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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

HERMINIO DERAS CEPEDA, individually, and
on behalf of all others similarly situated,

Plaintiff,

vs.

ALLIED LANDSCAPE SERVICES, INC., a
California corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: C23-01980

[Assigned for all purposes to Hon. Charles S.
Treat, Dept 12]

CLASS ACTION

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

Date: November 7, 2024
Time: 9:00 a.m.
Courtroom: Dept. 12
Judge: Hon. Charles S. Treat

Action Filed: August 10, 2023
Trial Date: Not Set

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

2 PLEASE TAKE NOTICE that on November 7 2024, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard, in Department 12 of the above-captioned Court, located at 725 Court Street,
4 Martinez, CA 94553, Plaintiff HERMINIO DERAS CEPEDA (“Plaintiff”) will and hereby does move
5 this Court for an order:

6 1. Granting class certification of the Class, solely for settlement purposes pursuant to
7 Code of Civil Procedure § 382;

8 2. Finally approving the CLASS ACTION AND PAGA SETTLEMENT
9 AGREEMENT AND CLASS NOTICE (“Settlement” or “Agreement”);

10 3. Appointing counsel for Plaintiff, Moon Law Group, PC, as Class Counsel;

11 4. Appointing Plaintiff as the Class Representative;

12 5. Ruling that Settlement Class Members who did not timely submit requests for
13 exclusion from the settlement as set forth in the Agreement have released their claims against
14 Defendants and the other releasees as set forth in the Agreement;

15 6. Ruling that Settlement Class Members who did not timely object to the settlement
16 pursuant to the terms set forth in the Agreement are barred from prosecuting or pursuing any
17 appeal of the Court’s Order;

18 7. Awarding the sums requested in the Motion;

19 8. Entering a Final Judgment; and,

20 9. Without affecting the finality of the final judgment, reserving continuing
21 jurisdiction over the parties for the purposes of implementing, enforcing and/or administering
22 the settlement as set forth in the Agreement or enforcing the terms of the Final Judgment.

23 Good cause exists to grant this Motion because: (1) the Class meets all of the requirements for
24 class certification for settlement purposes under Code of Civil Procedure § 382; (2) the Settlement
25 Agreement is a fair, adequate, and reasonable compromise of the disputed wage and hour claims asserted
26 by Plaintiff; (3) Plaintiff and Class Counsel are adequate to represent the Class; and, (4) the notice
27 procedures and related forms complied with California Rules of Court 3.766(d) and (e) and this Court’s
28 Order granting preliminary approval of the Settlement, and adequately apprised Class Members of their

1 rights and fully comport with due process.

2 This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court,
3 which require approval by the Court of a class action settlement and permit the Court to extend the page
4 limit for memoranda.

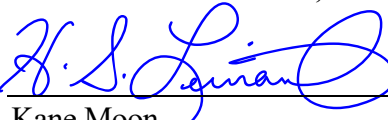
5 **TENTATIVE RULINGS:** Tentative rulings will be available beginning at 1:30 p.m. on the
6 court day preceding the scheduled hearing. If you are unable to access the Civil tentative rulings by the
7 web, you may call (925) 608-1000. The tentative ruling will become the Court's ruling unless by 4:00
8 p.m. of the court day preceding the hearing, counsel or parties call the department rendering the decision
9 to request argument and to specify what issues are to be argued. Calling counsel must advise all other
10 affected counsel and unrepresented parties by no later than 4:00 p.m. of his or her decision to appear and
11 of the issues to be argued. Failure to timely advise the Court and counsel or parties will preclude counsel
12 from arguing the matter.

13 This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points
14 and Authorities, the Declarations of H. Scott Leviant, Plaintiff, and the Settlement Administrator in
15 support thereof, all papers and pleadings on file with the Court in this action, all matters judicially
16 noticeable, and on such oral and documentary evidence as may be presented in connection with the
17 hearing on the Motion.

18 Respectfully submitted,

19 Dated: October 16, 2024

20 **MOON LAW GROUP, PC**

21 By: 
22 Kane Moon
23 H. Scott Leviant
24 Mariam Ghazaryan

25 Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rules 3.769(d) and (e), Plaintiff respectfully requests that
3 this Court finally approve the proposed class action settlement set forth in the CLASS ACTION AND
4 PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE (“Settlement” or “Agreement”) with
5 Defendant ALLIED LANDSCAPE SERVICES, INC. (hereinafter referred to as “Defendant”).

6 Plaintiff and Defendant (collectively referred to herein as the “Parties”) reached a proposed class
7 action settlement with a gross settlement amount (“GSA”) of **\$500,000.00** in compromise of disputed
8 claims asserted on behalf of the below-defined Class consisting of **533** members. Plaintiff believes this
9 settlement is a fair, adequate, and reasonable compromise of disputed claims for alleged wage and hour
10 violations and penalties asserted in this case.

11 Plaintiff now submits this Motion for Final Approval of Class Action Settlement, along with the
12 Settlement (attached to the Declaration of H. Scott Leviant [“Leviant Decl.”], Exhibit 1 thereto). For the
13 Court’s convenience, below is a summary of the key provisions of the Settlement.

14 **II. THE NOTICE PROCESS PROCEEDED AS DIRECTED**

15 Plaintiff and Defendant have thus far fulfilled the class notice procedures set forth in the
16 Settlement. The Settlement Administrator, Phoenix Settlement Administrators. (“Phoenix”), sent
17 individual Notices to Class Members on August 15, 2024. (Declaration of Mayra Gonzalez, ¶ 5.) No
18 Notices were undeliverable. (*Id.*, at ¶ 8.) There have been **no** opt out requests and **no** objections or
19 workweek disputes received. (*Id.*, at ¶¶ 9-11.) The final Class includes 533 individuals who did not
20 submit a timely request for exclusion. (*Id.*, at ¶ 12.)

21
22 **III. THE MAJOR TERMS OF SETTLEMENT**

23 The provisions of the proposed Settlement include the following:

- 24 • Defendant agrees not to oppose certification for purposes of Settlement (Settlement, ¶ 12.1);
- 25 • Class: All persons employed by ALLIED as hourly-paid or non-exempt employees in the
26 State of California during the Class Period. (the “Class Period” is August 10, 2019 to June
27 30, 2024). (Settlement, ¶ 1.5, 1.12.) “Participating Class Members” means a Class Member
28 who does not submit a valid and timely Request for Exclusion from the Class portion of the

Settlement. (Settlement, ¶ 1.9, 1.34);

- Settlement Amount: Defendant will pay a maximum of **\$500,000.00**, referred to as the Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross** payment per Class Member of approximately **\$938.08** (Settlement, ¶ 1.21);
- Class Size: **533** individuals who worked **30,370** workweeks. (Settlement, ¶¶ 4.1, 8);
- PAGA Group Size: **278** individuals who worked **5,866** pay periods. (Settlement, ¶¶ 4.1, 8.)
- PAGA Period: August 10, 2022 to June 30, 2024. (Settlement, ¶ 1.30);
- Escalator Clause: If the number of actual work weeks at the time of preliminary approval is more than 15% higher than the estimated workweeks (i.e., exceeds 32,367 work weeks), ALLIED may, at its election, opt to (a) increase the Gross Settlement Amount in the exact proportionate amount as to any additional work weeks (i.e., 17% more workweeks than estimated will result in a 2% proportionate increase in the GSA) or (b) end the Class Period on the date that the total work weeks equals 32,367 Workweeks. (the “Escalator Clause”). (Settlement, ¶ 8.) The Escalator Clause was not triggered;
- Kullar/Munoz Analysis: Plaintiffs address the claims analysis herein, at Part V.B.3, and in the Declaration of Leviant, at Paragraph 18;
- No Reversion: The Settlement is a **non-reversionary** settlement (Settlement, ¶ 3.1);
- Certification: Plaintiffs address certification requisites herein, at Part V.A. Certification was discussed in greater detail in the Motion for Preliminary Approval;
- No Claim Form: No claim form is required (Settlement, ¶ 3.1);
- Class Release: The Settlement will release specified wage-and-hour claims for Class Members (those Class Members who do not opt out of the Settlement) as defined by the First Amended Complaint (Settlement, ¶¶ 2.1, 5.2);
- PAGA Release: Class Members will release the PAGA Claims set forth in this Action, that were identified in the Operative Complaint and Plaintiff’s LWDA Notice Letter, regardless of whether they opt out of the class portion of the Settlement (Settlement, ¶¶ 2.1, 5.3);
- Release Effective Date: Effective on the date when ALLIED fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the

Individual Class Payments (Settlement, ¶ 5);

- Net Settlement Amount Available to the Class: After deducting Class Counsel's attorneys' fees and costs, service payment to Plaintiff, administration costs, and the PAGA penalty, the remainder will be available for distribution to Class Members who do not opt out, with each Class Member receiving a share based on the number of workweeks each Class Member worked for Defendant within the Class Period. The Net Settlement Amount is estimated to be at least **\$247,833.33**, resulting in an average **net** payment per Class Member of at least **\$464.97**, before any tax withholdings. (Settlement, ¶ 3);
- Tax Allocation: The amounts distributed to Class Members will be characterized as 20% alleged unpaid wages, 80% to penalties and interest, and PAGA Settlement Payments will be allocated as 100% penalties. (Settlement, ¶¶ 3.2.4.1, 3.2.5.2);
- Employer's Portion of Payroll Taxes Paid Separately: Defendant's portion of payroll taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that constitute wages will be paid separate and apart from the GSA (Settlement, ¶ 3.1);
- Settlement Administrator: The notice portion of the Settlement will be administered by a third-party Administrator, Phoenix Class Action Administration Solutions, and the Parties have accepted Phoenix Class Action Administration Solutions' bid for administration services in the amount of **\$10,000.00**, which is lower than the not to exceed payment that was agreed upon in the Settlement. (Settlement, ¶ 3.2.3; Moore Decl., Exh. C.)
- Class Data for Administration: The Settlement Administrator will receive the Class List within 14 days after the Court grants Preliminary Approval of the Settlement, use the NCOA database to update the Class List, and then use skip tracing on returned Notices (Settlement, ¶¶ 1.10; 4.2);
- Notice: The Notice will issue within 14 days of receipt of the Class List (Settlement, ¶ 7.4.2). The Notice describes how to dispute workweeks, submit an objection in writing, in person, or through an attorney, or request exclusion (Settlement, ¶¶ 7.4 – 7.7);
- Notice Language: Notice will issue in English and Spanish (Settlement, ¶ 1.11);
- Objections: Objections can be submitted in person, through an attorney, or in writing to the

- Settlement Administrator, with no pre-requisite to being heard (Settlement, ¶ 7.7);
- Exclusion Requests: The procedure for exclusion requests, mailing a request to the Settlement Administrator, is the same as the procedure for submitting a written objection (Settlement, ¶¶ 7.5 and 7.7);
 - PAGA Allocation: From the GSA, **\$50,000** will be allocated to settle claims brought pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq.* (“PAGA”), and seventy-five percent (75%), or **\$37,500**, will be paid to the California Labor & Workforce Development Agency. (Settlement, ¶¶ 1.33, 3.2.5.);
 - Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is attached to the Leviant Declaration;
 - Enhancement/Service Awards to Plaintiffs: Defendant will not oppose the application for a Class Representative Service Payment of up to **\$7,500.00** for the Plaintiff, to be paid from the GSA (Settlement, ¶ 3.2.1);
 - Fees and Costs: Defendant will not oppose Class Counsel’s application for fees not to exceed 33 1/3% of the GSA (**\$166,666.67**), and actual costs, in an amount not to exceed **\$18,000**, to be paid out of the GSA (Settlement, ¶ 3.2.2);
 - Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ 4.4.1);
 - Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed to the California Controller's Unclaimed Property Fund (Settlement, ¶ 4.4.3);
 - Judgment Notice: Judgment will be posted on the Settlement Administrator’s website after entry (Settlement, ¶ 7.8.1);
 - Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement with Class Members (Settlement ¶ 12.2).

(Leviant Decl., ¶¶ 11-12 and Exhibit 1 thereto.)

IV. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff’s Claims

On August 10, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of

1 action against Defendant for: (1) Failure to Pay Minimum Wages (Cal. Lab. Code §§ 204, 1194, 1194.2,
2 and 1197); (2) Failure to Pay Overtime Compensation (Cal. Lab. Code §§ 1194 and 1198); (3) Failure to
3 Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512); (4) Failure to Authorize and Permit Rest Breaks
4 (Cal. Lab. Code §§ 226.7); (5) Failure to Indemnify Necessary Business Expenses (Cal. Lab. Code
5 §2802); (6) Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203); (7) Failure
6 to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226); and (8) Unfair Business
7 Practices (Cal. Bus. & Prof. Code § 17200, *et seq.*). (The “Action.”) (Leviant Decl., ¶ 4.)

8 Plaintiff satisfied the administrative exhaustion prerequisite to filing a claim for Civil Penalties
9 under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, *et seq.*] (“PAGA”). On
10 October 27, 2024, Plaintiff filed a First Amended Complaint alleging an additional cause of action
11 against Defendant for violation of PAGA. (Leviant Decl., ¶ 5.) The First Amended Complaint is the
12 operative complaint in the Action (the “Operative Complaint.”) (*Id.*)

13 **B. Pre-Mediation Data Production and Analysis**

14 The Parties have conducted informal discovery and investigation of the facts and law. (Leviant
15 Decl., ¶ 6.) Such discovery and investigation have included, *inter alia*, the exchange of informal data and
16 discoverable information in preparation for the mediation session. (*Id.*) Defendant provided documents
17 reflecting their wage and hour policies and practices during the Settlement Period and information
18 regarding the total number of current and former employees in the Class. (*Id.*) The Parties have
19 analyzed payroll and time data. (*Id.*) Sampling was used, and data for approximately 127 class members
20 was provided to control costs. (*Id.*) The margin of error calculation for the sample of the Class in this
21 case is as follows:

22
$$1.96 \sqrt{\frac{0.5(1-0.5)}{127}} \sqrt{\frac{533-127}{533-1}} = \text{margin of error}^1 = 7.60\%$$

23
24 (*Id.*) With a random sample of data for 127 employees, the margin of error, using the population

25
26 ¹ The term “1.96” is derived from a standard deviation table for a 95% confidence interval, known as
27 a “z-table.” (*Id.*) It is not affected by sample or population size. (*Id.*) The margin of error is an
28 “overestimate” of because the variance is presumed to be at its highest value, using 0.5(1-0.5) to
represent p*q in the variance equation of (p*q)/n. (*Id.*) The original error estimate was 7.52%, based on
an estimated class size of 502 persons.

1 adjustment factor, was no more than 7.52 percent.² (*Id.*) In addition, Defendant also provided and other
2 data pertaining to Plaintiff and the Class during the relevant Settlement Period, including but not limited
3 to the numbers of former and current Class Members for different statutory periods, workweek and pay
4 period counts, and the average rate of hourly pay. (*Id.*)

5 After reviewing documents regarding Defendant's wage and hour policies and practices and
6 other information obtained during the informal exchange of discovery, Class Counsel were able to
7 evaluate the probability of class certification, success on the merits, and the reasonably obtainable
8 maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a
9 damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the
10 claims and defenses asserted in the litigation. (Leviant Decl., ¶ 7.)

11 C. Settlement

12 On February 16, 2024, the Parties participated in an all-day mediation presided over by
13 experienced mediator Steven Rottman, Esq. (Leviant Decl., ¶ 8.) At the mediation, the Parties discussed
14 at length the burdens and risks of continuing with the litigation as well as the merits of the claims and
15 defenses. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the
16 dispute, but each side was also prepared to litigate their or its position through trial and appeal if a
17 settlement had not been reached. The Parties agreed to the terms of a proposed settlement and signed a
18 long form settlement agreement (the Agreement). (*Id.*)

19 Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish liability for
20 the claims asserted in the Action, both generally and in response to Defendant's defenses thereto.
21 (Leviant Decl., ¶ 9.) Plaintiff and Class Counsel have also taken into account Defendant's agreement to
22

23 ² The margin of error formula does not require an adjustment factor for extremely large populations.
24 (*Id.*) A poll of all potential voters in the United States, for example, does not require an adjustment for the
25 population size, since the second radicand in the equation (the fraction in the second radical sign) is
26 effectively equal to 1. (*Id.*) This is because the square root of a fraction that is very close to 1 is even
27 closer to 1. Consider a population of 200 million and a sample of 1,000 individuals from that population.
28 The second radicand is the fraction of 200 million minus 1,000, all divided by 200 million minus 1. (*Id.*)
That is equal to 0.999995. (*Id.*) The square root is 0.99999975, which is indistinguishable from 1 when
talking about a margin of error percentage even to the nearest tenth of a percent. (*Id.*) But when the
population size is much smaller, the population size has a major impact on the margin of error for a given
sample size. (*Id.*)

enter into a Settlement that confers substantial relief upon the Class.

Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the Class. (Leviant Decl., ¶ 10.) Solely for the purpose of settling this case, the parties agree that the requirements for establishing class action certification with respect to this class are satisfied. (*Id.*) If this Settlement is not approved by the Court for any reason, Defendant reserves its rights to contest class certification. (*Id.*) This Settlement, if approved by the Court, will result in the termination with prejudice of the litigation through the entry of the Judgment and the release of all Released Claims for all Class Members, including all within the class definition who have not elected to exclude themselves from the Class. (*Id.*)

V. CLASS DEFINITION

The Class is defined as follows:

All persons employed by ALLIED as hourly-paid or non-exempt employees in the State of California during the Class Period. (the “Class Period” is August 10, 2019 to the date of preliminary approval of the Settlement or June 30, 2024, whichever is earlier). (Settlement, ¶ 1.5, 1.12.) “Participating Class Members” means a Class Member who does not submit a valid and timely Request for Exclusion from the Class portion of the Settlement. (Settlement, ¶ 1.9, 1.34)

(Leviant Decl., ¶ 11 and Exhibit 1.)

VI. DISCUSSION

A. Consistent with the Court’s Findings at the Time of Preliminary Approval, the Court Should Certify the Class for Settlement Purposes

Under Code of Civil Procedure § 382, class certification is warranted so long as there is a numerous and ascertainable class with a well-defined community of interest and that a “class action proceeding is superior to other means for a fair and efficient adjudication of the litigation.” *See, e.g., Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). For purposes of this Settlement only, Defendants stipulate to conditional certification. (Settlement ¶ 12.1.)

“The certification question is ‘essentially a procedural one that does not ask whether an action is legally or factually meritorious.’” *Id.*, at 326, quoting *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2000). The certification question asks whether the theory of recovery advanced by the plaintiff is likely to prove amenable to class treatment. *See, e.g., Jaimez v. Daihatsu USA, Inc.*, 181 Cal. App. 4th 1286,

1 1298 (2010). As the court noted in *Dunk*, although certification requirements are intended “to protect the
2 interests of the non-representative class members,” that concern is “protected by the trial court’s fairness
3 review of the settlement.” *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996). In view
4 of these standards, ***as discussed more thoroughly as part of the preliminary approval motion***, the
5 Settlement Class should be certified for settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

6 **B. The Court Should Approve the Settlement Because It Is a Fair, Adequate, and**
7 **Reasonable**

8 California courts favor settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal. App. 3d 231,
9 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists
10 to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v.*
11 *Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). This approval process consists of preliminary
12 settlement approval, notice being given to class members, and a final fairness and approval hearing being
13 held at which class members may be heard with respect to the settlement. *Id.* For the reasons discussed
14 below, this Court should finally approve the Settlement and enter Judgment.

15 **1. Class Action Settlements Are Subject to Review and Approval.**

16 Any settlement of class litigation must be reviewed and approved by the presiding court. Rules
17 of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review by the trial
18 court and (2) a subsequent (final) review after notice has been distributed to the class members. The
19 Preliminary Approval Hearing and Final Approval Hearing coincide with these two steps. The present
20 motion seeks *final approval* and the entry of a Judgment.

21 To evaluate a settlement, a court must receive “basic information about the nature and magnitude
22 of the claims in question and the basis for concluding that the consideration being paid for the release of
23 those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th
24 116, 133 (2008). But the record need ***not*** contain an explicit statement of the maximum theoretical
25 recovery. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409 (2010).

1 **2. The Parties Reached the Settlement Through Arms’ Length Negotiations**
2 **Between Experienced Counsel with the Assistance of a Highly-Qualified**
3 **Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.**

4 A settlement is presumptively fair where it is reached through arms’ length bargaining, based on
5 sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is
6 experienced in similar litigation, and the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802;
7 *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v.*
8 *Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In exercising these powers, the overriding concern
9 is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, at 1801, quoting
10 *Officers for Justice v. Civil Serv. Comm’n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

11 Relevant factors in making this determination, include, but are not limited to:

12 [T]he complexity and likely duration of further litigation, the risk of maintaining class
13 action status through trial, the amount offered in settlement, the extent of discovery
14 completed and the state 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.

15 *Id.* These factors require balancing, are non-exhaustive, and, trial courts should tailor the factors to each
16 case and give due regard to “what is otherwise a private consensual agreement between the parties.” *Id.*

17 Here, the Settlement resulted from thorough, arms’ length negotiations between experienced
18 counsel with the assistance of a highly-regarded mediator. (Levant Decl., ¶¶ 8-10.) With respect to the
19 claims at issue in this case, Plaintiff obtained data from Defendant (through informal discovery) and then
20 carefully reviewed that information. Counsel for Plaintiff also examined relevant policies and
21 interviewed witnesses in detail about their work experiences and Defendant’s practices.

22 Based on that review, Plaintiff estimated potential exposure and then estimated risk factors to
23 adjust the reasonable expected outcome. The investigation that Plaintiff’s counsel conducted was
24 sufficient to provide enough information to intelligently evaluate the estimated exposure for purposes of
25 negotiating the Settlement in view of the risks discussed below and are also sufficient to allow this Court
26 to do the same. *See, e.g., Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001).

1 **3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise**
2 **of Class Members’ Claims Based on Defendant’s Estimated Liability**
3 **Exposure Given the Risks Continued Litigation Would Entail.**

4 The proposed Settlement of \$500,000.00 offers substantial, timely, and guaranteed payments to
5 Class Members. A settlement is not judged against what might be recovered at trial and does not have to
6 provide 100% of damages to be reasonable. “In the context of a settlement agreement, the test is not the
7 maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the
8 settlement is reasonable under all of the circumstances.” *Wershba*, 91 Cal.App.4th at 250. Accordingly,
9 because settlements involve compromise, even one that provides for substantially narrower relief than
10 would likely be obtained if the suit were successfully litigated can be reasonable given that “the public
11 interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of
12 avoiding litigation.” *Id.*

13 With respect to the claims asserted on behalf of the Class in this case, there are serious risks that
14 support the reduced compromise amount. These risks include, but are not limited to risks that: (i)
15 Plaintiff would be unable to establish liability for unpaid straight time or overtime wages, *see Duran v.*
16 *US Bank Nat’l Ass’n*, 59 Cal. 4th 1, 39 & n. 33 (2014) (“*Duran*”), *citing Dilts v. Penske Logistics, LLC*
17 2014 WL 205039 (S.D. Cal. 2014) (dismissing certified off-the-clock claims based on proof at trial); (ii)
18 Defendant’s meal and rest period policies might not ultimately support class certification or a class-wide
19 liability finding; (iii) uncertainties pertaining to the ultimate legality of Defendant’s policies and practices
20 could preclude class-wide awards of statutory penalties; (iv) individual differences between Class
21 Members could be construed as pertaining to liability and not just damages; (v) any civil penalties award
22 under the PAGA could be reduced by the Court in its discretion; (vi) class treatment could be deemed
23 improper as to one or more claims, except for settlement purposes; (vii) a Court could have limited the
24 Class in terms of scope or job title; (viii) lengthy appellate litigation could ensue; and, (ix) violation rate
25 estimates could prove lower than expected. (Leviant Decl., ¶ 16.) These risks are non-exhaustive.

26 In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and
27 reasonable recovery for the Class Members. (Leviant Decl. ¶¶ 13-20.) The settlement amount is, of
28 course, a compromise figure. (Leviant Decl. ¶ 17.) By necessity it took into account risks related to

liability, damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class Member will be given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the 533 members of the Class, the average **gross** benefit is approximately **\$938.08** per class member, and the estimated average **net** recovery for each Class Member is approximately **\$464.97**. (*Id.*) Given that Defendant could challenge certification and liability, this is a significant sum to have achieved in settlement. Moreover, a Class Member who worked a greater number of weeks for Defendant will receive a larger share of the Settlement than a Class Member who worked for a shorter amount of time during the class period. (*Id.*)

After analyzing the claims in this matter, Plaintiff concluded that the value of this Settlement is fair, adequate, and reasonable. (Leviant Decl., ¶ 18.) The Class Settlement Amount of **\$500,000** is 99% of the **\$507,433.46** estimate of *risk-adjusted* recovery (excluding interest) at this stage in the litigation. On that basis, it would be unwise to pass up this settlement opportunity. This assessment is based on a carefully constructed model of the current fair value of the case, using estimated risks, average wage rates, numbers of employees, and the amount of time covered by the class period. (*Id.*)

Plaintiff's counsel estimates that the calculated plausible exposure is **\$4,021,430.82**, including PAGA penalties. (*Id.*)

- The reasonably estimated exposure for unpaid wages due to rounding was projected to be **\$1,953.00**, but with chances of certification and proof of liability (75% and 75% respectively) for a risk-adjusted exposure of **\$1,098.56**. This theory of liability is the most well-suited to certification. However, rounding stopped in August of 2020, so the total exposure is very small. Normally, rounding claims support large derivative penalties. But because only about 14% of all shifts were impacted by rounding, the derivative penalty exposure is very small. As noted, rounding ended in 2020, so Section 226 penalties are not available for this underpayment. The Section 203 exposure is also very limited due to the 2020 end date for rounding.
- The reasonably estimated exposure for unpaid wages due to off-the-clock work was projected to be **\$235,019.67**, but with chances of certification and proof of liability (40% and 25% respectively) for a risk-adjusted exposure of **\$23,501.97**. The factual theory is that Class Members arrived at the work yard and prepared their work vehicles before clocking in to start the day. But Defendant has a time system that provides a code to be entered for preparatory work, indicating an intention to pay for this time. Plaintiff's experience may stem from a misunderstanding of the timekeeping codes, suggesting that this theory of liability is highly risky.

- The reasonably estimated exposure for alleged rest break violations over the class period was calculated at **\$409,524.40** (*generously* assuming 100% of the class experienced one rest break issue every week on shifts over 3.5 hours in length) but with low chances of certification and proof of liability (25% and 25% respectively) for a risk-adjusted exposure of **\$30,657.78**. This exposure may be over-estimated as many employees were unsupervised, and at least some chose on their own to combine their 10-minute rest breaks with their meal breaks.
- The reasonably estimated exposure for alleged meal break violations over the class period was calculated at **\$1,066,261.50** (assuming all facial violations could be shown to be a meal break violation), with chances of certification and liability risks (40% and 40% respectively) resulting in a risk-adjusted exposure of **\$170,601.84**.
- Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties were estimated to be approximately **\$22,050.00** and **\$83,292.05**, respectively, on maximum exposures of **\$220,500.00** and **\$832,920.50**, respectively. The certification and liability risk factors are contingent upon the underlying unpaid wage claims and are assumed to be the same as those (40% and 25%) for that reason.
- The reasonably estimated exposure for unreimbursed expenses was over-estimated to be **\$30,482.75**, but with chances of certification and proof of liability (30% and 25% respectively) for a risk-adjusted exposure of **\$2,286.21**.
- PAGA penalties were calculated as having a maximum realistic exposure of **\$1,138,000.00**, but a risk adjusted value of **\$170,700.00**, after factoring in risks of reduction in penalties pursuant to Court discretion and the high risk of the inability to prove violations for all aggrieved employees.

(See, Leviant Decl., ¶ 18.)

The \$500,000 settlement here is fully supportable. Many risks are eliminated through settlement. And, with respect to those risks, certification rates in California are *lower* than conventional wisdom holds. (Leviant Decl., ¶ 19.) The Judicial Council’s Class Certification in California: SECOND INTERIM REPORT FROM THE STUDY OF CALIFORNIA CLASS ACTION LITIGATION - FEBRUARY 2010 (“Second Interim Report”), at page 5, states that “less than a quarter of disposed cases in the study sample were certified, either through a litigated motion for certification *or* as part of a classwide settlement agreement.” See, Second Interim Report, at 5 (emphasis added).³ That “*or*” is significant. The certification rates identified in the study of less than 25% includes *both* contested

³ The report is available at <https://www.courts.ca.gov/documents/classaction-certification.pdf> (last viewed March 12, 2024).

1 certifications and settlement certifications, which are the majority of certifications. In other words, one
2 must assume in any wage and hour class action prior to certification that a contested certification motion
3 will have a success rate of well under 25%, and probably closer to 10% as a starting point for risk
4 evaluation. (Leviant Decl., ¶ 19.) The facts of each case have significant bearing on these percentages.
5 But it cannot be disputed that certification is an exceptionally difficult procedural hurdle to successfully
6 overcome. Thus, it is not unreasonable to start from the proposition that a pre-certification settlement
7 that is 10% to 15% of the maximum plausible exposure is a valid starting point for valuation. (Leviant
8 Decl., ¶ 19.) If roughly 10% of class actions are certified on a contested basis, then, on average, 90% of
9 the time a class will not be certified and the result for the class is *zero* dollars. (*Id.*) The recovery is **12%**
10 of the maximum plausible recovery (estimated to be approximately **\$4,021,430.82**, including
11 \$1,138,000.00 in PAGA penalties), which falls within the expected outcome under the likelihood of
12 success metric and which compares favorably to other cases in which courts have granted approval of
13 class wage and hour settlements representing a smaller fraction of the maximum theoretical damages.⁴
14 (*Id.*) It would also be appropriate to evaluate the result by examining only the premium wages at issue
15 (approximately \$1,799,527.57, with no risk reduction), excluding penalties and interest; the settlement is
16 approximately 28% of the premium wages (unpaid wages, meal period premiums, and rest break
17 premiums) at maximum realistic exposure values.⁵ Because the total Settlement amount and the
18 proportion of the Settlement allocated to PAGA penalties fall within a reasonable range, the Settlement
19 should be approved.

20 **4. The Proposed Method for Allocating Settlement Funds Is Fair.**

21 The proposed method of allocating the Settlement to Class Members also is fair. As noted, the
22

23 ⁴ See, e.g., *Ferrell v. Buckingham Property Mgmt.* (E.D. Cal. Jan. 21, 2020) Case No. 1:19-cv-
24 00332-LJO-SAB, 2020 WL 291042, *17-20 (granting preliminary approval of settlement that
25 represented 5.2% of the original valuation of the claims); *Thomas v. Cognizant Tech. Sols. U.S. Corp.*
(C.D. Cal. June 24, 2013) No. SACV111123JSTANX, 2013 WL 12371622, at *6 (granting final
approval of settlement that encompassed between 4.4% and 5% of the maximum estimated liability).

26 ⁵ The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA
27 penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in its discretion “may award a lesser
28 amount than the maximum civil penalty amount specified by this part...”), and, second, courts evaluate
the strength of a proposed settlement without taking potential penalties or interest into consideration. *See*
Rodriguez v. West Publishing Corp., 563 F.3d 948, 955 (9th Cir. 2000); *see also Miller v. CEVA*
Logistics U.S.A., Inc., 2015 WL 729638, at *7 (E.D. Cal. Feb. 19, 2015).

1 Parties agreed to allocate the Settlement based on time worked by the Class Member during the Class
2 Period, in relation to the total amount of time worked by all participating Class Members collectively.
3 This proposed method is fair and reasonable because each Class Member's actual potential damages vary
4 based on the number of workweeks he or she actually worked. A Class Member who worked a greater
5 number of weeks for Defendant will receive a larger payment under the Settlement than a Class Member
6 who worked for a shorter amount of time during the relevant period. (Leviant Decl., ¶¶ 11, 17.)

7 **5. The Proposed Enhancement Payments to Plaintiff Is Fair, Adequate, and**
8 **Reasonable and Warrant Preliminary Approval.**

9 The proposed enhancement of \$7,500 to Plaintiff is intended to recognize substantial initiative
10 and significant efforts on behalf of the Class. Courts routinely approve incentive awards to compensate
11 named plaintiffs for the services they provide and the risks they incur during class action litigation, often
12 in much higher amounts than that sought here. Factors considered when awarding an incentive include
13 the actions the plaintiff has taken to protect the class, the degree to which the class has benefitted, the
14 amount of time and effort the plaintiff expended in the litigation, the risk to the class representative in
15 commencing suit (financial and otherwise), the notoriety and personal difficulties encountered, the
16 duration of the litigation, and the personal benefit (or lack thereof) enjoyed by the plaintiff as a result of
17 the litigation. *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 804 (2009). Here, Plaintiff
18 contributed time to the prosecution of this matter, including assistance prior to the mediation with
19 information and substantial time conferring with counsel over the course of this litigation and before it
20 was filed. (Leviant Decl., ¶ 33; Cepeda Decl., ¶¶ 5-14.) The enhancement also recognizes the risks
21 Plaintiff took on behalf of the Class to be personally liable for all costs incurred regardless of the success
22 of the litigation or class certification, as well as the personal risk of facing intrusive discovery and
23 potential disclosure to future employers that Plaintiff sued a former employer. The accompanying
24 Declaration of Plaintiff confirms his involvement and supports appointment as a Class Representative.

1 **6. The Proposed Award of Attorneys' Fees and Costs Is Also Fair, Adequate,**
2 **and Reasonable and Merits Approval.**

3 a) *Plaintiff's Counsel Should be Awarded Fees Based on a Percentage of*
4 *the Fund Recovered, Consistent with the Common Fund Method*

5 The request for fees as a percentage of a settlement is supported by the “common fund theory,”
6 where “one who expends attorneys’ fees in winning a suit which creates a fund from which others derive
7 benefits, may require those passive beneficiaries to bear a fair share of the litigation costs.” *Serrano v.*
8 *Priest*, 20 Cal. 3d 25, 35 (1977). The common fund doctrine has been applied “consistently in California
9 when an action brought by one party creates a fund in which other persons are entitled to share.” *City*
10 *and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995). The lodestar may be cross-checked
11 against the percentage. *See In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-58 (2009).

12 The California Supreme Court removed any lingering doubt about the use of the percentage of
13 the fund method to award attorney’s fees in California Courts. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal.
14 5th 480, 503 (2016).⁶ Thus, this Court may and, as strongly encouraged by the California Supreme
15 Court, *should* award attorney’s fees to Plaintiff’s counsel based upon the percentage methodology.

16 “Empirical studies show that, regardless whether the percentage method or the lodestar method is
17 used, fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162
18 Cal. App. 4th 43, 47 n. 11 (2008). This is consistent with Plaintiff’s counsel’s experience. Here,
19 Plaintiff’s attorneys intend to request attorneys’ fees of up to **\$166,666.67** (one-third of the GSA), and
20 costs capped at **\$18,000** (which includes payment for mediation, filing fees, legal research fees, and other
21 expenses). (Leviant Decl., ¶ 32.) Given the efforts and risks, and the results, these amounts warrant *final*
22 *approval*.

23
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26
27 ⁶ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing
28 doubt about the use of the percentage method: “The *Dunk* court, while finding the percentage method
inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport
to bar its usage generally in common fund cases.” *Laffitte*, 1 Cal. 5th at 501.

b) *A Lodestar Cross Check Confirms that Class Counsel's Requested Attorneys' Fees Are Reasonable*

Plaintiff's fee application is also reasonable based on lodestar. Under the lodestar method, the court considers a compilation of the time spent and a reasonable hourly compensation of each attorney to evaluate the reasonableness of the fee. *Ramos v. Countrywide Home Loans, Inc.*, 82 Cal. App. 4th 615, 622 (2000). The moving party meets its burden by submitting "declarations evidencing the reasonable hourly rate for their services and establishing the number of hours spent working on the case" as "California case law permits fee awards in the absence of detailed time sheets." *Wershba*, 91 Cal. App. 4th at 254-55; *Dunk*, 48 Cal. App. 4th at 1810; *Nightengale v. Hyundai Motors America*, 31 Cal. App. 4th 99, 103 (1994). The hours spent and the reasonable hourly compensation are used to arrive at a "lodestar" figure which may then be augmented or diminished taking into account various "multiplier" factors. *See Ramos*, 82 Cal. App. 4th at 622 (*citing Serrano*, 20 Cal. 3d at 48-49).

Here, Class Counsel's *total* lodestar is **\$133,277.50** (including about 10 hours of past and future time not billed by Mr. Leviant). (Leviant Decl., ¶ 32.) The billed lodestar to date is **\$123,527.50**. (Leviant Decl., ¶ 32.) The request for **\$166,666.67** in attorneys' fees, which is **1.25** times the estimated total lodestar, is reasonable under the lodestar method.

(1) Class Counsel's Hours Are Reasonable

In determining whether the number of hours was reasonable, the court must determine that "the time spent was reasonably necessary and that [] counsel made 'a good faith effort to exclude from the fee request hours that are excessive, redundant, or otherwise unnecessary.'" *Jordan v. Multnomah County*, 815 F.2d 1258, 1263 n.8 (9th Cir. 1987). The court should defer to the lawyer's judgment as to how much time he was required to spend on the case. *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008) ("[l]awyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee."). Here, Counsel expended a prudent amount of time to achieve the excellent result. (Leviant Decl., ¶ 32.)

(2) Class Counsel's Hourly Rates Are Reasonable

The reasonable hourly rate is that prevailing in the community for similar work. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). "[I]n assessing a reasonable hourly rate, the trial court is

1 allowed to consider the attorneys' skill as reflected in the quality of work, as well as the attorneys'
2 reputation and status." *MBNA American Bank, N.A. v. Gorman*, 147 Cal. App. 4th 1, 3 (2006). The trial
3 court may also "find hourly rates reasonable based on evidence of other courts approving similar rates."
4 *Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160, 1172 (C.D. Cal. 2010).

5 Class Counsel are experienced litigators who specialize in employment law, with a substantial
6 wage and hour practice. (Leviant Decl., ¶¶ 21-27.) A number of courts, including this Court, have
7 approved Class Counsel's hourly rates. (Leviant Decl., ¶ 21.) Given the skill and experience of Class
8 Counsel, and the excellent result achieved, Class Counsel's hourly rates are reasonable.

9 *c) Class Counsel's Costs Are Reasonable*

10 The Settlement Agreement provides for reimbursement of costs not to exceed \$18,000.00. Moon
11 Law Group, PC seeks capped costs in the amount of \$18,000.00, because actual costs exceed the cap.
12 (Leviant Decl., ¶ 32, Exh. 2.) These costs were reasonably incurred in prosecuting the Action on behalf
13 of the Class Members and should be approved by the Court. Accordingly, Class Counsel respectfully
14 requests the Court approve total costs in the amount of \$18,000.00. (*Ibid.*)

15 **7. The Proposed Payment to the Administrator Is Fair and Reasonable**

16 Phoenix Class Action Administration Solutions, which was selected due to its competitive bid,
17 estimates that administration can be performed for **\$10,000.00**. (Moore Decl.) In Class Counsel's
18 experience, an estimated cost of **\$10,000.00** is a fair and reasonable amount for administration fees and
19 should be preliminarily approved. (Leviant Decl., ¶ 34.)

20 **8. The PAGA Allocation is Reasonable**

21 The ultimate decision as to the amount of penalties is always up to the discretion of the Court.
22 Labor Code § 2699(e)(2) states: "In any action by an aggrieved employee seeking recovery of a civil
23 penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil
24 penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do
25 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."

26 Prior to the issuance of *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources
27 of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in
28 federal court decisions. In their view, a PAGA allocation, even if a small portion of the total settlement,

1 could be reasonable if the settlement of the wage and hour claims is robust and serves the deterrent
2 purpose of PAGA. *O'Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016)
3 (“By providing fair compensation to the class members as employees and substantial monetary relief, a
4 settlement not only vindicates the rights of class members as employees, but may have a deterrent effect
5 upon the defendant employer and other employers, an objective of PAGA.”). *Moniz* provided explicit
6 confirmation that this was an appropriate yardstick by which to measure reasonableness of a PAGA
7 settlement. *Moniz*, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with federal courts that have considered
8 how to evaluate a PAGA settlement, concluded that the class action factors are appropriately considered,
9 along with a consideration of whether the settlement furthers “PAGA’s purposes to remediate present
10 labor law violations, deter future ones, and to maximize enforcement of state labor laws.”

11 As to the first set of elements (the class-type analysis), it is embodied in Plaintiff’s discussion of
12 the adequacy of the settlement generally. Here, the expense, complexity and duration of future litigation
13 was to some extent unknown. However, what is certain is that to establish the foundational violations
14 that would support a substantial penalty award, tremendous time and expense would be invested.

15 The second element (the PAGA purposes element) is also satisfied here. As held by *Moniz*,
16 PAGA’s purposes include (1) remediation of present labor law violations, (2) deterrence of future
17 violations, and (3) maximization of enforcement of state labor laws. Here the allocation of a major
18 portion of settlement funds to class members still advances the goal of labor law violation remediation.
19 The allocation of a major portion of settlement funds to class members also deters future violations. This
20 is a \$500,000 settlement, not a trivial sum. Deterrence is fulfilled. Finally, allocation of a major portion
21 of settlement funds to class members still advances the goal of enforcement of state labor law. This
22 settlement is, by definition, a response to alleged violations of state labor laws, balanced against risks.

23 In addition, there is no evidence that a court or a commissioner had informed Defendant that its
24 conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008); *Willis v.*
25 *Xerox Bus. Servs., LLC*, 2013 WL 6053831, *7-8 (E.D. Cal. 2013). And in *Cotter*, the court found a
26 significant reduction of the PAGA claim would be appropriate because “[t]his does not appear to be a
27 case where a company has deliberately sought to evade the law.” *Cotter*, 176 F. Supp. 3d at 941.

28 Finally, the PAGA allocation is fair. The LWDA is receiving \$37,500.00. The Class is

1 receiving, net, an estimated \$247,833.33 for the releases of all other theories of recovery. While the
2 proportion is tipped in favor of the Class Members, an allocation to the LWDA equal to about 15% of the
3 Net Settlement Amount is not unfair and satisfies policies underlying California's wage and hour laws.

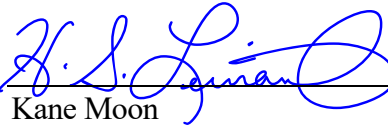
4 **VII. CONCLUSION**

5 For all the foregoing reasons, because the Class meets the requirements for certification, because
6 the Settlement bears all requisite indicia of fairness, and because the notice procedure complied with
7 Rule 3.766 and due process, this Court should grant this Motion for Final Approval.

8 Respectfully submitted,

9 Dated: October 16, 2024

MOON LAW GROUP, PC

10 By: 
11 Kane Moon
12 H. Scott Leviant
13 Mariam Ghazaryan

14 Attorneys for Plaintiff
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 725 S. Figueroa St., Suite 3100, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

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Counsel for Defendant

- ☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.
- ☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.
- ☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.
- ☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this court at whose direction the service was made, or I am a member of the bar of this court. Executed this **October 16, 2024** at Los Angeles, California.

H. Scott Leviant
Type or Print Name


Signature