

1 Joseph Lavi, Esq. (SBN 209776)
2 Vincent C. Granberry, Esq. (SBN 276483)
3 Melissa A. Huether (SBN 316604)
4 **LAVI & EBRAHIMIAN, LLP**
5 8889 W. Olympic Blvd., Suite 200
6 Beverly Hills, California 90211
7 Telephone: (310) 432-0000
8 Facsimile: (310) 432-0001
9 Emails: jlavi@lelawfirm.com
10 vgranberry@lelawfirm.com
11 mhuether@lelawfirm.com
12 wht3@lelawfirm.com

13 Attorneys for Plaintiff SANDRA JIMENEZ,
14 on behalf of herself and other aggrieved employees.

15 Todd B. Scherwin (SBN 239848)
16 Email: tscherwin@fisherphillips.com
17 Shaun Voigt, Esq. (SBN 265721)
18 Email: svoigt@fisherphillips.com
19 Victoria Shin, Esq. (SBN 306347)
20 Email: vshin@fisherphillips.com
21 **FISHER & PHILLIPS LLP**
22 444 South Flower Street, Suite 1500
23 Los Angeles, CA 90071
24 Telephone: (213) 330-4500
25 Facsimile: (213) 330-4501

26 Attorneys for Defendant EGO, INC.

27 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
28 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

SANDRA JIMENEZ, on behalf of herself
and other aggrieved employees,

Plaintiff,

vs.

EGO, INC.; EMERGENCY GROUPS'
OFFICE; BRAULT & ASSOCIATES, INC.;
and DOES 1 to 100, inclusive,

Defendants.

Case No.: 21STCV26796

*[Assigned for all purposes to the Daniel S.
Murphy, Dept. 32]*

**JOINT STIPULATION REQUESTING
APPROVAL OF SETTLEMENT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004
("PAGA"); ~~PROPOSED~~ ORDER AND
JUDGMENT THEREON**

*[Filed Concurrently with the Declaration of
Melissa A. Huether in Support Thereof]*

1 Plaintiff SANDRA JIMENEZ (“Plaintiff”) and Defendant EGO, INC. (“Defendant”)
2 (collectively, “the Parties”), by and through their respective counsel of record, hereby stipulate
3 and agree as follows:

4 **WHEREAS**, on April 30, 2021, Plaintiff submitted a letter to the California Labor and
5 Workforce Development Agency (“LWDA”) to notify the LWDA pursuant to the Private
6 Attorneys General Act of 2004, Labor Code section 2698, *et seq.* (“PAGA”) of Plaintiff’s intent
7 to seek civil penalties under PAGA for violations of the Labor Code.

8 **WHEREAS**, on July 21, 2021, Plaintiff filed a representative PAGA action complaint
9 alleging a single claim pursuant to PAGA for the following claims against Defendant: (1) failure
10 to pay wages for all hours worked at the legal minimum wage; (2) failure to pay wages for all
11 overtime hours worked at the overtime rate of pay; (3) failure to pay wages to hourly non-
12 exempt employees to compensate them for workdays Defendant failed to provide legally
13 required and compliant meal periods; (4) failure to pay wages to hourly non-exempt employees
14 to compensate them for workdays Defendant failed to provide legally required and compliant
15 rest periods; (5) failure to provide complete and accurate wage statements; and (6) failure to
16 pay all wages due and owing upon separation of employment (“the Action”);

17 **WHEREAS**, following the filing of the Action, counsel for the Parties met and conferred
18 with respect to the potential settlement of the action. Pursuant to these discussions, the Parties
19 agreed to exchange informal discovery and engage in private mediation. The Parties
20 subsequently exchanged informal discovery, including: a substantial sampling of the
21 timekeeping and payroll records of the PAGA Group; information and documentation
22 concerning the claims set forth in the Action, such as Defendant’s arbitration agreements,
23 employee handbooks and policies and procedures regarding the payment of wages, meal breaks,
24 and time keeping; information regarding the number of putative PAGA Group members and the
25 number of current versus former employees; and the pay periods worked by the PAGA Group;

26 **WHEREAS**, on February 10, 2022, the Parties participated in a mediation before
27 mediator Todd A. Smith, Esq. and reached a resolution of this matter after a mediator’s
28

1 proposal, subject to the Approval of the Court, and finalization of a formal Joint Stipulation of
2 Settlement of PAGA Action. The Parties have now entered into a more detailed, formalized
3 Settlement Agreement for submission to the Court for Approval;

4 **WHEREAS**, the Parties concluded that there were benefits associated with settling the
5 matters, and concluded, after taking into account the sharply disputed factual and legal issues
6 involved in this litigation, the risks associated with further prosecution, the substantial benefits
7 to be received pursuant to the compromise and settlement of the PAGA representative penalty
8 claims as set forth in the Settlement Agreement, and that settlement on the terms set forth therein
9 is in the best interest of the Plaintiff, the LWDA, the Aggrieved Employees covered by PAGA,
10 and Defendant, and is fair and reasonable;

11 **WHEREAS**, Defendant denies any liability or wrongdoing of any kind associated with
12 the claims alleged in the action; Defendant further denies that this action is appropriate for
13 PAGA representative treatment for any purpose other than settling this case; Defendant
14 contends, that it has complied at all times with the California Labor Code, the related California
15 Wage Orders, and all other state wage laws, and further contends that this case is without merit;
16 Defendant has denied and continues to deny each and every material factual allegation and
17 alleged claim asserted against it in this case and denies that Plaintiff or any other alleged
18 aggrieved employee has been harmed based on the allegations raised by Plaintiff;

19 **WHEREAS**, the Parties have reached a settlement of the claims of the Aggrieved
20 Employees who are defined as: all persons within the State of California who are or were
21 employed by Defendants as hourly, non-exempt employees in the State of California at any
22 time within the PAGA Period. The PAGA Period is from April 30, 2020 through April 11,
23 2022. According to the informal discovery conducted in advance of the mediation in this matter,
24 Plaintiff's counsel and expert witness analyzed a sampling of the complete time and pay records
25 for approximately thirty percent (30%) of the approximately 276 employees of Defendant
26 during the period from approximately March 22, 2020 to November 15, 2021. The number of
27 pay periods through mediation was estimated to be 9,500;
28

1 **WHEREAS**, thereafter, Parties negotiated and finalized the terms of a settlement
2 memorialized in a long-form Joint Stipulation of Settlement of PAGA Action (the “Settlement
3 Agreement”); a true and correct copy of the fully executed Settlement Agreement is appended
4 to the concurrently filed Declaration of Melissa A. Huether in Support (“Huether Dec.”) as
5 **Exhibit 1;**

6 **WHEREAS**, any settlement of a PAGA action brought by an aggrieved employee must
7 be approved by the court. Lab. Code § 2699(1)(2); in 2009, the California Supreme Court held
8 that an aggrieved employee's representative action brought on behalf of the state and other
9 aggrieved employees against an employer for PAGA violations *does not* need to meet the
10 requirements for class certification nor does there need to be notice to the other employees.
11 *Arias v. Superior Court*, 46 Cal.4th 969, 975; thus, the Court simply reviews the settlement and
12 approves it if it is deemed to be fair and reasonable. *See Gutilla v. Aerotek, Inc.*, 2017 WL
13 2729864, at *3 (E.D. Cal. Mar. 2017) (“the court will approve a settlement of PAGA claims
14 upon a showing that the settlement terms (1) meet the statutory requirements set forth by PAGA,
15 and (2) are fundamentally fair, reasonable, and adequate in view of PAGA’s public policy
16 goals.”); *see also Rincon v. W. Coast Tomato Growers, LLC*, 2018 WL 828104, at *2 (S.D. Cal.
17 2018) (same);

18 **WHEREAS**, the Parties seek to obtain the Court’s approval of the settlement terms and
19 resolve this matter in the most efficient manner possible; and

20 **WHEREAS**, for the reasons set forth in the supporting Declaration of Melissa A.
21 Huether, the PAGA settlement obtained here, including a gross PAGA settlement amount of
22 \$250,000, is fair and reasonable.

23 **THEREFORE, IT IS HEREBY STIPULATED AND PROPOSED BY THE**
24 **PARTIES HERETO AS FOLLOWS:**

25 The Parties stipulate and jointly request that the Court approve the following terms of the
26 fully-executed Joint Stipulation of PAGA Resolution (“Settlement Agreement”) which includes
27 the following key terms:
28

- 1 1. “Aggrieved Employees” or “PAGA Group” is defined as all persons within the
2 State of California who are or were employed by Defendant as hourly, non-
3 exempt employees in the State of California at any time within the PAGA Period
4 (Settlement Agreement § I.N.);
- 5 2. “PAGA Period” or “Settlement Period” is defined as the time period from April
6 30, 2020 through April 11, 2022. (Settlement Agreement § I.Q.);
- 7 3. “Settlement Amount” or “Gross Settlement Fund” refers to the Two Hundred
8 Fifty Thousand Dollars and Zero Cents (\$250,000.00) ¹ which shall be paid by
9 Defendant, and from which all Net Settlement Payments, Court approved
10 attorneys’ fees and litigation costs, Administrative Costs, enhancement to
11 Named Plaintiff, and distribution to the LWDA (Settlement Agreement § I.V.):
- 12 a. Plaintiff’s Counsel shall not seek or receive an amount in excess of
13 Eighty-Three Thousand, Three Hundred Thirty-Three Dollars and
14 Thirty-Three Cents (\$83,333.33) which represents 33 1/3% or one third
15 of the Settlement Amount for all past and future attorneys’ fees necessary
16 to prosecute, settle, and administer the Action and this Resolution
17 (Settlement Agreement § X);²
- 18 b. Plaintiff’s Counsel shall not seek or receive an amount in excess of
19 Twenty Thousand Dollars (\$20,000.00) for all past and future litigation
20 costs and expenses necessary to prosecute, settle, and administer the
21 Action and this Resolution (Settlement Agreement § X). Plaintiff’s
22 Counsel only incurred \$11,852.31 in litigation costs and therefore the

25 ¹ See ¶¶ 15-37 of Declaration of Melissa A. Huether in Support of Joint Stipulation Requesting Approval of
26 Settlement Pursuant to the Private Attorneys General Act of 2004, filed concurrently herewith, for briefing on the
27 value of Plaintiffs’ and the aggrieved employees’ claims.

28 ² See ¶¶ 37-52 of Declaration of Melissa A. Huether in Support of Joint Stipulation Requesting Approval of
Settlement Pursuant to the Private Attorneys General Act of 2004, filed concurrently herewith, for briefing on
Plaintiff’s counsel’s request for attorneys’ fees. Plaintiff contends 33 1/3% of the Settlement Amount is fair and
reasonable as this is a common fund settlement.

1 difference of \$8,147.69 will be included in the Net Settlement Amount.;
2 and

3 c. Charges and expenses of the Settlement Administrator, estimated to be
4 Five Thousand Dollars (\$5,000.00), will be paid from the Settlement
5 Amount. Any charges and expenses of the Settlement Administrator
6 greater than the allocated Five Thousand Dollars (\$5,000.00) will come
7 from the Settlement Amount (Settlement Agreement §VI).

8 4. Based on the requested amounts which are to be paid from the Gross Settlement
9 Fund, the estimated Net Settlement Amount is \$149,814.36, of which 75% (i.e.,
10 \$112,360.77) will be distributed to the LWDA and the remaining 25% (i.e.,
11 \$37,453.59) will be distributed to Aggrieved Employees. The average payment
12 to Aggrieved Employees is approximately \$135.70, based on 276 Aggrieved
13 Employees sharing an estimated \$37,453.59.

14 5. No Ability to Object or Opt-Out. The alleged Aggrieved Employees are not
15 permitted to opt-out or object to the Settlement Agreement. *See Robinson v.*
16 *Southern Counties Oil Co.* (August 13, 2020), First Appellate Dist. A158791;

17 6. The Net Settlement Amount shall be characterized as 100% civil penalties. The
18 Settlement Administrator shall pay seventy-five percent (75%) of the Net
19 Settlement Amount to the LWDA. (Settlement Agreement §§ I.J. & XI.A.);

20 7. PAGA Notice and Payment Procedure:

21 a. As soon as practicable following Approval of the Resolution, but no later
22 than fifteen (15) calendar days after the Effective Date, Defendant will
23 provide to the Settlement Administrator the PAGA List. The PAGA List
24 shall include a list of Aggrieved Employees including: (1) name; (2) last
25 known home address; (3) number of pay periods as a PAGA Group
26 member during the PAGA period; and (4) social security number.
27 (Settlement Agreement § I.P. & VII.A.1);
28

- 1 b. The Settlement Administrator shall run all the addresses provided
2 through the United States Postal Service NCOA database (which
3 provides updated addresses for any individual who has moved in the
4 previous four years and has notified the U.S. Postal Service of a
5 forwarding address) to obtain current address information. (Settlement
6 Agreement § VII.A.2.);
- 7 c. The funding of the Settlement Amount will be completed in two
8 installments with funds provided to and escrowed by the Settlement
9 Administrator. Defendant shall fund sixty percent (60%) or One
10 Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00) of the
11 Settlement Amount to the Settlement Administrator within five (5) days
12 of the Effective Date. Within one hundred eighty (180) calendar days of
13 approval, or by February 10, 2023, whichever is later, Defendant shall
14 fund the remaining forty percent (40%) or One Hundred Thousand
15 Dollars and Zero Cents (\$100,000.00) of the Settlement Amount
16 (Settlement Agreement § VIII.B.1.);
- 17 d. Within fourteen (14) calendar days after the Settlement Administrator's
18 receipt of the second installment of the Settlement Amount, the
19 Settlement Administrator will mail the Notice of PAGA Settlement
20 together with a settlement payment to all PAGA Group members by first-
21 class United States mail, postage prepaid, with directions to the
22 Postmaster to forward the Notice and return all undeliverable Notices to
23 the Settlement Administrator. For each Notice of PAGA Settlement and
24 settlement payment that is returned as undeliverable, the Settlement
25 Administrator shall promptly attempt to locate the Aggrieved Employee
26 by performing an additional skip trace and shall re-mail the Notice of
27 PAGA Settlement and settlement check no later than ten (10) calendar
28

1 days following receipt of the undeliverable Notice of PAGA Settlement.
2 (Settlement Agreement § VII.A.3.);

3 e. The Notice of PAGA Settlement will be provided in English and Spanish
4 (Settlement Agreement § VII.A.4.);

5 f. The Net Settlement Amount will be subdivided as follows: 75% of the
6 payment will be paid to the Labor and Workforce Development Agency
7 and 25% will be paid to Aggrieved Employees. Members of the PAGA
8 Group will receive a lump sum payment in an amount determined by the
9 Settlement Administrator in accordance with the provisions of this
10 Agreement. The lump sum payment to each member of the PAGA
11 Group will be determined by dividing the Net Settlement Amount by the
12 total number of pay periods worked by all members of the PAGA Group
13 during the Settlement Period (the “Pay Period Amount”) and then
14 multiplying the Pay Period Amount by the number of pay periods
15 worked by the individual PAGA member (Settlement Agreement §§ I.J,
16 I.K. & VIII.A.1-2);

17 g. The settlement checks will specifically indicate that they are void if not
18 negotiated within one hundred eighty (180) days of their issuance. Any
19 settlement checks that remain uncashed one hundred eighty (180) or
20 more calendar days after issuance by the Settlement Administrator shall
21 be voided. The Settlement Administrator will remit the entire amount of
22 each PAGA Group member’s uncashed Net Settlement Payment to the
23 California State Controller for deposit in the Unclaimed Property Fund
24 in the name of the PAGA Group member to whom the uncashed Net
25 Settlement Payment was drafted. (Settlement Agreement § VIII.B.4.);
26 and
27
28

1 h. The Settlement Administrator shall cause the Court approved attorneys’
2 fees, litigation costs, and LWDA Payment to be paid at the same time
3 and manner as the Settlement Payments to the PAGA Group (i.e., within
4 fourteen (14) calendar days after the Settlement Administrator’s receipt
5 of the second installment of the Settlement Amount) (Settlement
6 Agreement § VII.A.3. & VIII.C.).

7
8 Dated: October 13, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

9
10 By: /s/ Melissa A. Huether

Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Melissa A. Huether, Esq.
Attorneys for Plaintiff
SANDRA JIMENEZ, on behalf of herself
and all other current and former aggrieved
California-based hourly non-exempt
employees

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12
13
14
15
16 Dated: October 13, 2022

Respectfully submitted,
FISHER & PHILLIPS LLP

17
18 By: /s/ Victoria Shin

Todd B. Scherwin, Esq.
Shaun J. Voigt, Esq.
Victoria Shin, Esq.
Attorneys for Defendant EGO, INC.

1 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
2 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

3
4 SANDRA JIMENEZ, on behalf of herself
5 and all other current and former aggrieved
6 California-based hourly non-exempt
7 employees,

8 Plaintiff,

9 vs.

10 EGO, INC.; EMERGENCY GROUPS'
11 OFFICE; BRAULT & ASSOCIATES,
12 INC.; and DOES 1 to 100, inclusive,

13 Defendants.

Case No.: 21STCV26796

*[ASSIGNED FOR ALL PURPOSES TO THE
HON. DANIEL S. MURPHY, DEPT. 32]*

**~~[PROPOSED]~~ ORDER GRANTING JOINT
STIPULATION REQUESTING
APPROVAL OF SETTLEMENT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004
("PAGA") AND JUDGMENT THEREON**

14 Pursuant to Stipulation by the parties and good cause appearing:

15 Having considered the submissions of Plaintiff Sandra Jimenez ("Plaintiff") and
16 Defendant EGO, Inc. ("Defendant") (collectively, the "Parties"), and all legal authorities and
17 documents submitted in support thereof, including the Joint Stipulation of Settlement of PAGA
18 Action (the "Settlement Agreement") attached to the Huether Dec. as **Exhibit 1**, and good cause
19 appearing,

20 **HEREBY ORDERS AND ENTERS JUDGMENT**, as follows:

21 1. All terms used herein shall have the same meaning as defined in the Settlement
22 Agreement attached to the Huether Dec. as **Exhibit 1**.

23 2. The Court hereby approves the terms set forth in the Settlement Agreement and
24 finds that the Settlement Agreement is, in all respects, fair, adequate, and reasonable and directs
25 the Parties to effectuate the Settlement Agreement according to its terms. The Court finds that
26 the Settlement Agreement has been reached as a result of informed and non-collusive arm's-
27 length negotiations. The Court further finds that the Parties were able to reasonably evaluate
28 their respective positions. The Court also finds that settlement now will avoid additional and
potentially substantial litigation costs, as well as delay and risks if the Parties were to continue

1 to litigate the case. The Court has reviewed the monetary recovery being provided as part of
2 the Settlement and recognizes the significant value accorded to the Aggrieved Employees.

3 3. The Settlement Agreement is not an admission by Defendant or by any other of
4 the Released Parties, nor is this Order a finding of the validity of any allegations or of any
5 wrongdoing by any Defendant or any other Released Parties. Neither this Order, the Settlement
6 Agreement, nor any document referred to herein, nor any action taken to carry out the
7 Settlement Agreement, may be construed as, or may be used as, an admission of any fault,
8 wrongdoing, omission, concession, or liability whatsoever by or against Defendant or any of
9 the other Released Parties.

10 4. The entire Net Settlement Amount (the remainder of the Settlement Amount after
11 deducting Plaintiff's counsel's fees (\$83,333.33) and costs (\$11,852.31) and the costs of
12 administration (no more than \$5,000) from the \$250,000 Settlement Amount) shall be allocated
13 for payment of civil penalties and shall be distributed 75% to the LWDA and 25% to the
14 Aggrieved Employees.

15 5. The Net Settlement Amount shall be distributed to Aggrieved Employees pro rata
16 based on the number of pay periods worked by each Aggrieved Employee for Defendants during
17 the Settlement Period. "Aggrieved Employees" means all persons within the State of California
18 who are or were employed by Defendants as hourly, non-exempt employees in the State of
19 California at any time within the PAGA Period. "PAGA Period" means the time period from
20 April 30, 2020 to April 11, 2022

21 6. Defendant shall pay the Aggrieved Employees pursuant to the procedure
22 described in the Settlement Agreement.

23 7. The Court hereby confirms Lavi & Ebrahimian, LLP as Plaintiff's Counsel.

24 8. The Court hereby awards attorneys' fees in the amount of 33 1/3% of the
25 Settlement Amount, which is \$83,333.33 in attorneys' fees and up to \$11,852.31 in attorneys'
26 costs. The payment of fees to Plaintiff's Counsel shall be made in accordance with the terms
27 of the Settlement.

9. The Court approves the Notice of PAGA Resolution attached as Exhibit A to the Settlement Agreement.

10. All settlement checks will remain valid for 180 days after which the checks shall become null and void, and any monies remaining in the distribution account shall be transmitted to the California State Controller for deposit in the Unclaimed Property Fund in the name of the PAGA Group member to whom the uncashed Net Settlement Payment was drafted.

11. The Court further orders, adjudges and decrees that Upon Approval by the Court of this Settlement and Defendant's full funding of the Settlement Amount, Plaintiff, as a representative of the State of California, the PAGA Group, and the State of California will release any and all claims and causes of action, known or unknown, contingent or accrued, against Defendant, Defendant's parents, subsidiaries, officers, directors, affiliates, their insurers, attorneys, shareholders, executives, managers, and all agents thereof (collectively "Released Parties"), arising out of the facts and claims asserted in the Action for civil penalties under the Private Attorney General Act of 2004 Cal. Lab. Code § 2698 based upon the facts alleged, for violations of the California Labor Code governing: meal and rest breaks; unpaid wages, including minimum wages, regular wages, overtime, and double time wages, and all theories for or related to nonpayment of such wages and/or payment of such wages at the incorrect rate(s) of pay; wage statement violations and/or failure to maintain accurate records; failure to timely pay wages during employment; separation pay violations; and any other penalties which could be asserted based on the allegations alleged against Defendant in Plaintiff's LWDA letter sent on April 30, 2021 and the Action, including but not limited to Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, and 1198, as well as the applicable IWC Wage Order(s).

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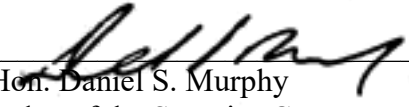
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1 12. This Court shall retain jurisdiction with respect to all matters related to the
2 administration and consummation of the settlement, and any and all claims, asserted in, arising
3 out of, or related to the subject matter of the lawsuit, including but not limited to all matters
4 related to the settlement and the determination of all controversies relating thereto.

5 13. OSC proof of distribution of funds May 22, 2023 at 8:30a.m.

6 Date: October 17, 2022



By: 
Hon. Daniel S. Murphy
Judge of the Superior Court
Daniel S. Murphy / Judge

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am an employee in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 8889 W. Olympic Blvd., Suite 200, Beverly Hills, California 90211.

On October 13, 2022, I served the foregoing document, described as:

**"JOINT STIPULATION REQUESTING APPROVAL OF SETTLEMENT PURSUANT TO
THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA"); [PROPOSED]
ORDER AND JUDGMENT THEREON"**

on all interested parties in this action as follows:

Attorneys for Defendant EGO, INC.:

Todd B. Scherwin (SBN 239848)
Email: tscherwin@fisherphillips.com
Shaun Voigt, Esq. (SBN 265721)
Email: svoigt@fisherphillips.com
Victoria Shin, Esq. (SBN 306347)
Email: vshin@fisherphillips.com
FISHER & PHILLIPS LLP
444 South Flower Street, Suite 1500
Los Angeles, CA 90071
Telephone: (213) 330-4500
Facsimile: (213) 330-4501

☒ **(BY MAIL)** As follows:

I placed such envelope, with postage thereon prepaid, in the United States mail at Los Angeles, California. I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid, at Los Angeles, California, in the ordinary course of business. I am aware that, on motion of the party served, service is presumed invalid if the postal cancellation or postage meter date is more than one day after the date of deposit for mailing in this affidavit.

☐ **(BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand to the attorney at the offices of the addressee.

☒ **(STATE)** I declare, under penalty of perjury under the laws of the State of California, that the above is true and correct. Executed on October 13, 2022, at Beverly Hills, California.



Rubi Martinez