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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

HOLLIE COLEMAN, individually, on a representative basis, and on behalf of all others similarly situated; Plaintiff, v. FLAGSTAR BANK N.A., a Michigan Corporation; NEW YORK COMMUNITY BANCORP, INC., a New York Corporation; DESERT COMMUNITY BANK and DOES 1 through 20, inclusive; Defendants.	Case No.: CIVSB2309384 *[Assigned to Hon. Christian Towns, Dept S26, for all purposes]* **PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; DECLARATIONS IN SUPPORT THEREOF; [PROPOSED] ORDER** <u>Hearing</u> Date: October 2, 2025 Time: 8:30 a.m. Dept.: S26 Complaint filed: April 27, 2023

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 2, 2025, at 8:30 a.m. or as soon thereafter as the matter may be heard by the Honorable Christian Towns, in Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415, Plaintiff Hollie Coleman, individually and on behalf of all others similarly situated, will and hereby does move the Court for entry of an Order preliminarily approving the Joint Stipulation and Settlement Agreement of Class Action and Representative Action Claims ("Settlement Agreement") between Plaintiff and Defendants Flagstar Bank N.A. (also previously

Flagstar Bank, FSB, erroneously named as Desert Community Bank); and Flagstar Financial, Inc. (previously New York Community Bancorp, Inc.) (collectively, "Defendants"), including:

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

This motion is based upon this Memorandum of Points and Authorities in Support thereof; the Declarations of Plaintiff's counsel (Brian Mankin and Misty Lauby) and Plaintiff Hollie Coleman, as well as the Settlement Agreement; the proposed Order granting Preliminary Approval of the Settlement; all other records, pleadings, and papers filed in this action; and other evidence as may be presented to the Court at the hearing of this motion.

Dated: September 9, 2025

LAUBY, MANKIN & LAUBY LLP

BY: ______________________________

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Hollie Coleman seeks preliminary approval of a $850,000 wage-and-hour class action settlement on behalf of all current and former nonexempt, employees employed by Defendants Flagstar Bank N.A., and Flagstar Financial, Inc., (collectively, "Defendants") in California at any time from April 27, 2019, through April 19, 2025 (the "Class Period").

Under the terms of the Settlement Agreement[1], Defendants will not oppose Plaintiff Counsel's application for a reasonable award of attorney's fees not to exceed one-third of the Gross Settlement Amount, litigation expenses not to exceed $25,000, Settlement Administrator Costs of $10,000, PAGA penalties of $50,000 (with 75% to the LWDA and 25% to the Aggrieved Employees on a pro rata basis), and a Service Payment of $10,000 to Plaintiff Hollie Coleman ("Class Representative"). (S.A. ¶ 8.)

After all Court-approved deductions from the Settlement Amount, it is estimated that $471,666.67 will be available to pay the Class Members, as follows:

Gross Settlement Amount	**$ 850,000.00**
Attorneys' Fees (1/3)	$ 283,333.33
Litigation Costs (not to exceed)	$ 25,000.00
Administrator Costs (not to exceed)	$ 10,000.00
PAGA Penalties	$ 50,000.00
Class Representative Service Award	$ 10,000.00
Net Settlement Amount	**$ 471,666.67**

Assuming approximately 874 Class Members, the average payment to each class member will be approximately $539.66 (NSA / 874). Of course, the actual payment will be calculated on a pro-rata basis according to the number of Workweeks during the Class Period. In addition, the Aggrieved Employees will receive a share of the $12,500 PAGA Penalties (25% of the total $50,000 PAGA allocation), calculated pro-rata based on approximate Pay Periods worked during the PAGA Period. (S.A. ¶ 47-48).

[1] The Joint Stipulation and Settlement Agreement of Class Action and Representative Action Claims (the "Settlement Agreement" or "S.A.") is attached as Exhibit 1 to the Declaration of Brian Mankin ["Mankin Decl"].

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

II. BACKGROUND

A. THE SETTLEMENT CLASS

The Class is defined as follows:

> All current and former nonexempt, employees employed by Defendants in California at any time during the Settlement Class Period of April 27, 2019, through April 19, 2025. (S.A. ¶¶ 27, 30).

B. PROCEDURAL HISTORY

On April 26, 2023, Plaintiff submitted a letter to the Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act of 2004 (the "PAGA"), and simultaneously sent a letter to Defendants requesting the production of personnel and timekeeping records in order to further evaluate her wage and hour claims. (Mankin Decl. ¶ 13).

The following day, Plaintiff filed a class action complaint in this action, alleging (1) failure to pay proper minimum wages, (2) failure to pay overtime wages, (3) failure to provide compliant meal periods, (4) failure to provide compliant rest periods, (5) failure to reimburse for business expenses, (6) failure to timely pay final wages, (7) failure to provide accurate itemized wage statements, and (7) unfair and unlawful competition. (Mankin Decl. ¶ 14).

Defendants retained counsel and immediately began to defend the case, including alleging in the Joint Initial Status Conference Report that "[t]he Parties entered into an Arbitration Agreement that includes an agreement to arbitrate all class and collective claims he may have against Defendant, including the claims in this lawsuit... Therefore, Plaintiff must dismiss her complaint, and instead file a demand for arbitration. The Parties will meet and confer regarding this issue. If Plaintiff refuses to submit her claims to arbitration, Defendants will file a motion to compel arbitration." In response, Plaintiff advised that she intended to oppose the arbitration and instead requested that Defendants stipulate to the filing a first amended complaint to add PAGA claims. At that time, the Parties agree to stay all pleadings in order to mediate the action. (Mankin Decl. ¶ 15).

In preparation for the mediation, the Parties informally exchanged documents and information that allowed both sides to calculate the potential damages and evaluate potential risk, including policies and procedures pertaining to each claim alleged, and statistics relating to the number of current and former employees, number of shifts, pay periods and weeks worked and other things. Defendants also provided its written policies and practices and a robust sampling of payroll and timekeeping records for Class Members, which included extensive documentation and excel data. This information enabled both Parties to take a deep dive into the claims. Additionally, during this process, Plaintiff and her counsel analyzed, researched, and investigated the potential issues, including matters related to the calculation of damages, trial, and appellate issues and risks. Plaintiff also retained an expert to perform a statistical analysis of the claims and violations. (Mankin Decl. ¶ 16).

On February 4, 2025, Plaintiff and Defendants participated in mediation before Hon. Amy Hogue (Ret.), a retired superior court judge who sat on the Los Angeles Complex Panel and presided over class actions, and now serves as a wage-and-hour class action mediator. The matter resolved at mediation pursuant to a mediator's proposal, which was accepted by the Parties. (Mankin Decl. ¶ 17). The Parties now seek the Court's preliminary approval of the Settlement.

C. <u>SUMMARY OF THE CLAIMS AND DEFENSES</u>

Plaintiff alleged numerous wage and hour violations on behalf of the Class Members. Defendants vigorously contested and denied Plaintiff's material allegations on the merits and as to the propriety of a class action or PAGA representative action.

For instance, Plaintiff raised several unpaid wage claims alleging that she and the Class Members were not provided all minimum, regular, and overtime wages due to Defendants' failure to accurately record and compensate for all hours worked, including performing pre-shift and post-shift work off the clock. Plaintiff also alleged that Defendants paid the Class Members on an hourly basis plus other nondiscretionary compensation (such as bonuses and commissions), yet Defendants failed to properly include this compensation in the regular rate calculations for meal premiums, paid sick leave (*see* Labor Code § 246(l)(1) (sick time must be paid at the "regular rate of pay"), and overtime compensation – in violation of California law and decades of case law. Lastly, Plaintiff claimed that commission-based employees were not paid their minimum and overtime wages for anything over 7.5 hours each shift, and were denied the ability to determine whether their commission wages were 1.5 times the minimum wage each pay period. Plaintiff argued these unpaid wage violations resulted in significant unpaid wages, waiting time penalties under Labor Code § 203 and other derivative penalties. Defendants opposed each unpaid wage and regular rate claims, arguing that the additional payments were properly excluded from the regular rate, and therefore these claims would fail.

Additionally, Plaintiff alleged that Defendants failed to provide compliant meal and rest breaks since Class Members were unable to take compliant meal periods and rest breaks because of the hectic workload and demands placed upon them by Defendants. Defendants argued that it provided and made all mandated meal and rest breaks available to the Class Members, and any employee who did not take a break did so entirely of their own volition.

Moreover, Plaintiff claimed that Defendants also required Class Members to utilize their personal cell phones and vehicles to perform security protocols and to carry out their tasks for Defendants, without reimbursement of business expenses.

Finally, Plaintiff alleged a variety of other claims (all of which Defendants disputed), such as the failure to timely pay wages each period, failure to timely pay all wages upon separation of employment, and failure to provide accurate itemized wage statements.

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

D. <u>Plaintiff has Claims that are Common and Typical of the Class</u>

As outlined in the Declaration of Plaintiff Hollie Coleman ("Coleman Decl."), Plaintiff asserts that she is an adequate class representative has claims that are common and typical of the Class. Notably, Plaintiff asserts that her claims are typical of the other Class Members because all Class Members were subjected to the Defendants' uniform practices in regard to payment of wages, calculation of the regular rate of pay and overtime, meal and rest breaks, wage statements, along with other issues. (Coleman Decl. ¶ 4).

III. <u>SUMMARY OF THE PROPOSED SETTLEMENT</u>

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

A. <u>Settlement Consideration and Allocation</u>

The $850,000 Settlement Amount is non-reversionary and will be paid out to Class Members without the need to submit a claim form or take any affirmative action. It includes: (1) a Class Counsel Fee Payment not to exceed one-third of the Settlement Amount and Litigation Expenses not to exceed $25,000, as approved by the Court; (2) a Class Representative Service Payment of $10,000, subject to approval by the Court; (3) Administrator Expenses not to exceed $10,000; (4) PAGA Penalties of $50,000, 75 percent of which is to be paid to the LWDA pursuant to California Labor Code § 2699(i) and 25 percent to the Aggrieved Employees; and (5) the aggregate of all Individual Class Payments of the Participating Class Members. (S.A. ¶ 46-52). Defendants will separately pay their share of employer payroll taxes and withholdings through the Administrator.

B. <u>Notice Procedures</u>

The proposed Class Notice will be provided to the Class Members showing the estimated amount that each Class Member will receive and the credited number of Workweeks during the Class Period and pay periods during PAGA Period (*See* Exhibit 2 to the Mankin Decl.). Within twenty (20) days after entry by the Court of its Order of Preliminary Approval, Defendants shall provide the Settlement Administrator with a list of Class Members containing names, addresses, telephone numbers, Social Security Numbers, and the total weeks worked in the Class Period and

PAGA Pay Periods worked in the PAGA Period (the "Class Data"). (S.A. ¶ 55).

Within fourteen (14) days of receipt of the Class Data, the Administrator shall calculate the number of weeks worked for each Class Member, populate the Class Notice for each, and send each Class Member the Class Notice via first-class, United States mail. (S.A. ¶ 57).

In the event that any Class Notice mailed to a Class Member is returned as having been undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace search and seek an address correction for such Class Member(s), and a second Class Notice will be sent to any new or different address obtained. (S.A. ¶ 57).

C. EXCLUSION AND OBJECTION PROCEDURES

Class Members who do not timely Opt-Out of the Settlement will be deemed to participate in the Settlement and shall become a Participating Class Member without having to submit a claim form or take any other action. To Opt-Out of the class portion of the Settlement, the Class Member must submit a written request to the Administrator no later than thirty (30) days after being mailed by the Settlement Administrator ("Response Deadline"). Any Opt-Out request that is not postmarked by the Response Deadline will be invalid. (S.A. ¶ 61-63).

The Class Notice shall inform the Class Members of their right to object to the Settlement. Any Class Member who wishes to object to the Settlement may submit a written objection to the Settlement Administrator no later than the Response Deadline. (S.A. ¶ 64-67).

D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES

The amount of each Class Member's Individual Class Payment is tied to the number of weeks worked by each Class Member for Defendants during the Class Period. Therefore, Individual Class Payments will be calculated by: (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (S.A. ¶ 47).

Additionally, each "Aggrieved Employee" will receive a share of the $12,500 of PAGA Penalties allocated to the Aggrieved Employees based on the number of PAGA Pay Periods during the PAGA Period. (S.A. ¶ 48).

The Class Notice will inform Class Members of the estimated Workweeks, PAGA Pay Periods, Individual Class Payment, and Individual PAGA Payment. Class Members may dispute their Workweeks and PAGA Pay Periods if they feel they worked more in California as a non-exempt employee during the Class Period or PAGA Period than Defendants' records show by timely submitting evidence to the Settlement Administrator. (S.A. ¶ 47.b).

E. TIMING OF SETTLEMENT DISBURSEMENTS

Defendants are required to deposit the Settlement Amount, along with the employer's share of payroll taxes owed, with the Settlement Administrator, within ten (10) calendar days after the "Effective Date" and these funds will be used to pay: (1) Class Counsel's Fees and Expenses Payment, as approved by the Court; (2) the Service Payment, as approved by the Court; (3) Administrator Expenses, as approved by the Court; (4) PAGA Penalties; and (5) the aggregate of all Individual Class Payments of Participating Class Members. Within fourteen (14) days after receiving the funds, the Settlement Administrator shall issue payments to cover all court-approved payments. (S.A. ¶ 45-46).

Class Members will have 180 days to cash the settlement check. If a Class Member fails to cash a check by the deadline, the Settlement Administrator shall issue unclaimed funds to the California State Controller in the name of the Class Member. (S.A. ¶ 47.f).

F. TAX TREATMENT

The Parties agree that 20% of the Individual Class Payment will be allocated as wages subject to withholding of all applicable local, state and federal taxes; and the remaining 80% will be allocated as non-wage damages and interest (pursuant to, *e.g.*, California Labor Code sections 203, 210, 226, etc.) from which no taxes will be withheld. (S.A. ¶ 47.d). Additionally, the PAGA Penalties payable to the Aggrieved Employees will be classified entirely as civil penalties and shall be reported as required on an IRS Form 1099.

Defendants will separately pay its share of employer payroll taxes on the sum allocated to wages. (S.A. ¶ 8).

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

In exchange for these payments, paragraph 68.a of the Settlement Agreement provides that the Participating Class Members will release the Released Parties of:

> All claims that were alleged in the Lawsuit, or that reasonably could have been alleged based upon the facts stated in the Lawsuit, including: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to provide rest breaks; (5) failure to reimburse business expenses; (6) failure to timely pay final wages; (7) failure to provide accurate itemized wage statements (8) Unfair and Unlawful Competition (Business and Professions Code § 17200 *et seq.*), and those claims predicated on the same or similar facts and/or claims alleged in the Lawsuit, as well as any claims that could have been pled under California common law, the federal law, and the California Business and Professions Code alleged which arise from the same or similar facts pled in the Lawsuit, and claims for interest, penalties (including but not limited to waiting time penalties), as well as any claims under the California Labor Code for violations of Labor Code sections 200, 201, 202, 203, 204, 204.1, 208, 210, 218.6, 221, 222, 223, 225.5, 226, 226.3, 226.7, 227.3, 246, 256, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802; applicable IWC Wage Orders; and California Code of Regulations, Title 8, sections 11000 et seq., including claims for injunctive relief, declaratory relief, restitution, which reasonably could have been alleged under the facts, allegations and/or claims pleaded in the Lawsuit.

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

Paragraph 68.b of the Settlement Agreement also defines the "Released PAGA Claims" as follows:

> All claims that were alleged in the Lawsuit, or that reasonably could have been alleged based upon the facts stated in the Lawsuit, including: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to provide rest breaks; (5) failure to reimburse business expenses; (6) failure to timely pay final wages; (7) failure to provide accurate itemized wage statements (8) Unfair and Unlawful Competition (Business and Professions Code § 17200 *et seq.*), and those claims predicated on the same or similar facts and/or claims alleged in the Lawsuit, as well as any claims that could have been pled under California common law, the federal law, and the California Business and Professions Code alleged which arise from the same or similar

> facts pled in the Lawsuit, and claims for interest, penalties (including but not limited to waiting time penalties), as well as any claims under the California Labor Code for violations of Labor Code sections 200, 201, 202, 203, 204, 204.1, 208, 210, 218.6, 221, 222, 223, 225.5, 226, 226.3, 226.7, 227.3, 246, 256, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802; applicable IWC Wage Orders; and California Code of Regulations, Title 8, sections 11000 et seq., including claims for injunctive relief, declaratory relief, restitution, which reasonably could have been alleged under the facts, allegations and/or claims pleaded in the Lawsuit.

Moreover, even if an Aggrieved Employee requests exclusion from the Class settlement, that individual will still be subject to the Released PAGA Claims to the fullest extent permitted by law and will receive their Individual PAGA Payment. (S.A. ¶ 68.b.ii).

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

California Rule of Court 3.769(d) provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 at n.19; *Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F.2d 615, 633 ("[C]ertification issues raised by class action litigation that is resolved short of a decision on the merits must be viewed in a different light."); *Amchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591, 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial."). As discussed below, for the purposes of this settlement only, Plaintiff requests that this Court provisionally certify the Class, as defined above, under Code of Civil Procedure § 382.

A. Ascertainability and Numerosity

In determining whether a class is ascertainable, the court considers "(1) the class definition, (2) the size of the class, and (3) the means available for identifying the class members." *Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1271; *Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101 (proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense). Here, according to Defendants' records, there are approximately 850 Class Members that are easily identifiable and fall within the defined Class. Thus, the proposed Class meets the ascertainability and numerosity requirements.

B. WELL-DEFINED COMMUNITY OF INTEREST

1. Commonality

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

2. Typicality

Typicality "focuses on whether there exists a relationship between the Plaintiff's claims and the claims alleged on behalf of the class." *See* Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* ("*Newberg*") § 3:13 (4th ed. 2002). Again, the Parties dispute whether Plaintiff's claims are typical of the Class for the purposes of any continued litigation of the Action, but agree for the purposes of this settlement only, that Plaintiff was employed as a non-exempt employee for Defendants. Plaintiff contends that she asserts claims that are typical of the class, namely regarding Defendants' payment of wages, the calculation of the regular rate of pay, wage statements, meal and rest break policies, and so on – all of which are at the core of the lawsuit.

3. Adequacy of Representation

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

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

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

4. <u>Superiority</u>

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

V. <u>THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE</u>

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

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

The decision to approve or reject a proposed settlement lies within the Court's sound discretion. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35.

Nevertheless, in considering a potential settlement for approval, a court is not to turn the approval hearing "into a trial or rehearsal for trial on the merits . . . [or] to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute." *Officers for Justice,* 688 F.2d at 625.

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

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

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

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

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

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

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

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

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

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

D. THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS

To evaluate a settlement, the parties must provide the trial court with "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise."

Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 133.

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

Of particular relevance to the reasonableness of the proposed Settlement is the fact that significant legal and factual grounds for defending this action exist. First, in addition to disputing the merits of Plaintiff's claims, Defendants argued that Plaintiff was required to arbitrate all claims on an individual basis. Defendants also strongly disputed that Plaintiff could obtain class certification, arguing a lack of commonality of the legal claims and injuries. Defendants further argued that it complied with the applicable law and that any purported deviations therefrom were individualized in nature, thereby limiting Plaintiff's ability to certify the class. While Plaintiff asserts that this is a suitable case for certification, she realizes that there is always a significant risk associated with class certification proceedings, which could significantly limit the claims that she could pursue on a class basis.

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

Based upon detailed data obtained through informal discovery and information exchanges, Plaintiff's counsel estimated the following data points through the date of mediation: (1) 874 Class Members, (2) 83,234 Workweeks during the Class Period, (3) 358,022 shifts worked during the Class Period, and (4) approximately 14,659 wage statements during the PAGA Period.

Here, there were several categories of claims alleged by Plaintiff, including but not limited to: (1) unpaid wage claims under various theories, (2) meal and rest break violations, (3) business expenses, (4) derivative claims for waiting time and both direct and derivative wage statement penalties due to the other alleged violations, and (5) PAGA claims.

As to the unpaid wage claims, Plaintiff alleged various distinct theories of liability. First, Plaintiff alleged that Defendants failed to pay overtime for certain off-the-clock hours. Second, Plaintiff alleged that Defendants failed to pay all required wages when Defendants did not factor in the off-the-clock time into commission pay. Third, Plaintiff alleged that Defendants failed to incorporate commission wages into the regular rate of pay for overtime, meal premiums and sick wages. In total, Plaintiff's counsel estimated the maximum value of these unpaid wages to be $1,088,428. Defendants vehemently opposed these unpaid wage claims on the merits and as to the propriety of class certification. For example, as to the time it took to perform security protocols, Defendants argued that such time was de minimis for the Class Members and that at certain times, an additional five (5) minutes was added to the Class Members' time to account for off-the-clock responsibilities. Furthermore, Defendants argued that any additional compensation paid to Plaintiff and the Class Members was properly included and rarely issued in a pay period where overtime was also earned. Moreover, in addition to its other defenses on the merits, Defendants argued that Plaintiff would be unable to meet its evidentiary burden at summary judgment and/or trial because Plaintiff and the Class Members would be unable to introduce evidence as to the amount of unpaid wages due to security protocols, thus defeating liability. Due to these defenses and arguments, Plaintiff assigned a 30% risk for the unpaid wages claim at the class certification stage. And, due to the defenses as to the merits, Plaintiff assigned a 30% merits-based risk. In sum, Plaintiff's counsel calculated the risk-adjusted value of the unpaid wage claims as $533,330.

Plaintiff also alleged meal and rest break claims against Defendants. Given the total number of shifts at issue (an estimate of 358,022 at mediation), and when incorporating violation rates from expert review of the timekeeping records and other evidence, Plaintiff's expert calculated a 10.5% violation rate for meal breaks and a rest break violation rate of 10%, leading to 41,171 alleged meal violations and 35,802 alleged rest break violations. This established a maximum potential value for these claims of $1,455,055 ($383,495 for meal period premiums after offsetting premiums previously paid and 35,802 rest break violations multiplied by the average hourly rate of $29.93 as the applicable premium rate under § 226.7 for a total of $1,071,560 in rest break damages). However, Defendants raised numerous arguments in response to this claim, including that it maintained fully compliant written policies and specifically authorized the Class Members to take meal and rest breaks, meaning that no one had a reason or cause to miss a break or take a short/late break. Therefore, Defendants asserted that a fact-finder would have to determine for each Class Member whether a break was missed and why, and why a break was noncompliant or nonexistent, because if it was by the employee's choice, no liability attaches to Defendants. These defenses are factored into Plaintiff's analysis in two ways. First, these issues raise questions regarding whether the meal and rest break claims could be certified, and Plaintiff placed a 20% risk at the class certification stage for meal periods and a 20% risk for rest breaks. Second, these defenses also go toward the merits given the evidentiary question of proving the number of meal and rest violations. As such, Plaintiff placed a 25% risk on the merits for meal breaks, and an additional 25% risk on the merits for rest breaks, setting the risk-adjusted value for the combined meal and rest break claims at $818,468.

Plaintiff further brought claims for expense reimbursement based on cell phone use. Defendants argued, however, that this claim had minimal value because roughly 59% of the employees were remote and did not need their cell phones to follow the branch safety protocols. Plaintiff estimated the maximum value of this claim at $380,875 [$5 per workweek for 76,175 Workweeks]. Plaintiff placed a 20% risk at the class certification stage and 50% risk on the merits for a risk adjusted value of $152,350.

Finally, Plaintiff also alleged claims for waiting time penalties and wage statement violations, including failure to accurately state all applicable hourly rates and total hours worked. Some of these claims were derivative of the claims above, meaning that they only had merit if the claims for unpaid wages or meal/rest breaks were successful. The maximum values for these claims were as follows: (1) $3,195,800 for waiting time penalties [estimated 568 former employees x $23.74 per hour x 7.9 hours per day x 30 days], and (2) $1,099,800 for wage statement violations [11,039 wage statements at the $50/$100 formula under § 226(e)]. But Defendants raised a variety of defenses to these derivative claims that impacted the valuation. Namely, as to the wage statement violations, Defendants argued that their wage statements did not violate Labor Code §§ 226, 212, and 213, and even if there was a "technical" violation, that Plaintiff would be unable to prove the required "knowing and intentional" and "injury" elements. Based on these facts and defenses, Plaintiff placed a 30% risk at class certification and estimated another 30% risk the merits, leading to a risk-adjusted value of $538,902 for the wage statement claims.

Then, as to the waiting time penalty claim, Plaintiff's valuation had to account for the fact that this claim was derivative of the unpaid wage and meal/rest break claims (*e.g.*, the unpaid wage premiums) and, if those claims failed at certification or on the merits, there would be no waiting time penalties owed, so the same risks for those claims applied to this claim. Furthermore, even if the unpaid wage and/or meal/rest claims succeeded at certification and on the merits, Plaintiff would have to prove that the violations (if any existed) were "willful" under the meaning of Labor Code § 203. And, here, Defendants argued that there could not be a finding of a "willful" violation since they had compliant written policies and any deviations there from were inadvertent and unintentional. As a result of this analysis, Plaintiff's counsel applied a 30% risk at class certification and a 30% risk on the merits, leading to a risk-adjusted value of $1,565,350.

And while the PAGA penalties had a maximum value in the low seven figures, this fails to acknowledge that courts have wide latitude to reduce the civil penalties "based on the facts and circumstances of a particular case" and if "to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Labor Code § 2699(e)(2). Moreover, Defendants argued against the merits of the underlying claims and particularly that the "willfulness" standard and/or "good faith" defenses mitigated the civil penalty claims and rendered any such penalties as uncertain. Defendants also argued it is improper to stack civil penalty claims on top of underlying statutory claims. For these reasons, the Parties submit that this settlement is fair and reasonable.

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

• Unpaid Wage Claims	$	533,330
• Meal and Rest Break Claims	$	818,468
• Business Expenses	$	152,350
• Wage Statement Claims	$	538,902
• Waiting Time Penalty Claims	$	1,565,934
• PAGA Penalties	$	50,000
• **Total Risk Adjusted Penalties and Damages**	**$**	**3,658,984**

The reasonableness of the settlement is apparent from the fact that the proposed settlement is 23.23% of the risk-adjusted class damages and penalties. *See*, *e.g.*, *Hopson v. Hanesbrands Inc.* (N.D. Cal. 2009) 2009 WL 928133, *8 ("The settlement … represents less than two percent of that amount," but "may be justifiable … given … significant defenses that increase the risks of litigation."); *Balderas v. Massage Envy Franchising* (N.D. Cal. 2014) 2014 WL 3610945 (settlement approved despite only 5% of projected maximum recovery). *Villegas v. J.P. Morgan Chase* (N.D. Cal. 2012) 2012 WL 5878390 (approved settlement that was 15% of potential recovery). Thus, the Parties submit that this settlement is fair and reasonable.

PLAINTIFF'S COUNSEL IS EXPERIENCED IN WAGE-AND-HOUR LITIGATION

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

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

E. THE CLASS NOTICE CONFORMS TO ALL APPLICABLE STATUTES AND RULES

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

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

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

The Class Notice satisfies the requirements of Rule of Court 3.766 and afford Settlement Class Members with all due process protections required by the United States Constitution. Moreover, the contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because the Notice includes, without limitation,: (1) a detailed explanation of the case, including the basic contentions or denials of the Parties; (2) a statement that the court will exclude the member from the class if the member so requests by a specified date; (3) a procedure for the member to follow in requesting exclusion from the class; (4) a statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and (5) a statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel. The 30-day deadline for Class Members to exclude themselves is reasonable, as it provides Class Members with sufficient time to do so and, if they so choose, to seek independent legal advice in the interim. If a Class Member does not opt-out, then he or she will automatically be sent a settlement check.

F. THE NON-REVERSIONARY "CHECKS CASHED" DISTRIBUTION ENSURES MAXIMAL RECOVERY FOR CLASS MEMBERS

The fact that each Class Member who does not opt out of the Settlement shall be mailed a check ensures that every Class Member will be paid unless they affirmatively acts to exclude themselves. Moreover, the Settlement Amount is non-reversionary, which means that no settlement funds will revert to Defendants; instead, if any checks are uncashed by the deadline, the funds will be transferred to the State Controller's Office subject to approval of the Court. Such terms are favored by Courts and demonstrate that there was no collusion between counsel for the Parties and that the Settlement is fair and favorable to the Class Members.

G. THE ATTORNEY'S FEES AND COSTS ALLOCATION IS FAIR

Under the terms of the Settlement Agreement, Class Counsel is requesting attorneys' fees equal to one-third of the Settlement Amount (which is $283,333.33). *See*, *e.g.*, *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480 (approving 1/3 fee in the amount of $6.33 million at a 2.13 lodestar multiplier, when class action litigation establishes a monetary fund for the benefit of the class members, the trial court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created); *see also Stuart v. RadioShack Corp*. (N.D. Cal. Aug. 9, 2010) 2010 WL 3155645 (approving fee award of 1/3 of the total maximum settlement amount of $4.5 million) (the court noted that the fee award of 1/3 of the total settlement was "well within the range of percentages which courts have upheld as reasonable in other class action lawsuits"); *Singer v. Becton Dickinson and Co*. (S.D. Cal. June 1, 2010) 2010 WL 2196104, at *8 (approving fee award of 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov. 14, 2007), 2007 WL 3492841, at *4 (awarding fees of 1/3 of common fund in a wage and hour class action, noting: "[f]ee awards in class actions average around one-third of the recovery."); *Martin v. FedEx Ground Package System, Inc*. (N.D. Cal. Dec. 31, 2008) 2008 WL 5478576, at *8 (approving fees of 1/3 of common fund).

Additionally, Plaintiff is seeking up to $25,000 in litigation costs, pursuant to the Settlement Agreement.

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

H. THE REQUESTED SERVICE AWARD REQUEST IS FAIR AND APPROPRIATE

The Settlement Agreement provides an incentive award payment of $10,000 to the Class Representative, which is reasonable given the recovery Class Members will receive on average, as well as the time and effort she devoted to this case.

Her efforts included: providing factual background for the Class and PAGA complaint; providing documents and information about Defendants' compensation plan; participating in phone calls to discuss litigation and settlement strategy; making herself available throughout the litigation to assist with analyzing the claims and defenses; helping Class Counsel prepare for the mediation; and reviewing the settlement documents. The Class Representative also assumed significant risk in bringing this litigation—namely, had she lost, she could have been ordered to pay Defendants' costs. Finally, the Class Representative agreed to release all claims in exchange for the Service Award and forego her right to bring individual claims, whereas the Class Members are merely releasing the claims alleged.

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

VI. THE COURT SHOULD APPOINT PHOENIX AS THE ADMINISTRATOR

Subject to the Court's approval, the Parties stipulated to Phoenix Settlement Administrators serving as the Administrator. Phoenix Settlement Administrators is experienced in administering class action settlements and has provided a flat-fee proposal to administer this settlement for $10,000. (Mankin Decl. ¶ 29; Exhibit 3;).

VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING

The last step in the approval process is the formal hearing, whereby proponents of the settlement may explain and describe its terms and conditions and offer argument in support of approval, and Class Members or their counsel may be heard in support of or in opposition to the settlement. Subject to the Court's approval, the Parties propose that the Court schedule a hearing for final approval at least 150 days after Preliminary Approval is granted.

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VIII. CONCLUSION

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

Dated: September 9, 2025

LAUBY, MANKIN & LAUBY LLP

BY: ______________________________

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

PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

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

On September 9, 2025, I caused to be served the foregoing document(s) described as follows:

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

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[ ] **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

[ ] **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

[ ] **By Overnight Service** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

[X] **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.

[X] **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 9, 2025, 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

Tracie Chiarito, Declarant

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