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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**
12

13 EDUARDO ZELAYA,

14 *Plaintiff,*

15 vs.

16 AKASH GENERAL PARTNERSHIP;
17 AKASH LLC LLC; MOHAMMAD A.
18 SIDDQUI; and DOES 1 to 25, inclusive,

19 *Defendant(s).*

Case No.: 22STCV02064

**PLAINTIFF'S NOTICE OF UNOPPOSED
MOTION FOR APPROVAL OF PAGA
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
THEREOF**

Action filed: 1/18/22

Date: 3/21/24

Time: 8:30am

Dept: 48

Reservation ID:

647454908906

Department:

48, Hon. Thomas Long

Submitted Herewith Under Separate Cover:

1. Declaration of Harout Messrelian in Support of Motion for Approval of PAGA Settlement and Release; and
2. [Proposed] Order

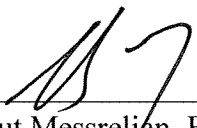
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2 TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:
3 PLEASE TAKE NOTICE THAT on March 21, 2024 at 8:30 a.m., or as soon thereafter as the
4 matter may be heard in Department 48 of the above-entitled Court, located at 111 N. Hill
5 Street, Los Angeles, California 90012, Plaintiff Eduardo Zelaya ("Plaintiff") and will and
6 hereby does move unopposed, the Court, pursuant to Labor Code § 2698 et seq., for an order
7 approving the Private Attorneys General Act of 2004 ("PAGA"), Cal. Labor Code § 2698 et
8 seq., settlement agreement between Plaintiff and Defendants Akash General Partnership; Akash
9 LLC LLC; and Mohammad A. Siddiqui ("AKASH" or "Defendants") (collectively, "the
10 Parties")

11 This Motion is based on this Notice, the attached Memorandum of Points and Authorities;
12 the concurrently-filed Declaration of Harout Messrelian, the papers and pleadings on file in this
13 action, any and such other evidence and oral argument as may be presented in connection with
14 the hearing on this Motion.

15 Respectfully Submitted,

16 MESSRELIAN LAW INC.

17
18 DATED: February 28, 2024

19 By 
20 Harout Messrelian, Esq.
21 Attorneys for Plaintiff
22 EDUARDO ZELAYA
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Eduardo Zelaya (“Plaintiff”) and Defendants Akash General Partnership; Akash
4 LLC LLC; and Mohammad A. Siddiqui (collectively “AKASH” or “Defendants”) have reached
5 an agreement to settle the above-captioned action (the “Action”). Plaintiff and Defendants are
6 collectively referred to as the “Parties” and any one of them individually may be referred to as a
7 “Party.” The Parties have memorialized the terms of this settlement in a “Joint Stipulation of
8 California Labor Code Private Attorneys General Act (“PAGA”) Settlement and Release (the
9 “Settlement Agreement”). Attached as **Exhibit 1** to the Declaration of Harout Messrelian
10 (“Messrelian Decl.”) is a true and accurate copy of the Settlement Agreement and the PAGA
11 notice that will be sent to the alleged aggrieved employees covered by the Settlement Agreement,
12 being Plaintiff and all current and former non-exempt employees of Defendant in the State of
13 California from November 14, 2020 through July 22, 2022 (“PAGA Members”), with their
14 payment. By this Motion and pursuant to California Labor Code § 2699(l), Plaintiff seeks an
15 order permitting settlement on the terms outlined in the Settlement Agreement.

16 **II. ALLEGATIONS AND INVESTIGATION**

17 Defendants AKASH own and operate a “Denny’s” restaurant location at which Plaintiff
18 worked. Plaintiff Eduardo Zelaya was classified as an hourly, non-exempt employee and worked
19 for Defendants as a server from approximately 2017 through July 2021. *See* Messrelian Decl.,
20 ¶4.

21 Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under
22 the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq. (“PAGA”).
23 On October 4, 2021, Plaintiff Eduardo Zelaya on behalf of himself and Defendants’ other
24 California non-exempt hourly employees (hereafter collectively the “Aggrieved Employees”) gave written notice by electronic service to the California Labor and Workforce Development
25 Agency (“LWDA”) and via certified mail to Defendant of their claims against Defendant. In his
26 notice to the LWDA, Plaintiff asserted on behalf of himself and the Aggrieved Employees that
27 Defendant (1) failed to compensate for all hours worked and to pay minimum wages (Labor
28

1 Code Sections 1194, 1197, 1197.1); (2) failed to pay overtime compensation (Labor Code
2 Section 510); (3) failed to provide rest breaks (Labor Code Section 226.7); (4) failed to provide
3 meal breaks (Labor Code Sections 512, 226.7); (5) failed to timely pay wages due during
4 employment (Labor Code Section 204); (6) failed to provide accurate itemized wage statements
5 (Labor Code Section 226); (7) failed to keep accurate and complete payroll records (Labor Code
6 Section 1174/1174.5); and (8) failed to pay wages at the end of employment (Labor Code section
7 203) under Industrial Welfare Commission Wage Orders 5-2001. Plaintiff filed his initial
8 lawsuit on January 18, 2022 in the Superior Court for the State of California, County of Los
9 Angeles, Case No. 22STCV02064 with a total of 1 cause of action for penalties under the Private
10 Attorneys General Act (PAGA) based on the following legal theories: (a) failure to pay all
11 minimum wages owed; (b) failure to pay all overtime wages owed; (c) failure to provide
12 compliant meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize
13 and permit complaint rest periods, or provide premium pay for non-complaint rest periods; (e)
14 failure to provide accurate, itemized wage statements and/or otherwise maintain accurate
15 records; and (f) failure to timely pay wages during employment and/or upon separation of
16 employment. *See* Messrelian Decl., ¶5.

17 Through informal discovery, Defendant produced records and represented that it
18 employed approximately 38 workers falling within Plaintiff's Aggrieved Employees definition
19 for the period from November 14, 2020 (one year and 65 days before Plaintiff's lawsuit filing
20 date) through July 22, 2022, and that there are paychecks issued for a total of approximately
21 1653 pay periods worked for that same time period. *See* Messrelian Decl., ¶6.

22 The Settlement Agreement covers PAGA Members, which are Aggrieved Employees
23 employed on or after November 14, 2020 through July 22, 2022.. *See* Messrelian Decl., ¶7.

24 The parties attended a full-day mediation with experienced J.J. Johnston on July 13,
25 2022, and thereafter settled the matter on July 22, 2022. Before agreeing to the terms of the
26 Settlement, the Parties engaged in informal discovery regarding Defendant's policies, practices,
27 operations, time and payroll information and other topics. Prior to negotiation, Defendants
28 produced Plaintiff's personnel file, time and payroll data for Plaintiff, and time records and

1 payroll records for the aggrieved employees falling within Plaintiff's Aggrieved Employees
2 definition and during the applicable PAGA period. Through extensive arm's length negotiations
3 and only after discovery and investigation were performed, the Parties agreed to settlement
4 terms. Attached as **Exhibit 1** is a true and accurate copy of the "Joint Stipulation of California
5 Labor Code Private Attorneys General Act ("PAGA") Settlement and Release" (hereinafter
6 "Settlement Agreement") and the PAGA notice that will be sent to the PAGA Members covered
7 by the Settlement Agreement. As alluded to above, the Parties negotiated the PAGA claims
8 through arms-length negotiation during an all-day mediation, and only after sufficient discovery
9 was completed, including data being sent to Plaintiff's data expert for analysis/review. *See*
10 *Messrelian Decl.*, ¶9.

11 The Parties conducted investigation of the facts and law both before and after the lawsuit
12 was filed. Counsel for the Parties have further investigated the applicable law as applied to the
13 facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code violations
14 claimed by Plaintiff. Based on their own independent investigations and evaluations, the Parties
15 and their respective counsel are of the opinion that the Settlement for the consideration and on
16 the terms set forth in this Motion are fair, reasonable and adequate and are in the best interests
17 of Plaintiff, the PAGA Members, and Defendant in light of all known facts and circumstances
18 and the risks inherent in litigation, especially in this post-pandemic era when most businesses
19 are still struggling to remain afloat, much less prosper and make a large profit. Moreover, there
20 was an arbitration agreement signed by Plaintiff and Defendants had the option of electing to
21 enforce the arbitration agreement per *Viking River* and *Adolph* and forcing Plaintiff to arbitrate
22 his individual PAGA claims first and establish standing before being able to return to Court and
23 prosecute the representative matter on behalf of other aggrieved employees. *See Messrelian*
24 *Decl.*, ¶10.

25 The Parties further recognize that the issues presented in the Action are likely only to be
26 resolved with extensive and costly pretrial and trial proceedings, and that further litigation will
27 cause inconvenience, distraction, disruption, delay, and expense disproportionate to the
28 maximum potential benefits, especially in light of the post- pandemic era and the business

1 climate. *See* Messrelian Decl., ¶11.

2 **III. FAIRNESS OF THE SETTLEMENT**

3 While this Action is a representative PAGA claim, the Parties are not obligated to follow
4 the class action procedural rules for obtaining approval of this settlement. *Arias v. Superior Court*
5 (*Angelo Dairy*) (2009) 46 Cal.4th 969.

6 Plaintiff alleges that the strongest claims are that Plaintiff and other PAGA Members
7 were not provided timely, uninterrupted meal and rest breaks. Defendant vehemently denies that
8 there were any meal and rest break violations especially in light of the fact that Defendant
9 presented evidence that it maintained Labor-Code-compliant meal and rest policies. *See*
10 Messrelian Decl., ¶12.

11 Plaintiff contends that the civil penalty statutes applicable to the Action arise from
12 violations of the California Labor Code, including, but not limited to, Labor Code §§ 210, 226.3,
13 558, 1174.5, 1197.1, and 2699(f)(2). Under these civil penalty statutes, an employee who suffers
14 a Labor Code violation may be awarded a sum of money for each pay period in which he or she
15 was underpaid. However, under Labor Code § 2699(e)(2), the Court can reduce an award of
16 civil penalties if the award is unjust, arbitrary, oppressive, or confiscatory. *See* Messrelian Decl.,
17 ¶13.

18 Under the civil penalty formulas applicable under PAGA, Plaintiff estimated a
19 **maximum** exposure of approximately \$120,550.00 for civil penalties for Plaintiff's strongest
20 disputed claims of failure to provide meal and rest periods. Plaintiff's analysis, which Defendant
21 vehemently disputes, revealed a 54.7% violation rate for either late, short, or interrupted meal
22 periods for shifts over 6 hours. Since the total number of pay periods in the PAGA period was
23 1,653 and since only 66.7% of the shifts were over 6 hours, the total number of pay periods to
24 consider for potential meal break violations was 1103 (66.7% x 1653 pay periods). As such,
25 with the 54.7% violation rate, the maximum exposure would be \$30,150.00, which is calculated
26 as \$50 penalty multiplied by 603 pay periods (54.7% of the 1103 pay periods). Plaintiff
27 extrapolated the same 54.7% rate for rest break violations, which would equate to a maximum
28 exposure of \$90,400 (\$100 penalty per pay period multiplied by 904 pay periods, which is 54.7%

1 x 1653 pay periods). As such, the aggregate maximum exposure for meal and rest break claims
2 would be \$120,550. It is important to note, however, that for the rest break claims, there was no
3 data to analyze and no clock-in and clock-out records for rest periods. As such, the exposure for
4 alleged rest break violations is simply an extrapolation of the meal period violations. Proving
5 the percentage of any rest break violations without data would be one of the challenges if this
6 matter proceeded to trial. Assuming that Plaintiff's calculations and analysis are accurate, the
7 maximum exposure presumes that the Court will not reduce the penalty award as unjust,
8 arbitrary, oppressive, or confiscatory. For the rest period violations, as alluded to above, it also
9 presumes that the meal and rest period violation rates were identical. *See* Messrelian Decl., ¶14.

10 Moreover, Plaintiff is aware of no California state courts awarding Plaintiff multiple
11 PAGA penalties for the same violation for the same pay period under different Labor Code
12 provisions. As such, one of the risks Plaintiff faces is that the Court would refuse to "stack" civil
13 penalties arising under the various Labor Code statutes. Furthermore, judges have awarded
14 extremely small sums to PAGA claimants in the past. In addition, Defendant would make an
15 argument that any presumption of meal or rest period violations could be rebutted by evidence
16 and therefore are not a predicate for civil penalties for improper wage statements and untimely
17 final wages under Labor Code secs. 201-204, 226, 226.3, and 2699. Defendant also adamantly
18 disputes all of Plaintiff's allegations in the operative Complaint. *See* Messrelian Decl., ¶15.

19 PAGA states a court has discretion to award a lesser amount than the maximum
20 penalty. *See Lab. Code* § 2699(e)(2) ("...a court may award a lesser amount than the maximum
21 civil penalty amount specified by this part if, based on the facts and circumstances of the
22 particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,
23 or confiscatory."); *see also Thurman v. Bayshore Transit Management, Inc.* (2012) 203
24 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the Court
25 could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's evidence
26 of willful and intentional conduct. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504
27 ("*Carrington*") illustrates this. In that case, the Court of Appeal affirmed a trial court's heavily
28 discounted award of only \$5 per violation because it was within the Court's discretion to

1 significantly reduce PAGA penalties even when there is a finding that a violation of the
2 California Labor Code occurred. The plaintiff in *Carrington* had requested penalties in excess
3 of \$70 million and was successful in proving the PAGA claim during a bench trial. However,
4 the trial court reduced the total award after trial to only \$150,000 (30,000 violations x \$5) and
5 stated that this reduction was warranted because imposing the maximum penalty would be
6 “unjust, arbitrary, and oppressive”, based on Starbucks’s “good faith attempts” to comply with
7 meal break obligations and because the Court found the violations were minimal. Applying the
8 same formula here and assuming there was one violation during each pay period, the award of
9 civil penalties could not exceed \$8,265.00 in PAGA penalties (1,653 violations x \$5). As such,
10 this Settlement is a great result based solely on the risk the Court chooses to apply the *Carrington*
11 formula. Defendant has also posed formidable defenses to the Labor Code claims underlying
12 Plaintiff’s allegations. Thus, the chance of Plaintiff recovering a higher amount than the Gross
13 Settlement Amount is uncertain. *See* Messrelian Decl., ¶16.

14 The Parties further recognize that the issues presented in the Action are likely only to be
15 resolved with extensive and costly pretrial and trial proceedings, and that further litigation will
16 cause inconvenience, distraction, disruption, delay, and expense disproportionate to the
17 maximum potential benefits to the PAGA Members and Plaintiff from continued litigation. *See*
18 Messrelian Decl., ¶17.

19 The settlement of the Action involves monetary relief to all PAGA Members, Plaintiff,
20 his attorneys, and the State of California. *See* Messrelian Decl., ¶18.

21 Furthermore, Plaintiff recognizes that continued litigation presents significant risks that
22 support a significant downward departure from Plaintiff’s estimated civil penalties amount. In
23 view of the risks, the Settlement represents a fair, adequate, and reasonable compromise amount
24 for these claims and is in the best interest of Plaintiff and PAGA Members and thus, warrants
25 approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014
26 WL 2465049, * 3. The PAGA settlement and its terms are fair, just, reasonable, adequate, and
27 equitable to Defendant, Plaintiff, and the State, especially in light of the current economic
28 climate, and are the product of good faith, and informed arms-length negotiations between the

1 Parties consistent with public policy and fully comply with applicable provisions of law. *See*
2 Messrelian Decl., ¶19.

3 **IV. TERMS AND PROCEDURES OF THE SETTLEMENT**

4 The Settlement Agreement covers all claims, charges, complaints, liens, demands, causes
5 of action, obligations, and liabilities, whether known or unknown, against the Released Parties
6 (as defined in the Settlement Agreement) for civil penalties predicated on any of the alleged
7 violations of the California Labor Code, Industrial Welfare Commission Wage Orders,
8 regulations, and/or other provisions of law that were alleged or asserted in the Action or any
9 PAGA notices filed by Plaintiff, or that could have been asserted in the Action or any PAGA
10 notice filed by Plaintiff based on any facts or allegations therein, with respect to PAGA Members
11 from November 14, 2020 through July 22, 2022. *See* Messrelian Decl., **Exhibit 1**, ¶1.20.

12 Defendants agree to pay \$39,000.00 toward the Settlement (the “Gross Settlement
13 Amount” or “GSA”) which will be distributed as follows:

- 14 i. \$13,000.00 (33 1/3% of the GSA) in attorneys’ fees to Harout Messrelian, Esq. of
15 Messrelian Law Inc.
- 16 ii. \$1,491.00 in attorney litigation costs to Harout Messrelian, Esq. of Messrelian
17 Law Inc.
- 18 iii. \$3,150.00 in PAGA Settlement Administrator costs to the Settlement
19 Administrators (ILYM).
- 20 iv. \$21,359.00 (the “Net Settlement Amount” or “NSA”) will be divided as follows:
 - 21 a. \$16,019.25 (75% of “NSA”) to the LWDA, which represents civil
22 penalties payable to the LWDA under the Labor Code Private Attorneys
23 General Act (“PAGA”), Labor Code section 2698, *et seq.*; and
 - 24 b. \$5,339.75 (25% of NSA) (the “PAGA Members Amount”) to the PAGA
25 Members which represents civil penalties payable to the PAGA Members
26 as civil penalties that are allegedly owed in the Action for the period from
27 November 14, 2020 through July 22, 2022.

28 *See* Messrelian Decl., **Exhibit 1**, ¶¶3.1; 3.2.1,
3.2.2.

1 Plaintiff and each PAGA Member shall receive a portion of the Aggrieved Employee
2 Amount on a pro-rata basis by multiplying the PAGA Members Amount by the ratio of (i) the
3 number of pay periods worked by the PAGA Member during the release period and (ii) the total
4 number of pay periods worked by all PAGA Members during the release period. *See* Messrelian
5 Decl., **Exhibit 1**, ¶¶3.2.3.1.

6 For purposes of computing taxes, one-hundred percent (100%) of the Aggrieved
7 Employee Settlement Award shall be considered to be a civil penalty and shall not be subject to
8 withholding, unless otherwise required by law. The Claims Administrator shall file proof of
9 payment. *See* Messrelian Decl., **Exhibit 1** at ¶¶3.2.3.1, 3.2.3.2.

10 **V. THE PROPOSED FEE AMOUNT FOR ATTORNEYS' FEES AND COST**
11 **AMOUNT FOR LITIGATION EXPENSES IS FAIR, ADEQUATE, AND REASONABLE**
12 **AND SHOULD BE APPROVED**

13 Plaintiff's counsel represents Plaintiff on a straight contingency basis. Plaintiff's counsel's
14 request for \$13,000.00 in attorney fees and \$1,491.00 in litigation costs is fair and reasonable.
15 "Empirical studies show that, regardless of whether the percentage method or the lodestar method
16 is used, fee awards in class actions average around one-third of the recovery. *Chavez v. Netflix,*
17 *Inc.* (2008) 162 Cal.App.4th 43, 47 fn. 11 (quoting *Shaw v. Toshiba America Information Systems,*
18 *Inc.* (E.D. Tex. 2000) 91 F.Supp.2d 942, 972; *See also Lafitte v. Robert Half Int'l Inc.* (Cal. Aug.
19 11, 2016) 1 Cal.5th 480, 503, 376 P.3d 672, 686 (holding that courts can use the percentage method
20 for the calculation of attorneys' fees). This is also consistent with Plaintiff's Counsel's experience
21 in cases involving PAGA claims. This award is justified here because Plaintiff's counsel achieved
22 a strong result for the PAGA Members and the State while bearing the substantial burdens of
23 contingency representation. *See* Messrelian Decl., ¶¶22-23.

24 It is an accepted practice in wage and hour class action settlements to award attorneys'
25 fees to Plaintiff's Counsel based on a percentage of the total settlement value agreed upon by the
26 Parties. California courts have long recognized that an appropriate method for awarding
27 attorneys' fees in class actions is to award a percentage of the common fund. (*Serrano v. Priest*
28 (1977), 20 Cal.3d. 25, 48-49 ["when a number of persons are entitled in common to a specific

1 fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation
2 or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the
3 fund"]; *Wershba v. Apple Computer, Inc.* (2001), 91 Cal.App.4th, 230, 254; *Lealao v. Beneficial*
4 *California, Inc.* (2000) 82 Cal.App.4th 19, 26-30.)

5 The litigation costs expended to aid in the representation of the PAGA Members
6 include the following: lawsuit filing fee of \$454.22, PAGA initial filing fees of \$75.00; expert
7 data analysis fee of \$850.00, and miscellaneous court filing fees of \$111.78 for a total of
8 \$1,491.00. All of these costs are documented and reasonably incurred. *See* Messrelian Decl.,
9 ¶24.

10 **VI. NO ADMISSION OF LIABILITY OR WRONGDOING**

11 The payment of consideration or any other obligation are not and shall not be construed
12 in any way as an admission of wrongdoing or liability on the part of Defendant, or any other
13 person or business entity. Defendant adamantly denies all allegations of wrongdoing arising out
14 of the employment relationship between the Parties and the PAGA Members. The Parties intend
15 merely to avoid the expense, delay, uncertainty and burden of continued litigation. *See*
16 Messrelian Decl., **Exhibit 1** at ¶2.1.

17 **VII. PAGA SETTLEMENT ADMINISTRATION**

18 The Parties agree to use ILYM to handle the administration of this Settlement. *See*
19 Messrelian Decl., **Exhibit 1** at ¶1.2.

20 The Settlement Administrator will be responsible for establishing a qualified settlement
21 fund ("QSF") and issuing payments and appropriate tax forms to PAGA Members, the LWDA,
22 and Plaintiff's Counsel. The Settlement Administration Costs will be paid from the Gross PAGA
23 Settlement Amount. *See* Messrelian Decl., **Exhibit 1** at ¶1.3.

24 Pursuant to the terms of the Settlement Agreement, the Parties are hereby presenting the
25 Settlement Agreement to the Court and requesting that the Court issue an order and judgment of
26 Settlement Approval, approving and incorporating by reference the terms and conditions of the
27 Settlement Agreement to the extent necessary to effectuate this Settlement Agreement.

28 Plaintiff's Counsel is responsible for complying with all requirements of the PAGA

1 governing notice to the LWDA of settlement and/or judgment. Specifically, Plaintiff's Counsel
2 has provided a copy of the Settlement Agreement to the LWDA at the same time that it was
3 submitted to the Court and will further provide a copy of the Court's Order and Judgment to the
4 LWDA within ten (10) calendar days after entry of said judgment or order as required by Labor
5 Code sections 2699(1)(2)-(3). See Messrelian Decl., ¶26 and **Exhibit 2**.

6 Pursuant to the Settlement Agreement, the following outlines the procedure for funding
7 and distribution of the PAGA settlement funds in this matter.

8 Aggrieved Employee Data. Within 21 days, DEFENDANTS will simultaneously
9 deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel
10 spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain
11 the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for
12 purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved
13 Employee Data to Administrator employees who need access to the Aggrieved Employee Data
14 to effect and perform under this Agreement. DEFENDANTS have a continuing duty to
15 immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted
16 employee identifying information and to provide corrected or updated Aggrieved Employee
17 Data as soon as reasonably feasible. Without any extension of the deadline by which
18 DEFENDANTS must send the Aggrieved Employee Data to the Administrator, the Parties and
19 their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise
20 resolve any issues related to missing or omitted Aggrieved Employee Data.

21
22 Funding of Gross Settlement Amount. DEFENDANTS shall fully fund the Gross
23 Settlement Amount by transmitting the funds to the Administrator no later than 60 days after
24 the Effective Date.

25 Payments from the Gross Settlement Amount. Within 14 days after DEFENDANTS
26 fund the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA
27 Payments, the PAGA Payment, the Administration Expenses Payment, PAGA Counsel Fees
28 Payment and PAGA Counsel Litigation Expenses Payment.

1 The Administrator will issue checks for the Individual PAGA Payments and send them
2 to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check
3 shall prominently state the date (not less than 180 days after the date of mailing) when the
4 check will be voided. The Administrator will cancel all checks not cashed by the void date.
5 Before mailing any checks, the Settlement Administrator must update the recipients' mailing
6 addresses using the National Change of Address Database.

7 The Administrator must conduct an Aggrieved Employee Address Search for all
8 Aggrieved Employees whose checks are returned undelivered without USPS forwarding
9 address. Within seven (7) days of receiving a returned check the Administrator must re-mail
10 checks to the USPS forwarding address provided or to an address ascertained through the
11 Aggrieved Employee Address Search. The Administrator need not take further steps to deliver
12 checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The
13 Administrator shall promptly send a replacement check to any Aggrieved Employee whose
14 original check was lost or misplaced, as requested by the Aggrieved Employee prior to the void
15 date.
16

17 For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and
18 cancelled after the void date, the Administrator shall transmit the funds represented by such
19 checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved
20 Employee.

21 The payment of Individual PAGA Payments shall not obligate DEFENDANTS to
22 confer any additional benefits or make any additional payments to the Aggrieved Employees
23 (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.
24

25 *See Messrelian Decl., **Exhibit 1** at ¶4.1 -4.4.*

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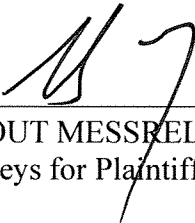
1 **VIII. CONCLUSION**

2 Plaintiff respectfully requests that the Court grant this Motion.

3
4 Respectfully Submitted,

5 MESSRELIAN LAW INC.

6
7 DATED: February 28, 2024

8 By _____
9 HAROUT MESSRELIAN, ESQ.
10 Attorneys for Plaintiff
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