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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO-CENTRAL DIVISION

MICHELLE JACKSON and ERICA AUGUSTIN, individually and as aggrieved employees pursuant to the Private Attorneys General Act ("PAGA") on behalf of the State of California and similarly situated employees,

Plaintiffs,

vs.

ALLIANT INTERNATIONAL UNIVERSITY, INC., a California corporation; and DOES 1 through 50,

Defendants.

Case No.: 37-2023-00043742-CU-OE-CTL
(Consolidated with Case No.: 37-2024-00002100-CU-OE-CTL)

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

Judge: Hon. Joel R. Wohlfeil
Dept.: 73
Hearing Date: April 4, 2025
Hearing Time: 9:00 a.m.

Complaint Filed: October 9, 2023
Trial Date: November 7, 2025
Discovery Cutoff: NA

[Decl. of Thomas D. Rutledge, [Proposed] Order, and Not. of Mot. filed concurrently herewith]

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Plaintiffs Michelle Jackson and Erica Augustin (the "Named Plaintiffs") on behalf of themselves, Aggrieved Employees, the state of California as its designated proxies, and the putative Class (collectively, the "Plaintiffs"), very respectfully request preliminary approval of this Class Action and PAGA Settlement. In this employment related case, Plaintiffs and Defendant Alliant International University Inc. have reached a full and final settlement, the terms of which are contained in the Class Action Settlement[1] attached as **Exhibit 1** to the Declaration of Thomas D. Rutledge served and filed herewith.

The core of Plaintiffs' case centers on allegations that Defendant violated multiple provisions of the California Labor Code. The Settlement provides for a $480,000 non-reversionary Gross Settlement Fund to benefit Settlement Class Members and Aggrieved Employees. Plaintiffs understand that the Class consists of approximately 300 nonexempt employees, 381 exempt employees, and 426 Aggrieved Employees within the PAGA Period. On average, nonexempt and exempt Settlement Class Members are expected to receive approximately **$450** and **$354**, respectively, from the Net Settlement Amount, while Aggrieved Employees are projected to receive around **$9** each. No action is required—Class Members and Aggrieved Employees will receive payment automatically, without the need to submit a claim.

Plaintiffs believe the proposed Settlement is fair, reasonable, and provides Class Members with outstanding relief. By this Motion, Plaintiffs very respectfully request this Honorable Court to preliminarily approve the Settlement.

II. PARTIES TO THE SETTLEMENT AGREEMENT.

A. The Named Plaintiffs.

From about July 29, 2013 to August 18, 2023, Defendant employed Plaintiff Michelle Jackson, in various high-level exempt positions within Alliant University. ROA #27, ¶¶ 19-20. From about April 1, 2013 to January 21, 2022, Defendant employed Plaintiff Augustin in various midlevel

[1] Unless otherwise defined herein, capitalized terms have the same meaning as the terms defined in the Parties' Class Action Settlement Agreement. Rutledge Decl., Exhibit 1.

nonexempt positions within Alliant University. *See* Case No.: 37-2024-00002100-CU-OE-CTL, ROA #1, ¶ 15; Rutledge Decl., ¶¶ 25-38.

B. <u>The Defendant.</u>

Defendant Alliant International University, Inc. is a private college headquartered in San Diego. It provides college and advanced degree education nationwide. *See* https://www.alliant.edu/.

C. <u>The Putative Class and Aggrieved Employees.</u>

The class is defined as: "*All current or former employees Defendant employed in California from October 9, 2019 to the present*." Plaintiffs understand that the Class includes approximately 300 nonexempt and 381 exempt Class Members, who collectively worked approximately 84,307 workweeks during the Class Period. Rutledge Decl., Ex. 1, ¶¶ II.2, 26, 30, 32, and VI. 2.a.(3).

The group of Aggrieved Employees is defined as: "*All current or former employees Defendant employed in California from October 10, 2022 to the present*." Plaintiffs are informed there are 426 Aggrieved Employees in the Class. Rutledge Decl., Ex. 1, ¶ II.20, ¶ 118.

III. <u>PROCEDURAL HISTORY & SETTLEMENT NEGOTIATIONS.</u>

In August 2023, Plaintiff Jackson retained the undersigned's office shortly after her involuntary termination by Defendant. This office thereafter obtained Plaintiff Jackson's payroll records and personnel file and began its investigation of Plaintiff's claims. Rutledge Decl., ¶¶ 25-38.

On October 9, 2023, Plaintiff Jackson, via counsel, filed a notice with the Labor Workforce Development Agency (LWDA) to exhaust her pre-litigation requirements under the PAGA. On the same day, Plaintiff Jackson, via counsel, commenced this PAGA and class action. ROA #1.

Except for Plaintiff Jackson's Labor Code § 2802 claim, the rest of Plaintiff Jackson's claims were brought under the PAGA only. This is because Plaintiff Jackson was an exempt employee and, as such, had no standing to raise class claims on behalf of nonexempt employees. Rutledge Decl., ¶¶ 25-38.

Shortly after commencing Plaintiff Jackson's litigation, however, Plaintiff Augustin retained the undersigned. On January 11, 2024, Plaintiff Augustin commenced a class action on behalf of all nonexempt employees. Plaintiff Augustin's complaint alleges the virtually the same causes of action

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that Plaintiff Jackson's litigation asserts except her claims are class claims, not just claims via the PAGA. ROA #1; *see also* Case No.: 37-2024-00002100-CU-OE-CTL, ROA #14.

Plaintiffs, via counsel, moved quickly in serving discovery, interviewing witnesses, and gathering evidence in support of their class claims. In the spring of 2024, following a series of detailed discussions between the parties via counsel regarding, among other things, Plaintiffs' intended amendments to the complaints, certification motion preparation, among other things, the parties agreed to attend private mediation. Rutledge Decl., ¶¶ 39-40.

Over a nine-month period, the parties voluntarily exchanged a large volume of records and data to prepare for a meaningful mediation. This information exchange included a wide range of evidence such as a random sampling of putative Class Members' time records, paystubs, critical data such as the class size, number of workweeks the Class worked, employee handbooks, policy memos, among other things. Plaintiffs' Counsel's staff analyzed the evidence, assessed liability, and measured damages. Rutledge Decl., ¶¶ 41-46.

On December 4, 2024, the Parties participated in an all-day private mediation before the Hon. Steven R. Denton (Ret.), a well-respected private mediator. Before mediation, the parties submitted detailed briefs outlining their respective positions. At the conclusion of the mediation, Judge Denton made a mediator's proposal the Parties accepted one week later. Rutledge Decl., Ex. 1. ¶¶ I.1-I.4; ¶¶ 47-48.

Over a three-month period, the Parties negotiated the terms of the Class Settlement, which they executed in the first week of March 2025. One of the Settlement terms requires the consolidation of the *Augustin* case with the *Jackson* case. *See* Rutledge Decl., Ex. 1, ¶ I.6. On March 7, 2025, the Parties filed a joint stipulation with the Superior Court to satisfy this requirement. *Id.*, Ex. 2. If the Court has not yet reviewed the joint stipulation before the hearing on this Motion, the Parties respectfully request that the Court sign the proposed order in conjunction with the relief sought in this Motion.

IV. **<u>THE SETTLEMENT AGREEMENT.</u>**

A. **<u>Overview of The Settlement Terms.</u>**

In consideration for the release of Class Members' claims, Defendant agrees to pay $480,000

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into a Gross Settlement Fund. Under no circumstances will any portion of this fund revert to the Defendant. Rutledge Decl., Ex. 1, ¶¶ II.12 and II.4.

The Gross Settlement Fund shall increase or decrease proportionately if the number of individuals exceeds or falls below the Defendant's estimates by 10% or more as defined in the Agreement. Rutledge Decl., Ex. 1, ¶ VI.1.a.(3). After Court-approved deductions for the Named Plaintiffs' Class Representative Enhancement and General Release Payments, attorneys' fees, litigation expenses, settlement administration expenses, and payments to the LWDA and Aggrieved Employees, the remaining funds will be automatically distributed *pro rata* to Settlement Class Members. *Id*., ¶ VIII. Proceeds from uncashed checks shall be distributed consistent with Code of Civil Procedure § 384 to the California Controller's Unclaimed Property Fund. *Id*., ¶ VIII.4.a. The Parties mutually agree to use Phoenix Settlement Administrators, an experienced neutral third party that provided the lowest bid, to serve as the Settlement Administrator. *Id*., ¶ II. 29.

B. <u>Allocation of Settlement Proceeds.</u>

The Settlement Agreement provides that allocation of the Net Settlement Fund shall be distributed as follows: 50% of the Net Settlement Proceeds will be allocated to each nonexempt Settlement Class Member and 50% of the Net Settlement Proceeds will be distributed to each exempt Settlement Class Member based on each Settlement Class Member's *pro rata* share of the total number of workweeks within the Relevant Time Period that he or she worked. Rutledge Decl., Ex. 1, ¶ VIII.1.b.

Like the Class Members, the Aggrieved Employees' portion ($3,750) of the PAGA Award (i.e. 25% of $15,000) will be allocated to Aggrieved Employees based on the total number of workweeks they worked during the PAGA Period. Rutledge Decl., Ex. 1, ¶ VIII.2.a.

C. <u>The Class Notice Packet.</u>

Per the Settlement Agreement, the Settlement Administrator shall mail Settlement Class Members and Aggrieved Employees the Notice Packet, a copy of which is attached as **Exhibit A** to the Settlement Agreement titled, "NOTICE OF PROPOSED CLASS ACTION AND PAGA SETTLEMENT" (the "Class Notice"). *See* Rutledge Decl., Ex. 1, Ex. A. The proposed Notice Packet provides Class Members and Aggrieved Employees sufficient information about the

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Settlement, including its monetary terms, the nature of the claims and their release, and Class Members' right to object to or exclude themselves from the Settlement, except for the Aggrieved Employees who have no lawful right to opt out of a court-approved PAGA Settlement. The Notice further informs Class Members and Aggrieved Employees of where and how to obtain additional information about the Settlement. In the event a Notice is returned to the Settlement Administrator by the Post Office, the Settlement Agreement requires the Settlement Administrator to take reasonable steps to locate Class Members/Aggrieved Employees' new mailing addresses. Rutledge Decl., Ex. 1, ¶¶ II.17, VI.

Plaintiffs believe the proposed Notice Packet meets the requirements of the California Rules of Court, Rule 3.766(d) because it "fairly apprise[s] the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. *App.* 4th 1135, 1159 (2000). Plaintiffs very respectfully request that the Court approve the Notice.

D. Attorneys' Fees, Litigation Costs, and Plaintiffs' Enhancement Fees.

The Settlement Agreement requires Plaintiffs' Counsel to move the Court to request an award of attorneys' fees in an amount not to exceed one third of the Gross Settlement Fund and reasonable litigation costs not to exceed $10,000, to request the Class Representatives' Enhancement Payments in the total amount of $5,000 each to the Named Plaintiffs as a reward for their work as Class Representatives, and to request $5,000 to each of the Named Plaintiffs for their general release payments as additional compensation for their unique personal claims in exchange for their Civil Code § 1542 release. These amounts along with settlement administration costs, if approved, will be deducted from the Gross Settlement Fund before distribution to Settlement Class Members. Rutledge Decl., Ex. 1, ¶ IV.1-IV.5.

E. Estimated Allocation of The Gross Settlement Fund.

The Parties estimate the Gross Settlement Fund will be allocated as follows:

Gross Class Settlement	**$480,000**
Litigation Expenses	($10,000)
Attorneys' Fees	($159,984)
Incentive Awards to Named Plaintiffs	($10,000)

1542 Payment to the Named Plaintiffs	($10,000)
Settlement Administration Expenses	($7,000)
LWDA	($11,250)
Aggrieved Employees	($3,750)
TOTAL	($211,984)
Net Settlement Amount	**$268,016**

V. THE CLASS AND PAGA SETTLEMENT IS FAIR AND REASONABLE.

Plaintiffs respectfully request certification of this action solely for settlement purposes pursuant to § 382 of the Code of Civil Procedure. Class certification is appropriate 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 . . ." and when the proposed class settlement is fair, reasonable, and complies with the requirements of Cal. Rules of Court, Rule 3.769, *et seq*. *See* Code Civ. Proc. § 382; *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996).

A. The Settlement Terms Are Fair, Reasonable, and Adequate.

"In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as the strength of Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *Wershba v. Apple Computers, Inc.,* 91 Cal. *App.* 4th 224, 233 (2001). A presumption of fairness exists where the settlement is reached through arm's-length bargaining. *Dunk, supra,* 48 Cal. App. 4th 1794, 1799.

1. The Settlement Was Reached Via Arm's Length Negotiations.

The Settlement was reached only after months of extensive, arm's-length negotiations. Throughout these discussions, the Parties thoroughly examined all aspects of the litigation, including Defendant's defenses against liability and class certification. Notably, attorneys' fees and service payments for the Plaintiffs were not addressed until after all other material settlement terms had been finalized, ensuring that no trade-off occurred between compensation for the Class and payments to Plaintiffs' Counsel or the Plaintiffs themselves. Defendant vigorously denies, and continues to deny, all claims and allegations asserted in this action. Rutledge Decl., ¶¶ 59-119. This

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Settlement, therefore, has the right to the presumption of fairness. *See Dunk,* 48 Cal. App. at 1802.

2. <u>The Amount of the Settlement Is Significant</u>.

Defendant agrees to pay $480,000. Nonexempt and exempt Settlement Class Members are expected to receive **$450** or **$354** apiece, respectively, and Aggrieved Employees to receive about **$9** apiece from the Net Settlement Amount on average. Class Members and Aggrieved Employees will be paid automatically—no need to submit a claim. This Class recovery is *well* within the range of reasonable. *See* Rutledge Decl., ¶¶ 59-119 (for a full discussion of Plaintiffs' Counsel's reasoning of why this settlement amount is fair and reasonable consistent with the *Kullar* analysis).

3. <u>The Risk of Litigation Support Class and PAGA Settlement.</u>

The significance of this recovery becomes even more apparent when weighed against the risks of continued litigation. Plaintiffs had not yet obtained class certification, and had the case proceeded, Defendant likely would have sought summary judgment on multiple grounds. For instance, Defendant argued that Plaintiffs' meal and rest break claims required highly individualized inquiries and that the PAGA claims were unmanageable. Additionally, Defendant challenged the viability of Plaintiffs' reimbursement claims for cell phone and internet expenses, asserting that its remote work reimbursement policies were more than reasonable. These and other defenses raised by Defendant played a substantial role in shaping the settlement amount. Rutledge Decl. ¶¶ 59-119.

4. <u>The Discovery Obtained and Stage of Proceedings Supports Settlement.</u>

Over the course of nearly 18 months, the Parties actively litigated this case, with more than nine months dedicated to preparing for mediation. Before mediation, the Parties exchanged a substantial volume of documents, and Defendant provided payroll data for Class Members and Aggrieved Employees, enabling Plaintiffs to accurately assess damages and evaluate liability. As a result, both sides entered mediation with a thorough understanding of the key issues and relevant evidence. Rutledge Decl*.,* ¶¶ 39-46. This factor further supports approval of the Settlement

5. <u>The Views and Experience of Counsel Support Settlement.</u>

The Parties are represented by attorneys who have significant experience in class action litigation and settlements. It is the view of Plaintiffs' Counsel, a lawyer with 30 years in this field, that the Settlement is fair, adequate, and reasonable. Rutledge Decl., ¶¶ 3-53. Courts typically defer

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to the judgment of putative Class Counsel. *See Kullar*, *supra,* 168 Cal. App. at 129 ("The court . . . should give considerable weight to the competency and integrity of counsel . . . in assuring itself that a settlement agreement represents an arm's-length transaction entered without self-dealing or other potential misconduct.")

B. <u>Certification of the Settlement Class Is Appropriate.</u>

To obtain certification under Code Civ. P. § 382, a party must "establish the existence of both an ascertainable class and a well-defined community of interest among the class members." *Lockheed Martin Corp. v. Superior Court,* 29 Cal. 4th 1096, 1103-1104 (2003). "The community of interest requirement embodies three factors: (1) predominant common 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.,* 29 Cal. 3d 462, 470 (1981).

1. <u>The Proposed Class Is Ascertainable and Numerous.</u>

"No set number is required as a matter of law for the maintenance of a class action," and courts have certified classes with as few as 28 members. *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981). Here, with over 600 Class Members, the numerosity requirement is clearly met.

Class members are considered ascertainable when they can be readily identified "without unreasonable expense or time by reference to official records." *Aguiar v. Cintas Corp. No. 2*, 144 Cal. App. 4th 121, 146 (2006). In this case, Class Members can be easily identified through Defendant's employment records, satisfying the ascertainability requirement.

2. <u>The Community of Interest Requirements Are Met.</u>

a. <u>Common Questions Predominate.</u>

"The ultimate question the element of predominance presents is whether the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1023 (2012). Here, Plaintiffs assert that common issues predominate over individual concerns, particularly the central question of whether Defendant violated the Labor Code. Because Defendant, as an employer, purportedly applied uniform procedures and enforced the same employment policies for all Class

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Members, Plaintiffs contend that the legality of Defendant's conduct can be determined on a class-wide basis.

b. <u>The Named Plaintiffs' Claims Are Typical.</u>

Typicality requires the named plaintiff's interests in the action be significantly similar to those of other class members. *See Richmond*, *supra*, 29 Cal. 3d at 470. A representative plaintiff's claims are typical if they (1) arise from the same event that gives rise to the claims of other class members and (2) are based on the same legal theories. *Miller v. Woods*, 148 Cal. App. 4th 867, 872-73 (1983). When the same underlying conduct affects the named plaintiffs and the putative class, the typicality requirement is met irrespective of varying fact patterns that may underlie individual claims. *Daniels v. Centennial Grp., Inc.*, 16 Cal. App. 4th 467, 473 (1993).

In this case, the Named Plaintiffs allege they and all Class Members suffered Labor Code violations. Claims of this sort are routinely found to be typical. *See Richmond*, *supra*, 29 Cal. 3d at 470.

c. <u>The Class Is Adequately Represented by Plaintiffs and Their Counsel.</u>

"Adequacy of representation depends on whether the Plaintiff's attorney is qualified to conduct the proposed litigation and the Plaintiff's interests are not antagonistic to the interests of the class." *McGhee v. Bank of Am.,* 60 Cal. App. 3d 445, 450 (1976). Here, the Named Plaintiffs have been actively involved throughout this litigation, providing counsel with relevant documents, staying informed on case developments and settlement negotiations, and ultimately signing the Settlement Agreement. In making litigation and settlement decisions, Plaintiffs prioritized the interests of the Class. They have no conflicts of interest with the putative class.

Additionally, Plaintiffs' Counsel has extensive experience in class action litigation, having represented employees in numerous employment class actions and PAGA cases. As in previous cases, Plaintiffs' Counsel will remain vigilant in fulfilling his fiduciary duty to the putative Class. Rutledge Decl., ¶¶ 3-24.

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d. Class Action Is the Superior Vehicle for Adjudication.

A class action is the preferred method when individual claims are too small to justify separate lawsuits and when the class mechanism prevents redundant or repetitive litigation. *Aguiar v. Cintas Corp. No. 2*, 144 Cal. App. 4th 121, 146 (2006). In a case like this, where all Class Members share identical claims arising from a common set of facts but involve relatively modest damages, resolving the matter as a class action will conserve time, effort, and resources while ensuring consistent outcomes.

C. Reasons to Preliminarily Approve the PAGA Settlement Allocation.

Plaintiffs also request that the Court preliminarily approve the $15,000 PAGA settlement payment, as it is fair and reasonable under the circumstances. Notably, this case primarily involves a class settlement aimed at compensating workers directly impacted by Defendant's alleged misconduct, making it appropriate to allocate a greater share of the settlement funds to Class Members rather than the State of California. Furthermore, there is no indication that the Labor Commissioner has ever cited Defendant for Labor Code violations. This absence of prior citations would likely have supported Defendant's request for leniency, given the Court's broad discretion in awarding PAGA penalties under the Labor Code

VI. CONCLUSION.

For the foregoing reasons, Plaintiffs very respectfully requests that the Court: (l) preliminarily approve the proposed Settlement, (2) certify the Class for settlement purposes only, (3) appoint the Named Plaintiffs as Class Representatives, (4) appoint Plaintiffs' counsel as Class Counsel, (5) direct notice to be distributed to the Class and Aggrieved Employees, and (6) schedule a final approval hearing.

Respectfully submitted,

Dated: March 11, 2025

Law Office of Thomas D. Rutledge

By: */s/Thomas D. Rutledge*
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PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

I, THOMAS D. RUTLEDGE, the undersigned, am employed in the County of San Diego, State of California; I am over the age of 18 and not a party to the within action; my business address is 16956 Via de Santa Fe, Suite 1847, Rancho Santa Fe, California 92091-4606.

On March 11, 2025, I served the foregoing document(s) described as:

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT
on the interested parties to this action by placing a copy thereof enclosed in a sealed envelope addressed as follows: **See Attached List.**

☐**(BY MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence was deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in San Diego, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

☒**(BY E-MAIL via E-file)** I am readily familiar with the business practice for collection and processing of correspondence for emailing with the Court authorized third-party vendor. This correspondence was sent via email via this third-party vendor pursuant to the vendor's policies and practices.

☐(BY OVERNIGHT DELIVERY SERVICE) I served the foregoing document by Federal Express, an express service carrier which provides overnight delivery, as follows. I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided for.

☐(BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the above named addressee(s).

☐(BY FACSIMILE) I caused such documents to be delivered via facsimile to the offices of the addressee(s) at the following facsimile number:

Executed March 11, 2025, at San Diego, California.

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

/s/THOMAS D. RUTLEDGE
THOMAS D. RUTLEDGE

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