Participating Class Members will be allocated as  
28 20 percent to wages subject to standard withholdings and 80 percent for interest and statutory

penalties (pursuant to, e.g., California Labor Code sections 203, 210, 226) from which no taxes will be withheld. The Settlement Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the penalties and interest allocations. (S.A. ¶ 49(d)). Payments to Aggrieved Employees will be treated as civil penalties and paid on a Form 1099.

The Settlement Agreement provides that Defendant shall fund the Settlement Amount within 60 days of the Effective Date, which is anticipated to be the date the Court enters an order granting Final Approval. The Settlement Administrator is then required to issue payments within 10 calendar days of receipt of the payment. (S.A. ¶ 71-72). Class Members will have 180 days to cash the settlement check. (S.A. ¶ 73). If a Class Member fails to cash a check by the deadline, the Administrator shall issue unclaimed funds to the California State Controller in the name of the Participating Class Member/Aggrieved Employee.

### **III. THE NOTICE PROCESS**

#### **A. NOTICE TO THE CLASS MEMBERS**

Pursuant to the Court's Order and the Settlement Agreement, the Parties directed the Settlement Administrator to review and update the Class Members' addresses, mail the Court-approved Notice Packet, and process their responses. (Flood Decl. ¶ 2).

Prior to mailing the Notice Packet, the Settlement Administrator performed a National Change of Address search on all Class Members to determine if any had moved. (*Id.* at ¶ 4). Then, on April 8, 2024, the Notice Packet was sent via first-class mail to the 460 Class Members to advise each about the suit and settlement. There were no undeliverable Notices, resulting in a **100%** success rate in mailing the Notice Packets. (*Id.* at ¶ 6).

In accordance with California Rules of Court, Rules 3.766(d) and 3.769(f), the Notice Packet provided Class Members with (1) a brief explanation of the case; (2) an explanation of each Settlement Class Member's right to opt out of the settlement class; (3) an explanation of the process (and relevant deadlines) through which a Class Member could opt out of the settlement class; (4) notice about the binding nature of the Judgment for Class Members who do not opt out; (5) an explanation of each Settlement Class Member's right to appear through counsel; (6) an

1 explanation of each Settlement Class Member’s right to appear at the fairness hearing and  
2 express views on the settlement, i.e., object or otherwise respond; and (7) an explanation of each  
3 Class Member’s right to participate in the Settlement and receive payment accordingly. (*See*  
4 **Exhibit A** to the Flood Decl.).

5 **B. THERE WERE NO OBJECTIONS AND 3 OPT-OUTS, RESULTING IN AN IMPRESSIVE**  
6 **99.3% CLASS PARTICIPATION IN THE SETTLEMENT**

7 California law makes clear that the percentage of objectors and opt-outs is an important  
8 factor in the Court’s consideration of a proposed class action settlement. *See Dunk v. Ford*  
9 *Motor Co. (1996) 48 Cal.App.4th 1794, 1802*. Also, the Ninth Circuit recognize that in the final  
10 fairness analysis, the number or percentage of class members who object to the settlement is a  
11 significant factor. *See Mandujano v. Basic Vegetable Prods., Inc. (9th Cir. 1976) 541 F.2d 672,*  
12 *677*.

13 Here, no objections were submitted, no disputes as to Work Weeks, and only 3 opt-outs,  
14 meaning that 99.3% of the Class Members elected to participate and receive a share of the  
15 Settlement. (Flood Decl. ¶¶ 8-10, see also Exhibit “B” for true and correct copies of the opt-  
16 outs).

17 In light of this positive reaction to the Settlement and its overall terms, it is clear that the  
18 Settlement, which was the product of arm’s-length negotiations, is fair and reasonable and the  
19 Parties therefore respectfully request that the Court grant final approval and enter the proposed  
20 judgment as requested. *See Dunk*, 48 Cal.App.4th at 1800-1802 (class action settlements should  
21 be approved if they are fair and reasonable, and a low percentage of objectors and opt-outs is  
22 evidence of an agreement’s fairness).

23 **IV. EVALUATION OF THE SETTLEMENT**

24 It is axiomatic that California law strongly favors and encourages settlements. *See*  
25 *Stambaugh v. Super. Ct. (1976) 62 Cal.App.3d 231, 236*. This presumption in favor of  
26 settlement applies with particular force in the context of class actions. *See Ferguson v. Lieff,*  
27 *Cabraser, Heimann & Bernstein (2003) 30 Cal.4th 1037* (Kennard, J., concurring and dissenting)  
28 (“[p]ublic policy favoring settlement is especially weighty for class actions”); *Bell v. Am. Title*

1 *Ins. Co.* (1991) 226 Cal.App.3d 1589, 1607-1608 (affirming approval of a class settlement and  
2 implicitly endorsing its citation of federal precedent for the notion that there is a “strong public  
3 policy in favor of settlement of class actions”); *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976)  
4 529 F.2d 943, 950 (“it hardly seems necessary to point out that there is an overriding public  
5 interest in settling and quieting litigation. This is particularly true in class action suits”).

6 When entertaining a request for final approval of a class action settlement, a court’s  
7 fundamental consideration is whether the settlement is fair, adequate and reasonable. *See Dunk,*  
8 *supra*, 48 Cal.App.4th at 1801, fn. 7 (noting that state courts look to federal authority concerning  
9 the approval of class settlements); California Rules of Court, Rule 3.769 (g).

10 Fairness is presumed when: (1) the settlement is reached through arm’s-length  
11 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act  
12 intelligently; (3) counsel is experienced in similar litigation; (4) the percentage of objectors and  
13 opt outs is small, and (5) the range of reasonableness of the settlement fund to a possible  
14 recovery in light of all attendant risks of litigation.” *Dunk, supra*, 48 Cal.App.4th at 1802. All  
15 five of these factors are discussed in detail below.

16 **A. THE SETTLEMENT WAS REACHED THROUGH INFORMED ARMS-LENGTH**  
17 **NEGOTIATION**

18 Courts presume the absence of fraud or collusion in the negotiation of a settlement,  
19 unless evidence to the contrary is offered. Thus, there is a presumption here that the negotiations  
20 were conducted in good faith. *See 3 Alba Conte & Newberg, supra*, at § 11.51. The proposed  
21 settlement here was the product of arm’s-length negotiation before a highly experienced and  
22 reputable class action mediator to reach a settlement.

23 Here, Plaintiff and Class Counsel have diligently investigated the claims raised in this  
24 litigation and, after taking into account the disputed factual and legal issues involved in this  
25 action, the risks attending further prosecution, and the benefits to be received pursuant to the  
26 compromise and settlement of the action as set forth in the Settlement, concluded that the  
27 settlement terms are fair, reasonable, and in the best interest of the Class.  
28

1 As the Settlement Agreement itself reveals, the Settlement is designed to fairly and  
2 adequately compensate all Class Members. And, pursuant to California Rules of Court Rule  
3 3.769 (b), the parties have disclosed the agreed upon and proposed attorney fee award, which is  
4 well within the range of reasonableness for matters of this nature.

5 **B. PLAINTIFF’S INVESTIGATION WAS SUFFICIENT**

6 As set forth at the time of preliminary approval, Class Counsel’s investigation into the  
7 facts and merits of the wage and hour claims alleged included analyzing substantial amounts of  
8 information, correspondence, documents, pay data, policies and procedures, and evidence  
9 relating to the class size and the commonality of the claims. During this process, Plaintiff and  
10 Class Counsel conducted investigations into the potential claims of the similarly situated  
11 employees, as well as researching and investigating Defendant’s defenses. Finally, Class  
12 Counsel synthesized and analyzed information provided by Defendant as to the total Class  
13 Members, the number of current and former employees, the number of employees who worked  
14 during various time periods, and prepared comprehensive damages calculations regarding the  
15 claims at issue.

16 **C. CLASS COUNSEL ARE EXPERIENCED IN SIMILAR LITIGATION AND ENDORSE THE**  
17 **SETTLEMENT**

18 Class Counsel are experienced in this type of litigation, and they have (and hereby do)  
19 represent that this Settlement is fair and reasonable. (Mankin Decl. ¶¶ 13, 34); *see 7-Eleven*  
20 *Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152 (Final  
21 approval of settlement affirmed where counsel were all experienced litigators with class-action  
22 experience and had recommended settlement based on the negotiated terms).

23 **D. REASONABLE ESTIMATE OF THE NATURE AND AMOUNT OF RECOVERY**

24 Plaintiff’s Motion for Preliminary Approval contained a comprehensive *Kullar* analysis  
25 which sufficiently provided the Court with “basic information about the nature and magnitude  
26 of the claims in question and the basis for concluding that the consideration being paid for the  
27 release of those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail,*  
28 *Inc.* (2008) 168 Cal.App.4th 116, 133. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*

1 (2010) 186 Cal.App.4th 399, later clarified *Kullar* by noting that an explicit statement of the  
2 maximum theoretical amount that the class could recover was not part of the “basic  
3 information” that counsel was required to produce:

4           Greenwell misunderstands *Kullar*, apparently interpreting it to  
5           require the record in all cases to contain evidence in the form of an  
6           explicit statement of the maximum amount the plaintiff class could  
7           recover if it prevailed on all its claims – a number which appears  
8           nowhere in the record of the case. But *Kullar* does not, as  
9           Greenwell claims, require any such explicit statement of value; it  
              requires a record which allows “an understanding of the amount  
              that is in controversy and the realistic range of outcomes of the  
              litigation.

10  
11           Of course, a settlement is not judged against what might have been recovered had a  
12           plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought  
13           to be fair and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 246, 250  
14           (“Compromise is inherent and necessary in the settlement process ... even if the relief afforded  
15           by the proposed settlement is substantially narrower than it would be if the suits were to be  
16           successfully litigated, this is no bar to a class settlement because the public interest may indeed  
17           be served by a voluntary settlement in which each side gives ground in the interest of avoiding  
18           litigation”).

19           In light of the uncertainties of protracted litigation, this negotiated settlement reflects the  
20           best practicable recovery for the Class. While the total settlement amount is, of course, a  
21           compromise figure, the potential risks and opportunities of both parties were effectively weighed  
22           and considered by the parties, resulting in a fair and equitable settlement. Based upon detailed  
23           data obtained through informal discovery and information exchanges, and factoring in class  
24           certification probabilities and liability probabilities, Class Counsel formulated detailed damages  
25           models to evaluate the claims for mediation in order to reach a realistic and reasonable resolution  
26           as set forth at preliminary approval.

27 ///

28 ///

1 **V. THE REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE**

2 For their efforts in creating a common fund for the benefit of the class, the Settlement  
3 Agreement provided that Class Counsel seek reasonable fees of one-third of the Settlement  
4 Amount, which is \$258,333.33. These fees are warranted under the law and within the range of  
5 fees commonly awarded in similar cases.

6 As shown herein, the requested percentage of one-third of the settlement fund as payment  
7 for attorneys' fees should be granted for several reasons. First, one-third is the standard  
8 benchmark in California for class action settlements. *See, e.g., Chavez v. Netflix, Inc.* (2008) 162  
9 Cal.App.4th 43, 66 n. 11 ("Empirical studies show that, regardless whether the percentage  
10 method or the lodestar method is used, fee awards in class actions average around one-third of  
11 the recovery"). Second, the California Supreme Court upheld that the percentage of the fund  
12 method survives in California class action cases. *See Laffitte v. Robert Half International, Inc.*  
13 (2016) 1 Cal.5th 480. Third, the requested amount is eminently reasonable through the prism of  
14 a lodestar cross-check. Accordingly, this request should receive final approval.

15 **A. PLAINTIFF IS ENTITLED TO RECOVER REASONABLE ATTORNEYS' FEES UNDER**  
16 **THE LABOR CODE**

17 Plaintiff and the Class in this action are entitled to recover reasonable attorneys' fees,  
18 expenses and costs under section 218.5 of the California Labor Code, which provides that, "[i]n  
19 any action brought for the nonpayment of wages ... the Court shall award reasonable attorneys'  
20 fees and costs to the prevailing party." In addition, Plaintiff and the Class are entitled to recover  
21 reasonable attorneys' fees pursuant to section 1194.2 of the Labor Code, which provides that,  
22 "... any employee receiving less than the legal minimum wage ... applicable to the employee is  
23 entitled to recover in a civil action the unpaid balance of the full amount of this minimum  
24 wage... including ... reasonable attorney's fees, and costs of suit." Plaintiff is also entitled to  
25 fees and costs under section 226(e) of the Labor Code (employee who prevails on claim for  
26 itemized wage statement violation "is entitled to an award of costs and reasonable attorneys'  
27 fees"), under PAGA (Labor Code § 2699(g), which provides "Any employee who prevails in any  
28 action shall be entitled to an award of reasonable attorney's fees and costs, including any filing

1 fee paid”), and, potentially, section 1021.5 of the California Code of Civil Procedure.

2           **B.       CLASS COUNSEL’S REQUEST FOR FEES IS REASONABLE AND PROPERLY**  
3                   **CALCULATED AS A PERCENTAGE OF THE COMMON FUND**

4           Under the “common fund” doctrine, the request for attorneys’ fees in the amount of 1/3  
5 of the common fund is reasonable and appropriate, because (1) it is within the approved range  
6 for percentages awarded as attorneys’ fees in similar cases; (2) it is supported by the high quality  
7 of Class Counsel’s work on this case and the results obtained for the Class; (3) the Class had  
8 sufficient notice of the fee request; (4) it is supported by the fact that this case was handled on a  
9 contingency basis and was undertaken despite various risks and expenses; and (5) the lodestar  
10 cross-check supports the fee request.

11                   ***1.       The Attorneys’ Fees Requested Here Fall Within the Reasonable Range***  
12                   ***Awarded in Cases Under the Established Common Fund Method***

13           The California Supreme Court approved trial courts’ usage of the common fund method  
14 of awarding attorneys’ fees in wage and hour class actions, like this one, and upheld a fee  
15 awarded of 1/3 of the total settlement amount obtained for the class. *See Laffitte, supra*, 1 Cal.5th  
16 at 506; *see also*, 4 Newberg on Class Actions, § 14:6 at 552 (“fee awards in class actions average  
17 around one-third of the recovery”). Specifically, in *Laffitte*, the Court wrote: “[w]e join the  
18 overwhelming majority of federal and state courts in holding that when class action litigation  
19 establishes a monetary fund for the benefit of the class members, and the trial court in its  
20 equitable powers awards class counsel a fee out of that fund, the court may determine the amount  
21 of a reasonable fee by choosing an appropriate percentage of the fund created”). *Id.* at 506. The  
22 California Supreme Court also noted that trial courts have the discretion to award fees as a  
23 percentage of the common fund, with or without the necessity to conduct a lodestar cross-check.  
24 *Id.* (“...[Courts] ... retain the discretion to forgo a lodestar cross-check and use other means to  
25 evaluate the reasonableness of a requested percentage fee.”).

26           The California Supreme Court’s *Laffitte* decision was consistent with its prior rulings  
27 recognizing that “when a number of persons are entitled in common to a specific fund, and an  
28 action brought by ... plaintiffs for the benefit of all results in the creation or preservation of that

1 fund, such ... plaintiffs may be awarded attorneys' fees out of the fund." *Serrano III v. Priest*  
2 (1977) 20 Cal.3d 25, 34; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 ("[A] lawyer who  
3 recovers a common fund ... is entitled to reasonable attorneys' fees from the fund as a whole").  
4 Notably, when fees are calculated as a percentage of the common fund, they should be calculated  
5 based on the amount that was available to be claimed, rather than as a percentage of the actual  
6 amount claimed. *See Boeing Co.*, 444 U.S. at 475-6, 480-1 (the SCOTUS held that attorneys for  
7 a successful class may recover a fee based on the fund created for the class, even if some class  
8 members make no claims against the fund, so that money remains in it that will be returned to  
9 the defendant, explaining: "[t]heir [class members'] right to share the harvest of the lawsuit upon  
10 proof of their identity, whether or not they exercise it, is a benefit in the fund created by the  
11 efforts of the class representatives and their counsel." *See also Williams v. MGM-Pathe*  
12 *Communs. Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 (trial court "abused its discretion by basing  
13 the fee on the class members' claims against the fund rather than on a percentage of the entire  
14 fund or on the lodestar").

15 **2. The High Quality of Work and Excellent Result Support the Award**

16 In addition to the fact that a Class benefit was created with a non-reversionary common  
17 fund settlement, the fairness of the requested fee award of 1/3 of the Settlement Amount is  
18 supported by the high quality of work performed by Class Counsel and the positive result  
19 obtained for the Class in spite of the risks of ongoing litigation. This result occurred because  
20 Class Counsel diligently, efficiently, and creatively pursued this case and reached a settlement  
21 for the benefit of the entire Class. The fact that the settlement was embraced and supported by  
22 the Class, as evidenced by a 99.3% participation rate, demonstrates that Class Counsel obtained a  
23 favorable result for the Class.

24 **3. Class Members Had Sufficient Notice of the Requested Fees**

25 Rule 3.769 of the California Rules of Court requires that the Class Members be given  
26 notice of any agreement regarding an application for attorneys' fees. Here, the Notice  
27 preliminarily approved by the Court and distributed to the Class Members apprised them that  
28 Class Counsel will ask for fees of one-third of the Gross Settlement Amount. (Flood Decl., Exh.

1 A.)

2 The Class Notice also advised the class members of the procedures for objecting to the  
3 proposed settlement and appearing at the settlement hearing, where they could present their  
4 objections to any aspect of the settlement, including the amount of attorneys' fees to be awarded  
5 to class counsel. *Litwin v. iRenew Bio Energy Solutions, LLC* (2014) 226 Cal.App.4th 877, 883  
6 ("Procedural due process requires that affected parties be provided with 'the right to be heard at a  
7 meaningful time and in a meaningful manner'"). In accordance with the foregoing, it is  
8 respectfully submitted that the instant notice complied with Rule 3.769 and, as a result, the Class  
9 Members' due process rights were fulfilled.

10 **4. The Contingent Nature of Class Counsel's Representation of Plaintiffs**  
11 **and the Class Further Supports the 1/3 Fee Award**

12 An additional factor militating in favor of the granting of the requested fee award is the  
13 fact that this case was both legally and financially risky for Class Counsel. *See Vizcaino v.*  
14 *Microsoft Corp* (9th Cir. 2002) 290 F.3d 1043, 1048-49. Class Counsel have been representing  
15 the Class in this matter on a strictly contingency basis, and as such, incurred the risk of non-  
16 recovery after a substantial investment of time, money, and resources, and have done so since the  
17 inception of this case without any payment or compensation. Specifically, there was the prospect  
18 of enormous cost inherent in class action litigation; the risk that Defendant could prevail on its  
19 argument that the class should not be certified; and the risk that Defendant could prevail on the  
20 merits of some or all of the claims.

21 The court in *Horsford v. Board of Trustees of California State University*, 132  
22 Cal.App.4th 359 (2005) analyzed this issue and held that, when determining the market-level  
23 compensation to award to contingent fee attorneys, the analysis must take into account the large  
24 risk inherent in such situations:

25 The market value of the services provided by plaintiffs' counsel in  
26 a case of this magnitude must take into consideration that any  
27 compensation has been deferred for up to four years from the time  
28 an hourly fee attorney would begin collecting fees from his or her  
client; that the demands of the present case substantially precluded  
other work during that extended period, which makes the ultimate  
risk of not obtaining fees all the greater (since the attorneys must

1 use savings or incur debt to keep their offices afloat and their  
2 families fed during the years-long litigation); and that a failure to  
3 fully compensate for the enormous risk in bringing even a wholly  
4 meritorious case would effectively immunize large or politically  
powerful defendants from being held to answer for constitutional  
deprivations, resulting in harm to the public.”

5 *Id.* at 399-400.

6 Indeed, as Plaintiff’s Counsel can attest, not all class/PAGA cases are successful. Many  
7 cases end with no fees or a greatly reduced fee that is far less than lodestar, often due to no fault  
8 of counsel (i.e., bankruptcy, change in the law, consolidation or coordination or preemption,  
9 being top filed, etc.). According to Mayer Brown LLP’s study entitled, An Empirical Analysis  
10 of Class Actions, cited in *Laguna v. Coverall North America, Inc.* (9th Cir. 2014) 753 F.3d 918,  
11 found that only one-third of class actions are successful, compared to two-thirds that are defeated  
12 and result in no payment to the class members.<sup>1</sup>

13 As exemplified by the contingent nature of high risk class action litigation, Plaintiff’s  
14 Counsel can further attest to having had many cases result in (a) zero recovery, (b) negative  
15 multiplier and (c) an individual settlement in lieu of a class recovery, as demonstrated below:

16 **Sample of Cases with Zero Recovery for Class Counsel**

17 The following is a small sample of cases in which Plaintiff’s Counsel have received zero  
18 recovery on class/PAGA cases due to the company’s financial condition.

- 19 • Heavily litigated Class/PAGA action that Class Counsel certified as a class,  
20 prevailed on summary adjudication, fully prepared for trial and one day before the  
21 start of trial, ***Defendant filed for bankruptcy, resulting in complete loss of***  
22 ***attorneys fees and all costs advanced*** (*Garza v. Quality Conversation*, San  
23 Bernardino Superior Court Case No. CIVDS1506788);
- 24 • Class actions in which ***Defendants filed for bankruptcy, resulting in a loss of all***  
25 ***fees and costs*** (*Gomez v. Ultimate Logistics*, Riverside Superior Court Case No.  
26 RIC1723054, and *Bonilla v. Home Energy*, San Bernardino Superior Court Case  
27 No. CIVSB2215927);

28  

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<sup>1</sup> [www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf](http://www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf)

- ***Class Counsel have been forced to dismiss class and PAGA cases without any compensation or reimbursement of fees or costs due to the financial condition of Defendant***, (*Cox v. NurseLoop*, San Bernardino Superior Court Case No. CIVSB2225440; *Joyce v. GES Distribution*, Riverside Superior Court Case No. RIC1905739).
- Of course, there is also the reality that a Defendant may prevail on the merits, whereby Class Counsel will receive no compensation and lose it out of pocket costs entirely. Class Counsel have experienced a situation wherein it prevailed at trial on a PAGA case, only to have the appellate court reverse the decision and rule in favor of Defendant, thereby reversing the fee and cost award and resulting in no recovery of fees or costs. (Mankin Decl. ¶ 21).

**Sample of Cases with Negative Multiplier for Class Counsel**

Even when Plaintiff's Counsel achieved a settlement and what appears to be a "favorable" outcome, there are countless times when the fees requested by Plaintiff's Counsel still result in a ***large negative attorney fee multiplier***, including the following examples:

- ***Negative 20.0 multiplier:*** In *Carr v. Edible Arrangements*, San Bernardino Superior Court, Class Counsel has litigated the case for over ***5 years*** with 1,000 plus hours in attorney time, leading to the class certification in favor of Plaintiff. Despite all the work invested into the matter, including preparing for trial, a financial review confirmed that Defendant could only fund a \$100,000 settlement, resulting in a mere \$33,000 fee and a ***-20.0 negative multiplier***;
- ***Negative 4.26 multiplier:*** In *Pompa v. Landforce*, San Bernardino Superior Court Case No. CIVDS1700451, Class Counsel litigated for over 4.5 years, and obtained class certification. Yet, despite the fact that a settlement was eventually achieved, it resulted in a negative 4.26 multiplier for Class Counsel due to financial condition;
- ***Negative 4.24 multiplier:*** In *Sacks v. Natural Energy*, San Bernardino Superior Court Case No. CIVDS1811288, the matter resulted in a settlement with a

negative 4.24 multiplier for Class Counsel due to financial condition;

- **Negative 2.85 multiplier:** In *Sowle v. Sherpaul*, Riverside Superior Court Case No. RIC2002410, Class Counsel’s lodestar was nearly the same amount as the gross settlement amount – thus, resulting in a negative 2.85 multiplier.

(Mankin Decl. ¶ 21).

**Class/PAGA Cases Converted to Small Individual Settlements**

There are also many situations when Plaintiff’s Counsel is forced to convert matters into small individual settlements (and therein lose substantial attorneys fees) for a variety of reasons, including due the financial constraints of a defendant, or because a company may engage in a “Pick-up Stix Campaign” to settle directly with the class members, or because a Defendant engages in a reverse auction and settles a class/PAGA case with another firm that will take less (i.e., cherry picking), thereby cutting off Class Counsel’s recovery. There are indeed numerous examples of this occurring that result in an individual settlement, thereby causing Class Counsel to bear the burden of a loss in attorneys’ fees. (Mankin Decl. ¶ 21).

**These Factors Support the Fee Request and a Reasonable Multiplier**

The situations highlight instances where Class Counsel here (Lauby Mankin Lauby LLP) has had to bear the weight of a complete loss or steep reduction in fees and costs. This is not an easy burden for Plaintiff’s Counsel, which is a small firm. (Mankin Decl. ¶ 20).

To offset these risks and unfavorable results, Courts historically award a multiplier on Class Counsel’s lodestar, as discussed further below. Because if the *best* Plaintiff’s Counsel could hope for is merely to be paid its customary hourly rate multiplied by the number of hours worked on a case, then Class Counsel would not be compensated for the hardships and serious risks they faced litigating contingency cases and incurring losses on the unfavorable results, and would not be incentivized to take on similar cases in the future. (*Id.*)

The availability of a “lodestar multiplier” allows Class Counsel to be an advocate for employees and take on risky cases where Class Counsel may have to shoulder the risks of litigation in other cases, so that the class members do not have to forego their right to the justice system. A multiplier ensures that class members in the future will have access to competent

1 counsel who are willing to offer contingency fee agreements in risky cases and be available and  
2 willing to take on cases to help all Class Members – not just those employed by large  
3 corporations.

4 For all of these reasons, the contingent nature of this case and the availability of a  
5 lodestar multiplier supports a fee of one-third of the common fund and granting of fee request.

6 **5. A Lodestar Cross-Check Confirms the Reasonableness of the Fee Award**

7 Despite recognized limitations of the so-called lodestar method, some California and  
8 federal courts acknowledge the utility of a lodestar “cross-check.”<sup>2</sup> (*Lealao, supra*, 82  
9 Cal.App.4<sup>th</sup> at 46-47.) Under the “lodestar multiplier” method of cross-checking the  
10 reasonableness of attorneys’ fees in class actions, the court ascertains Class counsel’s total  
11 “lodestar” amount by multiplying the number of hours reasonably expended by each attorney or  
12 legal staff member by their hourly rates, and then enhances or reduces this lodestar figure by a  
13 “multiplier” to account for a range of factors, such as the novelty or difficulty of the case, its  
14 contingent nature, and the degree of success achieved. *PLCM Group, Inc. v. Drexler* (2000) 22  
15 Cal.4<sup>th</sup> 1084, 1095-96; *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322; *Lealao, supra*, 82  
16 Cal.App.4<sup>th</sup> at 43 [court has discretion to use a multiplier to ensure that the “fee awarded is  
17 within the range of fees freely negotiated in the legal marketplace in comparable litigation”].)

18 Historically, California courts have approved multipliers of 1.5 to 4. *See Coalition for*  
19 *Los Angeles County Planning v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 251  
20 **(multiplier of 2+ approved)**; *Sternwest Corp v. Ash* (1986) 183 Cal.App.3d 74, 75. The  
21 multiplier requested by Class Counsel below is within the range of multipliers found to be  
22 appropriate by various federal and state courts in California. In *Sternwest Corp. v. Ash*, for  
23 instance, the Court of Appeal remanded for a lodestar enhancement of **“two, three, four or**  
24 **otherwise.”** *Id.* at 76; *see also Wershba*, 91 Cal.App.4<sup>th</sup> at 255 (**“Multipliers can range from 2**  
25 **to 4 or even higher”**); *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78, 83

26  
27 <sup>2</sup> In practice, the lodestar method is difficult to apply, time-consuming to administer, inconsistent in result, and  
28 capable of manipulation. In addition, the lodestar creates inherent incentive to prolong the 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.

(**affirming 2.34 multiplier**); *Coalition for Los Angeles County Planning in the Pub. Interest v. Board of Supervisors*, 76 Cal.App.3d 241, 251 (**affirming multiplier of approximately 2**); *Craft v. County of Los Angeles*, 2008 U.S. Dist. LEXIS 27526 (C.D. Cal. Apr. 1, 2008) (**applying 5.2 multiplier**); *See also Steinder v. Am. Broadcasting Co., Inc.* (9<sup>th</sup> Cir. 2007) 248 Fed. Appx. 780, 783 (**approving multiplier of 6.85** and citing cases with comparable or higher multipliers); *Vizcaino v. Microsoft Corp.* (9<sup>th</sup> Cir. 2002) 290 F.3d 1043, 1051 (finding no abuse of discretion in **awarding a multiplier of 3.65**). In *Torchia v. WW Grainger, Inc.* (E.D. Cal. 2014) 304 F.R.D. 256, 275-278, a federal magistrate in Fresno approved attorneys' fees of \$550,000 **constituting a 3.57 multiplier** on class counsel's total lodestar of \$153,856 in a wage and hour class action.

The actual aggregated lodestar between the Plaintiff's attorneys that worked on this case is approximately \$214,795. This results in a fair and reasonable 1.2 multiplier, as summarized in the following table:

| Attorney/Timekeeper                                                    | Rate         | Hours                 | Fee              |
|------------------------------------------------------------------------|--------------|-----------------------|------------------|
| <b>Brian J. Mankin</b><br><i>Trial Counsel / Partner</i><br>(23 Years) | <b>\$775</b> | <b>97<sup>3</sup></b> | <b>\$75,175</b>  |
| <b>Peter Carlson</b><br><i>Senior Associate</i><br>(10 Years)          | <b>\$600</b> | <b>232.7</b>          | <b>\$139,620</b> |
| <b>Grand Total for All Attorneys</b>                                   |              |                       | <b>\$214,795</b> |

(Mankin Decl. ¶ 26; Carlson Decl. ¶ 5).

Class Counsel's requested rates are reasonable under the Laffey Matrix ([www.laffeymatrix.com](http://www.laffeymatrix.com)) which indicates that the benchmark rate for an attorney with 20+ years of experience (such as Mr. Mankin) is \$914, while the rate for attorneys with 8-10 years of experience (such as Ms. Carlson) is \$672. Moreover, the Wolters Kluwer 2017 Real Rate Report ("Real Rate Report") provides directly applicable information in this regard. The Real Rate Report is based on an enormous and statistically significant compilation of data: 25.8 million

<sup>3</sup> Includes an estimated 15 hours of additional work preparing for and attending the hearing, as well as 20 hours in anticipated work to be performed after the final approval, particularly in light of the payment plan, as it will require considerable more work with counsel, administrator, and Class Members.

1 billing entries and 23.9 million hours billed by over 112,100 individual timekeepers from 4,620  
2 law firms, totaling \$9.02 billion in fees billed. (See Wolters Kluwer’s ELM Solutions, Inc., 2017  
3 Real Rate Report). The Real Rate Report then compiles and analyzes this data to provide the  
4 hourly rates for partners and associates in major metropolitan areas. For the southern California  
5 area, which is based on billing entries for 1,125 partners and 1,566 associates, the Real Rate  
6 Report states that: (a) the rates for partners in Los Angeles is between \$640 and \$869.75 per hour  
7 for the middle and upper quartiles, and (b) the rates for associates in Los Angeles is between  
8 \$478.74 and \$638.97 for the median and upper quartiles. And, perhaps most importantly, the  
9 information provided in the Real Rate Report is not based on self-reported numbers, surveys,  
10 sampling, or reviews or other publications – instead, the Real Rate Report is based on the actual  
11 hours and fees billed by law firms. These numbers are not surprising given that a 4-year-old  
12 article in the National Law Journal stated that in **2014** partners in Los Angeles charge an average  
13 of \$665, while the average associate rate is \$401. (Sloan, \$1,000 Per Hour Isn’t Rare Anymore;  
14 Nominal Billing Levels Rise, But Discounts Ease Blow (2014) Nat. Law Journal.)<sup>4</sup>. (Mankin  
15 Decl., ¶ 25.)

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

19 Class Counsel are also highly experienced in Class/PAGA litigation, including having  
20 been named by the LA Times as one “Southern California Leading Lawyers” in the May 2023  
21 issue of Consumer Attorney’s of Southern California (a recognition given to 17  
22 employment/labor law attorneys in 2023), having been selected as “Super Lawyer” in  
23 employment litigation over the last 5 consecutive years, having achieved large settlements,  
24 having prevailed at trial in PAGA-only actions and Class Action jury trials. (Mankin Decl. ¶¶ 2-  
25 6). Indeed, Class Counsel’s rates are typical of the rates charged by defense counsel with similar  
26 experience doing similar employment law work in this region.

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27 <sup>4</sup> The article notes that at Irell & Manella, the average partner rate is \$890/hr; Mannatt, Phelps & Phillips is \$740/hr;  
28 O’Melveny & Meyers is \$715/hr; and Jeffer Mangels Butler & Mitchell is \$690/hr. *Id.*

1 Thus, Plaintiff's Counsel's rates reasonable and typical, and the attorneys' fees requested  
2 confirm that the fee request is fair and reasonable under the lodestar multiplier cross-check.

3 **VI. THE REQUESTED COSTS AND SERVICE AWARDS ARE REASONABLE**

4 **A. THE REQUESTED COSTS ARE REASONABLE AND MERIT APPROVAL**

5 The Settlement Agreement authorized litigation costs of up to \$20,000. (S.A. ¶ 49(f)).  
6 Class Counsel's actual costs through the final approval hearing are estimated to be \$17,670.82.  
7 (Mankin Decl. ¶ 28, and Exhibit "C" thereto). These costs include mediation fees, filing fees,  
8 expert charges, CourtCall charges, and process server fees.

9 **B. THE REQUESTED SERVICE AWARD IS REASONABLE AND MERIT APPROVAL**

10 A named plaintiff is an essential ingredient of any class action and an incentive award  
11 is appropriate to induce individuals to step forward and assume the burdens and obligations of  
12 representing the Class. Courts regularly approve a service payment to compensate named  
13 plaintiffs for their service to the class and the risks they incurred during the course of the  
14 litigation. *See, e.g. Bell v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715, 726  
15 (upholding "service payments" to named Plaintiff for their efforts in bringing class action);  
16 *Rodriguez v. West Publishing* (9th Cir. 2009) 563 F.3d 948, 959 (stating that incentive awards  
17 are "intended to compensate class representatives for work done on behalf of the class, to make  
18 up for financial or reputational risk undertaken in bringing the action, and, sometimes, to  
19 recognize their willingness to act as a private attorney general.").

20 Defendant agreed to pay a Service Award of \$7,500 to Plaintiff in recognition of his  
21 contribution as Class Representative. (*See* Plaintiff's Decl. ¶ 3-8). Moreover, Plaintiff came  
22 forward and undertook significant risks, including the risk of being blackballed in the industry  
23 and the risk that he could have been liable for Defendant's costs if he lost. This factor is a  
24 significant one for a wage earner, and the potential risk is very real. *See Whiteway v. FedEx*  
25 *Kinkos Office & Print Svcs., Inc.* (N.D. Cal. Dec. 17, 2007) 2007 WL 4531783, at \*3 ("the few  
26 courts to consider this 'class representatives' dilemma' have not found it inequitable to assess  
27 costs upon the lead or named plaintiff in a class action.").

1 Plaintiff also committed a significant number of hours to assist with the  
2 litigation/settlement processes of this case. The requested Service Award is reasonable,  
3 particularly in light of the substantial benefits Plaintiff generated for the Class Members, the  
4 risks he undertook and the time and effort devoted to assisting with the Class/PAGA  
5 settlement. (*See* Plaintiff's Decl. ¶ 4-8).

6 The Notice sent to each Class Member detailed the proposed service award. No Class  
7 Member objected to the proposed service award to Plaintiff. Thus, Plaintiff's request that the  
8 Court approve the award because it is both reasonable and appropriate.

9 **VII. OTHER MATTERS FOR FINAL APPROVAL**

10 **A. SETTLEMENT ADMINISTRATION COSTS**

11 The Administrator, Phoenix Settlement Administrators, agreed to administer the  
12 settlement for a flat-fee of \$9,000. (Flood Decl. ¶ 16-20). This amount was fully disclosed to  
13 the Class Members in the Class Notice, and no Class Members objected to it. Phoenix  
14 Settlement Administrator's declaration also fully complies with the CMO in regards to the  
15 fixed fee and other work to be performed. As such, the Parties request that the Administrator's  
16 fee request be approved.

17 **B. UNCASHED CHECKS**

18 The Settlement Agreement provides that if checks are not cashed within the 180 day  
19 check cashing period, then the uncashed funds will be issued to the California State Controller's  
20 Office in the name of the Class Member and/or Aggrieved Employee.

21 **C. FINAL REPORT**

22 Defendant will issue payment to the Administrator within 60 days of the Effective Date,  
23 which is expected to occur on the day that Final Approval is granted. The Administrator will  
24 then have 10 days to issue payment to the Class Members, who will then have 180 days to cash  
25 their checks. Thus, the Parties propose submitting a declaration from the Administrator setting  
26 forth the money that was actually paid to the Class Members and Aggrieved Employees, as  
27 well as the value of the uncashed checks that will be paid to the State Controller (with a  
28 projected date of payment of the uncashed check fund) on approximately April 23, 2025.

1           **D.       SUBMISSION TO THE LWDA**

2           As set forth in the Mankin Declaration at ¶ 30, the settlement and this motion were  
3 concurrently submitted to the LWDA in accordance with Labor Code § 2699(1)(2).

4           **VIII.   CONCLUSION**

5           Plaintiff respectfully submit that the Settlement is fair, adequate, and reasonable, and  
6 merits approval. This motion is unopposed by Defendant.

7           Dated: June 18, 2024

LAUBY, MANKIN & LAUBY LLP

8  
9           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 June 18, 2024, I caused to be served the foregoing document(s) described as follows:

**NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; DECLARATIONS IN SUPPORT THEREOF; AND [PROPOSED] FINAL ORDER AND JUDGMENT**

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.

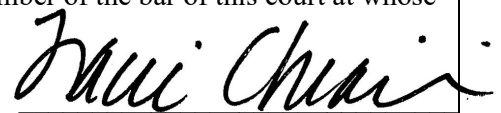
☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address [tracie@lmlfirm.com](mailto:tracie@lmlfirm.com) to the persons at the electronic notification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

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

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

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 18, 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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