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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

ELAINE COOPER, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

EXLSERVICE HOLDINGS, INC., a
Delaware Corporation; OVERLAND
SOLUTIONS, INC., a Delaware Corporation;
OVERLAND SOLUTIONS LLC, an Entity
Unknown; EXLSERVICE.COM, LLC, a
Delaware Limited Liability Company; and
DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVSB2308059
*[Assigned to the Hon. Joseph Ortiz, Dept.
S17, 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: March 3, 2025

Time: 1:30 p.m.

Dept.: S17

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 3, 2025, at 1:30 p.m., or as soon thereafter as
this matter may be heard by the Honorable Joseph Ortiz in Department S17 of the San
Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA
92415, Plaintiff Elaine Cooper, individually and on behalf of all others similarly situated, will
move this Court for an Order granting final approval of the class action settlement between
Plaintiff and Defendants ExlService Holdings, Inc. Overland Solutions LLC, Overland Solutions,

1 Inc. and ExlService.com, LLC (“Defendants”), which was preliminarily approved by the Court.
2 This Motion seeks final approval and entry of judgment of a \$844,287.48 settlement on behalf of
3 the Class Members and Aggrieved Employees, and is unopposed by Defendants.

4 *As set forth below, Plaintiff’s requests a two-week continuance of the final approval*
5 *hearing in order to give the full 30 day notice period to 3 individuals whom Defendants*
6 *recently discovered and added as Class Members, and thus Plaintiff requests a short*
7 *continuance of the final approval hearing to approximately March 17, 2025, or at the court’s*
8 *convenience.*

9 Specifically, Plaintiff will and hereby does move the Court to grant final approval of the
10 Class Action and PAGA Settlement Agreement (“Settlement Agreement”), and enter the
11 proposed order and final judgment filed concurrently herewith:

- 12 1. Finally certifying the Class, as defined in the Settlement Agreement and the
13 Court’s Order Granting Preliminary Approval of the Settlement, for settlement purposes only;
- 14 2. Finally appointing Plaintiff as the Class Representative for purposes of settlement;
- 15 3. Finally appointing Brian Mankin and Peter Carlson as Class Counsel for purposes
16 of settlement;
- 17 4. Finding that the Class Notice was properly provided to the Class in accordance
18 with the Court’s Order granting Preliminary Approval;
- 19 5. Finally approving the settlement as fair, adequate, and reasonable, based upon the
20 terms set forth in the Settlement Agreement;
- 21 6. Binding participating Class Members and the Aggrieved Employees to the terms
22 of the Settlement Agreement, including the Release specified therein; and
- 23 7. Retaining jurisdiction to enforce the Settlement Agreement.

24 This Motion will be based upon this notice; the attached memorandum of points and
25 authorities; the Declarations of the Settlement Administrator (Taylor Mitzner of Phoenix
26 Settlement Administrators), Class Counsel (Brian Mankin and Peter Carlson) and Plaintiff
27 (Elaine Cooper) filed concurrently herewith; the records and files in this action; and any other
28 further evidence or argument that the Court may receive at or before the hearing.

1 Dated: February 5, 2025

LAUBY, MANKIN & LAUBY LLP

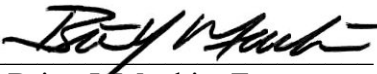
2
3 BY: 
4 Brian J. Mankin, Esq.
Attorneys for Plaintiff and the Class

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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 Elaine Cooper
4 respectfully requests that this Court grant final approval of the Class Action and PAGA
5 Settlement Agreement (“Settlement Agreement”), and enter the proposed order and final
6 judgment in this matter. This Motion is unopposed by Defendants ExlService Holdings, Inc.
7 Overland Solutions LLC, Overland Solutions, Inc. and ExlService.com, LLC (“Defendants”).

8 There are several essential reasons why this settlement should be approved. First, after
9 considerable work, preparation, exchange of data and mediation, the Parties reached a \$600,000
10 settlement on behalf of the Class Members and Aggrieved Employees (the “Settlement
11 Amount”), subject to an Escalator Clause that Class Counsel negotiated on behalf of the Class
12 that would increase the Settlement Amount or shorten the Class Period if the actual number of
13 Workweeks exceeds 14,554 by more than 10% (i.e., by more than 16,010). After Defendants
14 provided the final Class Data to the Settlement Administrator, it was determined that the
15 Escalator Clause had been triggered. Defendants then elected to end the Class Period on April 6,
16 2024, at which time the Class collectively worked a total of 21,935 through the new Class Period
17 end date (a 50.71% increase in Workweeks over 14,554 and 40.71% after deducting the 10%
18 allowance). Therefore, the Settlement Amount is increased from \$600,000.00 to \$844,287.48 (a
19 40.71% increase after subtracting the 10% allowance). Additionally, Defendants will separately
20 pay their share of payroll taxes on the wage portion of the Individual Class Payments). (See
21 Declaration of Settlement Administrator, Taylor Mitzner (“Mitzner Decl.”), ¶ 4). The Class was
22 informed of the updated Settlement Amount in the Class Notice. (See Exhibit A to the Mitzner
23 Decl. for a true and correct version of the Class Notice that was mailed to the Class Members.)

24 Second, the Class Members were deemed to participate in the Settlement, and were not
25 required to submit a Claim Form to receive funds. Plus, there is no reversion to Defendants, so
26 all funds will be distributed to the Class.

27 Third, there have been no objections and no opt-outs from the 260 Class Members to
28 date, meaning that **100%** of the Class elected to participate in the settlement thus far. However,

1 during the Notice Process, Defendant located 3 additional Class Members, and the Administrator
2 mailed the Notice to these 3 individuals on January 31, 2025. **Their deadline to submit a**
3 **dispute, objection or opt-out is March 3, 2025, which is the date of the final approval**
4 **hearing.** Accordingly, *Plaintiff requests a two-week continuance of the final approval hearing*
5 in order to give these individuals through March 3rd to submit an objection, opt-out or dispute,
6 and then Plaintiff's counsel will submit a supplemental declaration from the Administrator on
7 about March 10, 2025. Accordingly, Plaintiff requests a short continuance of the final approval
8 hearing to approximately March 17, 2025, or at the court's convenience.

9 Finally, the release language (that was approved by the Court at Preliminary Approval) is
10 narrowly tailored to the claims alleged.

11 In accordance with the analysis and laws set forth herein as well as in the preliminary
12 approval motion, the Settlement should be approved and judgment entered based on the
13 determination that the Settlement is fair, reasonable, adequate, and in the best interests of the
14 Class. (Declaration of Class Counsel, Brian J. Mankin; ¶ 13 ("Mankin Decl.").)

15 **II. PERTINENT BACKGROUND AND SETTLEMENT TERMS**

16 Plaintiff and the Class Members include all current and former non-exempt, hourly-paid
17 employees of Defendants ExlService Holdings, Inc. Overland Solutions LLC, Overland
18 Solutions, Inc. and ExlService.com, LLC who worked in California at any time during the Class
19 Period of April 24, 2019, through April 6, 2024. Plaintiff and the Aggrieved Employees include
20 all current and former non-exempt, hourly-paid employees of employed by Defendants who
21 worked in California at any time during the PAGA Period of April 21, 2022, through April 6,
22 2024. The primary claims, which Defendants dispute, include allegations that the Class
23 Members did not receive all minimum, regular and overtime wages owed, did not receive
24 accurate itemized wage statements, were not provided compliant meal and rest breaks, as well as
25 claims for waiting time penalties and PAGA penalties.

26 The Settlement includes 260 Class Members. The following is a breakdown reflecting
27 how the funds are allocated under the Settlement Agreement (Mitzner Decl. ¶ 15):
28

<i>Settlement Amount</i>	\$ 844,287.48
Attorneys' Fees (1/3)	\$ 281,429.16
Litigation Costs	\$ 18,073.39
Administrator Costs	\$ 7,500.00
PAGA Penalties	\$ 50,000.00
Class Representative Service Award	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 477,284.93

In terms of the payments, all Class Members were deemed to participate and did not need to submit a Claim Form to receive payment. (Settlement Agreement or "S.A." ¶ 3.1). Each Participating Class Member will receive a pro rata share of the Net Settlement Amount according to the percentage of Workweeks worked during the Class Period, such that the amount actually distributed to Participating Class Members will equal 100% of the Net Settlement Amount. (Settlement Agreement ¶ 3.2.4).

Assuming all of the amounts in the Settlement are approved by the Court, the *average* Individual Class Payment is estimated to be \$1,835.71 and the *highest* individual settlement payment is approximately \$5,613.84. (Mitzner Decl. ¶ 16). The Participating Class Members collectively worked 21,935 weeks during the Class Period, resulting in a net Workweek value of approximately \$21.76. (Mitzner Decl. ¶ 16).

In addition, 168 Aggrieved Employees will each receive an Individual PAGA Payment based on their share of the \$12,500 in PAGA Penalties (25% of the total \$50,000 PAGA allocation), calculated pro-rata based on the number of PAGA Pay Periods. (S.A. ¶ 3.2.5). The Aggrieved Employees collectively worked 4,657 Pay Periods, and their average Individual PAGA Payment is \$74.40. (Mitzner Decl. ¶ 17).

Fifteen percent (15%) of each Individual Settlement Amount shall constitute wages (for which each Participating Class Member will be issued an IRS Form W-2 for such payment), and the remaining eighty-five percent (85%) shall constitute interest and penalties (each for which each participating Class Member will be issued an IRS Form 1099). (S.A. ¶ 3.2.4.1). The Settlement Agreement provides that Defendants shall deposit the Settlement Amount within 25 days after the "Effective Date" (S.A. ¶ 4.3), which will be the date that the Final Order is entered since there were no objections or motions to intervene filed. Additionally, Defendants will

1 separately fund their share of payroll taxes. Within 10 days of receipt, the Settlement
2 Administrator shall issue payments to cover all court-approved payments. (S.A. ¶ 4.4).

3 Class Members and Aggrieved Employees will have 180 days to cash the settlement
4 check. If a person fails to cash a check by the deadline, the Settlement Administrator shall issue
5 unclaimed funds to the California State Controller in the name of the person. (S.A. ¶ 4.4.1).

6 **III. THE NOTICE PROCESS**

7 **A. Notice to the Class Members**

8 Pursuant to the Court's Order and the Settlement Agreement, the Parties directed the
9 Settlement Administrator to review and update the Class Members' addresses, mail the Court-
10 approved Notice Packet, and process their responses. The Administrator also posted the relevant
11 documents on its website for the Class Members to access.

12 Prior to the mailing, the Settlement Administrator performed a National Change of
13 Address search on all Class Members to determine if any had moved. (Mitzner Decl., ¶ 4). On
14 November 26, 2024, the Class Notice was sent via first-class mail to 257 Class Members.
15 (Mitzner Decl., ¶ 5). During the Notice Process, Defendant located 3 additional Class Members,
16 and the Administrator mailed the Notice to these 3 individuals on January 31, 2025. Their
17 deadline to submit a dispute, objection or opt-out is March 3, 2025 (which is the date of the final
18 approval hearing, which will prompt the Parties to ask for a short continuance of the final
19 approval hearing to ensure these individuals have a full 30-days to make a decision). (Mitzner
20 Decl., ¶ 6-7). Ultimately, all Class Notices were determined to be deliverable, resulting in a
21 100% success rate in mailing the Class Notice. (Mitzner Decl., ¶ 8-9).

22 In accordance with California Rules of Court, rules 3.766 (d) and 3.769 (f), the Notice
23 provided Class Members with (1) a brief explanation of the case; (2) an explanation of each
24 Class Member's right to opt out of the settlement class; (3) an explanation of the process (and
25 relevant deadlines) through which a Class Member could opt out of the settlement class; (4)
26 notice about the binding nature of the Judgment for Class Members who do not opt out; (5) an
27 explanation of each Class Member's right to appear through counsel; (6) an explanation of each
28 Class Member's right to appear at the fairness hearing and express views on the settlement, i.e.,

1 object or otherwise respond; and (7) an explanation of each Class Member’s right to participate
2 in the Settlement and receive payment accordingly. (See **Exhibit A** to the Mitzner Decl.)

3 **B. There are Zero Objections and Zero Opt-Outs To Date, Resulting In An**
4 **Impressive 100% of the Class Participating in the Settlement**

5 California law makes clear that the percentage of objectors and opt-outs is an important
6 factor in the Court’s consideration of a proposed class action settlement. (See *Dunk v. Ford*
7 *Motor Co.* (1186) 48 Cal.App.4th 1794 at 1802.) Indeed, the Ninth Circuit and other federal
8 courts recognize that in the final fairness analysis, the number or percentage of class members
9 who object to the settlement is a significant factor. (See *Mandujano v. Basic Vegetable Prods.,*
10 *Inc.*, (9th Cir. 1976) 541 F.2d 672, 677; *In re American Bank Note Holographics, Inc.* (SDNY
11 2001) 127 F.Supp.2d 418, 425 [“[i]t is well settled that the reaction of the class to the settlement
12 is perhaps the most significant factor to be weighed in considering its adequacy.”])

13 In this case, there are zero objections and zero opt-outs to the Settlement to date --
14 meaning that 100% of the Class Members elected to participate in the Settlement. (Mitzner
15 Decl., ¶ 10-11).

16 Notably, one Class Member challenged the number of Workweeks credited was
17 ultimately credited with 4 additional Workweeks. (Mitzner Decl., ¶ 12).

18 **V. EVALUATION OF THE SETTLEMENT**

19 It is axiomatic that California law strongly favors and encourages settlements. (See
20 *Stambaugh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236.) This presumption in favor of
21 settlement applies with particular force in the context of class actions. (See *Ferguson v. Lieff,*
22 *Cabraser, Heimann & Bernstein* (2003) 30 Cal.4th 1037 [“[p]ublic policy favoring settlement is
23 especially weighty for class actions”]; *Bell v. Am. Title Ins. Co.* (1991) 226 Cal.App.3d 1589,
24 1607-1608 [affirming the trial court’s approval of a class settlement and implicitly endorsing its
25 citation of federal precedent for the notion that there is a “strong public policy in favor of
26 settlement of class actions”]; see also *Franklin v. Kaypro Corp.* (9th Cir. 11869) 884 F.2d 1222,
27 1229, quoting *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950 [“it hardly
28 seems necessary to point out that there is an overriding public interest in settling and quieting

1 litigation. This is particularly true in class action suits”].)

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

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

12 **A. The Settlement Was Reached Through Informed Arms-Length Negotiation**

13 Courts presume the absence of fraud or collusion in the negotiation of a settlement,
14 unless evidence to the contrary is offered. Thus, there is a presumption here that the negotiations
15 were conducted in good faith. (See, 3 Alba Conte & Newberg, *supra*, at § 11.51.) The proposed
16 settlement here was the product of arm’s-length negotiation before a highly experienced and
17 reputable class action mediator to reach a settlement, which was finally consummated in the
18 months after mediation.

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

24 As the Settlement Agreement itself reveals, there is no preferential treatment for any
25 segment of the class, as the Settlement is designed to compensate all Class Members fairly and
26 adequately. And pursuant to California Rules of Court Rule 3.769(b), the parties have disclosed
27 the agreed upon and proposed attorney fee award, which is well within the range of
28 reasonableness for matters of this nature.

1 **B. Plaintiff's Investigation Was Sufficient**

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

12 **C. Class Counsel Are Experienced in Similar Litigation and Endorse the**
13 **Settlement**

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

19 **D. Reasonable Estimate of the Nature and Amount of Recovery**

20 Plaintiff's Motion for Preliminary Approval contained a comprehensive *Kullar* analysis
21 (which sufficiently provided the Court with "basic information about the nature and magnitude
22 of the claims in question and the basis for concluding that the consideration being paid for the
23 release of those claims represents a reasonable compromise." (*Kullar v. Foot Locker Retail,*
24 *Inc.* (2008) 168 Cal.App.4th 116, 133.) Of course, a settlement is not judged against what
25 might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to
26 provide 100% of the damages sought to be fair and reasonable. (*Wershba v. Apple Computers,*
27 *Inc.* (2001) 91 Cal.App.4th 246, 250.) ("Compromise is inherent and necessary in the settlement
28 process ... even if the relief afforded by the proposed settlement is substantially narrower than it

1 would be if the suits were to be successfully litigated, this is no bar to a class settlement because
2 the public interest may indeed be served by a voluntary settlement in which each side gives
3 ground in the interest of avoiding litigation.”)

4 In light of the uncertainties of protracted litigation, this negotiated settlement reflects the
5 best practicable recovery for the Class. While the total settlement amount is, of course, a
6 compromise figure, the potential risks and opportunities of both parties were effectively weighed
7 and considered by the parties, resulting in a fair and equitable settlement. Based upon detailed
8 data obtained through discovery and information exchanges, and factoring in claim certification
9 probabilities and liability probabilities, Class Counsel formulated detailed damages models to
10 evaluate the claims in preparation for mediation and in order to reach a realistic and reasonable
11 resolution.

12 Defendants deny that any damages should be assessed and deny all of the value
13 assessed by Plaintiff. Notwithstanding these arguments, in light of the uncertainties and
14 expense associated with protracted litigation, the Settlement commits Defendants to pay
15 \$844,287.48 to settle the litigation.

16 **VI. THE REQUESTED ATTORNEYS’ FEES ARE FAIR AND REASONABLE**

17 For their efforts in creating a common fund for the benefit of the Class, the Settlement
18 Agreement provided that Class Counsel may seek reasonable fees of \$281,429.16 (one-third of
19 the Settlement Amount). Not only did Class Counsel negotiate a fair and reasonable settlement,
20 but also negotiated an Escalator Clause that resulted in the Settlement Amount increasing from
21 \$600,000 to \$844,287.48.

22 As shown herein, the requested percentage of one-third of the settlement fund as payment
23 for attorneys’ fees should be granted for several reasons, including one-third is the standard
24 bench mark in California for class action settlements (see e.g., *Chavez v. Netflix, Inc.* (2008) 162
25 Cal.App.4th 43, 66 n. 11 (“Empirical studies show that, regardless whether the percentage
26 method or the lodestar method is used, fee awards in class actions average around one-third of
27 the recovery”), that the California Supreme Court held that the percentage of the fund method
28 survives in California class action cases (*Laffitte v. Robert Half International, Inc.* (2016) 1

1 Cal.5th 480, and through the prism of a lodestar cross-check. Accordingly, this request should
2 receive final approval.

3 **A. Plaintiff is Entitled to Recover Reasonable Attorney's Fees Under the**
4 **Labor Code**

5 Plaintiff and the Class in this action are entitled to recover reasonable attorneys' fees,
6 expenses and costs under section 218.5 of the California Labor Code, which provides that, "[i]n
7 any action brought for the nonpayment of wages ... the Court shall award reasonable attorneys'
8 fees and costs to the prevailing party." In addition, Plaintiff and the Class are entitled to recover
9 reasonable attorneys' fees pursuant to section 1194.2 of the Labor Code, which provides that,
10 "... any employee receiving less than the legal minimum wage ... applicable to the employee is
11 entitled to recover in a civil action the unpaid balance of the full amount of this minimum
12 wage... including ... reasonable attorney's fees, and costs of suit." Plaintiff is also entitled to
13 fees and costs under section 226(e) of the Labor Code (employee who prevails on claim for
14 itemized wage statement violation "is entitled to an award of costs and reasonable attorneys'
15 fees"); under PAGA (Labor Code § 2699(g), which provides "Any employee who prevails in any
16 action shall be entitled to an award of reasonable attorney's fees and costs, including any filing
17 fee paid"); and, potentially, section 1021.5 of the California Code of Civil Procedure.

18 **B. Class Counsel's Request for Fees Is Reasonable and Properly Calculated as**
19 **a Percentage of the Common Fund**

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

27 ///

28 ///

1 **1. *The Attorneys’ Fees Requested Here Fall Within the Reasonable***
2 ***Range Awarded in Similar Cases Under the Well-established***
3 ***Common Fund Method***

4 The California Supreme Court has approved trial courts’ usage of the common fund
5 method of awarding attorneys’ fees in wage and hour class actions, like this one, upholding a fee
6 awarded of 1/3 of the total settlement amount obtained for the class. *See Laffitte*, 1 Cal.5th at
7 506; *see also*, 4 Newberg on Class Actions, § 14:6 at 552 (“fee awards in class actions average
8 around one-third of the recovery”). Specifically, in *Laffitte*, the Court wrote: “[w]e join the
9 overwhelming majority of federal and state courts in holding that when class action litigation
10 establishes a monetary fund for the benefit of the class members, and the trial court in its
11 equitable powers awards class counsel a fee out of that fund, the court may determine the amount
12 of a reasonable fee by choosing an appropriate percentage of the fund created”). *Id.* at 506. The
13 California Supreme Court also noted that trial courts have the discretion to award fees as a
14 percentage of the common fund, with or without the necessity to conduct a lodestar cross-check.
15 *Id.* (“...[Courts] ... retain the discretion to forgo a lodestar cross-check and use other means to
16 evaluate the reasonableness of a requested percentage fee.”)

17 The California Supreme Court’s *Laffitte* decision was consistent with its prior rulings
18 recognizing that “when a number of persons are entitled in common to a specific fund, and an
19 action brought by ... plaintiffs for the benefit of all results in the creation or preservation of that
20 fund, such ... plaintiffs may be awarded attorneys’ fees out of the fund.” *Serrano III v. Priest*
21 (1977) 20 Cal.3d 25, 34; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 (“[A] lawyer who
22 recovers a common fund . . . is entitled to reasonable attorneys’ fees from the fund as a whole”).
23 Notably, when fees are calculated as a percentage of the common fund, they should be calculated
24 based on the amount that was available to be claimed, rather than as a percentage of the actual
25 amount claimed. *See Id.* at 475-6, 480-1 (the SCOTUS held that attorneys for a successful class
26 may recover a fee based on the fund created for the class, even if some class members make no
27 claims against the fund, so that money remains in it that will be returned to the defendant,
28 explaining: “[t]heir [class members’] right to share the harvest of the lawsuit upon proof of their

1 identity, whether or not they exercise it, is a benefit in the fund created by the efforts of the class
2 representatives and their counsel.” *See also Williams v. MGM-Pathe Communs. Co.* (9th Cir.
3 1997) 129 F.3d 1026, 1027 (trial court “abused its discretion by basing the fee on the class
4 members’ claims against the fund rather than on a percentage of the entire fund or on the
5 lodestar”).

6 **2. *The High Quality of Work and Excellent Result Obtained Support***
7 ***the Award***

8 In addition to the fact that a Class benefit was created with a \$844,287.48 non-
9 reversionary common fund settlement, the fairness of the requested fee award of 1/3 of the
10 Settlement Amount is supported by the high quality of work performed by Class Counsel and the
11 positive result obtained for the Class. This result occurred because Class Counsel diligently,
12 efficiently, and creatively pursued this case and reached a successful settlement for the benefit of
13 the entire Class. In fact, some Class Members will receive \$5,613.84, which is a great result.
14 Moreover, the fact that the settlement was embraced and supported by the Class, as evidenced by
15 a 100% participation rate, demonstrates that Class Counsel obtained a favorable result for the
16 Class.

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

18 Rule 3.769 of the California Rules of Court requires that the Class Members be given
19 notice of any agreement regarding an application for attorneys’ fees. Here, the Notice
20 preliminarily approved by the Court and distributed to the Class Members apprised them of the
21 requested attorneys fees, which was consistent with the Notice.

22 The Class Notice also advised the class members of the procedures for objecting to the
23 proposed settlement and appearing at the settlement hearing, where they could present their
24 objections to any aspect of the settlement, including the amount of attorneys’ fees to be awarded
25 to class counsel. (*Litwin v. iRenew Bio Energy Solutions, LLC* (2014) 226 Cal.App.4th 877, 883
26 “[p]rocedural due process requires that affected parties be provided with ‘the right to be heard at
27 a meaningful time and in a meaningful manner’”). In accordance with the foregoing, it is
28 respectfully submitted that the instant notice complied with Rule 3.769 and, as a result, the Class

Members' due process rights were fulfilled.

4. The Contingent Nature of Class Counsel's Representation of Plaintiff and the Class Further Supports the Fee Award at 1/3 of the Common Fund

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

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

The market value of the services provided by plaintiffs' counsel in a case of this magnitude must take into consideration that any compensation has been deferred for up to four years from the time 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 use savings or incur debt to keep their offices afloat and their families fed during the years-long litigation); and that a failure to fully compensate for the enormous risk in bringing even a wholly meritorious case would effectively immunize large or politically powerful defendants from being held to answer for constitutional deprivations, resulting in harm to the public."

Id. at 399-400.

Indeed, as Plaintiff's Counsel can attest, not all class/PAGA cases are successful. Many cases end with no fees or a greatly reduced fee that is far less than lodestar, often due to no fault

1 of counsel (i.e., bankruptcy, change in the law, consolidation or coordination or preemption,
2 being top filed, etc.). According to Mayer Brown LLP's study entitled, An Empirical Analysis
3 of Class Actions, cited in *Laguna v. Coverall North America, Inc.* (9th Cir. 2014) 753 F.3d 918,
4 found that only one-third of class actions are successful, compared to two-thirds that are defeated
5 and result in no payment to the class members.¹

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

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

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

- 12 • Heavily litigated Class/PAGA action that Class Counsel certified as a class,
13 prevailed on summary adjudication, fully prepared for trial and one day before the
14 start of trial, ***Defendant filed for bankruptcy, resulting in complete loss of***
15 ***attorneys fees and all costs advanced*** (*Garza v. Quality Conversation*, San
16 Bernardino Superior Court Case No. CIVDS1506788);
- 17 • Class actions in which ***Defendants filed for bankruptcy, resulting in a loss of all***
18 ***fees and costs*** (*Gomez v. Ultimate Logistics*, Riverside Superior Court Case No.
19 RIC1723054, and *Bonilla v. Home Energy*, San Bernardino Superior Court Case
20 No. CIVSB2215927);
- 21 • ***Class Counsel have been forced to dismiss class and PAGA cases without any***
22 ***compensation or reimbursement of fees or costs due to the financial condition***
23 ***of Defendant***, (*Cox v. NurseLoop*, San Bernardino Superior Court Case No.
24 CIVSB2225440; *Joyce v. GES Distribution*, Riverside Superior Court Case No.
25 RIC1905739).
- 26 • Of course, there is also the reality that a Defendant may prevail on the merits,
27 whereby Class Counsel will receive no compensation and lose it out of pocket
28

¹ www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

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).

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

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

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

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

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

20 The availability of a “lodestar multiplier” allows Class Counsel to be an advocate for
21 employees and take on risky cases where Class Counsel may have to shoulder the risks of
22 litigation in other cases, so that the class members do not have to forego their right to the justice
23 system. A multiplier ensures that class members in the future will have access to competent
24 counsel who are willing to offer contingency fee agreements in risky cases and be available and
25 willing to take on cases to help all Class Members – not just those employed by large
26 corporations.

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

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

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

14 Historically, California courts have approved multipliers of 1.5 to 4. *See Coalition for*
15 *Los Angeles County Planning v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 251
16 **(multiplier of 2+ approved)**; *Sternwest Corp v. Ash* (1986) 183 Cal.App.3d 74, 75. The
17 multiplier requested by Class Counsel below is within the range of multipliers found to be
18 appropriate by various federal and state courts in California. In *Sternwest Corp. v. Ash*, for
19 instance, the Court of Appeal remanded for a lodestar enhancement of “**two, three, four or**
20 **otherwise.**” *Id.* at 76; *see also Wershba*, 91 Cal.App.4th at 255 (“**Multipliers can range from 2**
21 **to 4 or even higher**”); *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78, 83
22 **(affirming 2.34 multiplier)**; *Coalition for Los Angeles County Planning in the Pub. Interest v.*
23 *Board of Supervisors*, 76 Cal.App.3d 241, 251 **(affirming multiplier of approximately 2)**;
24 *Craft v. County of Los Angeles*, 2008 U.S. Dist. LEXIS 27526 (C.D. Cal. Apr. 1, 2008)
25 **(applying 5.2 multiplier)**; *See also Steinder v. Am. Broadcasting Co., Inc.* (9th Cir. 2007) 248

26 _____
27 ² 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.

Fed. Appx. 780, 783 (**approving multiplier of 6.85** and citing cases with comparable or higher multipliers); *Vizcaino v. Microsoft Corp.* (9th 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 \$213,570. This results in a fair and reasonable 1.31 multiplier, as summarized in the following table:

Attorney/Timekeeper	Role	Yrs Experience	Rate	Hours	Fee
Brian J. Mankin (Partner – LML)	Trial Counsel	23	\$775	121³	\$93,775
Peter Carlson (Senior Associate – LML)	Handling Attorney	10	\$650	184.3	\$119,795
Grand Total for All Attorneys					\$213,570

(See Mankin Decl., ¶ 26; Carlson Decl. ¶ 8-9).

The hourly rates above are comparable to those of other attorneys with equal or similar experience, if not somewhat lower (*i.e.*, the Laffey Matrix at www.laffeymatrix.com indicates that the benchmark rates are: \$777/hour for an 8–10-year attorney, \$878/hour for a 11–19-year attorney, and \$1,057/hour for a 20+ year attorney).

Moreover, the Wolters Kluwer 2023 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, comprising millions of billing entries from a hundred thousand individual timekeepers who worked at thousands of law firms. The Real Rate Report then compiles and analyzes this data to provide the hourly rates for partners and associates in major metropolitan areas. For the southern California area: (a) the rate for partners in Los Angeles is between \$840 and \$1,159 per hour for the middle and upper quartiles, and (b) the

³ Includes an estimated 30 hours that will be expended in finalizing the motion, attending the hearing, working with the parties and administrator regarding the notice and payment process, and filing any post judgment paperwork.

1 rates for associates with seven or more years of experience, the median rate is \$674 per hour, and
2 the upper quartile rate is \$888 per hour. And, perhaps most importantly, the information
3 provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, or
4 reviews or other publications – instead, the Real Rate Report is based on the actual hours and
5 fees billed by law firms, which makes it “a much better reflection of true market rates than self-
6 reported rates in all practice areas.” *Brown v. CVS Pharmacy, Inc.* (C.D. Cal. Apr. 24, 2017)
7 2017 U.S. Dist. LEXIS 182309, at *21; *PLCM Group*, 22 Cal.4th at 1085 (holding that rates
8 should be premised upon precisely this form of independent, “objective” rate data that reflects
9 “fair market” rates actually billed to clients “in the community for similar work”). (Mankin
10 Decl., ¶ 25.)

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

19 Thus, Plaintiff’s Counsel’s rates are reasonable and typical, and the attorneys’ fees
20 requested confirm that the fee request is fair and reasonable under the lodestar multiplier cross-
21 check.

22 **VII. THE REQUESTED COSTS AND SERVICE AWARDS ARE REASONABLE**

23 **A. The Requested Costs Are Reasonable and Merit Approval**

24 The Settlement Agreement authorized litigation expenses up to \$25,000. (Settlement
25 Agreement ¶ 3.2.2). However, Class Counsel’s actual costs through the final approval hearing
26 are estimated to be \$18,073.39. (Mankin Decl. ¶ 27.) Since Class Counsel’s actual costs were
27 less than the amount allocated, the saving will be placed in the Net Settlement Amount. These
28 costs include mediation fees, filing fees, CourtCall charges, and court filing fees, and process

server fees.

B. The Requested Service Award is Reasonable and Merits Approval

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

Under the Settlement, Defendants agreed to pay a Service Award in the amount of \$10,000 to Plaintiff Elaine Cooper in recognition of her contribution as the Class Representative. In addition, Plaintiff also undertook significant risks, including the risk of being blackballed in the industry and the risk that she could have been liable for Defendants’ costs if she lost. This factor is a significant one for a wage earner, and the potential risk is very real. (*See Whiteway v. FedEx Kinkos Office & Print Svcs., Inc.* (N.D. Cal. Dec. 17, 2007) No. C 05-2320 SBA, 2007 WL 4531783, at *3 (“the few courts to consider this ‘class representatives’ dilemma’ have not found it inequitable to assess costs upon the lead or named plaintiff in a class action.”).)

Plaintiff also committed a significant number of hours to assist with the litigation/settlement processes of this case. The requested Service Payment is reasonable, particularly in light of the substantial benefits Plaintiff generated for the Class Members, the risks she undertook, and in exchange for executing a general release against Defendant. (See Cooper’s Declaration ¶¶ 3-9.)

1 The Notice sent to each Class Member detailed the proposed service award. No Class
2 Member has objected to the proposed payment to Plaintiff. Thus, Plaintiff's request that the
3 Court approve the award because it is both reasonable and appropriate.

4 **VIII. OTHERS MATTERS RE: FINAL APPROVAL**

5 **A. Settlement Administration Costs**

6 The parties agreed that the Administrator, Phoenix Settlement Administrators, would be
7 compensated for services performed. The Administrator's flat fee is \$7,500.00, which
8 included considerable work performed by the administrator in resolving the data issues and
9 paying for the newspaper ad. (Mitzner Decl., ¶ 17; Exhibit B thereto.)

10 **B. Notice of Final Judgment to the Class**

11 The Proposed Final Approval Order directs the Settlement Administrator to give notice
12 of entry of judgment by including a postcard to the Class Members at the same time the checks
13 are mailed.

14 **C. Uncashed Checks**

15 The Settlement Agreement provides that unclaimed funds will be submitted to the
16 California State Controller's Unclaimed Property Fund in the name of the Class Member
17 thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil
18 Procedure Section 384, subd. (b). (S.A. ¶ 4.4.1.)

19 **D. Final Report**

20 Defendants' payment is due 25 days after the Effective Date, which will occur the date
21 that the Final Order is entered since there were no objections or motions to intervene. The
22 Administrator then has 10 days thereafter process the funds and issue checks to the Class
23 Members, who will then have 180 days to cash their checks. Accordingly, the Parties project
24 that the check cashing deadline will occur on approximately October 4, 2025. The Parties
25 propose submitting a final report in the form of a declaration from the Administrator and then
26 holding a disbursement hearing approximately one year after the final approval hearing.

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IX. CONCLUSION

Dated: February 5, 2025

LAUBY, MANKIN & LAUBY LLP

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

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

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

On February 5, 2025, 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 to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

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

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

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 5, 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, Declarant

SERVICE LIST

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