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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10 EDUARDO ZELAYA,

11 *Plaintiff,*

12 vs.

13
14 AKASH GENERAL PARTNERSHIP;
15 AKASH LLC LLC; MOHAMMAD A.
16 SIDDQUI; and DOES 1 to 25, inclusive,

17 *Defendant(s).*

Case No.: 22STCV02064

**DECLARATION OF HAROUT
MESSRELIAN IN SUPPORT OF
UNOPPOSED MOTION FOR APPROVAL
OF PAGA SETTLEMENT**

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. Plaintiff's Notice of Unopposed Motion for Approval of PAGA Settlement; Memorandum of Points and Authorities in Support Thereof;
2. [Proposed] Order

DECLARATION OF HAROUT MESSRELIAN IN SUPPORT OF
MOTION FOR APPROVAL OF PAGA SETTLEMENT AND RELEASE

I, HAROUT MESSRELIAN, declare and state as follows:

1. I am an attorney duly licensed to practice before all the Courts of the State of California. I am the managing attorney of Messrelian Law Inc. and the attorney of record for Plaintiff Eduardo Zelaya (“Plaintiff”) in his lawsuit against Defendants Akash General Partnership; Akash LLC LLC; and Mohammad A. Siddiqui (collectively “AKASH” or “Defendant(s)”).

2. I am experienced in handling employment law matters and specifically wage and hour representative and individual actions. My qualifications are as follows: I received my JD from Loyola Law School in 2010. I started my own law firm in 2011 – the Law Offices of Harout Messrelian. Since 2016, I have been the founder and principal attorney at Messrelian Law, Inc. Since 2011, I have filed and handled over 250 civil actions and/or claims involving representative actions under the Private Attorneys General Act (“PAGA”) and/or wage and hour claims on behalf of my clients and have been appointed Class Counsel in three class action cases –*Zohrab Mekhitarian v. Triple Play Motors dba Bob Smith Toyota*, Los Angeles Superior Court Case No. 19STCV22411 (ADR Services, Inc., Case Number 20-2668-RWT), *Carina Camberos, on behalf of herself and others similarly situated, v. Great American Chicken Corp, Inc.*, Los Angeles Superior Court Case No. 21STCV32015, and *Robert Garcia, on behalf of himself and others similarly situated v. HD Supply Management Inc.*, San Bernardino Superior Court Case No. CIVSB2028067. I have a practice that encompasses cases in the Los Angeles Superior Courts, the Orange County Superior Courts, the Riverside County Superior Courts, the San Bernardino County Superior Courts, the Alameda County Superior Courts, Santa Clara County Superior Courts, San Mateo County Superior Courts, and the Monterey County Superior Courts.

3. Except as otherwise indicated, I have personal knowledge of all matters set forth herein and, if called as a witness, could and would competently testify thereto under oath.

Factual and Procedural Background

4. Defendants AKASH own and operate a “Denny’s” restaurant location at which

1 Plaintiff worked. Plaintiff Eduardo Zelaya was classified as an hourly, non-exempt employee
2 and worked for Defendants as a server from approximately 2017 through July 2021.

3 5. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit
4 under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq.
5 (“PAGA”). On October 4, 2021, Plaintiff Eduardo Zelaya on behalf of himself and Defendants’
6 other California non-exempt hourly employees (hereafter collectively the “Aggrieved
7 Employees”) gave written notice by electronic service to the California Labor and Workforce
8 Development Agency (“LWDA”) and via certified mail to Defendant of their claims against
9 Defendant. In his notice to the LWDA, Plaintiff asserted on behalf of himself and the Aggrieved
10 Employees that Defendant (1) failed to compensate for all hours worked and to pay minimum
11 wages (Labor Code Sections 1194, 1197, 1197.1); (2) failed to pay overtime compensation
12 (Labor Code Section 510); (3) failed to provide rest breaks (Labor Code Section 226.7); (4)
13 failed to provide meal breaks (Labor Code Sections 512, 226.7); (5) failed to timely pay wages
14 due during employment (Labor Code Section 204); (6) failed to provide accurate itemized wage
15 statements (Labor Code Section 226); (7) failed to keep accurate and complete payroll records
16 (Labor Code Section 1174/1174.5); and (8) failed to pay wages at the end of employment (Labor
17 Code section 203) under Industrial Welfare Commission Wage Orders 5-2001. Plaintiff filed
18 his initial lawsuit on January 18, 2022 in the Superior Court for the State of California, County
19 of Los Angeles, Case No. 22STCV02064 with a total of 1 cause of action for penalties under
20 the Private Attorneys General Act (PAGA) based on the following legal theories: (a) failure to
21 pay all minimum wages owed; (b) failure to pay all overtime wages owed; (c) failure to provide
22 compliant meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize
23 and permit complaint rest periods, or provide premium pay for non-complaint rest periods; (e)
24 failure to provide accurate, itemized wage statements and/or otherwise maintain accurate
25 records; and (f) failure to timely pay wages during employment and/or upon separation of
26 employment.

27 6. Through informal discovery, Defendant produced records and represented that it
28 employed approximately 38 workers falling within Plaintiff’s Aggrieved Employees definition

1 for the period from November 14, 2020 (one year and 65 days before Plaintiff's lawsuit filing
2 date) through July 22, 2022, and that there are paychecks issued for a total of approximately
3 1653 pay periods worked for that same time period.

4 7. The Settlement Agreement covers PAGA Members, which are Aggrieved
5 Employees employed on or after November 14, 2020 through July 22, 2022.

6 8. Defendant denies any liability or wrongdoing of any kind whatsoever associated
7 with the lawsuit and the Representative PAGA Claim. It is the desire of the Parties to fully,
8 finally, and forever compromise, and discharge all claims known or unknown related to those
9 alleged in Plaintiff's lawsuit.

10 9. The parties attended a full-day mediation with experienced J.J. Johnston on July
11 13, 2022, and thereafter settled the matter on July 22, 2022. Before agreeing to the terms of the
12 Settlement, the Parties engaged in informal discovery regarding Defendant's policies, practices,
13 operations, time and payroll information and other topics. Prior to negotiation, Defendants
14 produced Plaintiff's personnel file, time and payroll data for Plaintiff, and time records and
15 payroll records for the aggrieved employees falling within Plaintiff's Aggrieved Employees
16 definition and during the applicable PAGA period. Through extensive arm's length negotiations
17 and only after discovery and investigation were performed, the Parties agreed to settlement
18 terms. Attached as **Exhibit 1** is a true and accurate copy of the "Joint Stipulation of California
19 Labor Code Private Attorneys General Act ("PAGA") Settlement and Release" (hereinafter
20 "Settlement Agreement") and the PAGA notice that will be sent to the PAGA Members covered
21 by the Settlement Agreement. As alluded to above, the Parties negotiated the PAGA claims
22 through arms-length negotiation during an all-day mediation, and only after sufficient discovery
23 was completed, including data being sent to Plaintiff's data expert for analysis/review.

24 10. The Parties conducted investigation of the facts and law both before and after the
25 lawsuit was filed. Counsel for the Parties have further investigated the applicable law as applied
26 to the facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code
27 violations claimed by Plaintiff. Based on their own independent investigations and evaluations,
28 the Parties and their respective counsel are of the opinion that the Settlement for the

1 consideration and on the terms set forth in this Motion are fair, reasonable and adequate and are
2 in the best interests of Plaintiff, the PAGA Members, and Defendant in light of all known facts
3 and circumstances and the risks inherent in litigation, especially in this post-pandemic era when
4 most businesses are still struggling to remain afloat, much less prosper and make a large profit.
5 Moreover, there was an arbitration agreement signed by Plaintiff and Defendants had the option
6 of electing to enforce the arbitration agreement per *Viking River* and *Adolph* and forcing Plaintiff
7 to arbitrate his individual PAGA claims first and establish standing before being able to return
8 to Court and prosecute the representative matter on behalf of other aggrieved employees.

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

14 12. Plaintiff alleges that the strongest claims are that Plaintiff and other PAGA
15 Members were not provided timely, uninterrupted meal and rest breaks. Defendant vehemently
16 denies that there were any meal and rest break violations especially in light of the fact that
17 Defendant presented evidence that it maintained Labor-Code-compliant meal and rest policies.

18 13. Plaintiff contends that the civil penalty statutes applicable to the Action arise
19 from violations of the California Labor Code, including, but not limited to, Labor Code §§ 210,
20 226.3, 558, 1174.5, 1197.1, and 2699(f)(2). Under these civil penalty statutes, an employee who
21 suffers a Labor Code violation may be awarded a sum of money for each pay period in which
22 he or she was underpaid. However, under Labor Code § 2699(e)(2), the Court can reduce an
23 award of civil penalties if the award is unjust, arbitrary, oppressive, or confiscatory.

24 14. Under the civil penalty formulas applicable under PAGA, Plaintiff estimated a
25 **maximum** exposure of approximately \$120,550.00 for civil penalties for Plaintiff's strongest
26 disputed claims of failure to provide meal and rest periods. Plaintiff's analysis, which Defendant
27 vehemently disputes, revealed a 54.7% violation rate for either late, short, or interrupted meal
28 periods for shifts over 6 hours. Since the total number of pay periods in the PAGA period was

1 1,653 and since only 66.7% of the shifts were over 6 hours, the total number of pay periods to
2 consider for potential meal break violations was 1103 (66.7% x 1653 pay periods). As such,
3 with the 54.7% violation rate, the maximum exposure would be \$30,150.00, which is calculated
4 as \$50 penalty multiplied by 603 pay periods (54.7% of the 1103 pay periods). Plaintiff
5 extrapolated the same 54.7% rate for rest break violations, which would equate to a maximum
6 exposure of \$90,400 (\$100 penalty per pay period multiplied by 904 pay periods, which is 54.7%
7 x 1653 pay periods). As such, the aggregate maximum exposure for meal and rest break claims
8 would be \$120,550. It is important to note, however, that for the rest break claims, there was no
9 data to analyze and no clock-in and clock-out records for rest periods. As such, the exposure for
10 alleged rest break violations is simply an extrapolation of the meal period violations. Proving
11 the percentage of any rest break violations without data would be one of the challenges if this
12 matter proceeded to trial. Assuming that Plaintiff's calculations and analysis are accurate, the
13 maximum exposure presumes that the Court will not reduce the penalty award as unjust,
14 arbitrary, oppressive, or confiscatory. For the rest period violations, as alluded to above, it also
15 presumes that the meal and rest period violation rates were identical.

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

25 16. PAGA states a court has discretion to award a lesser amount than the maximum
26 penalty. *See Lab. Code* § 2699(e)(2) ("...a court may award a lesser amount than the maximum
27 civil penalty amount specified by this part if, based on the facts and circumstances of the
28 particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,

1 or confiscatory.”); *see also* *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
2 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the Court could
3 reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff’s evidence of
4 willful and intentional conduct. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504
5 (“*Carrington*”) illustrates this. In that case, the Court of Appeal affirmed a trial court’s heavily
6 discounted award of only \$5 per violation because it was within the Court’s discretion to
7 significantly reduce PAGA penalties even when there is a finding that a violation of the
8 California Labor Code occurred. The plaintiff in *Carrington* had requested penalties in excess of
9 \$70 million and was successful in proving the PAGA claim during a bench trial. However, the
10 trial court reduced the total award after trial to only \$150,000 (30,000 violations x \$5) and stated
11 that this reduction was warranted because imposing the maximum penalty would be “unjust,
12 arbitrary, and oppressive”, based on Starbucks’s “good faith attempts” to comply with meal break
13 obligations and because the Court found the violations were minimal. Applying the same formula
14 here and assuming there was one violation during each pay period, the award of civil penalties
15 could not exceed \$8,265.00 in PAGA penalties (1,653 violations x \$5). As such, this Settlement
16 is a great result based solely on the risk the Court chooses to apply the *Carrington* formula.
17 Defendant has also posed formidable defenses to the Labor Code claims underlying Plaintiff’s
18 allegations. Thus, the chance of Plaintiff recovering a higher amount than the Gross Settlement
19 Amount is uncertain.

20 17. The Parties further recognize that the issues presented in the Action are likely
21 only to be resolved with extensive and costly pretrial and trial proceedings, and that further
22 litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate
23 to the maximum potential benefits to the PAGA Members and Plaintiff from continued
24 litigation.

25 18. The settlement of the Action involves monetary relief to all PAGA Members,
26 Plaintiff, his attorneys, and the State of California.

27 19. Furthermore, Plaintiff recognizes that continued litigation presents significant
28 risks that support a significant downward departure from Plaintiff’s estimated civil penalties

1 amount. In view of the risks, the Settlement represents a fair, adequate, and reasonable
2 compromise amount for these claims and is in the best interest of Plaintiff and PAGA Members
3 and thus, warrants approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir.
4 June 3, 2014) 2014 WL 2465049, * 3. The PAGA settlement and its terms are fair, just,
5 reasonable, adequate, and equitable to Defendant, Plaintiff, and the State, especially in light of
6 the current economic climate, and are the product of good faith, and informed arms-length
7 negotiations between the Parties consistent with public policy and fully comply with applicable
8 provisions of law.

9 20. As such, the settlement of PAGA penalties in the gross sum of \$39,000.00, of
10 which 75% of the net amount after attorney's fees [\$13,000.00], attorney costs [\$1,491.00], and
11 settlement administrator fees [\$3,150.00], which is \$16,019.25 will be paid to the LWDA, and
12 25%, which equates to \$5,339.75, will be distributed to the PAGA Members, is reasonable and
13 appropriate under the circumstances.

14 ***Plaintiff's Individual Settlement***

15 21. Plaintiff did have individual claims for non-wage damages pursuant
16 to an arbitration complaint that was filed through the American Arbitration Association, Case
17 no. 01-22-0001-4060. The parties agreed that the consideration Plaintiff received pursuant to
18 the individual settlement agreement was to settle his individual non-wage claims, including
19 causes of action in arbitration for sexual harassment under the Fair Employment and Housing
20 Act (FEHA), failure to prevent harassment under FEHA, retaliation under FEHA, retaliation
21 under Labor Code section 1102.5, wrongful termination in violation of public policy, negligent
22 retention/supervision, and a violation of Business and Professions Code section 17200. As part
23 of this confidential agreement, Plaintiff also provided Defendant with a general release of all
24 claims, whether known or unknown, including unknown claims covered by Civil Code Section
25 1542. Plaintiff has no conflict of interest with the absent Aggrieved Employees and is adequate
26 to represent the Aggrieved Employees.

27 ***Attorneys' Fees and Costs***

28 22. I represent Plaintiff on a straight contingency basis. My firm's request for
\$13,000 in attorney fees and \$1,941.00 in litigation costs is fair and reasonable. To date, I have

1 investigated and prosecuted this matter vigorously, including drafting the initial PAGA notice
2 as well as the complaint; drafting informal discovery questions, reviewing Defendants' informal
3 document production, including wage and hour policies; sending and receiving emails on the
4 case with defense counsel, including substantive discussions; sending the PAGA data to
5 Plaintiff's expert for review/analysis and reviewing the expert's findings/conclusions; engaging
6 in an all-day mediation; and drafting this PAGA approval motion. I also expect to perform
7 additional work on this case if the Court grants final approval of the Settlement, including
8 supervision of the Settlement Administrator's disbursement of the settlement funds to the
9 Aggrieved Employees. "Empirical studies show that, regardless of whether the percentage
10 method or the lodestar method is used, fee awards in class actions average around one-third of
11 the recovery. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 47 fn. 11 (quoting *Shaw v.*
12 *Toshiba America Information Systems, Inc.* (E.D. Tex. 2000) 91 F.Supp.2d 942, 972; *See also*
13 *Lafitte v. Robert Half Int'l Inc.* (Cal. Aug. 11, 2016) 1 Cal.5th 480, 503, 376 P.3d 672, 686
14 (holding that courts can use the percentage method for the calculation of attorneys' fees). This
15 is also consistent with Plaintiff's Counsel's experience in cases involving PAGA claims. This
16 award is justified here because Plaintiff's counsel achieved a strong result for the PAGA
17 Members and the State while bearing the substantial burdens of contingency representation.

18 23. My previous experience in litigating wage and hour actions also supports the
19 reasonableness of the fee request, as does the caliber of opposing counsel. My previous
20 experience in similar matters was integral in evaluating the strengths and weaknesses of the
21 case against Defendants and the reasonableness of the Settlement. Because it is reasonable to
22 compensate me commensurate with my skill, reputation, and experience, attorney's fees of
23 approximately one-third of the Gross Settlement Amount is reasonable. Likewise, the caliber
24 and experience of opposing counsel in labor and employment litigation supports the fairness and
25 reasonableness of the requested fee award.

26 24. The litigation costs expended to aid in the representation of the PAGA Members
27 include the following: lawsuit filing fee of \$454.22, PAGA initial filing fees of \$75.00; expert
28 data analysis fee of \$850.00, and miscellaneous court filing fees of \$111.78 for a total of

1 \$1,491.00. All of these costs are documented and reasonably incurred.

2 ***Settlement Administration Costs***

3 25. With regard to the settlement administration costs provision, it is reasonable.
4 Before agreeing to ILYM Administrators, the parties sought and reviewed bids from other
5 reputable third-party administrator and ILYM's bid was comparable. ILYM's administrator bid
6 has been attached as Exhibit B to the Settlement Agreement, which has in turn been attached as
7 **Exhibit 1** to this declaration.

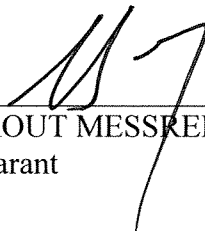
8 ***Notice of Settlement to the LWDA***

9 26. Pursuant to Lab. Code § 2699(1)(2), my firm submitted a copy of the Settlement
10 with the LWDA at the same time the Settlement is being filed with the Court. True and correct
11 copies of this submission with the LWDA and the confirmation email are collectively attached
12 as **Exhibit 2** to this declaration. My firm will further provide a copy of the Court's Order and
13 Judgment to the LWDA within ten (10) calendar days after entry of said judgment or order as
14 required by Labor Code sections 2699(1)(2)-(3).

15 I declare under the penalty of perjury of the laws of the State of California that the
16 foregoing is true and correct to the best of my knowledge.

17 Executed on February 28, 2024, at Glendale, California.

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HAROUT MESSRELIAN,
Declarant

EXHIBIT 1

**CRUSER, MITCHELL, NOVITZ,
SANCHEZ, GASTON, & ZIMET, LLP**

Stacie L. Turner (SBN 236699)
Ian McClain-Sewer (SBN 297046)
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Attorneys for Defendants
**AKASH GENERAL PARTNERSHIP,
AKASH LLC LLC and MOHAMMAD A. SIDDIQUI**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

EDUARDO ZELAYA,

Plaintiff,

v.

**AKASH GENERAL PARTNERSHIP; AKASH
LLC LLC; MOHAMMAD A. SIDDIQUI; and
DOES 1-25, inclusive,**

Defendants.

Case No.: 22STCV02064
Judge: Hon. Thomas D. Long
Dept.: 48

**JOINT STIPULATION OF
CALIFORNIA
LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT
("PAGA") SETTLEMENT AND
RELEASE**

Complaint: January 18, 2022
Trial: None set.

I. INTRODUCTION

1. Defendants AKASH GENERAL PARTNERSHIP; AKASH LLC LLC;
MOHAMMAD A. SIDDIQUI (collectively "Defendants") employed Plaintiff EDUARDO
ZELAYA ("Plaintiff") at a Denny's franchise location at 3012 W TEMPLE AVE • POMONA, CA
91766 Pomona, CA, in 2017 to approximately March, 2020, and then from February, 2021 to July,
2021 as a non-exempt server at \$14.00/hour at the time of his separation.

2. On or around October 4, 2021, Plaintiff sent Defendants a notice that he filed a
Private Attorney General Act claim on behalf of himself and similarly aggrieved employees. On

1 January 18, 2022, Plaintiff filed a civil complaint with the Los Angeles County Superior Court for
2 the State of California in a matter captioned *Eduardo Zelaya v. Akash General Partnership, Akash*
3 *LLC LLC, Mohammad Siddiqui*, Case No. 22STCV02064, alleging the following cause of action:

4 1) PRIVATE ATTORNEYS GENERAL ACT ("PAGA"). This is referred to as the "PAGA
5 Action."

6
7 3. Defendants maintain that, pursuant to *Viking River Cruises*, 142 S.Ct. 734, Plaintiff
8 cannot maintain such an action given that Plaintiff signed an arbitration agreement, and consented
9 to such.

10 1)

11 a. The Aggrieved Employees are all individuals who worked for Akash in California
12 during the Covered Period.

13 b. The Covered Period starts on 11/14/20 and continues until 7/22/22 ("PAGA
14 Period").

15
16 4. Defendants deny any and all of the Claims asserted by Plaintiff.

17 a. For purposes of settlement only, Defendants agree that they will not dispute
18 Plaintiff's standing as an aggrieved employee under the PAGA and as a PAGA
19 representative.

20
21 5. On July 22, 2022, the Parties reached an agreement to resolve the PAGA cause of action
22 after considering the expense of continued litigation and the uncertainty associated with the PAGA
23 cause of action. The Parties desire to settle the differences between them, including, but in no way
24 limited to, those differences arising from all alleged but disputed damages sought by Plaintiff as a
25 result of the PAGA claims raised in Plaintiffs Complaint.

26 6. This PAGA Settlement Agreement ("Agreement") is made by and between Plaintiff
27 Defendants. The Agreement refers to Plaintiff and Defendants collectively as "Parties," or
28 individually as "Party."

1 **1. DEFINITIONS.**

2 1.1. "Action" means the Plaintiff's PAGA lawsuit alleging wage and hour violations
3 against Defendants captioned *Eduardo Zelaya v. Akash General Partnership, Akash LLC LLC,*
4 *Mohammad Siddiqui*, Case No. 22STCV02064 filed on January 18, 2022 and pending in Superior
5 Court of the State of California, County of Los Angeles.

6 1.2. "Administrator" means, ILYM Group, Inc., the neutral entity the Parties have agreed
7 to appoint to administer the Settlement, whose services proposal is attached hereto as **Exhibit B**.

8 1.3. "Administration Expenses Payment" means the amount the Administrator will be paid
9 from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance
10 with the Administrator's "not to exceed" bid submitted to the Court in connection with approval of
11 this Settlement.

12 1.4. "Aggrieved Employee" means all non-exempt employees employed by
13 DEFENDANTS in California during the PAGA Period.

14 1.5. "Aggrieved Employee Data" means Aggrieved Employee identifying information in
15 DEFENDANTS' possession including each Aggrieved Employee's name, last-known mailing
16 address, Social Security number, and number of PAGA Pay Periods.

17 1.6. "Aggrieved Employee Address Search" means the Administrator's investigation and
18 search for current Aggrieved Employee mailing addresses using all reasonably available sources,
19 methods and means including, but not limited to, the National Change of Address database, skip
20 traces, and direct contact by the Administrator with Aggrieved Employees.

21 1.7. "Court" means the Superior Court of California, County of Los Angeles.

22 1.8. "Defense Counsel" means Stacie L. Turner and Ian McClain-Sewer of CRUSER
23 MITCHELL, NOVITZ, SANCHEZ, GASTON, & ZIMET, LLP.

24 1.9. "Effective Date" means the date by when the Court enters a Judgment on its Order
25 Approving the PAGA Settlement.

26 1.10. "Gross Settlement Amount" means \$39,000.00 which is the total amount
27 Defendants agree to pay under the Settlement. The Gross Settlement Amount will be used to pay
28

1 Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA
2 Counsel Litigation Expenses Payment, and the Administrator's Expenses Payment.

3 1.11. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of
4 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved
5 Employee worked during the PAGA Period.

6 1.12 "PAGA notice" refers to the notice that will accompany the "Individual PAGA
7 payment".

8 1.13. "Judgment" means the judgment entered by the Court based upon the Final
9 Approval.

10 1.14. "LWDA" means the California Labor and Workforce Development Agency, the
11 agency entitled, under Labor Code section 2699, subd. (i).

12 1.15. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the
13 LWDA under Labor Code section 2699, subd. (i).

14 1.16. "Net Settlement Amount" means the Gross Settlement Amount, less the following
15 payments in the amounts approved by the Court: PAGA Counsel Fees Payment, PAGA Counsel
16 Litigation Expenses Payment, and the Administration Expenses Payment. 75% of the remainder
17 shall be the "LWDA PAGA PAYMENT" and 25% of the remainder shall be the "Individual
18 PAGA Payment".

19 1.17. "PAGA Counsel" means Messrelian Law, Inc., the attorneys representing the
20 Plaintiff in the Action.

21 1.18. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses
22 Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable
23 attorneys' fees and expenses, respectively, incurred to prosecute the Action.

24 1.19. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee
25 worked for DEFENDANTS for at least one day during the PAGA Period.

26 1.20. "PAGA Period" means the period from November 14, 2020 to 7/22/22.

27 1.21. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

28 1.22. "PAGA Notice" means Plaintiff's letter to DEFENDANTS and the LWDA

1 providing notice pursuant to Labor Code section 2699.3, subd.(a).

2 1.23. "PAGA Penalties" means the total amount of PAGA civil penalties, \$39,000, to be
3 paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and 75% to
4 the LWDA in settlement of PAGA claims, and after deduction of the attorney's fees, costs, and
5 administrator fees.

6 1.24. "Plaintiff" means Eduardo Zelaya the named plaintiff in the Action.

7 1.25. "Approval Order" means the Court Order Granting Approval of the PAGA
8 Settlement.

9 1.26. "Released PAGA Claims" means the claims being released by the Plaintiff and
10 PAGA Counsel and as described in Paragraph 5 below.

11 1.27. "Released Parties" means: Defendants, or any related entity, or its current or former
12 predecessors, successors, parent entities, owners, subsidiaries, officers, directors, partners,
13 trustees, shareholders, attorneys, insurers and reinsurers, employees or former employees,
14 representatives, agents, assigns, or any former employees, including Ahmed Siddiqui, Nadeem
15 Siddiqui, Akash General Partnership, Akash LLC, Akash LLC LLC.

16 1.28. "Settlement" means the disposition of the Action effected by this Agreement and
17 the Judgment.

18 1.29. "DEFENDANTS" means the named Defendants.

19 **2. RECITALS.**

20 2.1. On or about January 18, 2022 Plaintiff commenced this Action by filing a Complaint
21 alleging causes of action against DEFENDANTS for California Labor Code

22 §§ 201, 202, 203, 204, , 226, 226.3, 226.7, 510, 512, 558, 558.1, , 1174, 1194, 1197, 1197.1, ,
23 2699.5.

24
25 Plaintiff seeks penalties for violations of the foregoing, which are recoverable under California
26 Labor Code section 2698 et. seq, as well as the Labor Code Private Attorney General Act of 2004
27 ("PAGA.")'
28

1 The Complaint is the operative complaint in the Action (the "Operative Complaint").
2 DEFENDANTS deny the allegations in the Operative Complaint, denies any failure to comply
3 with the laws identified in the Operative Complaint and denies any and all liability for the causes
4 of action alleged.

5 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice
6 to DEFENDANTS and the LWDA by sending the PAGA Notice.

7 2.3. On July 13, 2022, the Parties participated in an all-day mediation presided over by JJ
8 Johnston, which led to this Agreement to settle the Action. A fully executed copy of the
9 Memorandum of Understanding (MOU) that was signed after the mediation has been attached
10 hereto as **Exhibit A**.

11 2.4. Prior to mediation the Parties engaged in substantial informal discovery through which
12 Plaintiff obtained information on the policies and practices of DEFENDANTS' employees as
13 well as relevant payroll and time and attendance records for the Aggrieved Employees during
14 the PAGA Period.

15 2.5. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of
16 any other pending matter or action asserting claims that will be extinguished or affected by the
17 Settlement.

18 **3. MONETARY TERMS.**

19 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below,
20 DEFENDANTS promise to pay \$39,000 and no more as the Gross Settlement Amount.
21 DEFENDANTS have no obligation to pay the Gross Settlement Amount prior to the deadline
22 stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross
23 Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a
24 condition of payment. None of the Gross Settlement Amount will revert to DEFENDANTS.

25 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
26 deduct the following payments from the Gross Settlement Amount, in the amounts specified by
27 the Court in the Final Approval:

28 3.2.1. To PAGA Counsel and the Representative Plaintiff: A PAGA Counsel Fees

1 Payment of 1/3 of the Gross Settlement Amount which is currently estimated to be \$
2 \$13,000.00 and PAGA Counsel Litigation Expenses Payment of not more than \$1,491.00.
3 DEFENDANTS will not oppose requests for Court approval of these payments provided that they
4 do not exceed these amounts. If the Court approves a PAGA Counsel Fees Payment, a PAGA
5 Counsel Litigation Expenses Payment, the Administrator will allocate the remainder to the Net
6 Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other
7 Plaintiff's Counsel arising from any claim to any portion of any PAGA Counsel Fee Payment
8 and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA
9 Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment using one or more IRS
10 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA
11 Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds
12 DEFENDANTS harmless, and indemnifies DEFENDANTS, from any dispute or controversy
13 regarding any division or sharing of any of these Payments.

14 3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed
15 \$3,150, except for a showing of good cause and as approved by the Court. To the extent the
16 Administration Expenses are less or the Court approves payment less than \$3,150, the
17 Administrator will retain the remainder in the Net Settlement Amount.

18 3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties in the total amount of
19 \$39,000, allocated 25% to the Aggrieved Employees and 75% to the LWDA after the payment of
20 attorney's fees, attorney's costs, and settlement administrator expenses.

21 3.2.3.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing
22 the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of
23 PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b)
24 multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved
25 Employees assume full responsibility and liability for any taxes owed on their Individual PAGA
26 Payment.

27 3.2.3.2. If the Court approves PAGA Penalties of less than the amount requested, the
28 Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will

1 report the Individual PAGA Payments on IRS 1099 Forms.

2
3 **4. SETTLEMENT FUNDING AND PAYMENTS.**

4 4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date,
5 DEFENDANTS estimates that as of March 10, 2023 there are 38 Aggrieved Employees who
6 worked 61 Pay Periods during the PAGA Period, totaling roughly 1653 pay periods.

7 4.2. Aggrieved Employee Data. Within 21 days, DEFENDANTS will simultaneously
8 deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel
9 spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the
10 Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of
11 this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to
12 Administrator employees who need access to the Aggrieved Employee Data to effect and perform
13 under this Agreement. DEFENDANTS have a continuing duty to immediately notify PAGA
14 Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying
15 information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably
16 feasible. Without any extension of the deadline by which DEFENDANTS must send the
17 Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously
18 use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or
19 omitted Aggrieved Employee Data.

20 4.3. Funding of Gross Settlement Amount. DEFENDANTS shall fully fund the Gross
21 Settlement Amount by transmitting the funds to the Administrator no later than 60 days after the
22 Effective Date.

23 4.4. Payments from the Gross Settlement Amount. Within 14 days after DEFENDANTS
24 fund the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA
25 Payments, the PAGA Payment, the Administration Expenses Payment, PAGA Counsel Fees
26 Payment and PAGA Counsel Litigation Expenses Payment.

27 4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send
28 them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each

1 check shall prominently state the date (not less than 180 days after the date of mailing) when the
2 check will be voided. The Administrator will cancel all checks not cashed by the void date. Before
3 mailing any checks, the Settlement Administrator must update the recipients' mailing addresses
4 using the National Change of Address Database.

5 4.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all
6 Aggrieved Employees whose checks are returned undelivered without USPS forwarding address.
7 Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the
8 USPS forwarding address provided or to an address ascertained through the Aggrieved Employee
9 Address Search. The Administrator need not take further steps to deliver checks to Aggrieved
10 Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly
11 send a replacement check to any Aggrieved Employee whose original check was lost or
12 misplaced, as requested by the Aggrieved Employee prior to the void date.

13
14 4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed
15 and cancelled after the void date, the Administrator shall transmit the funds represented by such
16 checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved
17 Employee.

18 4.4.4. The payment of Individual PAGA Payments shall not obligate DEFENDANTS to
19 confer any additional benefits or make any additional payments to the Aggrieved Employees (such
20 as 401(k) contributions or bonuses) beyond those specified in this Agreement.

21 5. RELEASES OF CLAIMS. Effective on the date of the Approval Order.

22 5.1

23 5.1 Release by Aggrieved Employees: All Aggrieved Employees are deemed to release,
24 on behalf of themselves and their respective former and present representatives, agents, attorneys,
25 heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA
26 penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period
27 facts stated in the Operative Complaint and the PAGA Notices of the Plaintiffs, including those
28 arising from California Labor Code

1 §§ 201, 202, 203, 204, , 226, 226.3, 226.7, 510, 512, 558,
2 558.1, , 1174, 1194, 1197, 1197.1, , 2699.5 relating to (a) failure to pay all overtime wages; (b)
3 failure to pay all minimum wages; (c) failure to pay wages, (d) failure to pay for all work, including
4 off-the-clock work (e) failure to provide proper meal periods; (d) failure to authorize and permit rest
5 periods; (e) failure to furnish accurate wage statements; (f) waiting time penalties and (g) failure to
6 timely pay final wages.

7 5.3 Release by PAGA Counsel:

8 PAGA Counsel release on behalf of their present and former attorneys, employees, agents,
9 successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection
10 with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and
11 the PAGA Notice.

12

13 **6. APPROVAL OF SETTLEMENT.**

14 6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all
15 documents necessary for obtaining approval of this Settlement under Labor Code Section 2699,
16 subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a
17 signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of
18 all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)),
19 Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section
20 2699, subd. (l)(2)); and (iii) all facts relevant to any actual or potential conflict of interest with
21 Aggrieved Employees and/or the Administrator, if any. In their Declarations, PAGA Counsel shall
22 aver that they are not aware of any other pending matter or action asserting claims that will be
23 extinguished or adversely affected by the Settlement.

24 6.2 Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly
25 responsible for expeditiously finalizing and filing this Settlement no later than 30 days after the
26 full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion
27 and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for
28 delivering the Court's Approval to the Administrator.

1 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or
2 motion for approval of this Settlement and/or the supporting declarations and documents, PAGA
3 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting
4 and conferring, and in good faith, to resolve the disagreement and, as necessary, looping in neutral
5 JJ Johnston if otherwise at impasse. If the Court does not grant the motion for approval of this
6 Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel
7 and Defense Counsel will expeditiously work together on behalf of the Parties by meeting and
8 conferring, and in good faith, to modify or amend the Agreement and otherwise satisfy the Court's
9 concerns.

10 **7. SETTLEMENT ADMINISTRATION.**

11 7.1 Selection of Administrator. The Parties have jointly selected ILYM Group, Inc., to
12 serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc.,
13 agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this
14 Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel
15 represent that they have no interest or relationship, financial or otherwise, with the Administrator
16 other than a professional relationship arising out of prior experiences administering settlements.

17 7.2 Employer Identification Number. The Administrator shall have and use its own
18 Employer Identification Number for purposes of providing reports and forms to state and federal
19 tax authorities.

20 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that
21 meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation
22 section 468B-1.

23 7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to
24 be performed or observed by the Administrator contained in this Agreement or otherwise.

25
26 **8. CONTINUING JURISDICTION OF THE COURT.** The Parties agree that, after
27 entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement
28 solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement

1 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

2 8.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
3 conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA
4 Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to
5 appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the
6 right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals.
7 The waiver of appeal does not include any waiver of the right to oppose such motions, writs or
8 appeals. If another party appeals the Judgment, the Parties' obligations to perform under this
9 Agreement will be suspended until such time as the appeal is finally resolved and the Judgment
10 becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

11 **9. ADDITIONAL PROVISIONS.**

12 9.1 No Admission of Liability or Representative Manageability for Other Purposes. This
13 Agreement represents a compromise and settlement of highly disputed claims. Nothing in this
14 Agreement is intended or should be construed as an admission by DEFENDANTS that any of the
15 allegations in the Operative Complaint have merit or that DEFENDANTS have any liability for
16 any claims asserted; nor should it be intended or construed as an admission by Plaintiff that
17 DEFENDANTS' defenses in the Action have merit. The Parties agree that representative
18 treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this
19 Settlement, DEFENDANTS reserve all available defenses to the claims in the Action, and Plaintiff
20 reserves the right to contest DEFENDANTS' defenses. The Settlement, this Agreement and
21 Parties' willingness to settle the Action will have no bearing on, and will not be admissible in
22 connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and
23 this Agreement).

24 9.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
25 together with its attached exhibits shall constitute the entire agreement between the Parties relating
26 to the Settlement, superseding any and all oral representations, warranties, covenants, or
27 inducements made to or by any Party.

28 9.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and

1 represent that they are authorized by Plaintiff and DEFENDANTS, respectively, to take all
2 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to
3 effectuate its terms, and to execute any other documents reasonably required to effectuate the
4 terms of this Agreement including any amendments to this Agreement.

5 9.4 Cooperation. The Parties and their counsel will cooperate with each other and use their
6 best efforts, in good faith, to implement the Settlement by, among other things, modifying the
7 Settlement Agreement, submitting supplemental evidence and supplementing points and
8 authorities as requested by the Court. In the event the Parties are unable to agree upon the form or
9 content of any document necessary to implement the Settlement, or on any modification of the
10 Agreement that may become necessary to implement the Settlement, the Parties will seek the
11 assistance of mediator JJ Johnston, and/or the Court for resolution.

12 9.5 No Prior Assignments. The Parties separately represent and warrant that they have not
13 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
14 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
15 action, or right released and discharged by the Party in this Settlement.

16 9.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, DEFENDANTS nor Defense
17 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
18 Settlement be relied upon as such within the meaning of United States Treasury Department
19 Circular 230 (31 CFR Part 10, as amended) or otherwise.

20 9.7 Modification of Agreement. This Agreement, and all parts of it, may be amended,
21 modified, changed, or waived only by an express written instrument signed by all Parties or their
22 representatives, and approved by the Court.

23 9.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to
24 the benefit of, the successors of each of the Parties.

25 9.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be
26 governed by and interpreted according to the internal laws of the state of California, without
27 regard to conflict of law principles.

28 9.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation

1 of this Agreement. This Agreement will not be construed against any
2 Party on the basis that the Party was the drafter or participated in the drafting.

3 9.11 Confidentiality. To the extent permitted by law, all agreements made, and orders
4 entered during Action and in this Agreement relating to the confidentiality of information shall
5 survive the execution of this Agreement.

6 9.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA
7 Counsel during the discovery process and/or pursuant to Cal. Evid. Code §1152, and all copies and
8 summaries of the PAGA Data provided to PAGA Counsel by DEFENDANTS in connection with
9 the mediation, other settlement negotiations, or in connection with the Settlement, may be used
10 only with respect to this Settlement, and no other purpose, and may not be used in any way that
11 violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after
12 the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff and PAGA
13 Counsel shall destroy all paper and electronic versions of Aggrieved Employee Data received
14 from DEFENDANTS.

15 9.13 Headings. The descriptive heading of any section or paragraph of this Agreement is
16 inserted for convenience of reference only and does not constitute a part of this Agreement.

17 9.14 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement
18 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
19 weekend or federal legal holiday, such date or deadline shall be on the first business day
20 thereafter.

21 9.15 Notice. All notices, demands or other communications between the Parties in
22 connection with this Agreement will be in writing and deemed to have been duly given as of the
23 third business day after mailing by United States mail, or the day sent by email or messenger,
24 addressed as follows:

25 Plaintiff’s Counsel:

Defense Counsel:

26 Messrelian Law Inc.

Cruser, Mitchell, Novitz, Sanchez, Gatson & Zimet

27 Harout Messrelian, Esq.

Stacie Turner, Esq.

28 500 N. Central Ave., Suite 840

Ian McClain-Sewer

1 Glendale, CA 91203

800 Wilshire Blvd., 15th Floor

2 818-484-6531

Los Angeles, CA 90017

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213-689-8500

4 9.16 Execution in Counterparts. This Agreement may be executed in one or more
5 counterparts by facsimile, electronically (e.g., DocuSign), or email which for purposes of this
6 Agreement shall be accepted as an original. All executed counterparts and each of them will be
7 deemed to be one and the same instrument if counsel for the Parties will exchange between
8 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
9 the existence and contents of this Agreement.

10 9.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the
11 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
12 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
13 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
14 process.

15 DATED: Jan 8, 2024

EDUARDO ZELAYA

17

18

By: 
Eduardo Zelaya, Plaintiff

19

20 DATED:

**AKASH GENERAL PARTNERSHIP, AKASH
LLC LLC**

21

22

23

By: _____
MOHAMMAD A. SIDDIQUI on behalf of
Defendants Akash General Partnership; Akash LLC
LLC

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26 DATED:

MOHAMMAD A. SIDDIQUI

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By: _____
MOHAMMAD A. SIDDIQUI, Defendant

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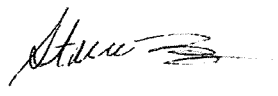
DATED:

MESSRELIAN LAW INC.

By: _____
Harout Messrelian
Attorneys for Plaintiff
EDUARDO ZELAYA

DATED:

**CRUSER, MITCHELL, NOVITZ,
SANCHEZ, GASTON & ZIMET LLP**

By:  _____
Stacie L. Turner
Ian McClain-Sewer
Attorneys for Defendants
AKASH GENERAL PARTNERSHIP, AKASH LLC
LLC and MOHAMMAD A. SIDDIQUI

9.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (e.g., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

9.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

DATED: Oct 18, 2023

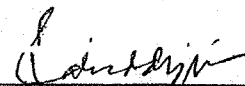
EDUARDO ZELAYA

By: 
Eduardo Zelaya (Oct 18, 2023 22:30 EDT)
Eduardo Zelaya, Plaintiff

DATED:

2/5/2024

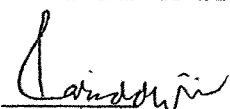
**AKASH GENERAL PARTNERSHIP, AKASH
LLC LLC**

By: 
MOHAMMAD A. SIDDIQUI on behalf of
Defendants Akash General Partnership; Akash LLC
LLC

DATED:

2-5-2024

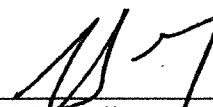
MOHAMMAD A. SIDDIQUI

By: 
MOHAMMAD A. SIDDIQUI, Defendant

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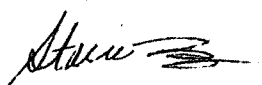
DATED: 10-18-2023

MESSRELIAN LAW INC.

By: 
Harout Messrelian
Attorneys for Plaintiff
EDUARDO ZELAYA

DATED: 2/5/2024

CRUSER, MITCHELL, NOVITZ,
SANCHEZ, GASTON & ZIMET LLP

By: 
Stacie L. Turner
Ian McClain-Sewer
Attorneys for Defendants
AKASH GENERAL PARTNERSHIP, AKASH LLC
LLC and MOHAMMAD A. SIDDIQUI

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EXHIBIT A

PAGA ACTION SETTLEMENT
MEMORANDUM OF AGREEMENT ("MOA")

Eduardo Zelaya ("Plaintiff") on the one hand, and Akash General Partnership and Mohammad Siddiqui (collectively "Defendants") hereby set forth the terms of a Memorandum of Agreement ("MOA" or "Agreement") designed to bind the parties to the terms of a PAGA-only settlement. Defendants and Plaintiff are referred to in this Agreement individually as a "Party" and collectively as the "Parties." The Parties hereby agree as follows:

1. This MOA memorializes the settlement reached in the mediation on July 22, 2022, between the Parties. This MOA confirms the essential terms of the settlement and will assist the Parties in preparing a comprehensive "long form" settlement agreement. This MOA is admissible and enforceable by, binding on, and subject to disclosure by all Parties.

2. The term "Action" means the action that is entitled *Eduardo Zelaya v. Akash General Partnership, Akash LLC LLC, Mohammad Siddiqui*, Case No. 22STCV02064 which is pending in the Los Angeles County Superior Court.

3. The term "Akash" means Akash General Partnership and its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers including Ahmed Siddiqui, Nadeem Siddiqui, Akash General Partnership, Akash LLC, Akash LLC LLC (collectively, the "Released Parties").

4. The term "Defendants" means Akash as well as Mohammad Siddiqui.

5. The Parties intend to enter into a more formal "long form" agreement (Stipulation of Settlement) not inconsistent with the terms of this MOA, but if they fail to execute a more formal agreement, this MOA will be final, binding and enforceable pursuant to California Code of Civil Procedure Section 664.6 and admissible pursuant to California Evidence Code Section 1123. The Parties shall have 30 days from the date of this MOA to prepare a "long form" Stipulation of Settlement. In the event that the Parties do not complete that "long form" Settlement Stipulation within 30 days, then after 30 days, either party may move for approval of this settlement on the basis of the terms set forth in this MOA.

6. The Aggrieved Employees are all individuals who worked for Akash in California during the Covered Period.

7. The Covered Period starts on 11/14/20 and continues until 07/22/22.

8. The Parties and their counsel agree that the consideration described in the subparagraphs below constitutes their good faith compromise of the Action based upon their assessment of the value of the case, and the mutual risks and costs of further litigation. Specifically, the consideration provided by Defendants consist of the following:

- a. Defendants shall pay a Maximum Settlement Amount of THIRTY NINE THOUSAND DOLLARS AND ZERO CENTS (\$39,000) in full and complete settlement of the PAGA claim, which sum includes all civil penalties, attorneys' fees, costs, settlement administration costs, and an enhancement award to the Plaintiff. In no event shall Defendants be liable for more than the Maximum Settlement Amount as a result of the settlement of the PAGA claim.
- b. "Net Settlement Amount" means the Maximum Settlement Amount less deductions for the settlement administration costs, Plaintiff's enhancement payment, and Plaintiff's Counsel's attorneys' fees and costs.
- c. The Net Settlement Amount will be allocated to civil penalties, of which 75% shall be distributed to the California Labor & Workforce Development Agency ("LWDA") and 25% to the Aggrieved Employees, all in satisfaction of all remaining PAGA claims in the Action.

9. The Parties agree that the consideration described in Paragraph 8, above, constitutes adequate consideration for the settlement and following limited release:

- a. Upon the Effective Date, Plaintiff, each Aggrieved Employee and the LWDA shall fully release and forever discharge Defendants and the Released Parties from any and all claims, rights, or causes of action arising from November 14, 2020 to July 22, 2022 seeking civil penalties under the PAGA that are based on the alleged violations by Defendants of the Labor Code (including, but not limited to California Labor Code §§ 201, 202, 203, 204, , 226, 226.3, 226.7, 510, 512, 558, 558.1, , 1174, 1194, 1197, 1197.1, , 2699.5) that were alleged or reasonably could have been alleged based on the facts alleged in the operative Complaint.

10. Defendants will not oppose an application for an award to Plaintiff's Counsel, from the Maximum Settlement Amount, of up to 33.33% of the Maximum Settlement Amount in attorneys' fees, plus actual costs and expenses as supported by declaration. Even in the event that the Court reduces or does not approve the requested Counsel Award and costs, Plaintiff's Counsel shall not have the right to revoke this MOA or this settlement, and it will remain binding.

11. The Parties will select a Settlement Administrator on the basis of cost and competence. Fees of the Settlement Administrator shall be paid out of the Maximum Settlement Amount.

12. California Labor Code § 2699(1)(2) requires that the Court review and approve any penalties sought as part of a proposed settlement agreement pursuant to PAGA. All amounts and procedures described in this Agreement are subject to the Court's approval. Should the Court not approve the settlement, the Parties shall request leave to, and jointly attempt to, modify the settlement in order to obtain the Court's approval.

13. If the Court fails to approve the settlement, or if the settlement is terminated, cancelled, or fails to become effective for any reason, or if Defendants fail to fund the settlement, the Parties' settlement, stipulation and this Agreement will be void, and the litigation of the Action shall revert to its status as it existed at the time Plaintiff moved for approval of the PAGA

settlement, e.g., an action with a single claim for violation of PAGA, as set forth in the First Amended Complaint.

14. For purposes of settlement only, Defendants agree that they will not dispute Plaintiff's standing as an aggrieved employee under the PAGA and as a PAGA representative.

15. Plaintiff and Plaintiff's Counsel agree not to disclose or publicize the Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any person or entity, except potential class members and as shall be contractually required to effectuate the terms of the Settlement. For the avoidance of doubt, this section means Plaintiff and Plaintiff's Counsel agree not to issue press releases, communicate with, or respond to any media or publication entities, publish information in manner or form, whether printed or electronic, on any medium or otherwise communicate, whether by print, video, recording or any other medium, with any person or entity concerning the Settlement, including the fact of the Settlement, its terms or contents and the negotiations underlying the Settlement, except as shall be contractually required to effectuate the terms of the Settlement.

IT IS SO AGREED.

Dated: Oct 23, 2022

Plaintiff EDUARDO ZELAYA

Eduardo Zelaya
Eduardo Zelaya; Oct 23, 2022 20:01 PDT

Eduardo Zelaya

Dated: Oct 15, 2022

**Defendant AKASH GENERAL
PARTNERSHIP**

Ahmed Siddiqui
Ahmed Siddiqui; Oct 15, 2022 11:53 PDT

By: Partner
Its: Ahmed S Siddiqui

Defendant MOHAMMAD SIDDIQUI

Dated: _____

Mohammad Siddiqui

settlement, e.g., an action with a single claim for violation of PAGA, as set forth in the First Amended Complaint.

14. For purposes of settlement only, Defendants agree that they will not dispute Plaintiff's standing as an aggrieved employee under the PAGA and as a PAGA representative.

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IT IS SO AGREED.

Plaintiff EDUARDO ZELAYA

Dated: _____

Eduardo Zelaya

**Defendant AKASH GENERAL
PARTNERSHIP**

Dated: _____

By:
Its:

Defendant MOHAMMAD SIDDIQUI

Dated: Oct 15, 2022

Mohammad A. Siddiqui
Mohammad A. Siddiqui - Oct 15, 2022 14:15 PDT

Mohammad Siddiqui

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EXHIBIT B

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Eduardo Zelaya v. Akash General Partnership

Monday, February 20, 2023

Requesting Attorneys Name:

Harout Messrelian

E-Mail:

ianis@messrelianlaw.com

ILYM Contact:

Lisa Mullins

E-Mail:

Lisa@ilymgroup.com

Contact Number:

714.878.8836

Assumptions: PAGA Settlement

ASSUMPTIONS	
Total Number of Aggrieved Employees	38
NCOA	Yes
Certified Spanish Translation	Yes
Case Duration (Years)	1

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	1	\$150.00
Project Manager (Case notification and maintenance)	Hourly	\$120.00	2	\$240.00
Toll Free Telephone Support	Flat Rate	\$35.00	1	\$35.00
Certified Spanish Translation	Flat Fee	\$500.00	1	\$500.00
NCOA	Flat Rate	\$30.00	1	\$30.00

*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.

Subtotal \$955.00

DISTRIBUTION (Includes EIN, Bank Acct /QSF Setup)*				
Distribution Setup & Management	Hourly	\$150.00	2	\$300.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	2	\$250.00
Notice, Check, Stub & Release - (including 1099)	Per Check	\$1.50	38	\$57.00
USPS First Class Postage	Per Piece	\$0.60	38	\$22.80
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	8	\$15.20
Preparation of Taxes	Hourly	\$125.00	1	\$125.00
Annual Filing of Tax Return	Per Year	\$1,200.00	1	\$1,200.00

*Additional Bank fees may apply

Subtotal \$1,970.00

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Declaration	Hourly	\$125.00	1	\$125.00

Subtotal \$225.00

TOTAL CASE COSTS: \$3,150.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

Mailing Date

NOTICE OF SETTLEMENT UNDER THE CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT

Name

Address

Dear NAME:

[case name],

Los Angeles County Superior Court Case No. _____

You are receiving the enclosed check in settlement of a lawsuit entitled [case name] Case No. _____. In the lawsuit, _____ (“Plaintiff”) pursued various claims against _____ (“Defendants”) under Labor Code § 2699 *et seq.*, the California Private Attorneys General Act of 2004 (“PAGA”). Defendants deny all of the allegations and liability for any claims in this case. The Court has approved the Settlement on behalf of the following employees (“Aggrieved Employees”): all current and former non-exempt employees of Defendants in California during the time period from _____ to _____ (the “PAGA Period”).

The enclosed check for \$_____ is your share of the Settlement. Your settlement amount represents penalties and will be reported on an IRS Form 1099. Your check is valid for 180 days from the date of mailing. Funds attributable to any uncashed check will be sent to the State Controller’s Office Unclaimed Property Fund in the name of the Aggrieved Employee.

As a result of the Settlement, all Aggrieved Employees and the California Labor and Workforce Development Agency (“LWDA”) have released Defendants and their present, former, or future parents, owners, subsidiaries, and any affiliated or related persons or entities and each of its officers, directors, employees, partners, shareholders, attorneys and agents, and any other predecessors, successors, assigns, or legal representatives from the following Released Claims: all claims and/or causes of action under PAGA which are based upon the factual allegations set forth in the operative complaint and/or Plaintiff’s PAGA notice to the LWDA and arising at any time during the PAGA Period, including but not limited to claims for PAGA penalties for violations of Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 2699.5 *et seq.* The Aggrieved Employees’ Released Claims are limited to claims for civil penalties under PAGA.

BY CASHING THE CHECK, THE EMPLOYEE IS NOT GIVING UP ANY RIGHT TO SUE FOR DAMAGES ARISING OUT OF ANY ALLEGED GRIEVANCES THAT THE EMPLOYEE HAS AGAINST THE EMPLOYER.

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EXHIBIT 2