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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

JADE MCARTHUR, individually, and as a representative of other aggrieved employees, Plaintiff, vs. WYNDHAM VACATION OWNERSHIP, a California Corporation, and DOES 1 through 250, inclusive, Defendants.	Case No.: 30-2023-01337693-CU-OE-CXC *The Honorable David A. Hoffer* **CLASS ACTION** **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: August 15, 2025 Time: 10:00 a.m. Dept.: CX103 Action Filed: 07/20/2023

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff seeks preliminary approval of a $1,450,000 class action settlement that provides monetary relief for 1257 Class Members, of which 841 are also PAGA members. There are a total of 42,692 workweeks in the Class Period and the escalator clause was not triggered. The key terms of the "Stipulation of Settlement"[1] are as follows:

Settlement Class Members: "All current and former hourly or non-exempt sales employees of Defendant in California who worked at any time from July 20, 2019, through March 30, 2024."

(1) A Gross Fund Value of $1,450,000 that includes:

  (a) The Net Settlement Amount (i.e., the Gross Fund Value minus Attorneys' Fees and Costs, payroll (employee only) taxes, the Claims Administration Fee, the LWDA Payment, and the Class Representative Service Award).

  (b) $483,333.33 in Attorneys' Fees (33.3 percent of the Gross Fund) and $13,000 in actual costs to Class Counsel (less than actually incurred).

  (c) $12,500 to the Claims Administrator, Phoenix.

  (e) $45,000 PAGA payment pursuant to Private Attorneys General Act (75% of which, or $33,750, goes to the LWDA, and the remaining 25%, or $11,250, going to the Net Fund). The PAGA Aggrieved Employees are: "All current and former hourly or non-exempt sales employees of Defendant in California who worked at any time from May 16, 2022, through June 30, 2024.

  (e) $10,000 Service Award to the class representative.

The Settlement, which is non-reversionary (See Settlement Agreement, ¶5c), is fair, reasonable, and adequate—and meets approval under California law. Accordingly, Plaintiff

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[1] Hereinafter, "Settlement Agreement" or "Settlement." Unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Settlement Agreement.

respectfully requests that this Court grant final approval of the Settlement Agreement.

II. FACTS AND PROCEDURE

A. Plaintiff Filed a Putative Class Action Alleging Labor Code Violations

On July 20, 2023, plaintiff filed a PAGA Complaint against the Defendant, alleging a variety of claims for Labor Code violations. On October 18, 2023, plaintiff filed a First Amended Complaint, which added class claims for: (1) unpaid overtime; (2) failure to timely pay wages; (3) failure to pay meal period premiums; (4) failure to pay rest period premiums; and (5) unfair competition. On August 2, 2024, plaintiff filed a Second Amended Complaint that explicitly added a claim for paystub violations under Labor Code §226, since that claim was mentioned but not specifically pled in the lawsuit and was a subject of the mediation. On December 12, 2024, plaintiff filed a Third Amended Complaint to add a claim under Labor Code §2802, which had been mentioned in the earlier complaints but not explicitly pled as a cause of action. (Buchsbaum Decl., at ¶9.)

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This is a wage and hour class action arising out of plaintiff's former employment as a salesperson for Wyndham Vacation Ownership, Inc. Plaintiff worked out of the company's Anaheim location, and he was responsible for providing general information regarding Wyndham's products to its customers and eventually selling timeshare units to Wyndham customers. He was initially an unlicensed tour guide, but was later converted to a licensed sales representative when he obtained his California real estate license. (Buchsbaum Decl. ¶10).

The key issue in the lawsuit relates to the Defendant's failure to pay class members overtime, meal premiums or sick pay at the "regular rate of pay." Plaintiff alleges during a portion of the class period Defendant miscalculated the amount of overtime wages by failing to include commissions in the regular rate of pay calculation. Moreover, for a significant portion of the class period the Defendant paid meal period premiums, but they were also paid at the base hourly rate, rather than at the "regular rate of pay," as mandated by the California Supreme Court in ***Ferra v. Loews Hollywood Hotel, LLC*** (2021) Cal.5th 858. These problems manifest themselves many times over in the sampling records the Defendant provided prior to the mediation. (Buchsbaum Decl., at ¶11.)

This turns out to be a substantial exposure problem, because some of these sales employees were earning very high compensation and thus would be entitled to substantial waiting time penalties under Labor Code §203. (Buchsbaum Decl., at ¶12.)

III. LEGAL CLAIMS AND EXPOSURE ANALYSIS

A. Unpaid Overtime, Meal Premiums and Sick Pay

Plaintiff's counsel hired a statistical expert to analyze a random 25% class sampling of time and associated pay records. Further, we have noted that at some point towards the second half of the class period, the Defendant realized that it had a regular rate problem and began factoring in commission pay in determining the regular rate for overtime, meal premiums and sick pay. Our expert isolated the individuals from the sample who were clearly underpaid overtime and then extrapolated that to the class. The class overtime damages are $11,839, with associated PAGA penalties for wage underpayments amounting to $45,300, for a total of $57,139. With regard to underpaid meal premiums, rest premiums and sick pay, the underpayment amounts to $21,268 for the class, and $30,300 in associated PAGA penalties, for a total of $51,568. (Buchsbaum Decl., at ¶13.)

The Defendant pointed out, however, that commissions were not necessarily "earned" at the time they appear on the paystub, but could actually be associated with prior pay periods where no overtime was worked and/or no meal period premium was accrued. As a result, our calculations may have been high, and we viewed the settlement value of these claims to be diminished to some extent and valued these claims at $80,000. (Buchsbaum Decl., at ¶14.)

B. Waiting Time Penalties

The waiting time penalty claim was premised on the underpayments of overtime, sick time and meal/rest premiums as described above. From plaintiff's perspective, at least up to a point, many class members were clearly underpaid with regard to overtime, meal period premiums, sick pay, Covid pay, or a combination of these categories.[2] (Buchsbaum Decl., at

[2] In ***Naranjo v. Spectrum Security Services, Inc.*** (2022) 15 Cal.5th 93, the California Supreme Court held that unpaid meal premiums can be a catalyst for a waiting time penalty claim.

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¶15.) Plaintiff's expert identified over 200 class members just in the sample who had been underpaid due to regular rate issues. The expert then calculated the actual waiting time penalty due to these individuals, and extrapolated this to the class, and the exposure amounted to approximately $1,359,912.50. It is important to note that the DLSE, as indicated on the guidance on its website, clearly includes commission earnings in the calculation of the "daily rate of pay" for purposes of determining the Labor Code §203 penalty. The associated PAGA penalty is $45,100. (Buchsbaum Decl., at ¶16.)

The biggest risk concern had to do with whether class members could prove that there was no good faith defense that could be raised to the unpaid wages that served as a trigger for the waiting time penalty claim. This was a difficult argument, because the ***Ferra v. Loews***, supra, decision did not get released until July 15, 2021, and prior to that the law was unclear with regard to how a meal period premium should be calculated (i.e. based on the hourly rate or the regular rate). Moreover, most of the waiting time penalty exposure was based on miscalculated meal period premiums, and a substantial share of those occurred prior to the release of the ***Ferra v. Loews*** decision, which potentially jeopardized a significant portion of the overall exposure. Further, the meal period calculation was corrected within 6 months to a year of the ***Ferra v. Loews*** decision being released, so that by 2022 the underpaid meal period premiums became much less frequent. Nevertheless, we did view this as a strong claim, and despite these defenses, for settlement purposes we believed the waiting time penalty claim had a value of $700,000, which is roughly ½ of the total exposure. (Buchsbaum Decl., at ¶17.)

C. The Paystub Claim

One of the main problems with the paystubs that were distributed to the class members relates to this regular rate issue. That is, while the Defendant apparently learned it was paying employees incorrectly, and sought to correct this practice going forward, it did so in a very opaque manner. In the course of preparing for the mediation, we learned that in late 2022, or perhaps a bit earlier in some circumstances, the additional regular rate for the base meal period premium was almost randomly thrown onto the paystub under the **"Californsckadj"** column.

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We understand that this column stands for "California Sick Leave Adjustment." There is no way any employee could have understood that his or her meal period premium, and the rate that he was receiving for each hour penalty, was somehow derived from a combination of his base hourly rate and some other sum of money associated with a sick pay adjustment heading. We believe that some of the "Californsckadj" was, in fact, regular rate pay associated with sick or Covid pay, but additional meal period premiums and rest period premiums are jumbled into this column indiscriminately as well. That has the added confusing effect of making it impossible for an employee, during a pay period with sick days, to sort out what portion of the "Californsckadj" is associated with sick pay and what is associated with meal or rest premiums. As a result, the paystubs arguably fail to record "all applicable hourly rates in effect during the pay period." See Labor Code §226(a). Instead, inaccurate meal premium and sick pay rates are indicated on the stub, and the additional earnings are reported confusingly under an obscure code. The law is clear that the rate of pay for a meal period premium is the employee's "regular rate of compensation," which appears nowhere on the paystubs that contain meal premiums. See Labor Code §226.7. (Buchsbaum Decl., at ¶18.)

Through analysis of the records, plaintiff's counsel and the retained expert have extrapolated exposure of the Labor Code §226(a) statutory claim at $185,900, and the associated PAGA penalty claim at $305,200, for a cumulative exposure of $491,100. (Buchsbaum Decl., at ¶19.)

That being said, Labor Code §226(a) requires a showing of "wilfulness," as was recently detailed by the California Supreme Court's decision in ***Naranjo v. Spectrum Security Services, Inc.*** (2024) 15 Cal.5th 1056. Here, even thought the paystubs were arguably confusing, proving wilfulness was likely to be a substantial challenge. As a result of this risk, plaintiff's counsel viewed the settlement value of this case to be substantially less than the maximum exposure. For settlement purposes, the paystub claim had a value of approximately $150,000. (Buchsbaum Decl., at ¶20.)

D. The Meal Period Claim

Our expert analyzed the time punch data and through extrapolation from the sample determined that there was a very high violation rate related to first meal periods. Indeed, 76.6% of the shifts contained violations (i.e. missed, late, or short meals). Notably, however, 69.3% of the violations relate to incidences where there is just no meal period noted in the records at all (and the shift exceeded 6 hours). In total, our expert extrapolated that there were 23,581 meal violations, which were offset by 3,154 meal premiums paid, for a total of 20,535 meal violations. The exposure related to this claim is $7,770,333. The associated PAGA penalties are $1,727,500, for a total of $9,497,833. (Buchsbaum Decl., at ¶21.)

However, upon review of further records, we determined that in the vast majority of these cases (over 90%), the employee had actually pushed a button on the company's time system indicating that the meal was voluntarily skipped. Further, many of the violations were premised upon an employee ending a meal period a minute or two early, and proving that this was involuntary was likely an insurmountable task, particularly on a class basis. While the overall exposure was very high upon our initial analysis, that had to be revised down due to the time punch information, so that the actual maximum exposure was approximately 1.1 million. However, given the certification risk due to individual inquiries that would inevitably arise as to why a meal was missed, late or short, we viewed the settlement value of the meal period claim as being approximately $200,000. We also took into consideration that there were facially compliant meal period policies that had been distributed to the class members during the relevant period. (Buchsbaum Decl., at ¶22.)

E. The Rest Period Claim

There was very little evidence of rest period violations, other than anecdotally. That is, plaintiff and several witnesses indicated that taking a rest break during a long sales discussion with a customer, or while touring a timeshare, was not feasible. However, there are no records of rest breaks, and the policies distributed are facially complaint. If you assumed that for each meal violation there was also a rest period violation, then the total exposure was arguably 1.1

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million. However, we viewed this claim as having almost no chance to be certified, and for settlement purposes attributed a negligible value of $20,000 for both the statutory penalties and PAGA penalties. (Buchsbaum Decl., at ¶23.)

IV. THE PARTIES INVESTIGATED THE CLAIMS PRIOR TO SETTLEMENT

A. Plaintiffs' Counsel Thoroughly Investigated the Factual and Legal Issues

Plaintiff's Counsel thoroughly investigated and researched the Class claims, as well as the representative PAGA claims, and their theories of liability, their defenses, and the developing body of law before the Settlement. The comprehensive investigation included the exchange of documents and statistical information with Defendant, as well as interviews with Plaintiff and several witnesses regarding the pay practices at issue. Plaintiff's Counsel also retained a statistical expert to analyze a 25% sampling of pay data. There were also numerous discussions with Defense Counsel regarding the merits and potential legal defenses. (Buchsbaum Decl. ¶25) Plaintiff received, among other things, the following information: (1) data and documents relevant to Class-wide liability ("Class Data") in support of our investigation and evaluation of Class claims; (2) employee handbooks, procedure manuals, and operations manuals addressing Defendant's wage and hour practices, e.g., (i) timekeeping and payroll policies, (ii) meal and rest periods records, (iii) wage statements; (3) employee time and payroll records; and (4) employee time audit records. (Buchsbaum Decl. ¶24)

Using the data supplied by Defendants for mediation and Plaintiff's Counsel's own investigation, Plaintiff's Counsel also determined: (i) the approximate average hourly rate of pay for Class Members; (ii) the total number of former and current employees in the Class Period; (iii) the total number of Class Members in the PAGA period; and (iv) the total number of pay periods worked by all Class Members during the Class Period. (Buchsbaum Decl. ¶25)

The receipt and analysis of the Class Data was sufficient for the Parties to make an informed decision about the strengths and weaknesses of Plaintiff's theories of liability, Defendant's affirmative defenses, Class-wide damages, and benefits of Settlement. (Buchsbaum Decl. ¶26)

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Further, and continuing its due diligence, Plaintiff's Counsel (1) determined Plaintiff's suitability to serve as Class representative, through interviews, background investigations, and analyses of his employment files and related records; (2) researched wage-and-hour class actions involving similar claims; (3) engaged in the discovery process; (4) obtained and analyzed Defendant's wage-and-hour policies and procedures; (5) obtained and analyzed hundreds of time and corresponding payroll records to determine violation rates and penalty payments; (6) researched the latest case law bearing on the theories of liability; (7) researched settlements in similar cases; (8) analyzed the value of Plaintiffs' claims; (9) negotiated the terms of the Settlement; (10) finalized the Settlement Agreement; (11) helped to finalize the Notice of Class Action Settlement; and (12) drafted preliminary and final approval papers. (Buchsbaum Decl. ¶27)

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B. The Parties Settled After Statistical Sampling

The Parties agreed to informal settlement discussion that involved a voluntary production of a 25% statistical sample of the class members. Plaintiff's counsel then hired a statistician to review the records to extrapolate exposure on a class and PAGA basis. The Parties further hired a highly qualified mediator, former Los Angeles County Superior Court Complex Judge, Carl West. At all times the Parties' negotiations were adversarial and non-collusive. (Buchsbaum Decl. ¶28).

C. The Proposed Settlement Fully Resolves Plaintiffs' Claims

1. Composition of the Settlement Class

The proposed Settlement Class Members consist of: "“All current and former hourly or non-exempt sales employees of Defendant in California who worked at any time from July 20, 2019, through March 30, 2024.”

[Settlement Agreement, at Page 2, ¶2]. The Settlement Agreement is attached to the Declaration of Brent S. Buchsbaum in Support of Final Approval of Class Action and PAGA Settlement.

2. Settlement Consideration

Plaintiff and Defendants have agreed to fully resolve the class and representative claims for $1,450,000. The Gross Fund Value includes: (1) settlement payments to participating Class Members ("Net Settlement Amount"); (2) attorneys' fees of $483,333.33 (1/3 of the gross amount); actual litigation of $13,000; (3) Claims Administration Fee of 12,500; (4) LWDA Payment of $45,000 (with $33,750 going to the LWDA, and the remainder, $11,250, back into the Net Fund); (5) Class Representative Service Award of $10,000 to the class representative.

The distribution of the Net Settlement Amount to Class Members is straightforward: Each Class Member's share of the settlement will be proportional to the total number of workweeks he or she worked during the Class Period. The distribution of the PAGA portion works the same way, based proportionally on the number of pay periods during the PAGA period. [See Settlement Agreement, Page 6, ¶6(b)]

Given that there are 1257 Class Members, the average net recovery will be approximately $704.99. See Islas Decl., at §14, with an estimated high recovery of $5026.14 and low recovery of $20.76. This average net recovery is on par or higher than other wage and hour class action settlements approved by California state and federal courts. (Buchsbaum Decl. ¶28) *See*, *e.g.*, *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately $120); *Contreras v. United Food Group, LLC,* Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately $120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately $90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately $65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery of approximately $60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately $35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. County Super. Ct.) (average net recovery of approximately $20.).

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3. Release by the Settlement Class

In exchange for the Class Settlement Amount, Plaintiffs and Class Members will agree to release the Released Claims. [See Settlement Agreement, at Page 3, ¶4] The class representative will also agree to an additional general release of his individual claims as part of the consideration for his enhancement as the class representative. [Id., at ¶4(c)]

V. ARGUMENT

A. The Court Should Grant Final Approval of the Class Action Settlement

1. Courts Review Class Action Settlements to Ensure that the Terms Are Fair, Adequate, and Reasonable

California Rule of Court ("Rule"), Rule 3.769 requires litigants to obtain court approval of class action settlements. Approval occurs in two steps: (1) an early "preliminary" review by the trial court; and (2) a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. Rules 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009) (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement").

The Court has already granted preliminary approval of a settlement. Thus, pursuant to Rule 3.769(f) requires the court to (1) schedule a final approval hearing and (2) approve the method by which the parties are to provide notice to the class of the hearing and "an explanation of the proposed settlement." The court must also approve a procedure for class members to file objections to the settlement. Rule 3.769(f). At the final approval hearing, the court must conduct an inquiry into the fairness of the proposed settlement. Rule 3.769(g).

Although Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, final approval is warranted if the settlement falls within a "reasonable range." *See North County Contractor's Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085, 1089-90 (1994); Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002) ("Newberg"). Reasonableness and fairness are presumed where: (1) the settlement is reached through "armslength 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 v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996). The presumption of fairness is consistent with California's public policy goal of favoring settlements. *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) ("the law wisely favors settlements"); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 ("public policy generally favors the compromise of complex class action litigation"); *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) ("voluntary conciliation and settlement are the preferred means of dispute resolution . . . [t]his is especially true in complex class action litigation"); *Skulnick v. Roberts Express, Inc.*, 2 Cal. App. 4th 884, 891 (1992) ("public policy strongly discourages litigation and encourages settlement [because settlements] can produce peace and goodwill in the community while reducing the expense and persistency of litigation").

Additionally, in reviewing the fairness of a class action settlement, due regard should be given to what is "otherwise a private consensual agreement between the parties." *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1389 (2010) ("*Cellphone Termination Fee Cases II*") . 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, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id.* .

2. Plaintiffs' Counsel Conducted A Thorough Investigation of the Factual and Legal Issues

As set forth in greater detail above, based on our analysis of documents produced by Defendant (including time and payroll records, and policies and procedures manuals) and information provided during interviews, Plaintiff's Counsel was able to realistically assess the value of the class claims and intelligently engage defense counsel in settlement discussions that culminated in the proposed settlement now before the Court. (Buchsbaum Decl. ¶36)

By engaging in a thorough investigation and evaluation of Plaintiffs' claims, Plaintiffs' Counsel can state with confidence that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable, and adequate, and is in the best interests of Class Members. (Buchsbaum Decl. ¶34)

As noted in this brief, Plaintiff undertook substantial efforts to investigate and analyze class liability, including through a random sampling of pay records that were analyzed by a statistical expert, who was able to make statistical extrapolations regarding liability. The realistic settlement value of the case was, in our view, between $1,000,000 and $1,5000,000. The full exposure of $4,159,000 had to be discounted due to legal defenses that had been raised, certification risks, as well as the concern that the Court might have reduced the PAGA penalties substantially based on factors related to their derivative nature. (Buchsbaum Decl. ¶35)

At the end of the day, given the legal uncertainties regarding litigation, the evidentiary challenges with the meal and rest period claims, the risk that some of these issues could not be certified, and the fact that liability was disputed, we viewed a settlement of $1,450,000 as being a very reasonable compromise, and in line with the discount related to these risks, even though the theoretical exposure was considerably higher. (Buchsbaum Decl. ¶36)

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3. The Settlement Was Reached through Arm's-Length Bargaining in Which All Parties Were Represented by Experienced Counsel

"[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement's fairness." *State v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. Newberg, § 11.51.

The Parties engaged in a non-collusive, open settlement dialogue that included the voluntary disclosure of a 25% sampling to be reviewed by an expert statistician, who was able to make statistical extrapolations from the data. The parties then hired a well- regarded mediator, Retired Judge Carl West, who formerly served as a complex judge in Los Angeles

County Superior Court. The Parties were represented by experienced class action counsel throughout the negotiations resulting in this Settlement. Plaintiff's Counsel regularly litigates wage and hour class actions and has reached numerous class action and representative settlements. The Defendant's lawyers are also sophisticated, experienced class action lawyers. (Buchsbaum Decl., at ¶37.)

4. The Proposed Settlement Is Reasonable Given the Strengths of Plaintiffs' Claims and the Risks and Expense of Litigation

Of the many factors that courts consider in deciding whether to approve a class action settlement, "[t]he most important factor is the strength of the case for Plaintiffs on the merits, balanced against the amount offered in settlement." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 130 (2008); *see also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 407-8 (2010).

Plaintiff was cautiously optimistic about the chances of prevailing on the class claims, as well as the additional representative PAGA claims. Nevertheless, we recognized that had the litigation continued, we may have encountered significant legal, practical, and factual hurdles that could have prevented the Class from obtaining any recovery, including failure to certify a class. (Buchsbaum, Decl. ¶38)

The time and effort—not to mention the uncertainty—that would be expended to pursue further litigation may easily eclipse the amount that is recoverable. For example, if this action had settled following additional litigation, the settlement amount would likely have taken into account the additional costs incurred, and there may have been less available for Class Members. Plaintiff and his counsel would have had to devote considerable time and resources towards trial and the difficult and complicated issues of proof. *See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc*., 244 F.3d 1152, 1163 (9th Cir. 2001) (explaining that "[i]f plaintiffs cannot proceed as a class, some—perhaps most—will be unable to proceed as individuals because of the disparity between their litigation costs and what they hope to recover."). (Buchsbaum Decl. ¶39).

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In short, given the substantial risks in litigating this action, and the uncertainty of success, the Settlement represents a reasonable compromise of Plaintiff's claims, and ensures that Class Members receive a fair and adequate recovery. (Buchsbaum Decl. ¶40)

5. The Proposed Notice Properly Informs Class Members about the Case and the Settlement

Class members are entitled to the best practical notice under the circumstances. *Kass v. Young*, 67 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. *Trotsky v. Los Angeles Fed. Savings & Loan Assn.*, 48 Cal. App. 3d 143, 151-52 (1975). The notice must advise class members "that they may be excluded from the class if they so request and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion." *Kass*, 67 Cal. App. 3d at 106. In a case such as this involving a significant number of class members, California authorities generally require service of the class notice by mail or similar reliable means. *Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 972 (1975).[3]

Phoenix was selected by the Parties to provide notice of the Settlement and perform class administration duties in this Action. Pursuant to the Stipulation of Class Action and PAGA Settlement ("Settlement Agreement" or "Settlement") for this matter, Phoenix was responsible for: (i) preparing, printing, and mailing the *Notice of Proposed Class Action Settlement* ("Notice"); (ii) responding to inquiries from Class Members; (iii) confirming the number of weeks each Class Member worked during the period from July 20, 2019 to March 30, 2024 ("Class Period") and the number of workweeks that each PAGA Aggrieved Employee worked during the time period from May 16, 2022 to March 30, 2024 ("PAGA Period"); (iv)

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[3] Due process does not require that each class member actually receive a notice, but rather a procedure reasonably certain to reach class members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If appropriate notice is given, class members will be bound by the judgment even if they never actually receive the notice. *Fontana v. Elrod*, 826 F.2d 729, 732 (7th Cir. 1987).

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determining the validity of letters indicating a request to be excluded from the Class Settlement ("Requests for Exclusion"), written objections to the Class Settlement ("Objections"), and/or dispute regarding the number of Workweeks submitted by Class Members; (v) calculating the Net Settlement Amount and the Individual Settlement Payment to Class Members; (vi) calculating and issuing the Individual Settlement Payments and distributing them to Settlement Class Members and PAGA Amount to Aggrieved Employees; (vii) issuing the payment to Class Counsel for Counsel Fees and Costs Award, the Class Representative Enhancement Payment to Plaintiff, and the employer/employee payroll taxes to the appropriate taxing authorities; and (viii) such other tasks as set forth in the Settlement Agreement or as the Parties mutually agree or as the Court orders. Islas Decl., at ¶2.

On February 18, 2025, Phoenix received a data file from Defense Counsel that contained names, last known mailing addresses, Social Security numbers, dates of employment, and workweeks for each Class Member ("Class List") during the Class Period. The final mailing list contained one thousand two hundred two hundred fifty-seven (1,257) individuals identified as Class Members. Islas Decl., at ¶3.

On February 18, 2025, Phoenix conducted a National Change of Address ("NCOA") search in an attempt to update the class list of addresses as accurately as possible. A search of this database provides updated addresses for any individual who has moved in the previous four (4) years and notified the U.S. Postal Service of their change of address. Islas Decl., at ¶4.

On March 4, 2025, Phoenix mailed the Notice via U.S. first class mail, to all one thousand two hundred fifty-seven (1,257) Class Members on the Class List. Islas Decl., at ¶5.

As of the date of Ms. Islas' declaration, forty-eight (48) Notices have been returned to Phoenix. None were returned with a forwarding address. For the forty-eight (48) Notices returned from the Post Office without a forwarding address, Phoenix attempted to locate a current mailing address using TransUnion TLOxp, one of the most comprehensive address databases available for skip tracing. Of the forty-eight (48) Notices that were skip traced, twenty-five (25) updated addresses were obtained and the Notice was promptly re-mailed to those Class Members via first class mail. Islas Decl., at ¶6.

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As of the date of Ms. Islas' declaration, twenty-three (23) Notices remain undeliverable, specifically, twenty-three (23) are undeliverable since an updated address could not be obtained via skip trace. Islas Decl., at ¶7.

The mailing was thus highly effective in providing notice to the Class Members.

6. The Positive Response of the Class Supports Settlement

Phoenix has received zero (0) Requests for Exclusion from Class Members. The deadline to request exclusion from the Class Settlement was May 5, 2025. Islas Decl., at ¶8.

Phoenix has received zero (0) Notices of Objection from Class Members. The deadline for objecting to the Class Settlement was May 5, 2025. Islas Decl., at ¶9.

As of the date of this declaration, Phoenix has received one (1) Workweek dispute from Class Members, which involved an individual inadvertently included on the list. The deadline for submitting a dispute was May 5, 2022. Islas Decl., at ¶10.

There are one thousand two hundred fifty-seven (1,257) Class Members who did not submit timely and valid Requests for Exclusion and are therefore deemed Settlement Class Members, representing 100% of the Class. Settlement Class Members have worked a collective total of forty-two thousand six hundred ninety-two (42,962) Workweeks during the Class Period. Each Workweek is valued at approximately $20.76. Islas Decl., at ¶11.

The Escalator Clause of the Settlement Agreement indicates if the number of actual total workweeks worked by Settlement Class Members during the Class Period, as reported to the Settlement Administrator following preliminary approval, exceeds this amount by more than 10% (i.e., if there are 43,304 or more total workweeks), Defendant will either: (1) pay an additional sum necessary to increase the Maximum Settlement Amount on a proportional basis (i.e., if there was a 15% increase in workweeks, Defendant would increase the Maximum Settlement Amount by 5%); or (2) elect to shorten the Class Period and PAGA Period (along with their associated releases) to a date that the total number of workweeks worked is at or under the 43,304 workweek threshold. Given the total workweeks was 42,692, the escalator clause was not triggered. Islas Decl., at ¶12.

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The Net Settlement Amount of $886,166.67 available to pay Settlement Class Members was determined by subtracting the requested Class Counsel attorneys' fees ($483,333.33), and Class Counsel costs ($13,000.00), requested Enhancement Payment to Plaintiff McArthur ($10,000.00), the PAGA Amount ($45,000.00), and the requested Settlement Administrator Fees ($12,500.00) from the Maximum Settlement Amount ($1,450,000). Islas Decl., at ¶13.

Based upon the calculations stipulated in the Settlement, the highest Individual Settlement Payment to be paid is approximately $5,026.14, the lowest Individual Settlement Payment to be paid is approximately $20.76, while the average Individual Settlement Payment to be paid is approximately $704.99. Settlement Class Members will be issued payment of their Individual Settlement Shares subject to reduction for the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Payment. Islas Decl., at ¶14.

Additionally, $45,000.00 of the Maximum Settlement Amount has been allocated toward penalties under the Private Attorneys General Act ("PAGA civil penalties"), of which 75%, or $33,750.00, shall be paid to the Labor and Workforce Development Agency ("LWDA"), and 25%, or $11,250.00, of which shall be paid to all current and former hourly non-exempt individuals who are or were employed by Defendant during the PAGA Period. There are eight hundred forty-one (841) Aggrieved Employees who worked a total of twenty-five thousand three hundred sixty-nine (25,369) workweeks during the PAGA Period. The highest PAGA Payment to be paid is approximately $43.46, and the average PAGA Payment to be paid is approximately $8.95. Islas Decl., at ¶15.

Pursuant to the Settlement, Defendant has agreed to fund the employer-side taxes due separately and apart from the Gross Settlement Amount. Islas Decl., at ¶16.

Phoenix's costs associated with the administration of this matter are $12,500.00. This includes all costs incurred to date, as well as estimated costs involved in completing the settlement distribution. A true and correct copy of the invoice from Phoenix is attached to the Declaration of Ms. Islas as **Exhibit B**.

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B. The Proposed PAGA Settlement Is Reasonable

Pursuant to the Settlement Agreement, $45,000 from the Class Settlement Amount will be allocated to the resolution of Plaintiffs' PAGA claims, of which 75% ($33,750) will be paid directly to the LWDA, and the remaining 25% ($11,250) will be paid to Participating Class Members. This result was reached after good-faith negotiation between the parties. Where PAGA penalties are negotiated in good faith and "there is no indication that [the] amount was the result of self-interest at the expense of other Class Members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see*, *e.g.*, *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 579 (2010) ("[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims.").

C. The Proposed Class Representative Enhancement Payment Is Reasonable

Named Plaintiff is eligible for a payment that reasonably compensates him for undertaking and fulfilling a fiduciary duty to represent absent class members. *Cellphone Termination Fee Cases*, 186 Cal. App. 4th at 1393; *Bell v. Farmers Ins. Exchange*, 115 Cal. App. 4th 715, 726 (2004) (upholding "service payments" to named Plaintiffs for their efforts in bringing the case). "Incentive awards are fairly typical in class action cases. Such awards are discretionary and are intended to compensate class representatives for work done on behalf of the class . . .." *Rodriguez v. West Publ'g Corp.,* 563 F.3d 948, 958 (9th Cir. 2009) (citing 4 William B. Rubenstein et al., Newberg on Class Actions § 11:38 (4th ed. 2008)). These payments work both as an inducement to participate in the suit and as compensation for time spent in litigation activities. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 463 (describe the service award as an ***incentive*** to the class representatives).

The Parties have negotiated an enhancement payment for the class representative in the amount of $10,000 for his efforts in bringing the original action, serving as private attorney general under PAGA, assisting counsel with informal discovery, regularly conferring with counsel on the status of his case and the strategies for prosecuting the claims, and reviewing the

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proposed settlement to ensure that its terms are fair and that it provides adequate relief for the Settlement Class. He is also signing a general release.

These enhancement payments are fair and reasonable compensation for Plaintiff's services to the Class. Modest payments to named plaintiffs for their services as class representatives are customary and generally approved. *See Van Vranken v. Atlantic Richfield Co*., 901 F. Supp. 294, 300 (N.D. Cal. 1995).

Courts have recognized that employees face a particular set of challenges when bringing class action suits. Current employees risk retaliation or, less explicitly, greater difficulties in the workplace as a result of bringing suit. *See Guippone v. BH S&B Holdings LLC*, No. 09 Civ. 1029, 2011 U.S. Dist. LEXIS 126026, at *20 (S.D.N.Y. Oct. 28, 2011) ("Even where there is not a record of actual retaliation, notoriety, or personal difficulties, class representatives merit recognition for assuming the risk of such for the sake of absent class members."). Both current and current employees also place their future employment prospects in peril by becoming class representatives, as "the fact that a plaintiff has filed a federal lawsuit is searchable on the internet and may become known to prospective employers when evaluating the person." *Id.* at *4. It is common for employers to screen employee candidates to determine whether they have ever filed suit, and that employee candidates who might be branded "litigious" are likely to be screened out of the process. In fact, an entire industry has developed for providing employers with background information on employee candidates.[4] By bringing this action against an

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[4] The companies that provide these services actually promote themselves by touting their ability to identify and weed out potentially litigious employee candidates:

- "Our value-added partner uses sophisticated technology to ensure the officers and managers of our clients can significantly reduce the likelihood of hiring litigious and untrustworthy employees by providing the information needed to make critical hiring decisions. We specifically help you avoid the traps, pitfalls and legal issues that plague many companies today." *Sentric, Inc.*, http://www.sentric.net/solutions/workforce-management/ancillary-products/pre-employment-screening;
- "In today's litigious culture, employers simply cannot afford to hire employees who will put their company at risk." *Back Track Screening*, http://www.btscreening.com/wp-content/uploads/2012/09/Screening-101.pdf;
- "Background screening has become a necessity in today's litigious society. An employer, who bases their hiring decisions based solely on instinct, may very well open the door to extremely expensive lawsuits. Bad decision making from

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employer, Plaintiff has assumed considerable reputational risk that may impact his ability to find employment in the near and distant future. Long after this action is forgotten by Class Members, these Class Representatives will have to endure the risk of being branded "litigious" by prospective employers, and may have employment applications rejected on that basis alone.

Finally, Named Plaintiff also released his personal damages as part of the Cal. Civ. Code § 1542 general release he executed, which is considerably broader than the separate, narrower release required of the Settlement Class. Named Plaintiff's execution of a general release—entailing an additional detriment for Named Plaintiff that does not apply to other Class Members—further supports his request for an enhancement award. *See Schaffer v. Litton Loan Servicing, LP*, No. 05-07673-MMM, 2012 U.S. Dist. LEXIS 189830, *64 (C.D. Cal. Nov. 13, 2012) ("[C]lass representatives released their actual damages claims as part of the Settlement. This ["personal benefit"] factor, therefore, weighs in favor of approving the incentive awards.").

For all these reasons, the request enhancement payment to Named Plaintiff is reasonable and should be awarded.

D. The Negotiated Attorneys' Fees and Costs Are Reasonable

The purpose of an attorneys' fee award in class action litigation is to reward counsel who took the risk of non-payment and invested in a case that achieved a substantial positive result for the class. California courts routinely award attorneys' fees equalling one-third or more of the potential value of the common fund. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."). Theodore Eisenberg & Geoffrey P. Miller, Attorney Fees in Class Action Settlements: An

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the start can cause huge budgetary impacts upon your company and also destroy the reputation of all those involved." *Quest Background Services – The Screening Specialists*, http://www.questbackgrounds.com/pre-employment_screening.htm;

- "In today's litigious culture, you simply cannot afford to hire employees who will put your company at risk." *Credit Technologies, Inc.*, http://www.credittechnologies.com/Employment_Screening.asp.

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Empirical Study, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide have come to a similar conclusion that a one-third fee is consistent with market rates).

At final approval, Plaintiffs will seek Court-approval of attorneys' fees and costs of $483,333.33 (or one-third of the Class Settlement Amount) and $13,000 respectively.

There is no fee splitting agreement with any other lawyer or law firm.

E. California Law Authorizes Provisional Certification for Settlement Purposes The California Standard for Class Certification

Class actions are statutorily authorized "when the question is one of common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1332 (2008). Class certification is appropriate when there is an "ascertainable class and a well-defined community of interest among class members." *Sav-On*, 34 Cal. 4th at 326. Class treatment is appropriate even if class members at some point may be required to make an individual showing as to eligibility for recovery. *Bufil v. Dollar Financial Group, Inc.*, 162 Cal. App. 4th 1193, 1207 (2008); *Sav-On*, 34 Cal. 4th at 333.

G. The Proposed Settlement Class is Ascertainable and There is a Well-Defined Community of Interest Among Class Members

Whether a class is "ascertainable" within the meaning of Section 382 is "determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members." *Lee v. Dynamex*, 166 Cal. App. 4th 1325, 1334 (2008). Class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records. *Id.*

The community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3) a class representative and counsel who can adequately represent the class.

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Cal. Civ. Proc. Code § 382.

In April of 2012, the California Supreme Court expounded on the element of predominance:

> The "ultimate question" the element of predominance presents is whether "the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants."

Brinker, 53 Cal. 4th at 1021-1022 (citations omitted).

The proposed Settlement Class consists of 1257 individuals, making joinder of all Class Members impracticable. Further, because all Class Members are either current or former employees of Defendant, the class is readily ascertainable from Defendants' regular business records. (Buchsbaum Decl. ¶51)

The California statutes relating to each of Plaintiffs' claims apply with equal force and effect to all Class Members. Factually, Plaintiff claims that Defendants' policies and practices apply class-wide and Defendants' liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class Members. (Buchsbaum Decl. ¶45)

Named Plaintiff's wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Named Plaintiff's interests are entirely coextensive with the interests of the Class. Named Plaintiff was allegedly injured by the same Company-wide practices to which the proposed Settlement Class was subject and seeks the same relief. Named Plaintiff has already demonstrated his ability to advocate for the interests of the Class by initiating this litigation, undertaking extensive class discovery, and evaluating the proposed settlement to ensure that it is fair. (Buchsbaum Decl. ¶46)

Additionally, Plaintiffs are represented by competent counsel who has extensive

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experience in litigating wage and hour class action cases. See Buchsbaum Dec., at §¶1-8. Plaintiffs' Counsel have successfully briefed, argued, certified, and gained court settlement approval of the same class-wide causes of action that are at issue in this case. Plaintiff's Counsel's wage and hour class action expertise establishes they are well qualified to represent the interests of this Class. (Buchsbaum Decl. ¶47)

A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual Class Member's claim, Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication. (Buchsbaum Decl. ¶48)

VI. CONCLUSION

The Parties have negotiated a fair and reasonable settlement of claims. Having appropriately presented the materials and information necessary for final approval, Plaintiff requests that the Court grant final approval of the settlement.

Respectfully Submitted,

Dated: June 23, 2025

LAW OFFICES OF BUCHSBAUM & HAAG,
A Limited Liability Partnership

By: Brent Buchsbaum
Brent Buchsbaum, Attorney for Plaintiffs

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 100 Oceangate, Suite 1200, Long Beach, California 90802.

On June 23, 2025, I served the foregoing document described as:

MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

The true copies thereof were enclosed in a sealed envelope and addressed as follows:

Counsel for Defendants, Wyndham Vacation Ownership, Inc.
KATHY A. LE
KELLI M. DREGER
LAUREN B. SHELBY
JACKSON LEWIS P.C.
200 Spectrum Center Drive, Suite 500
Irvine, California 92618
Tel : (949) 885-1360
Email : Kathy.Le@jacksonlewis.com
Kelli.dreger@jacksonlewis.com
Lauren.shelby@jacksonlewis.com
Stacy.Boura@jacksonlewis.com
Derek.sutter@jacksonlewis.com

___ **BY U.S. MAIL**: By placing a true copy thereof enclosed in a sealed envelope(s) addressed as above, and placing each for collection and mailing on that date following ordinary business practices. I am "readily familiar" with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in ordinary course of business with the U.S. Postal Service in Long Beach, California, in a sealed envelope with postage fully prepaid.

___ **BY OVERNIGHT DELIVERY:** I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed as above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

___ **BY PERSONAL SERVICE**: I caused such envelope(s) to be delivered by hand to the office(s) of the addressee(s). (C.C.P. Section 1011)

___ **BY FACSIMILE:** Based on an agreement of the parties to accept service by fax transmission, I faxed the document(s) to the person(s) at the fax number(s) listed above. The sending facsimile machine issued a transmission report confirming that the transmission was complete and without error.

<u>XX</u> **BY E-MAIL OR ELECTRONIC TRANSMISSION**: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from ***valeries@buchsbaumhaag.com*** to the person(s) at the e-mail address(es) listed above.

<u>XX</u> **STATE** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

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.

Executed, June 23, 2025, at Long Beach, California.

Valerie Siguenza
VALERIE SIGUENZA, Declarant

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