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

FERNANDO ALBERTO ACEVEDO,
ANTHONY GUZMAN, FERNANDO
HIPOLITO, and VANESSA OLMOS-CORTES,
individually, on behalf of all others similarly
situated, and on behalf of the State of California
and other aggrieved persons,

Plaintiffs,

v.

CROCS RETAIL, LLC, a limited liability
company; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 23STCV15354

CLASS & REPRESENTATIVE ACTION

[Assigned to: Hon. Elihu M. Berle, Dept. 6]

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

[Filed concurrently with: Declaration of
Arrash T. Fattahi; Declaration of Plaintiff
Fernando Alberto Acevedo; Declaration of
Plaintiff Anthony Guzman; Declaration of
Plaintiff Fernando Hipolito; Declaration of
Plaintiff Vanessa Olmos-Cortes; Declaration
of Julie Green of CPT Group, Inc.; Declaration
of Stanley Stringfellow; and [Proposed] Order]

PRELIMINARY APPROVAL HEARING

Date: January 17, 2025

Time: 11:00 a.m.

Dept: 6

Complaint filed: June 30, 2023

FAC filed: December 20, 2024

Trial date: Not set

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

2 PLEASE TAKE NOTICE that on January 17, 2025, at 11:00 a.m., in Department 6 of the
3 Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012,
4 pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769 *et seq.*, Plaintiffs
5 Fernando Alberto Acevedo, Anthony Guzman, Fernando Hipolito, and Vanessa Olmos-Cortes
6 (collectively, “Plaintiffs”) will move the Court for an Order granting preliminary approval of the
7 proposed class action settlement between Plaintiffs and Defendant Crocs Retail, LLC (“Defendant”
8 or “Crocs”). Plaintiffs further move the Court for an Order:

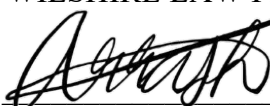
- 9 1. Granting preliminary approval of the Class Action and PAGA Settlement Agreement;
10 2. Certifying a Class for settlement purposes;
11 3. Approving the Notice and the plan for distribution of the Notice;
12 4. Appointing Plaintiffs as Class Representatives for settlement purposes;
13 5. Appointing Plaintiffs’ Counsel, Arrash T. Fattahi and Arman A. Salehi, of Wilshire
14 Law Firm, PLC, as Class Counsel for settlement purposes;
15 6. Appointing CPT Group, Inc., as the Settlement Administrator; and
16 7. Scheduling a final approval hearing.

17 The Motion will be based upon this notice, the attached memorandum of points and
18 authorities, the Declarations of Arrash T. Fattahi, Plaintiffs Fernando Alberto Acevedo, Anthony
19 Guzman, Fernando Hipolito, and Vanessa Olmos-Cortes, Julie Green of CPT Group, Inc., and
20 Stanley Stringfellow, filed concurrently herewith, the records and files in this action, and any other
21 or further evidence or argument that the Court may properly receive at or before the hearing.

22 Respectfully submitted,

23 Dated: December 23, 2024

WILSHIRE LAW FIRM

24
25 By: 

Arrash T. Fattahi
Arman A. Salehi

26
27 Attorneys for Plaintiffs
28

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Fernando Alberto Acevedo, Anthony Guzman, Fernando Hipolito, and Vanessa Olmos-Cortes (collectively “Plaintiffs”) seek preliminary approval of a proposed \$1,000,000.00 non-reversionary, wage and hour class action settlement with Defendant Crocs Retail, LLC (“Defendant” or “Crocs,” and together with Plaintiffs, the “Parties”). The Settlement will provide substantial monetary payments to approximately 1,886 class members. And, as set forth more fully below, the proposed Settlement satisfies all criteria for settlement approval under California law. The Settlement was reached after extensive investigation, discovery, and negotiations. The negotiations were at arms-length and were facilitated by an experienced class action mediator, Steve Rottman, Esq., over the course of a full day of mediation that was conducted via Zoom. After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiffs’ claims and Defendant’s defenses, the Parties reached a settlement in May 2024. Accordingly, Plaintiffs request that the Court preliminarily approve the proposed Settlement, certify the proposed settlement class, approve the proposed notice, and set a final approval hearing.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs’ Claims

This is a wage and hour class and Private Attorneys General Act (“PAGA”) (Cal. Lab. Code § 2699 *et seq.*) representative action. Plaintiffs and putative class members worked in California as hourly-paid or non-exempt employees for Defendant during the class period. Defendant is a world leader in innovative casual footwear for women, men, and children, whose products are sold in more than 85 countries. (Declaration of Arrash T. Fattahi in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement [“Fattahi Decl.”], ¶ 2.)

Plaintiffs allege that Defendant’s payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. Plaintiffs allege that Defendant failed to pay for all hours worked. Plaintiffs further allege that Defendant failed to provide employees with legally compliant meal and rest periods, and Defendant failed to reimburse business expenses. Based on these allegations, Plaintiffs assert related claims for failure to provide accurate wage

1 statements, failure to pay all final wages at termination, unfair business practices, and civil
2 penalties under PAGA. (*Id.* at ¶ 3.)

3 On June 30, 2023, Plaintiff Acevedo filed a putative wage and hour class action
4 complaint against Defendant for: (1) failure to pay minimum and straight time wages; (2) failure
5 to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit
6 rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate
7 itemized wage statements; (7) failure to indemnify employees for expenditures; and (8) unfair
8 business practices. (Fattahi Decl., ¶ 4.) On December 20, 2024, Plaintiff Acevedo filed a First
9 Amended Class & Representative Action Complaint adding a PAGA cause of action and
10 Plaintiffs Anthony Guzman, Fernando Hipolito, and Vanessa Olmos-Cortes as named plaintiffs
11 to the matter.¹ (*Id.*)

12 **B. Discovery and Investigation**

13 Following the filing of the initial complaint, the Parties exchanged documents and
14 information before mediating this action. Defendant produced a sampling of timekeeping and
15 payroll records for the class members. Defendant also provided documents of its wage and hour
16 policies and practices during the class period, and information regarding the total number of
17 current and former employees in its informal discovery responses. (*Id.* at ¶ 5.)

18 After reviewing documents regarding Defendant’s wage and hour policies and practices
19 and analyzing Defendant’s timekeeping and payroll records, Class Counsel were able to
20 evaluate the probability of class certification and success on the merits and assess Defendant’s
21 maximum monetary exposure for all claims. (*Id.* at ¶ 6.) Class Counsel also investigated the
22 applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Based on the
23 foregoing, Class Counsel prepared a damage analysis prior to the mediation. (*Id.*)

24 **C. Settlement Negotiations**

25 On May 13, 2024, the Parties participated in a private mediation session with
26 experienced class action mediator, Steve Rottman, Esq. (*Id.* at ¶ 7.) The mediation session was
27

28 ¹ Plaintiffs previously gave adequate notice to Defendant and the California Labor & Workforce
Development Agency (“LWDA”) regarding their intention to pursue a PAGA matter.

1 conducted via Zoom. The settlement negotiations were at arm's length and, although conducted
2 in a professional manner, were adversarial. The Parties went into the mediation willing to
3 explore the potential for a settlement of the dispute, but each side was also prepared to litigate
4 their position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive
5 negotiations and discussions regarding the strengths and weaknesses of Plaintiffs' claims and
6 Defendant's defenses, the Parties reached a settlement (via a proposal from the mediator), the
7 material terms of which are encompassed within the Settlement Agreement. (*Id.* at ¶ 8, Ex. 1
8 [Class and PAGA Settlement Agreement].)

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

15 Indeed, the \$1,000,000.00 Settlement represents **62.7%** of the **realistic maximum**
16 **recovery** of \$1,595,040.96. (*Id.* at ¶ 24.) Although Class Counsel estimated that Defendant's
17 maximum potential liability for all claims was approximately \$14.1 million, when the risk of
18 prevailing at certification and trial are factored into the equation, Class Counsel believes that
19 Defendant's realistic exposure was \$1,595,040.96, meaning the Settlement achieves a
20 significant recovery. (*Id.* at ¶¶ 15-28.) Considering the risk and uncertainty of prevailing at
21 class certification and at trial, this is an excellent result for the Class. (*Id.* at ¶ 24.) Indeed,
22 because of the proposed Settlement, class members will receive timely, guaranteed relief and
23 will avoid the risk of an unfavorable judgment.

24 **D. Key Terms of the Proposed Settlement**

25 The Parties used the Los Angeles County Superior Court's Form Class Action and PAGA
26 Settlement Agreement. A document showing edits the Parties made to the template in redline are
27 attached to the Declaration of Arrash T. Fattahi as **Exhibit 2**. The Settlement's key terms include:

- 28 1. Class Definition: For settlement purposes only, the Parties agree to the certification

1 of a class pursuant to California Code of Civil Procedure § 382 defined as: “all persons employed
2 as hourly, non-exempt employees by Crocs in California during the Class Period.” (Settlement, §
3 1.5.)

4 2. Class Period: “means the period from January 3, 2019, through the date of
5 Preliminary Approval, unless Defendant exercises its option pursuant to Section 5.2, below.”
6 (Settlement, § 1.12.)

7 3. Participating Class Members: “means a Class Member who does not submit a valid
8 and timely Request for Exclusion from the Settlement.” (Settlement, § 1.33.)

9 4. Aggrieved Employees: “means a person employed as an hourly, non-exempt
10 employee by Crocs in California during the PAGA Period.” (Settlement, § 1.4.)

11 5. PAGA Period: “means the period from February 14, 2023, through the date of
12 Preliminary Approval.” (Settlement, § 1.29.)

13 6. Gross Settlement Amount: This amount is \$1,000,000.00, for all claims, including
14 Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, the Class
15 Counsel Fees Payment, the Class Counsel Expenses Payment, the Class Representative Service
16 Payments, and the Administrator’s Expenses Payment. (Settlement, § 1.20.)

17 7. Uncashed Checks: Any settlement checks remaining uncashed after one hundred
18 and eighty (180) days shall be transmitted to the California Controller's Unclaimed Property Fund
19 in the name of the Class Member thereby leaving no “unpaid residue” subject to the requirements
20 of California Code of Civil Procedure Section 384, subd. (b). (Settlement, § 6.3.3.)

21 8. Release by Participating Class Members: “All Participating Class Members, on
22 behalf of themselves and their respective present and former spouses, representatives, agents,
23 attorneys, heirs, administrators, successors, and assigns, release and discharge Released Parties
24 from all claims, debts, liabilities, demands, obligations, guarantees, actions, or causes of action of
25 whatever kind or nature during the Class Period, whether known or unknown, that were alleged in
26 the Operative Complaint or that reasonably could have been alleged, based on the facts stated in the
27 Operative Complaint and that were ascertained in the course of the Action, including those arising
28 out of or related to: (1) all claims for failure to pay minimum, straight-time, and/or overtime wages

1 for all hours worked, including all off-the-clock time both before clocking in for a shift, after clocking
2 out for meal periods, and after clocking out at the end of shift; (2) all claims for failure to provide
3 compliant meal periods or compensation in lieu thereof; (3) all claims for failure to authorize and
4 permit compliant rest periods or compensation in lieu thereof; (4) all claims for failure to pay
5 overtime, meal and/or rest period compensation, and/or sick pay at the regular rate of pay; (5) all
6 claims for failure to timely pay wages due upon termination or resignation of employment; (6) all
7 claims for failure to pay wages due upon regularly-scheduled paydays; (7) all claims for non-
8 compliant wage statements; (8) all claims for failure to reimburse necessary business expenses; and
9 (9) all claims asserted through California Business & Professions Code section 17200 *et seq.* arising
10 out of the Labor Code violations referenced in the Operative Complaint (the “Released Claims”). The
11 Released Claims include all related claims of any kind for unpaid wages, premium pay, liquidated
12 damages, statutory penalties, civil penalties, restitution, interest, injunctive relief, punitive
13 damages, and other damages, costs, expenses, and attorneys’ fees arising from the alleged violation
14 of any provision of common or statutory law that were or reasonably could have been raised as
15 part of Plaintiffs’ claims in the Operative Complaint, including but not limited to claims under
16 California Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 246 *et*
17 *seq.*, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698 *et seq.*, 2800, and 2802,
18 all provisions of the California Industrial Welfare Commission Wage Orders that provide the same
19 or similar protections, and section 17200 *et seq.* of the California Business and Professions Code.”
20 (Settlement, § 7.2.) This Release will be deemed effective on the date when Defendant fully funds
21 the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage
22 Portion of the Individual Class Payments. (Settlement, § 7.)

23 9. Release by Aggrieved Employees: “All Aggrieved Employees, on behalf of
24 themselves and their respective present and former spouses, representatives, agents, attorneys, heirs,
25 administrators, successors, and assigns, are deemed to release and discharge the Released Parties
26 from all claims for any and all PAGA remedies during the PAGA Period that were alleged in, or
27 reasonably could have been alleged in, or that were based on, arise from, or relate to the facts stated
28 in the Operative Complaint, the PAGA Notices, and that were ascertained in the course of the

1 Action, including any right, claim, or demand for civil penalties pursuant to Labor Code sections
2 210, 226.3, 558, 1174.5, 1197.1, and 2699 in connection with alleged violations of Labor Code
3 sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.7, 246 *et seq.*, 510, 512, 1174, 1194, 1194.2,
4 1197, 1198, 2800, and 2802, all provisions of the California Industrial Welfare Commission Wage
5 Orders that provide the same or similar protections, and section 17200 *et seq.* of the California
6 Business and Professions Code. Plaintiffs and Aggrieved Employees will be bound by this release
7 of PAGA claims even if they, or any of them, request to be excluded from the Settlement in
8 accordance with Paragraph 9.5, below.” (Settlement, § 7.3.)

9 10. No Reversion: “None of the Gross Settlement Amount will revert to Crocs.”
10 (Settlement, § 4.1.)

11 11. PAGA Allocation: The settlement includes \$10,000.00 allocated to Plaintiffs’
12 claims under PAGA, 75% of which (\$7,500.00) being paid to the LWDA and 25% (\$2,500.00)
13 being paid to the Aggrieved Employees. (Settlement, § 4.2.5.) Class Counsel submitted the
14 proposed settlement to the LWDA before filing this Motion for Preliminary Approval. (Fattahi
15 Decl., ¶ 10.)

16 12. Net Settlement Amount: The “Net Settlement Amount” is the amount that remains
17 and that shall be paid to Settlement Class Members after the following amounts are subtracted:
18 Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payments,
19 Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration
20 Expenses Payment. (Settlement, § 1.26.)

21 13. Distribution Formula: “An Individual Class Payment calculated by (a) dividing the
22 Net Settlement Amount by the total number of Workweeks worked by all Participating Class
23 Members during the Class Period and (b) multiplying the result by each Participating Class
24 Member’s Workweeks.” (Settlement, § 4.2.4.) As to PAGA: “The Administrator will calculate
25 each Individual PAGA Payment by (a) dividing \$2,500.00 by the total number of PAGA Period
26 Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the
27 result by each Aggrieved Employee’s PAGA Period Pay Periods.” (Settlement, § 4.2.5.1.)
28

1 14. Tax Allocation: Any settlement money paid to Settlement Class Members will be
2 allocated as 25% to wages and 75% to penalties and interest. (Settlement, § 4.2.4.1.)

3 15. Class Representative Service Awards: Subject to Court approval, Plaintiffs shall be
4 paid an enhancement award not to exceed \$7,500.00 each (\$30,000.00 total). (Settlement, § 4.2.1.)
5 This amount is for Plaintiffs' time and effort in bringing and presenting the action, and in exchange
6 for a general release of all claims, known or unknown, pursuant to Civil Code Section 1542.
7 (Settlement, § 7.1.)

8 16. Attorneys' Fees and Costs: The Settlement provides that Defendant will not oppose
9 a fee application of up to 1/3 (\$333,333.33) of the Gross Settlement Amount, plus out-of-pocket
10 costs not to exceed \$35,000.00. (Settlement, § 4.2.2.)

11 17. Notice of Proposed Class Action Settlement: The Notice sets forth in plain terms, a
12 statement of the case, the terms of the Settlement Agreement, the approximate amount of attorneys'
13 fees, costs, and service award being sought, and an explanation of how the settlement allocations
14 are calculated. (Settlement, Ex. A, Class Notice.) Class Members will be notified by first-class
15 mail of the settlement. (Settlement, § 6.3.1.) CPT Group, Inc., the proposed Settlement
16 Administrator, will undertake its best efforts to ensure that the notice is provided to the current
17 addresses of class members, including conducting a national change of address search and re-
18 mailing the notice to updated addresses. (*Id.*; Fattahi Decl., ¶ 11.)

19 **III. DISCUSSION**

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

27 In considering whether a settlement is reasonable, the trial court should consider relevant
28 factors, which may include the strength of plaintiff's case, the risk, expense, complexity and likely

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

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

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

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

19 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
20 evidence to the contrary is offered; thus, there is a presumption here that the negotiations were
21 conducted in good faith. (Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 11.51.)
22 Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super.*
23 *Ct.* (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The
24 fact that a plaintiff might have received more if the case had been fully litigated is no reason not
25 to approve the settlement.”].)

26 The Settlement was reached following extensive negotiations at mediation with
27 experienced employment mediator, Steve Rottman, Esq. (Fattahi Decl., ¶ 7.) The settlement
28 negotiations were at arm’s length and, although conducted in a professional manner, were

1 adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a
2 settlement of the dispute, but each side was also prepared to litigate their or its position through
3 trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and
4 discussions regarding the strengths and weaknesses of Plaintiffs’ claims and Defendant’s defenses,
5 the Parties reached an agreement. (Fattahi Decl., ¶ 8.)

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

16 Class Counsel also has considerable experience and has demonstrated competence with
17 litigating wage and hour class actions. (*Id.* at ¶¶ 39-47.) Again, this supports the position that the
18 terms of the Settlement are premised on objective evidence that has been considered and weighed
19 in light of the risks, expenses, and time consumption to both sides of continued litigation of this
20 action.

21 **2. The Settlement Is Fair and Reasonable in Light of the Parties’** 22 **Respective Legal Positions**

23 A settlement is not judged against what might plaintiff recover had he or she prevailed at
24 trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable.
25 (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250 [“Compromise is inherent
26 and necessary in the settlement process . . . even if the relief afforded by the proposed settlement
27 is substantially narrower than it would be if the suits were to be successfully litigated, this is no
28

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 (Fattahi Decl., ¶ 26.) While Plaintiffs are confident in the merits of their claims, a legitimate
5 controversy exists as to each cause of action. (*Id.* at ¶ 25.) Plaintiffs also recognize 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 \$1,000,000.00 therefore represents a substantial recovery when
9 compared to Plaintiffs’ reasonably forecasted recovery. (*Id.* at ¶¶ 15-28.) 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 \$1,000,000.00 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 ***\$303.24.*** (*Id.* at ¶ 27.)

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. (Fattahi Decl., ¶¶ 39-47.)
21 Although Plaintiffs and their 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

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

C. The Proposed Attorneys' Fees and Costs Are Reasonable

Under the Settlement, subject to the Court's approval, Defendant agrees to pay Class Counsel reasonable attorneys' fees in amount of \$333,333.33, which is 1/3 of the Gross Settlement Amount, and up to \$35,000.00 in costs. These amounts are disclosed to all class members in the proposed Notice and are reasonable.

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

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

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

The California Supreme Court affirmed in *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480 that, "when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the

1 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
2 fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage
3 method—including relative ease of calculation, alignment of incentives between counsel and the
4 class, a better approximation of market conditions in a contingency case, and the encouragement
5 it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—
6 convince us the percentage method is a valuable tool that should not be denied our trial courts.”
7 (*Id.* [internal citations omitted].)

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

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

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

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

27 Labor Code § 1194 (a) provides for the recovery of “minimum wage or overtime
28 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Under this

1 section, Plaintiffs would be permitted to recover their actual attorneys’ fees, even if those fees were
2 larger than the total class recovery at the conclusion of this case. This settlement is beneficial in
3 that it limits the risk of continued expenses and consumption of time, energy, and resources facing
4 Defendant while at the same time rewarding Class Counsel for their decision to assume risk by
5 taking on this matter. In fact, prosecution of this action involved significant financial risk for Class
6 Counsel. (Fattahi Decl., ¶¶ 37-38.) Class Counsel undertook this matter solely on a contingent
7 basis, with no guarantee of recovery. (*Id.*) Once counsel undertook this litigation on behalf of the
8 Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class
9 ahead of all other concerns.

10 **4. The Experience, Reputation and Ability of Class Counsel Support the** 11 **Requested Fee Award**

12 As demonstrated by their past experience in pursuing class actions on behalf of consumers
13 and employees, Class Counsel possesses considerable expertise in litigating class actions. (Fattahi
14 Decl., ¶¶ 39-47.) Class Counsel has been involved as lead counsel or co-counsel in several class
15 actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate class
16 counsel commensurate with their skill, reputation and experience, Class Counsel’s requested fee
17 award is supported here.

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

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

26 Where settlements negotiate a good faith amount for PAGA penalties and “there is no
27 indication that this amount was the result of self-interest at the expense of other” class members,
28 such amounts are generally considered reasonable. (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr.

3, 2009) No. CV-08-0844 EDL, 2009 WL 928133 at *1, 9.) Courts have approved amounts for
PAGA penalties in the range of zero to two percent of the total maximum amount of the Settlement.
(*Id.* [approving a PAGA payment of 0.3%, or \$1,500]; *see also Jack v. Hartford Fire Ins. Co.* (S.D.
Cal. Oct. 13, 2011) 2011 WL 4899942 at *6 [approving a PAGA payment of 0.25%]; *McKenzie v.*
Fed. Express Corp. (C.D. Cal. Jan. 23, 2012) 2012 WL 12882124 at *5 [acknowledging that courts
approve PAGA claim settlements in the range of zero to two percent of the total settlement].) Here,
the amount to be paid to the LWDA is larger than many other PAGA settlement amounts approved
by the courts where seemingly nominal amounts were allocated for such claims. (*See, e.g., Zubia*
v. Shamrock Foods Co. (C.D. Cal. Dec. 21, 2017) No. CV1603128ABAGRX, 2017 WL 10541431,
at *14 [approving a PAGA settlement of 0.1%]; *Hopson*, 2008 WL 3385452, at *1 [approving a
PAGA settlement of 0.3% or \$1,500]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal. Oct. 31, 2012)
No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at *3 [approving a PAGA settlement of
0.27%].) Here, the Parties negotiated a good faith amount of \$10,000.00, 75% of which
(\$7,500.00) will be paid to the LWDA and 25% (\$2,500.00) to be distributed to the Aggrieved
Employees. (Settlement at §1.32.) The \$10,000.00 settlement amount equates to approximately
1% of the Gross Settlement Amount, which far exceeds amounts that are routinely approved. The
Parties negotiated to allocate 1% of the Settlement to PAGA penalties in good faith and this amount
is reasonable considering that the maximum PAGA penalties were estimated at \$953,700.00
(which assumed \$100 per pay period). (Fattahi Decl., ¶ 23.)

E. The Service Awards to Named Plaintiffs Are Reasonable

Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
compensate them for the expense or risk they have incurred in conferring a benefit on other
members of the class.” (*Munoz, supra*, 86 Cal.App.4th at p. 412.) Courts routinely grant approval
of class action settlement agreements containing enhancements for the class representatives, which
are necessary to provide incentive to represent the class, and are appropriate given the benefit the
class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp.* (9th Cir.
2009) 563 F.3d 948, 958-59.)

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

11 Under the settlement agreement, subject to the Court’s approval, Defendant agreed to pay
12 Service Awards in the amount of \$7,500.00 to each named Plaintiff (\$30,000.00 total). This
13 amount is also in exchange for Plaintiffs’ general releases of all claims against Defendant. Courts
14 routinely approve more than \$7,500.00 in enhancement awards for plaintiffs represented by Class
15 Counsel. (See, e.g., *Moreno v. Pretium Packaging, L.L.C.* (C.D. Cal. Aug. 6, 2021) 2021 WL
16 3673845, *3 [“The Court concludes a \$10,000 incentive award is appropriate.”]; *Suarez v. Bank of*
17 *America, National Association* (N.D. Cal., Jan. 11, 2024, No. 18-CV-01202-LB) 2024 WL 150721,
18 at *4 [“The court approves awards of \$10,000 for each class representative.”].) Class Counsel
19 represent that Plaintiffs devoted a great deal of time and work assisting counsel in the case,
20 communicated with counsel very frequently for litigation and to prepare for the mediation, and
21 were frequently in contact with Class Counsel during the mediation. (Fattahi Decl., ¶¶ 29-33.)
22 This amount is reasonable particularly in light of the substantial benefits Plaintiffs generated for
23 all class members. (*Id.*)

24 When compared with the amounts awarded in typical class action cases, the amount
25 requested here is particularly reasonable. Indeed, a **2006** study examining the average incentive
26 award given to class action plaintiffs from **1993 to 2002** found that the “average award per class
27 representative was \$15,992 and the median award per class representative was \$4,357.” (Eisenberg
28 & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L.Rev.

1303, 1308.) That same study found that named plaintiffs in employment discrimination class actions received an average award of \$69,850 and a median award of \$31,081, while named plaintiffs in other employment class actions received an average award of \$12,121 and a median award of \$13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards in employment cases reflected the “courts’ wish to make representative plaintiffs whole by compensating them for the high costs of their service to the class, including risks of stigmatization or retaliation on the job.” (*Id.* at p. 1308.)

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

A. **Legal Standard**

The proposed Settlement Class is well suited for class certification. All of the claims derive from a core set of alleged violations of California’s wage and hour laws and regulations. For the reasons set forth more fully below, for purposes of settlement only, the Class satisfies the prerequisites for certification under Code of Civil Procedure § 382. Section 382 provides: “when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.” (Code Civ. Proc., § 382.) There are two requirements to section 382: “(1) There must be an ascertainable class; and (2) there must be a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented.” (*Daar v. Yellow Cab Co.* (1967) 67 Cal. 2d 695, 704 [citations omitted].) To clarify these requirements, the California Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that the community-of-interest requirement itself embodies three factors: “(1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal. 3d 462, 470.)

California law and policy favor the fullest and most flexible use of the class action device. (*Id.* at pp. 469-73.) Indeed, “Courts long have acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system” particularly where the rights of consumers are at issue. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434.) Any doubt as to

the appropriateness of class treatment should be resolved in favor of certification. (*Richmond, supra*, 29 Cal.3d at pp. 473-75.)

B. Plaintiffs Maintain That the Criteria for Class Certification Are Satisfied for Settlement Purposes.

1. The Class is Ascertainable and Numerous

The proposed class that Plaintiffs seek to represent is easily ascertainable and includes approximately 1,886 employees of Defendant.

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

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

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

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

1 Here, the employment practices at issue are: whether Defendant had legally compliant
2 policies and practices for all hours worked, including overtime wages; whether Defendant had
3 legally compliant policies and practices to provide employees with meal periods; whether
4 Defendant had legally compliant policies and practices authorizing and permitting its employees
5 to take rest periods; whether Defendant reimbursed employees for business expenses; whether final
6 payment of wages was untimely and excluded unpaid wages, including meal and rest period
7 premium wages; and whether the wage statements were consequently non-compliant. Plaintiffs
8 contend that the factual and legal issues are the same for all of the identified class members,
9 including Plaintiffs. Further, all class members suffered from, and seek redress for, the same
10 alleged injuries.

11 **3. Plaintiffs' Claims Are Typical of the Claims of the Class**

12 The typicality requirement does not focus on the individual characteristics or circumstances
13 of the representative plaintiff compared to those of the remainder of the class, but rather upon the
14 typicality of the proposed representative's claims as they relate to the defendant's conduct and
15 activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["[t]he only requirements are that
16 common questions of law and fact predominate and that the class representative be similarly
17 situated" vis-à-vis the class.].) A representative plaintiff's claims are typical of the class if they
18 arise from the same event, practice or course of conduct, and if the claims rest on the same legal
19 theories. (*Id.*) That is precisely the case here. Plaintiffs are former employees of Defendant; as
20 such, they allege that they were subject to the same policies and practices as other similarly situated
21 employees.

22 **4. Plaintiffs and Their Counsel Meet the Adequacy Requirement**

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

27 All of these requirements are met here for settlement purposes. Plaintiffs retained counsel
28 with extensive experience in prosecuting complex class actions, including similar class actions that

1 previously settled. (Fattahi Decl., ¶¶ 39-47.) Class Counsel unquestionably is “qualified,
2 experienced and generally able to conduct the proposed litigation.” (*Miller v. Woods* (1983) 148
3 Cal.App.3d 862, 875.) In addition, Plaintiffs have no conflicts, and Plaintiffs have, with counsel,
4 litigated this case and diligently reviewed the settlement terms, showing their dedication.
5 Plaintiffs’ willingness to serve as representatives demonstrate their serious commitment to
6 bringing about the best results possible for the class. (*McGhee, supra*, 60 Cal.App.3d at p. 451.)

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

8 Finally, in making its class certification decision, the Court must determine that a class
9 action would be superior to alternative means for the fair and efficient adjudication of the litigation.
10 By consolidating many potential individual actions into a single proceeding, this Court’s use of the
11 class action device enables it to manage this litigation in a manner that serves the economics of
12 time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly-
13 situated employees with small but nevertheless meritorious claims for damages would, as a
14 practical matter, have no means of redress because of the time, effort and expense required to
15 prosecute individual actions. (*Gentry, supra*, 42 Cal.4th at pp. 57-62; *Leyva v. Medline Ind.* (9th
16 Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the superiority concerns
17 are essentially non-existent.

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

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

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

28 ///

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

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

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

15 **VI. CONCLUSION**

16 For the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary
17 approval of the proposed settlement and set a Final Approval Hearing in August 2025.

18 Respectfully submitted,

19 Dated: December 23, 2024

 WILSHIRE LAW FIRM

20 By: _____

 Arash T. Fattahi
 Arman A. Salehi

21 Attorneys for Plaintiffs
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25
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27
28

PROOF OF SERVICE

Acevedo v. Crocs Retail, LLC, et al.
23STCV15354

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Arman A. Salehi, am employed in the county of Orange, 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 arman.salehi@wilshirelawfirm.com.

On **December 24, 2024**, I served the foregoing **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

Glenn L. Briggs (SBN 174497)
gbriggs@kadingbriggs.com
Kymberleigh Damron-Hsiao (SBN 240508)
kdh@kadingbriggs.com
Stanley G. Stringfellow II (SBN 259047)
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KADING BRIGGS LLP
100 Spectrum Center Drive, Suite 800
Irvine, California 92618
Telephone: (949) 450-8040
Facsimile: (949) 450-8033

Attorneys for Defendant

(X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor & Workforce Development Agency Online Filing Site.

(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 address listed above via third-party service **CASEANYWHERE**.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this **December 24, 2024**, at Los Angeles, California.


Arman A. Salehi