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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

MARCO CARBAJAL, individually, on behalf of
all others similarly situated, and on behalf of the
State of California and other aggrieved
employees,

Plaintiff,

v.

MATTCO FORGE, INC., a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 23STCV12264

CLASS & REPRESENTATIVE ACTION

*[Assigned for all purposes to: Hon. Lawrence
P. Riff, Dept. 7]*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

*[Filed concurrently with: Declaration of
Justin F. Marquez; Declaration of Plaintiff
Marco Carbajal; Declaration of Jill L. Ripke;
Declaration of Andrew Fite; and [Proposed]
Order]*

PRELIMINARY APPROVAL HEARING

Date: October 24, 2024

Time: 11:00 a.m.

Dept: 7

Complaint filed: May 31, 2023

FAC filed: October 20, 2023

Trial date: Not set

TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on October 24, 2024 at 11:00 a.m., in Department 7 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, *et seq.*, Plaintiff Marco Carbajal (“Plaintiff”) will move the Court for an Order granting preliminary approval of the proposed class action settlement between Plaintiff and Defendant Mattco Forge, Inc. (“Defendant”). Plaintiff further moves the Court for an Order:

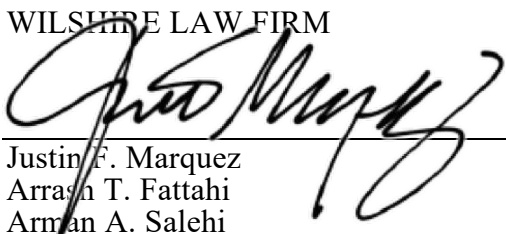
1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement and Class Notice;
2. Certifying a Class for settlement purposes;
3. Approving the Notice and the plan for distribution of the Notice;
4. Appointing Plaintiff Marco Carbajal as Class Representative for settlement purposes;
5. Appointing Plaintiff’s Counsel, Justin F. Marquez, Arrash T. Fattahi, and Arman A. Salehi of Wilshire Law Firm, PLC, as Class Counsel for settlement purposes;
6. Appointing Apex Class Action, LLC as the Settlement Administrator; and
7. Scheduling a final approval hearing.

The motion will be based upon this notice, the attached memorandum of points and authorities, the Declarations of Justin F. Marquez, Plaintiff Marco Carbajal, Jill L. Ripke, and Andrew Fite, filed concurrently herewith, the records and files in this action, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: July 10, 2024

WILSHIRE LAW FIRM

By: 

Justin F. Marquez
Arrash T. Fattahi
Arman A. Salehi

Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Marco Carbajal (“Plaintiff”) seeks preliminary approval of a proposed \$950,000.00
4 non-reversionary, wage and hour class action settlement with Defendant Mattco Forge, Inc.
5 (“Defendant,” and together with Plaintiff, the “Parties”). The Settlement will provide substantial
6 monetary payments to approximately 193¹ class members and constitutes a compromise and
7 settlement of highly disputed claims. And, as set forth more fully below, the proposed Settlement
8 satisfies all the criteria for settlement approval under California law. The Settlement was reached
9 after extensive investigation, discovery, and negotiations. The negotiations were at arms-length and
10 were facilitated by an experienced class action mediator, Hon. Carl J. West (Ret.), over the course
11 of a full day of mediation that was conducted via Zoom. After extensive negotiations and discussions
12 regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses, the Parties
13 reached a settlement on February 20, 2024. Accordingly, Plaintiff requests that the Court
14 preliminarily approve the proposed Settlement, certify the proposed settlement class, approve the
15 proposed notice, and set a final approval hearing.

16 **II. SUMMARY OF THE LITIGATION AND SETTLEMENT**

17 **A. Plaintiff’s Claims**

18 This is a putative wage and hour class action and Private Attorneys General Act
19 (“PAGA”) representative action. Plaintiff and putative class members worked in California as
20 hourly-paid or non-exempt employees for Defendant during the class period. Defendant is in
21 the business of developing, manufacturing, and testing engineered forged metal products for the
22 aerospace, defense, oil & gas, transportation, and power generation industries. (Declaration of
23 Justin F. Marquez in Support of Plaintiff’s Motion for Preliminary Approval of Class Action
24 Settlement [“Marquez Decl.”], ¶ 2.)

25 Plaintiff alleges that Defendant’s payroll, timekeeping, and wage and hour practices
26 _____

27 ¹ This figure was provided to Plaintiff’s counsel on July 8, 2024. Prior to the mediation that took place in
28 February 2024, Plaintiff’s counsel was informed that there were an estimated 178 class members. Given that the
settlement class period extended to April 2024, it was anticipated that the settlement class members would increase.

1 resulted in Labor Code violations. Plaintiff alleges that Defendant failed to pay for all hours
2 worked. Plaintiff further alleges that Defendant failed to provide employees with legally
3 compliant meal and rest periods, and Defendant failed to reimburse business expenses. Based
4 on these allegations, Plaintiff asserts related claims for failure to provide accurate wage
5 statements, failure to pay all final wages at termination, unfair business practices, and civil
6 penalties under PAGA. (*Id.* at ¶ 3.)

7 On May 31, 2023, Plaintiff filed a putative wage and hour class action complaint against
8 Defendant for: (1) failure to pay minimum and straight time wages (Labor Code §§ 204, 1194,
9 1194.2, and 1197); (2) failure to pay overtime wages (Labor Code §§ 1194 and 1198); (3) failure
10 to provide meal periods (Labor Code §§ 226.7 and 512); (4) failure to authorize and permit rest
11 periods (Labor Code §§ 226.7); (5) failure to timely pay final wages at termination (Labor Code
12 §§ 201-203); (6) failure to provide accurate itemized wage statements (Labor Code § 226); (7)
13 failure to indemnify employees for expenditures (Labor Code § 2802); and (8) unfair business
14 practices (Business and Professions Code 17200, *et seq.*). Plaintiff sent a notice to Defendant
15 and the California Labor & Workforce Development Agency (“LWDA”) alleging similar wage
16 and hour violations pursuant to the PAGA on June 21, 2023. On October 20, 2023, Plaintiff
17 filed a First Amended Class & Representative Action Complaint against Defendant adding a
18 claim for civil penalties under the PAGA. (Marquez Decl., ¶ 4.) Defendant disputed all of
19 Plaintiff’s claims.

20 **B. Discovery and Investigation**

21 Following the filing of the initial Complaint, the Parties exchanged documents and
22 information before mediating this action. Defendant produced a sample of time and pay records
23 for class members. Defendant also provided documents of its wage and hour policies and
24 practices during the class period, and information regarding the total number of current and
25 former employees in its informal discovery responses. (*Id.* at ¶ 5.)

26 After reviewing documents regarding Defendant’s wage and hour policies and practices
27 and analyzing Defendant’s timekeeping and payroll records, Class Counsel was able to evaluate
28 the probability of class certification, success on the merits, and Defendant’s maximum monetary

1 exposure for all claims. (*Id.* at ¶ 6.) Class Counsel also investigated the applicable law
2 regarding the claims and defenses asserted in the litigation. (*Id.*) Class Counsel reviewed these
3 records and prepared a damage analysis prior to mediation. (*Id.*)

4 C. Settlement Negotiations

5 On February 20, 2024, the Parties participated in private mediation with experienced
6 class action mediator, Hon. Carl J. West (Ret.). (*Id.* at ¶ 7.) The mediation was conducted via
7 Zoom. The settlement negotiations were at arm's length and, although conducted in a
8 professional manner, were adversarial. The Parties went into the mediation willing to explore
9 the potential for a settlement of the dispute, but each side was also prepared to litigate their
10 position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive
11 negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and
12 Defendant's defenses, the Parties reached a settlement, the material terms of which are
13 encompassed within the Settlement. (*Id.* at ¶ 8, Ex. 1 [Class Action and PAGA Settlement
14 Agreement and Class Notice].)

15 Class Counsel has conducted a thorough investigation into the facts of this case. Based
16 on the foregoing discovery and their own independent investigation and evaluation, Class
17 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
18 interests of the Settlement Class Members in light of all known facts and circumstances, the risk
19 of significant delay, and the defenses that could be asserted by Defendant both to certification
20 and on the merits, trial risk, and appellate risk. (*Id.* at ¶ 16.)

21 Indeed, the \$950,000.00 Settlement represents **81.7%** of the **realistic maximum**
22 **recovery of \$1,163,401.15**. (*Id.* at ¶ 26.) Although Class Counsel estimated that Defendant's
23 maximum potential liability for all claims was approximately \$4.9 million, when the risk of
24 prevailing at certification and trial are factored into the equation, Class Counsel believes that
25 Defendant's realistic exposure was \$1,163,401.15, meaning the Settlement achieves a
26 significant recovery. (*Id.* at ¶¶ 16-30.) Considering the risk and uncertainty of prevailing at
27 class certification and at trial, this is an excellent result for the Class. (*Id.* at ¶ 26.) Indeed,
28 because of the proposed Settlement, class members will receive timely, guaranteed relief and

will avoid the risk of an unfavorable judgment.

D. Key Terms of the Proposed Settlement

The Parties used the Los Angeles County’s Superior Court’s Form Class Action and PAGA Settlement Agreement and Class Notice. A document showing edits the Parties made to the template in redline is attached to the Declaration of Justin F. Marquez as Exhibit 2. The Settlement’s key terms include:

1. Class Definition: For settlement purposes only, the Parties agree to the certification of a class pursuant to California Code of Civil Procedure § 382 defined as: “all persons employed by Mattco in California and classified as an hourly-paid, non-exempt employee during the Class Period.” (Settlement, § 1.5.)

2. Class Period: “means the period from May 31, 2019 to April 20, 2024.” (Settlement, § 1.12.)

3. Participating Class Members: “means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.” (Settlement, § 1.35.)

4. Aggrieved Employees: “means a person employed by Mattco in California and classified as an hourly-paid, nonexempt employee who worked for Mattco during the PAGA Period.” (Settlement, § 1.4.)

5. PAGA Period: “means the period from May 31, 2022 to April 20, 2024.” (Settlement, § 1.31.)

6. Gross Settlement Amount: This amount is \$950,000.00, for all claims, including Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, the Class Representative’s Service Payment, and the Administrator’s Expenses. (Settlement, § 1.22.)

7. Uncashed Checks: “For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after one hundred and eighty (180) calendar days from the date the check is issued, such check(s) will be voided by the Administrator, and the Administrator shall transmit the funds to the California Controller’s Unclaimed Property

1 Fund in the name of the Class Member, thereby leaving no “unpaid residue” subject to California
2 Code of Civil Procedure Section 384, subd. (b).” (Settlement, § 4.3.3.)

3 8. Release by Participating Class Members: “All Participating Class Members, on
4 behalf of themselves and their respective former and present representatives, agents, attorneys,
5 heirs, administrators, successors, and assigns, release Released Parties from any and all claims,
6 rights, demands, liabilities, and causes of action, whether statutory, in tort, contract or otherwise,
7 whether known or unknown, arising during the Class Period, that were asserted, or could have been
8 alleged, based on the facts pleaded in the Operative Complaint and/or PAGA Notice sent to the
9 LWDA, and/or ascertained in the course of the Action including but not limited to any and all
10 claims for: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages;
11 (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to
12 timely pay final wages at termination; (6) failure to provide accurate itemized wage statements;
13 (7) failure to indemnify employees for expenditures; and (8) violation of California’s Unfair
14 Competition Law, California Business and Professions Code §§ 17200, *et seq.* Except as set forth
15 in Section 5.3 of this Agreement [the Release by Aggrieved Employees], Participating Class
16 Members do not release any other claims, including claims for vested benefits, wrongful
17 termination, violation of the Fair Employment and Housing Act, unemployment insurance,
18 disability, social security, workers’ compensation, or claims occurring outside the Class Period.”
19 (Settlement, § 5.2.) This Release will be deemed effective on the date when Defendant fully funds
20 the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage
21 Portion of the Individual Class Payments. (Settlement, § 5.)

22 9. Release by Aggrieved Employees: “The State of California and all Aggrieved
23 Employees, including, all Non-Participating Class Members who are Aggrieved Employees are
24 deemed to release, on behalf of themselves and their respective former and present representatives,
25 agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all
26 claims for PAGA penalties (that occurred during the PAGA Period) that were asserted or could
27 have been asserted, based on the facts pleaded in the Operative Complaint, and/or the PAGA
28 Notice and /or ascertained in the course of the Action, including but not limited to any and all

PAGA claims for: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; and (7) failure to indemnify employees for expenditures.” (Settlement, § 5.3.)

10. No Reversion: “None of the Gross Settlement Amount will revert to Mattco.” (Settlement, § 3.1.)

11. PAGA Allocation: The settlement includes \$25,000.00 allocated to Plaintiff’s claims under PAGA, with 75% of which (\$18,750.00) being paid to the LWDA and 25% (\$6,250.00) being paid to the Aggrieved Employees. (Settlement, § 1.34.) Class Counsel submitted the proposed settlement to the LWDA before filing this Motion for Preliminary Approval. (Marquez Decl., ¶ 10.)

12. Net Settlement Amount: The “Net Settlement Amount” is the amount that remains and that shall be paid to Settlement Class Members after the following amounts are subtracted: Individual PAGA Payments, the LWDA PAGA Payment, the Class Representative’s Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. (Settlement, § 1.28.)

13. Distribution Formula: “An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member’s Workweeks.” (Settlement, § 3.2.4.) As to PAGA: “The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties (\$6,250.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Period Pay Periods.” (Settlement, § 3.2.5.1.)

14. Tax Allocation: Any settlement money paid to Settlement Class Members will be allocated as 20% wages and 80% to penalties and interest. (Settlement, § 3.2.4.1.)

15. Class Representative Service Award: Subject to Court approval, Plaintiff shall be paid an enhancement award not to exceed \$10,000.00. (Settlement, § 3.2.1.) This amount is for

1 Plaintiff's time and effort in bringing and presenting the action, and in exchange for a general
2 release of all claims, known or unknown, pursuant to Civil Code Section 1542. (Settlement, § 5.1.)
3 If the Court approves a lesser enhancement, then the unapproved portion or portions shall revert
4 into the Net Settlement Amount to be distributed between the Participating Class Members on a
5 pro-rata basis. (Settlement, § 3.2.1.)

6 16. Attorneys' Fees and Costs: The Settlement provides that Defendant will not oppose
7 a fee application of up to 1/3 (\$316,666.67) of the Gross Settlement Amount, plus out-of-pocket
8 costs not to exceed \$25,000.00. (Settlement, § 3.2.2.)

9 17. Notice of Proposed Class Action Settlement: The Notice sets forth in plain terms, a
10 statement of the case, the terms of the Settlement Agreement, the approximate amount of attorneys'
11 fees, costs, and service award being sought, and an explanation of how the settlement allocations
12 are calculated. (Settlement, Ex. A, Class Notice.) Class Members will be notified by first-class
13 mail of the settlement. (Settlement, § 7.4.) Apex Class Action, LLC, the proposed Settlement
14 Administrator, will undertake its best efforts to ensure that the notice is provided to the current
15 addresses of class members, including conducting a national change of address search and re-
16 mailing the notice to updated addresses. (*Id.*; Marquez Decl., ¶ 11, Ex. 3 [Settlement Administrator
17 Bid].)

18 18. Settlement Administrator: The Settlement provides that the administrator will be
19 paid an amount not to exceed \$10,000.00. (Settlement § 3.2.3.)

20 **III. DISCUSSION**

21 To prevent fraud, collusion, or unfairness to the class, the settlement of a class action
22 requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) This
23 Court has wide discretion to determine whether the proposed settlement is fair. (*Mallick v. Super.*
24 *Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness is presumed when: (1) the settlement is reached
25 through arm's-length bargaining; (2) investigation is sufficient to allow counsel and the court to
26 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
27 is small. (*Dunk*, 48 Cal.App.4th at p. 1800.)

28 In considering whether a settlement is reasonable, the trial court should consider relevant

factors, which may include the strength of plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App.4th 116, 128.) In order to approve a class action settlement, the court must satisfy itself that the class settlement is within the "ballpark" of reasonableness. (*Id.* at p. 133.) The record need not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not require "an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims", but instead, only an "understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."].)

As discussed below, Class Counsel has provided information exceeding the threshold required to provide this Court with materials and information necessary to determine that the proposed settlement is fair, adequate, and reasonable.

A. The Settlement Is Fair, Reasonable, Adequate, and the Product of Investigation, Litigation, and Negotiation

1. The Settlement Is the Product of Discovery, Investigation, and Informed and Non-Collusive Arm's-Length Negotiations

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 here that the negotiations were conducted in good faith. (Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 11.51.) Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 ["The fact that a plaintiff might have received more if the case had been fully litigated is no reason not to approve the settlement."].)

The Settlement was reached following extensive negotiations following one day of mediation with experienced employment mediator, Hon. Carl J. West (Ret.). (Marquez Decl., ¶

7.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their or its position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties reached an agreement. (Marquez Decl., ¶ 8.)

Prior to reaching this settlement, Class Counsel conducted informal discovery concerning the claims set forth in the litigation, such as a sample of class member timekeeping and payroll records, Defendant's policies and procedures concerning the payment of wages, the provision of meal and rest breaks, issuance of wage statements, and providing all wages at separation, as well as information regarding the number of putative class members and the mix of current versus former employees, the wage rates in effect, and the amount of meal and rest period premium wages paid to class members. (*Id.* at ¶¶ 5-6.) In conjunction with their extensive factual investigation, Class Counsel investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Thus, Plaintiff and his counsel were able to act intelligently and effectively in negotiating the proposed Settlement. (*Id.*)

Class Counsel also has considerable experience and has demonstrated competence with litigating wage and hour class actions. (*Id.* at ¶¶ 41-53.) Again, this supports the position that the terms of the Settlement are premised on objective evidence that has been considered and weighed in light of the risks, expenses, and time consumption to both sides of continued litigation of this action.

2. The Settlement Is Fair and Reasonable in Light of the Parties' Respective Legal Positions

A settlement is not judged against what might plaintiff recover had he prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250 ["Compromise is inherent and necessary in the settlement process . . . even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no

1 bar to a class settlement because the public interest may indeed be served by a voluntary settlement
2 in which each side gives ground in the interest of avoiding litigation.”].)

3 This settlement avoids the risks and the accompanying expense of further litigation.
4 (Marquez Decl., ¶ 28.) While Plaintiff is confident in the merits of his claims, a legitimate
5 controversy exists as to each cause of action. (*Id.* at ¶ 27.) Plaintiff also recognizes that proving
6 the amount of wages due to each class member would be an expensive, time-consuming, and
7 uncertain proposition. (*Id.*)

8 The proposed settlement of \$950,000.00 therefore represents a substantial recovery when
9 compared to Plaintiff’s reasonably forecasted recovery. (*Id.* at ¶¶ 16-30.) Because of the proposed
10 Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an
11 unfavorable judgment. When considering the risks of litigation, the uncertainties involved in
12 achieving class certification, the burdens of proof necessary to establish liability, the probability
13 of appeal of a favorable judgment, it is clear that the settlement amount of \$950,000.00 is within
14 the “ballpark” of reasonableness, and preliminary settlement approval is appropriate. (*Id.*) ***Indeed,***
15 ***each Settlement Class Member is eligible to receive an average net benefit of approximately***
16 ***\$2,938.79.*** (*Id.* at ¶ 29.)

17 **3. Class Counsel Has Extensive Experience in Class Action Litigation**

18 The settlement negotiations were conducted by highly capable and experienced counsel.
19 Class Counsel have a strong record of vigorous and effective advocacy for their clients and are
20 experienced in handling complex wage and hour class action litigation. (Marquez Decl., ¶¶ 41-
21 53.) Although Plaintiff and his counsel were prepared to litigate the claims alleged in the litigation,
22 they support the proposed Settlement as being in the best interests of the class.

23 **B. The Proposed Class Notice of Settlement Should Be Approved**

24 The proposed Notice, in the form attached to the Settlement Agreement, should be approved
25 for dissemination to the class. The Notice informs the class of the terms of the settlement and of
26 their rights to be excluded from the settlement. And if there are class members who wish to object
27 to this proposed class action settlement, they will have the opportunity to file their objections and
28

1 be heard at the Final Approval Hearing. Accordingly, the proposed Notice meets all the
2 requirements of Rule 3.769(f) of the California Rules of Court.

3 **C. The Proposed Attorneys' Fees and Costs Are Reasonable**

4 Under the Settlement, subject to the Court's approval, a Class Counsel Fees Payment for
5 reasonable attorneys' fees in amount of \$316,666.67, which 1/3 of the Gross Settlement Amount,
6 is sought to be paid to Class Counsel out of the Gross Settlement Amount. In addition, Class
7 Counsel seeks a Class Counsel Litigation Expense Payment of up to \$25,000.00 in costs from the
8 Gross Settlement Amount. These amounts are disclosed to all class members in the proposed
9 Notice and are reasonable. Defendant does not dispute these amounts for purposes of settlement.

10 **1. Class Counsel Request an Award of Fees Based on the "Common Fund"**
11 **Method**

12 California courts have long awarded attorneys' fees as a percentage of the benefit created
13 by counsel in creating a common fund. The California Supreme Court held that "when a number
14 of persons is entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs
15 for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs
16 may be awarded attorneys' fees out of the fund." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34,
17 quoting *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1.)

18 Class Counsel seeks an award of attorneys' fees on the "percentage of recovery/ common
19 fund" theory. The purpose of this approach is to "spread litigation costs proportionally among all
20 the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v.*
21 *Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1995)
22 15 Cal.3d 162, the California Supreme Court stated: "[O]ne who expends attorneys' fees in
23 winning a suit which creates a fund from which others derive benefits may require those passive
24 beneficiaries to bear a fair share of the litigation costs." (*Id.* at p. 167.) Similarly, in *City and*
25 *County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized
26 that the common fund doctrine has been applied "consistently in California when an action brought
27 by one party creates a fund in which other persons are entitled to share." (*Id.* at p. 110.)

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1 The California Supreme Court affirmed in *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th
2 480 that, “when class action litigation establishes a monetary fund for the benefit of the class
3 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
4 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
5 fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage
6 method—including relative ease of calculation, alignment of incentives between counsel and the
7 class, a better approximation of market conditions in a contingency case, and the encouragement
8 it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—
9 convince us the percentage method is a valuable tool that should not be denied our trial courts.”
10 (*Id.* [internal citations omitted].)

11 **2. The Requested Fee Award Is in Line with Typical Cases**

12 According to a leading treatise on class actions, “[n]o general rule can be articulated on
13 what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on
14 a reasonable fee award from a common fund in order to assure that the fees do not consume a
15 disproportionate part of the recovery obtained for the class, although somewhat larger percentages
16 are not unprecedented.” (*See Conte & Newberg, Newberg on Class Actions* (3rd Ed.) § 14.03.)
17 Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with thirty
18 to forty percent commonly awarded in cases where the settlement is relatively small. (*Id.*; *see also*
19 *Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most
20 cases where 30-50 percent was awarded involved “smaller” settlement funds of under \$10
21 million].)

22 Here, Plaintiff requests attorneys’ fees equal to 1/3 of the Gross Settlement Amount, which
23 is in line with the prevailing guidelines established in California case law and academic literature
24 and is consistent with awards in California. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th
25 43, 66, n.11 [“Empirical studies show that, regardless whether the percentage method or the
26 lodestar method is used, fee awards in class actions average around one-third of the recovery.”].)
27 Accordingly, Plaintiff respectfully requests that the Court preliminarily approve the attorneys’ fees
28 as negotiated by the Parties and requested herein.

1 **3. This Matter Involves A “Fee-Shifting” Provision of the Labor Code**

2 Labor Code § 1194 (a) provides for the recovery of “minimum wage or overtime
3 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Under this
4 section, Plaintiff would be permitted to recover his actual attorneys’ fees, even if those fees were
5 larger than the total class recovery at the conclusion of this case. This settlement is beneficial in
6 that it limits the risk of continued expenses and consumption of time, energy, and resources facing
7 Defendant while at the same time rewarding Class Counsel for their decision to assume risk by
8 taking on this matter. In fact, prosecution of this action involved significant financial risk for Class
9 Counsel. (Marquez Decl., ¶¶ 39-40.) Class Counsel undertook this matter solely on a contingent
10 basis, with no guarantee of recovery. (*Id.*) Once counsel undertook this litigation on behalf of the
11 Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class
12 ahead of all other concerns.

13 **4. The Experience, Reputation and Ability of Class Counsel Support the**
14 **Requested Fee Award**

15 As demonstrated by their past experience in pursuing class actions on behalf of consumers
16 and employees, Class Counsel possess considerable expertise in litigating class actions. (Marquez
17 Decl., ¶¶ 41-53.) Class Counsel has been involved as lead counsel or co-counsel in several class
18 actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate class
19 counsel commensurate with their skill, reputation and experience, Class Counsel’s requested fee
20 award is supported here.

21 Class Counsel’s experience in wage and hour class actions was integral in evaluating the
22 strengths and weaknesses of the case against Defendant and the reasonableness of the settlement.
23 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning
24 the rapidly evolving substantive law (state and federal), as well as the procedural law of class
25 action litigation. Based on these and other factors, Class Counsel has frequently received fee
26 awards of this percentage from the gross recovery for the class. Therefore, the requested fee award
27 is reasonable and fair.

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1 **D. The PAGA Allocation is Reasonable**

2 Where settlements negotiate a good faith amount for PAGA penalties and “there is no
3 indication that this amount was the result of self-interest at the expense of other” class members,
4 such amounts are generally considered reasonable. (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr.
5 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133 at *1, 9.) Courts have approved amounts for
6 PAGA penalties in the range of zero to two percent of the total maximum amount of the Settlement.
7 (*Id.* [approving a PAGA payment of 0.3%, or \$1,500]; *see also Jack v. Hartford Fire Ins. Co.* (S.D.
8 Cal. Oct. 13, 2011) 2011 WL 4899942 at *6 [approving a PAGA payment of 0.25%]; *McKenzie v.*
9 *Fed. Express Corp.* (C.D. Cal. Jan. 23, 2012) 2012 WL 12882124 at *5 [acknowledging that courts
10 approve PAGA claim settlements in the range of zero to two percent of the total settlement].) Here,
11 the amount to be paid to the LWDA is larger than many other PAGA settlement amounts approved
12 by the courts where seemingly nominal amounts were allocated for such claims. (*See, e.g., Zubia*
13 *v. Shamrock Foods Co.* (C.D. Cal. Dec. 21, 2017) No. CV1603128ABAGRX, 2017 WL 10541431,
14 at *14 [approving a PAGA settlement of 0.1%]; *Hopson*, 2008 WL 3385452 at *1 [approving a
15 PAGA settlement of 0.3% or \$1,500]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal. Oct. 31, 2012)
16 No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at *3 [approving a PAGA settlement of
17 0.27%].) Here, the Parties negotiated a good faith amount of \$25,000.00, 75% percent of which
18 (\$18,750.00) will be paid to the LWDA and 25% (\$6,250.00) to be distributed to the Aggrieved
19 Employees. (Settlement, §1.34.) The \$25,000.00 settlement amount equates to approximately
20 2.6% of the Gross Settlement Amount, which far exceeds amounts that are routinely approved.
21 The Parties negotiated to allocate 2.6% of the Settlement to PAGA penalties in good faith and this
22 amount is reasonable considering that the maximum PAGA penalties were estimated by Plaintiff’s
23 counsel at \$736,300.00 (which assumed \$100 per pay period). (Marquez Decl., ¶ 25.)

24 **E. The Service Award to Named Plaintiff Is Reasonable**

25 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
26 compensate them for the expense or risk they have incurred in conferring a benefit on other
27 members of the class.” (*Munoz, supra*, 86 Cal.App.4th at p. 412.) Courts routinely grant approval
28 of class action settlement agreements containing enhancements for the class representatives, which

1 are necessary to provide incentive to represent the class, and are appropriate given the benefit the
2 class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp.* (9th Cir.
3 2009) 563 F.3d 948, 958-59.)

4 Service awards are particularly important to plaintiffs in wage and hour cases because they
5 promote the important public policies underlying the wage and hour laws. This strong policy is
6 codified in California Labor Code § 90.5, which provides, “it is the policy of this state to vigorously
7 enforce minimum labor standards in order to ensure employees are not required or permitted to
8 work under substandard unlawful conditions” Nonetheless, the California Supreme Court has
9 noted that “retaliation against employees for asserting statutory rights under the Labor Code is
10 widespread,” despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.*
11 (2007) 42 Cal.4th 443, 460-61.) In this context, class representatives should be rewarded for
12 assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman Kodak Co.*
13 (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

14 Under the settlement agreement, subject to the Court’s approval, a Service Award is sought
15 to be paid from the Gross Settlement Amount in the amount of \$10,000.00 to Plaintiff. This amount
16 is also in exchange for Plaintiff’s general release of all claims against Defendant. Courts routinely
17 approve a \$10,000 enhancement award for plaintiffs represented by Class Counsel. (*See, e.g.,*
18 *Moreno v. Pretium Packaging, L.L.C.* (C.D. Cal. Aug. 6, 2021) 2021 WL 3673845, *3 [“The Court
19 concludes a \$10,000 incentive award is appropriate.”]; *Suarez v. Bank of America, National*
20 *Association* (N.D. Cal., Jan. 11, 2024, No. 18-CV-01202-LB) 2024 WL 150721, at *4 [“The court
21 approves awards of \$10,000 for each class representative.”].) Class Counsel represent that Plaintiff
22 devoted a great deal of time and work assisting counsel in the case, communicated with counsel
23 very frequently for litigation and to prepare for mediation, and was frequently in contact with Class
24 Counsel during the mediation. (Marquez Decl., ¶¶ 31-35.) This amount is reasonable particularly
25 in light of the substantial benefits Plaintiff generated for all class members. (*Id.*) Indeed, in *Karl*
26 *Adams, III, et al. v. MarketStar Corporation, et al.*, No. 2:14-cv-02509-TLN-DB, Class Counsel
27 Justin F. Marquez helped negotiate a \$2.5 million class action settlement for 339 class members,
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1 and the court approved a \$25,000 class representative incentive award for each named plaintiff.
2 (Marquez Decl., ¶ 35.)

3 When compared with the amounts awarded in typical class action cases, the amount
4 requested here is particularly reasonable. Indeed, a **2006** study examining the average incentive
5 award given to class action plaintiffs from **1993 to 2002** found that the “average award per class
6 representative was \$15,992 and the median award per class representative was \$4,357.” (Eisenberg
7 & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L.Rev.
8 1303, 1308.) That same study found that named plaintiffs in employment discrimination class
9 actions received an average award of \$69,850 and a median award of \$31,081, while named
10 plaintiffs in other employment class actions received an average award of \$12,121 and a median
11 award of \$13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards in
12 employment cases reflected the “courts’ wish to make representative plaintiffs whole by
13 compensating them for the high costs of their service to the class, including risks of stigmatization
14 or retaliation on the job.” (*Id.* at p. 1308.)

15 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

16 **A. Legal Standard**

17 The proposed Settlement Class is well suited for class certification. All of the claims derive
18 from a core set of alleged violations of California’s wage and hour laws and regulations. For the
19 reasons set forth more fully below, for purposes of settlement only, the Class satisfies the
20 prerequisites for certification under Code of Civil Procedure § 382. Section 382 provides: “when
21 the question is one of a common or general interest, of many persons, or when the parties are
22 numerous, and it is impracticable to bring them all before the court, one or more may sue or defend
23 for the benefit of all.” (Code Civ. Proc., § 382.) There are two requirements to section 382: “(1)
24 There must be an ascertainable class; and (2) there must be a well-defined community of interest
25 in the questions of law and fact involved affecting the parties to be represented.” (*Daar v. Yellow*
26 *Cab Co.* (1967) 67 Cal. 2d 695, 704 [citations omitted].) To clarify these requirements, the
27 California Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that the
28 community-of-interest requirement itself embodies three factors: “(1) predominant questions of

1 law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class
2 representatives who can adequately represent the class.” (*Richmond v. Dart Indus., Inc.* (1981) 29
3 Cal. 3d 462, 470.)

4 California law and policy favor the fullest and most flexible use of the class action device.
5 (*Id.* at pp. 469-73.) Indeed, “Courts long have acknowledged the importance of class actions as a
6 means to prevent a failure of justice in our judicial system” particularly where the rights of
7 consumers are at issue. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434.) Any doubt as to
8 the appropriateness of class treatment should be resolved in favor of certification. (*Richmond*,
9 *supra*, 29 Cal.3d at pp. 473-75.)

10 **B. Plaintiff Maintains That the Criteria for Class Certification Are Satisfied for**
11 **Settlement Purposes.**

12 **1. The Classes Are Ascertainable and Numerous**

13 The proposed class that Plaintiff seeks to represent is easily ascertainable and includes
14 approximately 193 employees or former employees of Defendant.

15 Plaintiff maintains that there is an easily ascertainable class, defined by objective and
16 precise criteria. Because class members are identified using specific criteria in the regular business
17 records of Defendant, i.e., job position, the class is ascertainable. (*Wilner v. Sunset Life Ins. Co.*
18 (2000) 78 Cal.App.4th 952, 959-60 [class membership defined by ownership of product that is the
19 subject of the lawsuit is sufficient to make the class ascertainable].)

20 “The requirement of Code of Civil Procedure section 382 that there be ‘many’ parties to a
21 class action suit is indefinite and has been construed liberally.” (*Rose v. City of Hayward* (1981)
22 126 Cal.App.3d 926, 934.) “Where a question is of common interest to ‘many’ persons, an action
23 may be maintained as a class action even where the parties are numerous and it is in fact practicable
24 to join them all.” (*Id.*) “No set number is required as a matter of law for the maintenance of a
25 class action.” (*Id.*) “Thus, our Supreme Court has upheld a class representing the 10 beneficiaries
26 of a trust in an action for removal of the trustees.” (*Id.*, citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d
27 574; *see also Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding a 35 member class.]) Therefore,
28 Plaintiff contends that numerosity is plainly satisfied for settlement purposes.

1 **2. There are Many Common Issues of Law and Fact Which Predominate**

2 The Court should grant conditional class certification for settlement purposes here on the
3 grounds that questions of law and fact common to all class and subclass predominate over any
4 individual questions. This inquiry tests whether proposed classes are sufficiently cohesive to
5 warrant adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191
6 Cal.App.3d 605.)

7 Here, the employment practices at issue are: whether Defendant had legally compliant
8 policies and practices for pay employees for all hours worked, including overtime wages, as a
9 result of employees working off-the-clock; whether Defendant included non-discretionary
10 remuneration in overtime payments for employees; whether Defendant had legally compliant
11 policies and practices to provide employees with meal periods; whether Defendant had legally
12 compliant policies and practices authorizing and permitting its employees to take rest periods;
13 whether Defendant reimbursed employees for business expenses; whether final payment of wages
14 was untimely and excluded unpaid wages, including meal and rest period premium wages; and
15 whether the wage statements were consequently non-compliant. Plaintiff contends that the factual
16 and legal issues are the same for all of the identified class members, including Plaintiff. Further,
17 all class members suffered from, and seek redress for, the same alleged injuries. For settlement
18 purposes only, Defendant does not dispute commonality.

19 **3. Plaintiff's Claims Are Typical of the Claims of the Class**

20 The typicality requirement does not focus on the individual characteristics or circumstances
21 of the representative plaintiff compared to those of the remainder of the class, but rather upon the
22 typicality of the proposed representative's claims as they relate to the defendant's conduct and
23 activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["[t]he only requirements are that
24 common questions of law and fact predominate and that the class representative be similarly
25 situated" vis-à-vis the class.].) A representative plaintiff's claims are typical of the class if they
26 arise from the same event, practice or course of conduct, and if the claims rest on the same legal
27 theories. (*Id.*) That is precisely the case here. Plaintiff is a former employee of Defendant; as
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1 such, he alleges that he was subject to the same policies and practices as other similarly situated
2 employees. For settlement purposes only, Defendant does not dispute typicality.

3 **4. Plaintiff and His Counsel Meet the Adequacy Requirement**

4 The adequacy of representation requirements is met by fulfilling two conditions: first, a
5 named plaintiff must be represented by counsel qualified to conduct the pending litigation; second,
6 a named plaintiff's interests cannot be antagonistic to those of the class. (*McGhee v. Bank of*
7 *America* (1976) 60 Cal.App.3d 442, 451.)

8 All of these requirements are met here for settlement purposes. Plaintiff retained counsel
9 with extensive experience in prosecuting complex class actions, including similar class actions that
10 previously settled. (Marquez Decl., ¶¶ 41-53.) Class Counsel unquestionably is "qualified,
11 experienced and generally able to conduct the proposed litigation." (*Miller v. Woods* (1983) 148
12 Cal.App.3d 862, 875.) In addition, Plaintiff has no conflicts, and Plaintiff has, with counsel,
13 litigated this case and diligently reviewed the settlement terms, showing his dedication. Plaintiff's
14 willingness to serve as a representative demonstrates his serious commitment to bringing about the
15 best results possible for the class. (*McGhee, supra*, 60 Cal.App.3d at p. 451.) For settlement
16 purposes, Defendant does not dispute adequacy.

17 **5. A Class Action is Superior to a Multiplicity of Litigation**

18 Finally, in making its class certification decision, the Court must determine that a class
19 action would be superior to alternative means for the fair and efficient adjudication of the litigation.
20 By consolidating many potential individual actions into a single proceeding, this Court's use of the
21 class action device enables it to manage this litigation in a manner that serves the economics of
22 time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly-
23 situated employees with small but nevertheless meritorious claims for damages would, as a
24 practical matter, have no means of redress because of the time, effort and expense required to
25 prosecute individual actions. (*Gentry, supra*, 42 Cal. 4th 443, 457-62; *Leyva v. Medline Ind.* (9th
26 Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the superiority concerns
27 are essentially non-existent.

28 ///

1 **V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND**

2 **A. The Proposed Notice Plan Satisfies Due Process**

3 Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court,
4 Rule 3.766 (e), (f).) California law vests the Court with broad discretion in fashioning an
5 appropriate notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no
6 statutory or due process requirement that all class members receive actual notice, but in this matter,
7 the class members will receive direct mailed notice. As the Court of Appeals has explained, “[t]he
8 notice given should have a reasonable chance of reaching a substantial percentage of the Class
9 Members” (*Id.* at p. 974.) In this case, notice of the proposed settlement will be provided
10 by direct mailing, the best possible form of notice.

11 **B. The Notice is Accurate and Informative**

12 The proposed Notice should be approved. It will be disseminated through direct U.S. first
13 class mail to the last known address for each Class Member. It informs the Class Members of the
14 terms of the settlement and their right to be excluded from the Settlement. And if there are Class
15 Members who wish to object to this proposed class action settlement, they will have the
16 opportunity to file their objections and be heard at the Final Approval Hearing.

17 The Notice also fulfills the requirement of neutrality in class notices. (Conte & Newberg,
18 *Newberg on Class Actions* (3rd Ed.) § 8.39.) It summarizes the proceedings to date and the
19 terms and conditions of the settlement agreement, in an informative and coherent manner. It
20 makes clear that the settlement agreement does not constitute an admission of liability by the
21 Defendant, who denies all liability, and it recognizes that this Court has not ruled on the merits
22 of the action. It also states that the final settlement approval decision has yet to be made. The
23 Notice thus complies with the standards of fairness, completeness, and neutrality required of a
24 combined settlement-certification class notice.

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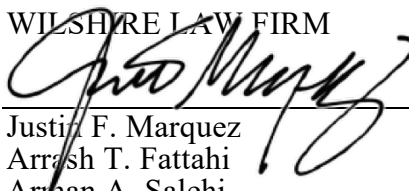
1 **VI. CONCLUSION**

2 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
3 approval of the proposed settlement and set a Final Approval Hearing on March 2025.

4
5
6 Dated: July 10, 2024

Respectfully submitted,

WILSHIRE LAW FIRM

7 By:  _____

8 Justin F. Marquez
Arrash T. Fattahi
Arman A. Salehi

9 Attorneys for Plaintiff
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Carbajal v. Mattco Forge, Inc., et al.
23STCV12264

I, Zeyra Ceballos, am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is 15707 Rockfield Blvd., Suite 250, Irvine, California 92618. My electronic service address is zeyra.ceballos@wilshirelawfirm.com.

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(X) **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service **CASEANYWHERE**.

Executed this **July 10, 2024**, at Irvine, California.


Zeyra Ceballos