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10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 BARBARA GRADY, individually and
14 on behalf of all others similarly
15 situated,

16 Plaintiffs,

17 vs.

18 RCM TECHNOLOGIES, INC.,

19 Defendant.

Case No.: 5:22-cv-00842 JLS-SHK

**PLAINTIFF’S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
SERVICE AWARD TO CLASS
REPRESENTATIVE;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Date: February 21, 2025

Time: 10:30 a.m.

Location:

Courtroom 8A, 8th Floor
First Street U.S. Courthouse
350 West 1st Street,
Los Angeles, CA 90012

Complaint Filed: February 7, 2022

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NOTICE OF MOTION AND MOTION

TO ALL CLASS MEMBERS, PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take notice that on **February 21, 2025, at 10:30 a.m.**, or as soon thereafter as the matter may be heard, in the Courtroom of the Honorable Josephine L. Staton, Courtroom 8A, 8th Floor, United States District Court, Central District of California, First Street U.S. Courthouse, 350 West 1st Street, Los Angeles, CA 90012, Plaintiff Barbara Grady (“Plaintiff”) will hereby move this Court for an Order approving a service award of \$5,000 to the Class Representative to be paid out of the non-reversionary, common settlement fund.

The service award sought is warranted in light of Ms. Grady’s time and efforts in this case, including appearing for deposition, searching for documents, participating in mediation, and engaging in multiple conferences with counsel over the course of the case. She also took personal risks in bringing the lawsuit, rejected the opportunity to settle her claims individually, and fulfilled important public policies by prosecuting the case on behalf of others, rather than just herself. Moreover, Ms. Grady has agreed to a broader release than the Class and PAGA Release. The requested service award for Ms. Grady also falls comfortably within the range of service awards granted by the courts in comparable litigation

The Motion is made following the conference of counsel pursuant to L.R. 7-3.

This Motion is based on the accompanying Memorandum of Points and Authorities; the Declaration of Barbara Grady in Support of the Motion for Final Approval and Motion Service Award; the Declaration of Joshua Konecky in Support of the Motion for Final Approval, Reasonable Attorneys’ Fees and Costs, and Service Award; such oral argument as may be heard by the Court; and all other papers on file in this action.

1 Dated: December 26, 2024

Respectfully Submitted,

2 **SCHNEIDER WALLACE**
3 **COTTRELL KONECKY LLP**

4 */s/ Joshua G. Konecky*

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6 Joshua G. Konecky
7 Attorney for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Barbara Grady requests that this Court approve a service award of
4 \$5,000 for her important and substantial contributions to the Class in both the
5 litigation and class settlement of this matter. The requested service award is
6 warranted in light of Ms. Grady’s time and efforts in helping Plaintiff’s counsel to
7 develop and prosecute this case; the personal risks she undertook in bringing this
8 lawsuit; her rejection of the opportunity to settle her claims individually later in the
9 case; her commitment to prosecuting the case in the best interests of the Class; the
10 fact that she has nonetheless executed a broader release than the other Class
11 Members; and the important public policies that she helped to vindicate by stepping
12 forward to be the class representative. Ms. Grady agreed to the proposed settlement
13 without any condition of receiving a service award because she was committed to
14 bringing relief to the Class. Furthermore, the requested service award falls well
15 within the range of service awards granted by the courts.

16 The requested service award would be paid from the \$1,658,410 Gross
17 Settlement Fund and represent only 0.30% of the total settlement amount (and 0.5%
18 of the net settlement amount to be distributed to the other Class and PAGA
19 Members), further underscoring its reasonableness.

20 Ms. Grady has submitted a declaration that attests to her efforts and goals in
21 bringing this case and helping her counsel to litigate it effectively on behalf of the
22 Class. Ms. Grady worked diligently with counsel to represent the interests of the
23 Class. She put aside her personal interests so that she could best represent the Class’s
24 interests and make the significant relief secured by this case a reality for over a
25 thousand other Class Members. The service award she now requests is reasonable
26 and warranted in consideration of the significant benefit that she has conferred on
27 the Class Members through her work with counsel, her commitment to the case, the
28 personal risks she took to serve as a class representative, and her agreement to a

1 broader release of claims than the unnamed Class Members.

2 For the reasons stated herein, Ms. Grady respectfully requests that this Court
3 approve the proposed service award of \$5,000.

4 **II. SUMMARY OF PLAINTIFF’S WORK ON THIS CASE**

5 A more detailed description of the claims and citation to the evidence
6 presented during the case can be found in Plaintiff’s Motion for Class Certification,
7 filed June 21, 2024 (ECF No. 41), Plaintiff’s Motion for Preliminary Approval, filed
8 July 26, 2024 (ECF No. 44), and Plaintiff’s Motion for Final Approval, filed
9 concurrently with this Motion.

10 Ms. Grady worked as a nurse for Defendant RCM Technologies (USA), Inc.
11 (RCM) in September and October of 2020. She worked assignments for RCM at Hi
12 Desert Continuing Care in Joshua Tree, California, and at “pop up” Covid 19 testing
13 centers at the Rancho Cucamonga Sports Park, San Bernardino Orange Show,
14 Hesperia, Lytle Creek, Rialto, Upland, Fontana, and Montclair. This also was during
15 the height of the Covid-19 pandemic and the patient flow tended to be busy. *See*
16 Declaration of Barbara Grady ISO Motion for Final Approval and Service Award
17 (“Grady Final Approval Decl.”) at ¶ 2.

18 Ms. Grady reports there were many occasions when she did not get off-duty
19 meal periods of at least 30 minutes by the end of the fifth hour of work or off-duty
20 rest periods every four hours while working at the Covid testing sites. Declaration of
21 Barbara Grady in Support of Preliminary Approval, ECF No. 44-9 (“Grady
22 Preliminary Approval Decl.”) at ¶¶4-9. She describes that it was often too busy with
23 the people getting tested for her and her co-workers to take off-duty meal and rest
24 periods. *Id.* at ¶8. Still, a half-hour was regularly deducted from her pay based on the
25 assumption that the nurses always received all their meal and rest periods in a timely
26 fashion. *Id.* at ¶9. Ms. Grady was not paid any additional premium pay for
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1 noncompliant meal or rest periods at any of the locations that she worked while
2 employed by RCM. *Id.*

3 Ms. Grady also reports regularly needing to load and unload tables and
4 equipment before and after the shift, but that this time often was not accounted for in
5 the sign-in and sign-out time on the time sheets. *Id.* at ¶7.

6 Ms. Grady brought this case, not just because she felt RCM did not pay her
7 correctly, but because she was concerned that RCM's policies caused other nurses
8 like her to be deprived of their wage and hour rights too. She brought this case to
9 seek redress for the nurses as a class, not just herself. *See* Grady Final Approval Decl.
10 at ¶4; Grady Preliminary Approval Decl. at ¶10.

11 Ms. Grady has been committed to working with Class Counsel to prosecute this
12 case in the best interest of the class. At various points during the case, such as when
13 the Court denied approval of the previous settlement, she had the opportunity to settle
14 her claims individually, but chose not to. *See* Grady Preliminary Approval Decl. at
15 ¶11; Konecky Declaration at ¶106. However, she resisted those pulls and continued
16 to prosecute the case on behalf of the class. *Id.*

17 Ms. Grady spent many hours with Class Counsel over the course of this case
18 providing information and assisting them in bringing the claims forward. She
19 traveled from her home in Covina, California to the downtown LA offices of RCM's
20 attorneys to sit for deposition. *See* Grady Final Approval Decl. at ¶6; Konecky
21 Declaration at ¶106. She also participated in the mediation on July 2, 2024, and had
22 many discussions with Class Counsel during and after the mediation to evaluate the
23 different settlement positions, the potential benefits and risks of litigation, and the
24 mediator's proposal. *See* Grady Final Approval Decl. at ¶7; Konecky Declaration at
25 ¶106.

26 Under the Settlement Agreement, Ms. Grady has agreed to a general release of
27 all known and unknown claims. *See* Settlement Agreement at ¶60. This stands in
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1 contrast to the narrower release for unnamed Class Members, who waive only those
2 wage-and-hour claims that were pled or could have been pled based on the
3 allegations in the Operative Complaint. *Id.* at ¶¶27, 58-59.

4 **III. LEGAL STANDARD**

5 Service awards are common in class action cases. *Rodriguez v. West Publ’g*
6 *Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (service awards “are fairly typical in class
7 action cases.”); *see also Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003)
8 (“named plaintiffs ... are eligible for reasonable incentive payments.”). The purpose
9 of such awards is “to compensate class representatives for work done on behalf of
10 the class [and] make up for financial or reputational risk undertaken in bringing the
11 action....” *Rodriguez*, 563 F.3d at 958-59; *Staton*, 327 F.3d at 977.

12 Numerous courts in the Ninth Circuit have approved service awards of \$5,000
13 or more. *See, e.g., Morin v. Lojack Corp.*, 2011 U.S. Dist. LEXIS 165606, at *4
14 (C.D. Cal. Dec. 7, 2011) (granting \$20,000 service award); *Marsh v. P&G Paper*
15 *Prods. Co.*, 2019 U.S. Dist. LEXIS 240576, at *11-12 (C.D. Cal. July 11, 2019)
16 (granting a \$5,000 service award); *Edwards v. First Am. Corp.*, 2016 U.S. Dist.
17 LEXIS 188791, at *3 (C.D. Cal. Oct. 14, 2016) (granting a \$5,000 service award);
18 *In re NCAA Ath. Grant-in-Aid Cap. Antitrust Litig.*, 2017 U.S. Dist. LEXIS 201108,
19 at *25-*26, *26 n.69 (N.D. Cal. Dec. 6, 2017) (granting each class representative a
20 \$20,000 service award and collecting cases in which courts have granted awards of
21 \$5,000 and more); *In re Pep Boys Overtime Actions*, 2008 U.S. Dist. LEXIS 126648,
22 at *7-8 (C.D. Cal. Nov. 12, 2008) (granting service awards of \$20,000 to each of
23 seven named plaintiffs); *Garner v. State Farm Mut. Auto. Ins. Co.*, 2010 U.S. Dist.
24 LEXIS 49477, at *47, *47 n.8 (N.D. Cal. Apr. 22, 2010)(granting \$20,000;
25 “Numerous courts in the Ninth Circuit and elsewhere have approved incentive
26 awards of \$20,000 or more where, as here, the class representative has demonstrated
27 a strong commitment to the class.”) (collecting cases).

28 In evaluating the appropriateness of service awards, courts consider the

1 following relevant factors: (1) the amount of time and effort spent by the class
2 representative on the litigation; (2) the degree to which the class representative’s
3 efforts benefitted the class; (3) the personal difficulties encountered by the class
4 representative; (4) the duration of the litigation; (5) the personal benefit, or lack
5 thereof, enjoyed by the class representative as a result of the litigation; and (6) the
6 risk to the class representative in commencing suit, both financial and otherwise. *See*
7 *Staton*, 327 F.3d at 977; *In re Toys R Us-Delaware, Inc. FACTA Litig.*, 295 F.R.D.
8 438, 470 (C.D. Cal. 2014). As discussed below, application of these factors
9 demonstrates that the service award requested in the Settlement for Ms. Grady is
10 warranted here.

11 **IV. ARGUMENT**

12 **A. Plaintiff invested substantial time and effort for the benefit of the** 13 **Class Members**

14 “An incentive award is appropriate where the ‘class representatives remained
15 fully involved and expended considerable time and energy during the course of the
16 litigation.’” *Waldbuesser v. Northrop Grumman Corp.*, 2017 U.S. Dist. LEXIS
17 223293, at *21 (C.D. Cal. Oct. 24, 2017) (citation omitted).

18 Here, Ms. Grady devoted many hours to the case. As discussed above, she
19 provided important information to counsel, engaged in lengthy interviews with
20 counsel, sat for deposition, searched for documents, appeared at the mediation, and
21 provided sworn declarations. *See* Grady Final Approval Decl. at ¶¶6-7; Konecky
22 Decl. at ¶¶106-108.

23 Ms. Grady’s dedication and involvement have been essential to this case.
24 There would be no case or settlement without her contributions and service.

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1 **B. The Class Members received a substantial benefit from Plaintiff’s**
2 **service**

3 In addition to weighing the amount of time and effort expended by the named
4 plaintiffs, courts also consider the degree to which their efforts benefitted the class.
5 *Staton*, 327 F.3d at 977 (internal citation omitted).

6 Here, Ms. Grady’s numerous contributions to this litigation will significantly
7 benefit the Class. First, the case would not have been filed but for Ms. Grady’s time
8 and effort in bringing the class complaints to the attention of Plaintiff’s counsel.
9 Second, Ms. Grady put her personal interests aside, rejected the opportunity to settle
10 her claims individually, and committed herself to representing the interests of the
11 Class as a whole. *See* Grady Final Approval Decl. at ¶¶6-7; Grady Preliminary
12 Approval Decl. at ¶11; Konecky Declaration at ¶106. Third, the Class and PAGA
13 Members stand to receive a substantial benefit from Plaintiff’s efforts. Indeed, the
14 Settlement Class Members are estimated to receive an average settlement share of
15 approximately \$899 per person (an average of \$938 per person for Class Members
16 who are also PAGA Members). *See* Konecky Decl. at ¶38. As discussed in Plaintiff’s
17 Motion for Final Approval, these recoveries compare favorably to comparable wage
18 and hour cases, particularly given the relatively short-term nature of the work
19 assignments and Class Period in this case. The substantial benefit Plaintiff’s efforts
20 have secured for the Class weigh in favor of granting the requested service award.

21 **C. The service award is justified by the duration of the litigation**

22 Perseverance in pursuing litigation on behalf of a class over several years of
23 litigation weighs in favor of granting a service award. *See, e.g., In re NCAA Ath.*
24 *Grant-in-Aid Cap. Antitrust Litig.*, 2017 U.S. Dist. LEXIS 201108, at *10-11, *26
25 (granting each class representative a \$20,000 service award where investigation and
26 litigation lasted “more than three years” and “the class representatives spent a
27 significant amount of time assisting in the litigation of th[e] case, preparing for and
28 having their depositions taken, in searching for and producing documents . . . and in

1 conferring with counsel throughout the litigation.”); *Byles v. Ace Parking Mgmt.*,
2 2019 U.S. Dist. LEXIS 141272, at *4 (W.D. Wash. Aug. 20, 2019) (granting \$5,000
3 service award and stating: “Plaintiff . . . participated meaningfully in a contested
4 lawsuit, remained willing to provide assistance to the parties for over three years,
5 and class counsel with evidence of the claims and her consent to make strategic
6 decisions [in] the case.”). Indeed, courts have granted awards of \$5,000 and more
7 even in cases that have been pending for far less time than this case has. *See, e.g.*,
8 *Marsh*, 2019 U.S. Dist. LEXIS 240576, at *1, *11-12 (\$5,000; case pending a little
9 over one year); *Morin*, 2011 U.S. Dist. LEXIS 165606, at *1, *4 (\$20,000; case
10 pending about 1.5 years); *Garner*, 2010 U.S. Dist. LEXIS 49477, at *3, *47
11 (\$20,000; case pending for approximately two years).

12 Here, Ms. Grady has worked for the benefit of the Class for approximately
13 three-and-one-half years. Ms. Grady provided interviews and information to Class
14 Counsel, searched for documents, traveled to and sat for deposition, and participated
15 in the mediation. *See* Grady Final Approval Decl. at ¶¶6-7. For these reasons, the
16 duration factor weighs in favor of the requested service award.

17 **D. Plaintiff acted in the best interests of the Class**

18 In stepping forward to represent the class, Ms. Grady put her individual
19 concerns aside and acted in the best interests of the class. *See* Grady Final Approval
20 Decl. at ¶¶4-7. Moreover, when Ms. Grady accepted the proposed settlement on
21 behalf of the Class, she did so without any condition that she would receive a service
22 award. *See id.* at ¶8. Her support for the proposed settlement is in no way
23 conditioned upon the promise of a service award. *Id.*

24 Additionally, Ms. Grady has agreed to a broader release that encompasses all
25 known and unknown claims she may have against Defendants, not just the specific
26 wage and hour claims more narrowly released by the other Class Members. *See*
27 Settlement Agreement at ¶¶58-60.

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1 **E. Plaintiff took a substantial risk in bringing this class action**

2 Another factor supporting the award of service payment is whether the class
3 representative’s service resulted in personal difficulties and/or whether they
4 undertook significant risks to serve as class representatives. *See, e.g., Schaffer v.*
5 *Litton Loan Servicing, LP*, 2012 U.S. Dist. LEXIS 189830, at *59 (C.D. Cal. Nov.
6 13, 2012); *Millan v. Cascade Water Servs., Inc.* 2016 WL 3077710, at *12 (E.D. Cal.
7 May 31, 2016 (reasoning that service awards “are particularly appropriate in wage-
8 and-hour actions where plaintiffs undertake a significant ‘reputational risk’ by
9 bringing suit against their present or former employers.”) (citation omitted). “When
10 a class representative shoulders some degree of personal risk in joining the litigation,
11 such as workplace retaliation or financial liability, an incentive award is especially
12 important.” *In re Toys R Us*, 295 F.R.D. at 470. Examples of risks to the plaintiff
13 in commencing the litigation “includ[e] reasonable fears of workplace retaliation,
14 personal difficulties, and financial risks.” *Wren v. RGIS Inventory Specialists*, 2011
15 WL 1230826, at *32 (N.D. Cal. Apr. 1, 2011) (collecting cases).

16 Further, it is well established that plaintiffs in the employment context “face[]
17 the risk that new employers would learn that they were class representatives in a
18 lawsuit against their former employer and take adverse action against them.
19 Moreover, each time they change jobs, they will risk retaliation in the hiring
20 process.” *Asare v. Change Grp. N.Y., Inc.*, 2013 U.S. Dist. LEXIS 165935, at *40
21 (S.D.N.Y. Nov. 15, 2013); *DeWitt v. Darlington Cnty.*, 2013 U.S. Dist. LEXIS
22 172624, at *38 (D.S.C. Dec. 6, 2013) (noting that incentive payments are especially
23 warranted “where the plaintiff is often a former or current employee of the defendant,
24 and thus, by lending her name to the litigation, she has, for the benefit of the class as
25 a whole, undertaken the risk of adverse actions by the employer or co-workers.”)
26 (internal markings and citation omitted).

27 Here, Ms. Grady risked her reputation in the community and with future
28 employment opportunities as a result of stepping forward publicly as the named

1 representative in a class action. Further, she bore the risk that she might have to pay
2 defense costs if she lost the case.

3 **F. The proposed service award is a small fraction of the settlement**
4 **amount**

5 In evaluating proposed service awards, courts compare the overall settlement
6 benefits and the range of recovery available to the class members to the
7 representative plaintiffs' proposed service awards. *See, e.g., Staton*, 327 F.3d at 976-
8 77; *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 328 (C.D. Cal. 2016). The purpose
9 of the inquiry is to ensure that the service awards have not compromised the ability
10 of the representative plaintiff to act in the best interest of the class. *Radcliffe v.*
11 *Experian Info. Solutions, Inc.*, 715 F.3d 1157, 1163 (9th Cir. 2013) (courts must
12 scrutinize "the awards so that they do not undermine the adequacy of the class
13 representatives"). Courts view more favorably those service awards which constitute
14 "only a tiny fraction" of the total settlement amount. *See, e.g., Mego Fin. Corp. Sec.*
15 *Litig.*, 213 F.3d 454, 457-63 (9th Cir. 2000) (approving combined service awards
16 constituting 0.57% of the \$1.725 million settlement); *Sandoval v. Tharaldson*
17 *Employee Mgt., Inc.*, 2010 WL 2486346, at *10 (C.D. Cal. June 15, 2010) (approving
18 service award of \$7,500 where average class member received \$749.60, but service
19 award was 1% of gross settlement).

20 Here, the proposed service award is quite modest in comparison to the overall
21 benefits of the settlement and recovery to the class. The proposed service award of
22 \$5,000 to Ms. Grady represents only approximately 0.3% of the total settlement
23 amount and 0.5% of the net settlement amount to be distributed to the Class. *See,*
24 *e.g., Alcantar v. Hobart Serv.*, 2018 U.S. Dist. LEXIS 221900, at *27-29 (C.D. Cal.
25 Aug. 13, 2018) (granting a \$25,000 service award, which "represent[ed] just 0.6
26 percent of the total Settlement."); *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, 2017
27 U.S. Dist. LEXIS 199172, at *31 (C.D. Cal. May 8, 2017) (granting \$25,000 each to
28 two class representatives because, among other reasons, the total constituted only

1 0.2% of the settlement); *Watson v. Tennant Co.*, 2020 U.S. Dist. LEXIS 166823, at
2 *12, 19 (E.D. Cal. Sep. 10, 2020) (approving service award of \$25,000 to named
3 plaintiff where average recovery per class member was estimated to be \$8,830.14
4 and noting that “[t]his service award is less than three times the average award to
5 individual class members, which is low relative to similar settlements.”).

6 **G. The proposed service award promotes the public policies underlying**
7 **the California Labor Code**

8 Approving the requested service award will promote important public policies
9 underlying Plaintiff’s wage-and-hour claims. Plaintiff’s claims are brought under the
10 California Labor Code, a remedial statute reflecting a strong remedial scheme and
11 public policy of robust employee rights. *Murphy v. Kenneth Cole Prods. Inc.*, 40 Cal.
12 4th 1094, 1103 (Cal. 2007). Furthermore, the State’s strong public policy in favor of
13 strict enforcement of minimum wage and overtime laws is well-established and
14 fundamental to the Labor Code’s protective purpose. *See Sav-On v. Superior Ct.*, 34
15 Cal. 4th 319, 340 (Cal. 2004) (citing *Earley v. Superior Ct.*, 79 Cal.App.4th 1423,
16 1429-30 (Cal. 2000)) (confirming “a clear public policy . . . that is specifically
17 directed at the enforcement of California’s minimum wage and overtime laws for the
18 benefit of workers.”). Likewise, California’s meal and rest period requirements also
19 were designed to protect workers from substantial health and safety risks resulting
20 from employer abuses. *See Lazarin v. Superior Ct.*, 188 Cal.App.4th 1560, 1582-83
21 (Cal. 2010).

22 Here, Ms. Grady’s efforts and service helped to vindicate the important public
23 policies underlying the State’s wage and hours laws. Accordingly, this factor weighs
24 heavily in favor of the requested service award.

25 **V. CONCLUSION**

26 For the foregoing reasons, Plaintiff respectfully requests that this Court
27 approve a service award of \$5,000 for the Class Representative, Barbara Grady, for
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1 her time, effort, and service to the case.

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Dated: December 26, 2024

/s/ Joshua G. Konecky

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Joshua G. Konecky

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiff, certifies that this brief contains 3,254 words, which complies with the word limit of L.R. 11-6-1.

Dated: December 26, 2024 /s/ Joshua G. Konecky
Joshua G. Konecky

CERTIFICATE OF SERVICE

I hereby certify that on December 26, 2024, I electronically filed the foregoing document with the Clerk of the Court using the Court’s CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

/s/ Joshua G. Konecky
Joshua G. Konecky