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

13 CALYNDRA DAVIS,

14 *Plaintiff,*

15 vs.

16 KAM ENTERPRISES LLC dba FARMER
17 BOYS; LEEZA JAYNE BRAZIER; and
18 DOES 1 to 25, inclusive,

19 *Defendant(s).*

Case No.: 22STCV17280

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

Action filed: 5/25/22

Date: 11/14/23

Time: 8:30am

Dept: 34

Reservation ID:

341812301108

Department: 34, Hon. Michael
Linfield

Submitted Herewith Under Separate Cover:

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

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TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

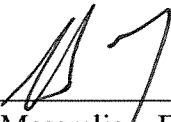
. PLEASE TAKE NOTICE THAT on November 14, 2023 at 8:30 a.m., or as soon thereafter as the matter may be heard in Department 34 of the above-entitled Court, located at 111 N. Hill Street, Los Angeles, California 90012, Plaintiff Calynda Davis (“Plaintiff”) and will and hereby does move unopposed, the Court, pursuant to Labor Code § 2698 et seq., for an order approving the Private Attorneys General Act of 2004 (“PAGA”), Cal. Labor Code § 2698 et seq., settlement agreement between Plaintiff and Defendants KAM Enterprises LLC dba Farmer Boys and Leeza Jayne Brazier (“KAM” or “Defendants”) (collectively, “the Parties”)

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

Respectfully Submitted,

MESSRELIAN LAW INC.

DATED: October 19, 2023

By 

Harout Messrelian, Esq.
Attorneys for Plaintiff
CALYNDRA DAVIS

TABLE OF CONTENTS

TABLE OF AUTHORITIES	v
I. INTRODUCTION	1
II. FACTUAL AND PROCEDURAL SUMMARY	1
A. Background on the Parties.....	1
B. Notice to the LWDA	1
C. The Complaint.....	2
D. The Defense Contentions and Affirmative Defenses	2
E. The Motion for Summary Adjudication of Issues	4
F. Informal Discovery, Investigation and Arm’s Length Negotiations	4
III. TERMS AND PROCEDURES OF THE SETTLEMENT	6
1. Gross Settlement Amount	6
2. PAGA Period	6
3. PAGA Penalties and the LWDA Payment	6
4. Attorney’s Fees and Litigation Costs	7
5. Settlement Administrator Costs.....	7
IV. THE PAGA PENALTIES SECURED BY THE SETTLEMENT ARE GENUINE AND MEANINGFUL AND FULFILL PAGA’S UNDERLYING PURPOSE TO BENEFIT THE PUBLIC.....	7
V. THE REQUESTED ATTORNEYS’ FEES AND COSTS ARE REASONABLE	12
VI. PAGA SETTLEMENT ADMINISTRATION.....	14
A. Distribution of Settlement Funds.....	14
B. The PAGA Settlement Administration Costs Are Reasonable	15
C. Released Claims	15

VII. CONCLUSION.....	15
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2
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TABLE OF AUTHORITIES

Cases	Pages(s)
<i>Aguirre v. Genesis Logistics</i> (C.D. Cal. July 3, 2013)	4
<i>Amey v. Cinemark USA Inc.</i> , 2015 WL 2251504, at *16 (N.D. Cal. May 13, 2015)	11
<i>Amiri v. Cox Communs, LLC</i> (2017) 272 F.Supp.3d 1187, 1195.....	3
<i>Arias v. Superior Court (Angelo Dairy)</i> (2009) 46 Cal.4th 969.....	7
<i>Bowers v. First Student, Inc.</i> , 2015 WL 1862914, at *4 (C.D. Cal. 2015).....	11
<i>Brinker Restaurant Corp. v. Sup. Ct.</i> , 53 Cal.4 th , 1004.....	3,10
<i>Carrington v. Starbucks Corp.</i> (2018) 30 Cal.App.5th 504, 529.....	4
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43, 66, fn.11 (“ <i>Chavez</i> ”).....	12
<i>Cingular Wireless PCS, LLC v. Pub. Utilities Comm’n</i> , 246 Cal. App. 4th 784, 807 (2016).....	8
<i>Duran v. U.S. Bank Nat’l Ass’n</i> , 59 Cal. 4th 1, 33-34 (2014).....	11
<i>Elkins v. Superior Court</i> , 41 Cal. 4th 1337, 1357 (2007).....	11
<i>Feltzs v. Cox Communs. Cal.</i> (October 21, 2021) 2021 U.S. Dist. LEXIS 207087.....	10
<i>Fleming v. Covidien Inc.</i> (C.D. Cal. Aug. 12, 2011)	4
<i>Hibbs-Rines v. Seagate Techs, LLC</i> , 2009 WL 513496, at *4 (N.D. Cal. Mar. 2, 2009).....	11
<i>In re Pacific Enter. Sec. Litig.</i> (9th Cir. 1995) 47 F.3d 373, 379 (“ <i>Pacific</i> ”).....	12
<i>Iskanian v. CLS Transportation</i> (2014) 59 Cal.4th 348, 381	6
<i>Krusi v. Bear, Stearns & Co.</i> (1993) 144 Cal.App.3d 664, 673.....	4
<i>Laguna v. Coverall N. Am., Inc.</i> , Case No. 12-55479 (9th Cir. June 3, 2014).....	12
<i>Litty v. Merrill Lynch & Co.</i> , 2014 WL 5904904, at *3 (C.D. Cal. 2014).....	11
<i>Magadia v. Wal-Mart Associates, Inc.</i> (N.D. Cal. 2019) 384 F.Supp.3d 1058, 1100.....	4
<i>Molina v. Dollar Tree Stores, Inc.</i> , 2013 U.S. Dist. LEXIS 138642, at *33-34 (C.D. Cal. Aug. 9, 2013).....	11

1	<i>O'Connor v. Uber Techs., Inc.</i> 201 F. Supp. 3d 1110, 1133 (N.D. Cal. 2016).....	8
2	<i>Ortiz v. CVS Caremark Corp.</i> (N.D. Cal. 2014) 2014 WL 1117614.....	3
3	<i>Ortiz v. CVS Caremark Corp.</i> , Case No. 12-05859 EDL, 2014 WL 1117614 (N.D. Cal. Mar.	
4	19, 2014).....	10
5	<i>Parr v. Golden State Overnight Delivery Service, Inc.</i> , 2014 WL 11199453 at * 6.....	4
6	<i>Plotnik v. Meihaus</i> (2014) 208 Cal.App.4th 1590, 1612	4
7	<i>Ramirez</i> , 2017 U.S. Dist. LEXIS 137272, at*18.....	7
8	<i>Stafford v. Dollar Tree Stores, Inc.</i> , 2014 WL 6633396, at *2–4 (E.D. Cal. 2014).....	11
9	<i>Vargas v. Cent. Freight Lines, Inc.</i> , No. 16-cv-00507-JLB, 2017 U.S. Dist. LEXIS 157976, at	
10	*7 (S.D. Cal. Sep. 25, 2017).....	7
11	<i>Walmart Stores, Inc. v. Dukes</i> , 131 S. Ct. 2541, 2561 (2011).....	11
12	<i>Washington v. Joe's Crab Shack</i> (2010) 271 F.R.D. 629, 642.....	3
13	<i>Wesson v. Staples The Office Superstore, LLC</i> (2021) 68 Cal.App.5 th 746.....	10
14	<i>Williams v. MGM-Pathe Communications Co.</i> (9th Cir. 1997) 129 F.3d 1026, 1027.....	13
15	<i>ZB, N.A. v. Superior Court</i> (2019) 8 Cal.5th 175, 182.....	6
16	Statutes	
17	Lab. Code, section 210	9
18	Lab. Code, section 210	9
19	Lab. Code, section 201	10,15
20	Lab. Code, section 202	10,15
21	Lab. Code, section 203	10,15
22	Lab. Code, section 204	10,15
23	Lab. Code, section 226.3	9
24	Lab. Code, section 226.7	15

1	Lab. Code, section 226	10,15
2	Lab. Code, section 226.3	10,15
3	Lab. Code, section 510	15
4	Lab. Code, section 512	15
5	Lab. Code, section 558	9
6	Lab. Code, section 558	15
7	Lab. Code, section 1102.5	12
8	Lab. Code, section 1174	15
9	Lab. Code, section 1174.5	9,15
10	Lab. Code, section 1197.1	9
11	Lab. Code, section 1194	15
12	Lab. Code, section 1197	15
13	Lab. Code, section 1198	15
14	Lab. Code, section 2699(1)	1
15	Lab. Code, section 2699.3	1
16	Lab. Code, section 2699(1)(2)	1,7
17	Lab. Code, section 2699(g)(1)	6
18	Lab. Code, section 2699(f)(2)	9
19	Lab. Code, section 2699	10
20	Lab. Code, section 2698	15
21	Lab. Code, section 2698	15
22	Lab. Code, section 2699	15
23	Lab. Code, section 2699(e)(2)	4,9,10
24	Lab. Code, section 2800	15

1	Lab. Code, section 2802	15
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1 **I. INTRODUCTION**

2 Plaintiff Calyndra Davis (“Plaintiff”) and Defendants KAM Enterprises LLC dba Farmer
3 Boys and Leeza Jayne Brazier (“KAM” or “Defendants”) (collectively “Parties”) have reached
4 an agreement to settle the above-captioned action (the “Action”). The parties have memorialized
5 the terms of this settlement in a PAGA Settlement Agreement (the “Settlement Agreement”).¹
6 By this Motion and pursuant to California Labor Code § 2699(l), Plaintiff seeks an order
7 approving the terms outlined in the Settlement Agreement.

8 Defendants adamantly deny any liability or wrongdoing of any kind whatsoever
9 associated with the Action. It is the desire of the Parties to fully, finally, and forever compromise,
10 and discharge all claims known or unknown related to those alleged in the Action.

11 The Settlement warrants approval because it fulfills the purpose of the PAGA and
12 provides fair and reasonable monetary recovery to the State of California and the Aggrieved
13 Employees. This is especially in light of the pending defense Motion for Summary Adjudication.
14 Should this litigation continue, there is substantial risk that Plaintiff would not prevail on her
15 claims.

16 **II. FACTUAL AND PROCEDURAL SUMMARY**

17 **A. Background on the Parties**

18 Defendants KAM Enterprises LLC dba Farmer Boys is a limited liability
19 company that owns and operates a “Farmer Boys” fast food restaurant franchise. Plaintiff
20 Calyndra Davis was classified as an hourly, non-exempt employee and worked for Defendants
21 as a server/cashier from October 13, 2021 through November 10, 2021. Messrelian Decl. ¶ 4.

22 **B. Notice to the LWDA**

23 Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit
24
25

26 ¹ The Settlement Agreement is attached as Exhibit (“Ex.”) 1 to the Declaration of Harout
27 Messrelian (“Messrelian Decl.”), which is submitted herewith under a separate cover. Pursuant
28 to Lab. Code § 2699(l)(2), Plaintiff will submit a copy of the Settlement Agreement and this
Motion to the LWDA at the same time this Motion. Plaintiff will also submit to the LWDA a
copy of the Court’s order approving the Settlement Agreement within ten (10) days after entry
of order.

1 under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq.
2 (“PAGA”). On November 19, 2021, Plaintiff Calyndra Davis on behalf of herself and
3 Defendants’ other California non-exempt hourly employees (hereafter collectively the
4 “Aggrieved Employees”) gave written notice by electronic service to the California Labor and
5 Workforce Development Agency (“LWDA”) and via certified mail to Defendant of their claims
6 against Defendants.

7 **C. The Complaint**

8 Plaintiff filed her initial lawsuit on May 25, 2022 in the Superior Court for the State of
9 California, County of Los Angeles, Case No. 22STCV17280 alleging 16 individual causes of
10 action and a single cause of action for penalties under PAGA based on the following legal
11 theories: (a) failure to pay all minimum wages owed; (b) failure to pay all overtime wages
12 owed; (c) failure to provide compliant meal periods, or premium pay for non-compliant meal
13 periods; (d) failure to authorize and permit complaint rest periods, or provide premium pay for
14 non-complaint rest periods; (e) failure to provide accurate, itemized wage statements and/or
15 otherwise maintain accurate records; and (f) failure to timely pay wages during employment
16 and/or upon separation of employment. Messrelian Decl. ¶ 5.

17 **D. The Defense Contentions and Affirmative Defenses**

18 The affirmative defenses and defense contentions are summarized below, including
19 procedural and substantive defenses, which will substantially undercut the projected value of
20 the claims and resultant damages, or even eliminate claims altogether.

21 1. Plaintiff has failed to articulate the common evidence of a policy, or a pattern and
22 practice of labor code violations, that caused labor code violations, and Plaintiff will be unable
23 to overcome a substantial barrier to show the case is manageable prior to proceeding to trial.
24 Plaintiff has also failed to articulate any practicable means for addressing these voluminous
individualized issues for the represented employees in a manner consistent with Defendants’ due
process rights. As such, there is a very real risk that the case will be dismissed for lack of
manageability.

25 2. Plaintiff will not survive the defense pending motion for summary adjudication

26 3. The pending Motion for Summary Adjudication is very likely to resolve Plaintiff’s
27 individual wage and hour claims, thus, Plaintiff would lack standing to bring a representative
28 claim on behalf of other employees. The motion would also dispose of any alleged PAGA claim
against individual defendant Brazier as Plaintiff has no proof that she complied with the
mandatory PAGA as to the individual defendant.

4. Defendants review of the time and pay records discloses no violations of alleged failures
to pay overtime wages, minimum wages or payment of wages during and at the time of separation

of employment.

5. Defendants complied with required meal and rest period obligations under California law have compliant written policies regarding meal and rest period obligations, and these claims are unmanageable because they would require hundreds or thousands of time-consuming individualized inquiries to resolve.²

6. Defendants pay for all hours worked, and maintain and implement a lawful policy regarding the payment of overtime wages and prohibiting off-the clock-work.

7. Throughout the PAGA recovery period, the employee handbook sets forth meal and rest break policies compliant with the requirements set forth by the California Supreme Court in *Brinker Restaurant Corp. v. Superior Court*. At the time of hire, each employee, including Plaintiff, is provided with Defendants' policies and procedures, including, the employee handbook, and the meal and rest break and overtime policies. All employees, including Plaintiff, go through an orientation process, where each employee is trained on operations, company policies, including how to record time, the importance of clocking in, and no off-the-clock work. The employee agrees that he/she is responsible for adhering to the policies and procedures in the handbook. When the handbook is revised employees are provided notice and access to the updated handbook

8. For certain shifts like those that are six hours or less, Plaintiff and the aggrieved employees waived meal breaks, and even if not waived, the meal and rest break claims to the contrary are unmanageable for presentation at trial as there are countless individual inquiries on the issues liability and damages.

9. Plaintiff has no common evidence or theory that aggrieved employees engaged in off-the-clock work, and as such, these claims would be unmanageable requiring the trial judge to hear evidence on each employee's work off-the-clock work, and Defendants' knowledge of that employee's specific work.³

10. Plaintiff alleges derivative claims, such that if the underlying claims fails no PAGA penalties are owed.

11. The cause of action for Unfair Competition under the Business and Professions Code section 17200 *et seq.* is entirely derivative of underlying claims, so if the underlying claims fails

²*E.g., Amiri v. Cox Communs, LLC* (2017) 272 F.Supp.3d 1187, 1195 ("Absent a widespread policy or practice of not permitting field employees to have their required meal and rest periods, the Court would be required to determine (1) whether each individual took a particular meal or rest break (2) on a particular occasion and (3) and if the individual skipped the break, why it was skipped for each of the around 1,000 aggrieved employees"). Similarly, on the rest period claim, the trial judge would need to determine for each alleged aggrieved employee if and when each was ever prevented from taking a lawful rest period.

³*See Ortiz v. CVS Caremark Corp.* (N.D. Cal. 2014) 2014 WL 1117614, *at 3 (to prove off-the-clock PAGA claim "Plaintiffs would have to present evidence about each [individual] ... Proof of this claim would be unmanageable, and could not be done with statistical or survey evidence but only with detailed inquiries about each employee claimed to have done so and her manager's knowledge thereof."; *also see Washington v. Joe's Crab Shack* (2010) 271 F.R.D. 629, 642 ("Plaintiff has provided no evidence of any company-wide or class-wide policy of requiring 'off-the-clock' work, and the individualized assessment necessary to ascertain whether there were in fact any employees who were told to work 'off-the-clock' would not be susceptible to common proof.")).

so does this claim.

12. Plaintiff's claim under PAGA fails because Plaintiff did not fully comply with pre-filing notice requirements mandated by statute, and/or the PAGA claim fails to the extent Plaintiff seeks penalties for violations occurring prior to the applicable statute of limitations.

13. Even assuming manageability and liability, Plaintiff cannot stack or double dip PAGA penalties for the same alleged conduct. This rule is based on the well-established principle that a party is permitted one recovery, regardless of the number of theories asserted.⁴

14. Further, assuming manageability and liability, PAGA penalties would likely be substantially reduced because penalties are subject to significant reduction where, as here, Defendants took its obligations seriously and in good faith attempted to comply with the law. *See Lab. Code* § 2699(e)(2) ("...a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.").⁵

E. The Motion for Summary Adjudication of Issues

Defendant's Motion for Summary Adjudication of Issues and was set for hearing on August 14, 2023 and seeks to adjudicate all causes of action in the Complaint except the 14th cause of action for alleged retaliation. If the Settlement is not approved and the litigation proceeds, then Defendants will re-notice this motion.

F. Informal Discovery, Investigation and Arm's Length Negotiations

Through formal discovery, Defendants produced records and represented that it employed approximately 143 workers falling within Plaintiff's Aggrieved Employees definition for the period from May 25, 2021 (one year before Plaintiff's lawsuit filing date) through May 14, 2023, and that there are paychecks issued for a total of approximately 1109 pay periods worked for that same time period. Messrelian Decl. ¶ 6.

⁴*E.g., Plotnik v. Meihaus* (2014) 208 Cal.App.4th 1590, 1612 (emphasis added, internal citations omitted) (reversing recovery under alternate theories that "would amount to double recovery"); *see also Krusi v. Bear, Stearns & Co.* (1993) 144 Cal.App.3d 664, 673 (prohibiting "double recovery for the same wrong").

⁵*E.g., Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (court affirmed a 90% reduction in the penalty imposed based on employer's "good faith attempts" to comply with meal break obligations); *Fleming v. Covidien Inc.* (C.D. Cal. Aug. 12, 2011) No. 10-cv-1387, 2011 WL 7563047 (82 % reduction); *Aguirre v. Genesis Logistics* (C.D. Cal. July 3, 2013) No. SACV1200687, 2013 WL 10936036 at *2 (72 % reduction); *Parr v. Golden State Overnight Delivery Service, Inc.*, 2014 WL 11199453 at * 6 (Alameda Super. Court, RG12-618103 July 10, 2014) (94% reduction); *Magadia v. Wal-Mart Associates, Inc.* (N.D. Cal. 2019) 384 F.Supp.3d 1058, 1100 (63% reduction).

1 The parties negotiated through their respective attorneys and reached a settlement of the
2 PAGA claims. Before agreeing to the terms of the Settlement, the Parties engaged in formal
3 discovery regarding Defendants' policies, practices, operations, time and payroll information
4 and other topics. Prior to negotiation, Defendants produced Plaintiff's personnel file, time and
5 payroll data for Plaintiff, and time records and payroll records for 30 of the 143 workers falling
6 within Plaintiff's Aggrieved Employees definition for the period from May 25, 2021 through
7 May 14, 2023, which is a 21% sample. Messrelian Decl. ¶ 9.

8 Through extensive arm's length negotiations, the Parties negotiated the PAGA claims
9 through arms-length negotiation, via email and via telephone, and only after formal discovery
10 was completed, including associated meet and confer efforts, after Plaintiff's deposition was
11 taken, and after the data of other employees' time and payroll records was retrieved through
12 formal discovery and sent to Plaintiff's data expert for analysis/review. Plaintiff's counsel and
13 defense counsel had enough information and had developed the case to the point where they
14 were able to have direct and informed settlement negotiations and advocate the respective
15 positions of their clients. Messrelian Decl. ¶ 9.

16 The Parties conducted investigation of the facts and law both before and after the lawsuit
17 was filed. Counsel for the Parties have further investigated the applicable law as applied to the
18 facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code violations
19 claimed by Plaintiff. Based on their own independent investigations and evaluations, the Parties
20 and their respective counsel are of the opinion that the Settlement for the consideration and on
21 the terms set forth in this Motion are fair, reasonable and adequate and are in the best interests
22 of Plaintiff, the Aggrieved Employees, and Defendants in light of all known facts and
23 circumstances and the risks inherent in litigation, especially in this post-pandemic era when
24 most businesses are still struggling to remain afloat, much less prosper and make a large profit.
25 Messrelian Decl. ¶ 10.

26 The Parties further recognize that the issues presented in the Action are likely only to be
27 resolved with extensive and costly pretrial and trial proceedings, and that further litigation will
28 cause inconvenience, distraction, disruption, delay, and expense disproportionate to the

1 maximum potential benefits, especially in light of the post- pandemic era and the business
2 climate. Messrelian Decl. ¶ 11.

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

4 Attached as **Exhibit 1** to the Messrelian Decl. is a true and accurate copy of the
5 PAGA Settlement Agreement (“Settlement Agreement”) and the PAGA notice that will be sent
6 to the Aggrieved Employees. The key terms are summarized below.

7 **1. Gross Settlement Amount**

8 The gross settlement amount is \$25,000.00. (“Gross Settlement Amount” or “GSA”).
9 The Settlement covers any and all civil penalties claims arising from Plaintiff’s allegations in
10 her Complaint, including, but not limited to, Defendants’ alleged failure to compensate for all
11 hours worked, failure to pay minimum wages/overtime, failure to provide meal and rest breaks,
12 failure to provide accurate itemized wage statements, failure to pay wages owed every pay
13 period and at the end of employment, failure to maintain accurate records, failure to provide
14 business expense reimbursement, unfair business practices, and PAGA.

15 This is not a class settlement and does not release the individual wage claims, if any, of
16 the affected employees other than Plaintiff himself. Cal. Lab. Code § 2699(g)(1); *Iskanian v.*
17 *CLS Transportation* (2014) 59 Cal.4th 348, 381; *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th
18 175, 182 (unpaid wages are not recoverable under PAGA).

19 **2. PAGA Period.**

20 The PAGA recovery period is May 25, 2021 (one year before Plaintiff’s lawsuit filing
21 date) through the date the court enters an order approving the PAGA settlement (“PAGA
22 Period”). Messrelian Decl. ¶ 7. Aggrieved employee means all current and former hourly paid or
23 non-exempt individuals who performed work for Defendant KAM Enterprises, within the State of
24 California at any time during the PAGA Period.

25 **3. PAGA Penalties and the LWDA Payment**

26 The gross PAGA penalties is \$12,252.42 (the “Net Settlement Amount” or “NSA”).
27 \$9,189.31 of that amount (75% of “NSA”) will go to the LWDA. \$3,063.11 (25% of NSA) will
28

1 go to the Aggrieved Employees.⁶

2 **4. Attorney's Fees and Litigation Costs**

3 \$8,333.33 (33 1/3% of the GSA) is allocated as attorneys' fees to Harout Messrelian,
4 Esq. of Messrelian Law Inc. \$1,641.25 is allocated to litigation costs to Messrelian Law Inc.

5 **5. Settlement Administrator Costs**

6 \$2,773.00 will be paid to ILYM Group, Inc. to administer the settlement.

7 **IV. THE PAGA PENALTIES SECURED BY THE SETTLEMENT ARE GENUINE**
8 **AND MEANINGFUL AND FULFILL PAGA'S UNDERLYING PURPOSE TO**
9 **BENEFIT THE PUBLIC**

10 While the *Calyndra Davis* lawsuit has a Representative PAGA Claim, the Parties are not
11 obligated to follow the class action procedural rules for obtaining approval of this settlement.
12 *Arias v. Superior Court (Angelo Dairy)* (2009) 46 Cal.4th 969.

13 Court approval is required for PAGA settlements. Labor Code § 2699(1)(2). The PAGA
14 itself, however, does not establish any explicit standards for the review of PAGA settlements.
15 "[N]either the California legislature, nor the California Supreme Court, nor the California Courts
16 of Appeal, nor the [LWDA] has provided any definitive answer as to what the appropriate
17 standard is for approval of a PAGA settlement." *Jordan*, 2018 U.S. Dist. LEXIS 25297, at *55.

18 Courts have recognized that PAGA settlements must be viewed in light of the PAGA's
19 public purpose, namely augmenting the state's enforcement capabilities, encouraging compliance
20 with Labor Code provisions, and deterring noncompliance with California's labor laws. See, e.g.,
21 *Vargas v. Cent. Freight Lines, Inc.*, No. 16-cv-00507-JLB, 2017 U.S. Dist. LEXIS 157976, at *7
22 (S.D. Cal. Sep. 25, 2017); *Ramirez*, 2017 U.S. Dist. LEXIS 137272, at*18. "[T]he Court will
23 approve the PAGA settlement upon a showing that the settlement terms are fundamentally fair,

24
25 ⁶Plaintiff and each Aggrieved Employee shall receive a portion of the Aggrieved Employee
26 Amount on a pro-rata basis by multiplying the Aggrieved Employee Amount by the ratio of (i)
27 the number of pay periods worked by the Aggrieved Employee during the release period and
28 (ii) the total number of pay periods worked by all Aggrieved Employees during the release
period. For purposes of computing taxes, one-hundred percent (100%) of the Aggrieved
Employee Settlement Award shall be considered to be a civil penalty and shall not be subject to
withholding, unless otherwise required by law. The Claims Administrator shall file proof of
payment.

adequate, and reasonable in light of PAGA’s policies and purposes.” *Jordan*, 2018 U.S. Dist. LEXIS 25297, at *5.

The LWDA has provided guidance on approving PAGA settlements, explaining that courts should evaluate settlements of PAGA claims based on whether “the relief provided for under the PAGA [is] genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public.” *O’Connor v. Uber Techs., Inc.* 201 F. Supp. 3d 1110, 1133 (N.D. Cal. 2016); *see also Salazar*, 2017 WL 1135801 at *2. Courts defer to the agency’s interpretation of a statute where authority has been delegated to that agency; *also see New Cingular Wireless PCS, LLC v. Pub. Utilities Comm’n*, 246 Cal. App. 4th 784, 807 (2016). When evaluating a PAGA settlement, the court should analyze whether the amount of civil penalties obtained is “genuine and meaningful” in light of PAGA’s statutory purpose.

Here, the Settlement provides relief to the Aggrieved employees that is genuine and meaningful, and consistent with the underlying fair and reasonable in light of the purposes of the PAGA to benefit the public, because it provides fair and reasonable monetary recovery to the State of California and Aggrieved Employees, especially in light of the Defendant’s Motion for Summary Adjudication. Should this litigation continue, there is substantial risk and some doubt that Plaintiff would prevail on her claims. Absent this Settlement, the harsh reality is that the Action could result in no recovery at all, much less at an amount higher than the Gross Settlement Amount. As detailed below, even in light of the risks of proceeding forward with the Action, the settlement fulfills the underlying purposes of the statute and confers a substantial benefit on the public.

Plaintiff alleges that the strongest claims are that Plaintiff and other PAGA Members were not provided timely, uninterrupted meal and rest breaks. Defendants vehemently deny that there were any meal and rest break violations especially in light of the fact that Defendants presented evidence that they maintained Labor-Code-compliant meal and rest policies. Moreover, there was evidence that Defendants even tracked rest periods for employees such as Plaintiff by having Plaintiff clock-in and clock-out for rest breaks. Messrelian Decl. ¶ 12.

Plaintiff contends that the civil penalty statutes applicable to the Action arise from

1 violations of the California Labor Code, including, but not limited to, Labor Code §§ 210, 226.3,
2 558, 1174.5, 1197.1, and 2699(f)(2). Under these civil penalty statutes, an employee who suffers
3 a Labor Code violation may be awarded a sum of money for each pay period in which he or she
4 was underpaid. However, under Labor Code § 2699(e)(2), the Court can reduce an award of
5 civil penalties if the award is unjust, arbitrary, oppressive, or confiscatory. Messrelian Decl. ¶
6 13.

7 Under the civil penalty formulas applicable under PAGA, Plaintiff estimated a
8 **maximum** exposure of approximately \$50,450.00 for civil penalties for Plaintiff's strongest
9 disputed claims of failure to provide meal and rest periods. Plaintiff's analysis, which
10 Defendants vehemently dispute, revealed a 36.2% violation rate for either late, short, or
11 interrupted meal periods for shifts over 6 hours. Since the total number of pay periods in the
12 PAGA period was 1,109 and since only 51.7% of the shifts were over 6 hours, the total number
13 of pay periods to consider for potential meal break violations was 573 (51.7% x 1109 pay
14 periods). As such, with the 36.2% violation rate, the maximum exposure would be \$10,350.00,
15 which is calculated as \$50 penalty multiplied by 207 pay periods (36.2% of the 573 pay periods).
16 Plaintiff extrapolated the same 36.2% rate for rest break violations, which would equate to a
17 maximum exposure of \$40,100.00 (\$100 penalty per pay period multiplied by 401 pay periods,
18 which is 36.2% x 1109 pay periods). As such, the aggregate maximum exposure for meal and
19 rest break claims would be \$50,450.00. Assuming that Plaintiff's calculations and analysis are
20 accurate, the maximum exposure presumes that the Court will not reduce the penalty award as
21 unjust, arbitrary, oppressive, or confiscatory. For the rest period violations, it also presumes that
22 the meal and rest period violation rates were identical. Messrelian Decl. ¶ 14.

23 Moreover, Plaintiff is aware of no California state courts awarding Plaintiff multiple
24 PAGA penalties for the same violation for the same pay period under different Labor Code
25 provisions. As such, one of the risks Plaintiff faces is that the Court would refuse to "stack" civil
26 penalties arising under the various Labor Code statutes. Furthermore, judges have awarded
27 extremely small sums to PAGA claimants in the past. In addition, Defendants would make an
28 argument that any presumption of meal or rest period violations could be rebutted by evidence

1 and therefore are not a predicate for civil penalties for improper wage statements and untimely
2 final wages under Labor Code secs. 201-204, 226, 226.3, and 2699. Defendants also adamantly
3 dispute all of Plaintiff's allegations in the operative Complaint. Messrelian Decl. ¶ 15.

4 The source of penalties available is under PAGA, which allows employees to recover
5 civil penalties for certain violations of the Labor Code so long as the penalties are not unjust,
6 arbitrary, oppressive, or confiscatory. There are no State Court decisions under the PAGA to
7 date with substantial awards of civil penalties. There is a substantial risk that the Court could
8 reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's evidence of
9 willful and intentional conduct. The PAGA expressly counsels against such awards. *See Lab.*
10 *Code* § 2699(e)(2) ("...a court may award a lesser amount than the maximum civil penalty
11 amount specified by this part if, based on the facts and circumstances of the particular case, to
12 do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.").
13 Further, although class certification is not required for a PAGA claim, Defendants could contend
14 that Plaintiff cannot show that the PAGA claims are manageable. Messrelian Decl. ¶ 16.

15 As such, Defendants could also convince the Court to dismiss the claims due to
16 unmanageability. *Wesson v. Staples The Office Superstore, LLC* (2021) 68 Cal.App.5th 746
17 ("*Wesson*"); *Feltzs v. Cox Communs. Cal.* (October 21, 2021) 2021 U.S. Dist. LEXIS 207087.
18 On September 9, 2021, the California Court of Appeal issued the significant decision in *Wesson*
19 *v. Staples the Office Superstore, LLC*, holding that courts have authority to ensure that PAGA
20 claims are manageable, and that courts may limit or strike unmanageable PAGA claims.
21 Defendants contend that Plaintiff's allegations require a host of individualized inquiries which
22 would arguably devolve into a series of mini-trials based on whether each employee voluntarily
23 elected to unilaterally waive a provided meal period or authorized rest break, based on position
24 titles, job duties and the type of work they perform. (See, e.g., *Brinker Restaurant Corp. v. Sup.*
25 *Ct.*, 53 Cal.4th, 1004.) In *Ortiz v. CVS Caremark Corp.*, the court dismissed a PAGA claim
26 because it was unmanageable. 2014 WL 1117614, at *3-4 (N.D. Cal. 2014). The *Ortiz* court
27 cited the "multitude of individualized assessments" that case would have required in ordering
28 dismissal. *Id.* at *4. Several other courts have adopted *Ortiz*, and dismissed PAGA claims where,

1 as here, there are a large number of allegedly aggrieved individuals whose claims require
2 individual assessments. *See, e.g., Litty v. Merrill Lynch & Co.*, 2014 WL 5904904, at *3 (C.D.
3 Cal. 2014); *Bowers v. First Student, Inc.*, 2015 WL 1862914, at *4 (C.D. Cal. 2015); *see also*
4 *Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396, at *2–4 (E.D. Cal. 2014) (bifurcating
5 trial of plaintiff’s claim from representative claims: “in light of the number of potential
6 aggrieved employees, judicial economy favors deferring the representative portion of the PAGA
7 claim”); *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal. May 13, 2015). DS,
8 ¶ 24. The risk of an unmanageable trial is heightened in a representative PAGA claim because
9 the burden of proof rests with the plaintiff to establish violations of the Labor Code “with respect
10 to each and every individual on whose behalf [they] seek[] to recover civil penalties.” *Molina v.*
11 *Dollar Tree Stores, Inc.*, 2013 U.S. Dist. LEXIS 138642, at *33-34 (C.D. Cal. Aug. 9, 2013);
12 *Hibbs-Rines v. Seagate Techs, LLC*, 2009 WL 513496, at *4 (N.D. Cal. Mar. 2, 2009).
13 Moreover, in a PAGA case the plaintiff must prove liability with respect to “each and every
14 individual” through representative evidence – but without sacrificing the defendant’s due
15 process right to present proof of their affirmative defenses. *Elkins v. Superior Court*, 41 Cal. 4th
16 1337, 1357 (2007); *Walmart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2561 (2011); *Duran v. U.S.*
17 *Bank Nat’l Ass’n*, 59 Cal. 4th 1, 33-34 (2014). Plaintiff would be required to establish a violation
18 of the Labor Code in each pay period of each and every one of the approximately 143 employees.
19 The Court could find that this is an impractical task and require the PAGA Members to bring
20 individual claims instead of a PAGA representative claim. Messrelian Decl. ¶ 17.

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

26 The settlement of the Action involves monetary relief to all PAGA Members,
27 Plaintiff, her attorneys, and the State of California. Messrelian Decl. ¶ 19.

28 Furthermore, Plaintiff recognizes that continued litigation presents significant risks that

1 support a significant downward departure from Plaintiff's estimated civil penalties amount. In
2 view of the risks, the Settlement represents a fair, adequate, and reasonable compromise amount
3 for these claims and is in the best interest of Plaintiff and PAGA Members and thus, warrants
4 approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014
5 WL 2465049, * 3. The PAGA settlement and its terms are fair, just, reasonable, adequate, and
6 equitable to Defendants, Plaintiff, and the State, especially in light of the current economic
7 climate, and are the product of good faith, and informed arms-length negotiations between the
8 Parties consistent with public policy and fully comply with applicable provisions of law.
9 Messrelian Decl. ¶ 20.

10 Plaintiff's individual settlement agreement was negotiated separate from the PAGA
11 settlement and the parties agreed that the consideration Plaintiff received pursuant to the
12 individual settlement agreement was to settle her individual claims. As part of this confidential
13 agreement, Plaintiff also provided Defendants with a general release of all claims, whether
14 known or unknown, including unknown claims covered by Civil Code Section 1542. Plaintiff
15 has no conflict of interest with the absent Aggrieved Employees and is adequate to represent
16 the Aggrieved Employees. Plaintiff's individual settlement includes her claims for wage and
17 hour violations, retaliation pursuant to Labor Code section 1102.5, and wrongful termination in
18 violation of public policy. Plaintiff's individual settlement was negotiated directly through
19 counsel by arms-length negotiations through email and over the telephone. While Plaintiff's
20 individual settlement agreement is confidential, the settlement amount was in the 4 figures and
21 did not in any way impact the amount allocated to the PAGA claims. Messrelian Decl. ¶ 22.

22 **V. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE.**

23 Plaintiff's Counsel's fee request of \$8,333.33 (one-third of the Gross Settlement Amount)
24 is fair and reasonable based on their lodestar as cross-checked against the percentage of the
25 recovery. "[R]egardless whether the percentage method or the lodestar method is used, fee
26 awards in class actions average around one-third of the recovery." (See *Chavez v. Netflix, Inc.*
27 (2008) 162 Cal.App.4th 43, 66, fn.11 ("*Chavez*")); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995)
28 47 F.3d 373, 379 ("*Pacific*") [affirming 33% fee award]; *Williams v. MGM-Pathe*

1 *Communications Co.* (9th Cir. 1997) 129 F.3d 1026, 1027 (“*MGM*”) (awarding 33% of total fund
2 amount.) This is also consistent with Plaintiff’s Counsel’s experience in wage and hour class
3 and PAGA settlements. Messrelian Decl., ¶¶ 23-25.

4 To date, Plaintiff’s counsel has investigated and prosecuted this matter for 20.5 hours.
5 Plaintiff’s counsel also expects to perform additional work on this case if the Court grants final
6 approval of the Settlement, including supervision of the Settlement Administrator’s disbursement
7 of the settlement funds to the Aggrieved Employees. Messrelian Decl., ¶ 23.

8 Plaintiff’s Counsel’s requested attorneys’ fees will also be justified under the lodestar
9 method. In this case, Plaintiff’s Counsel has a total lodestar of approximately \$11,275.00 without
10 the use of any multiplier, which results in a multiplier of 1.353 when compared against the
11 \$8,333.33 request for attorneys’ fees. Messrelian Decl., ¶ 24.

12 Plaintiff’s counsel’s previous experience in litigating wage and hour actions also supports
13 the reasonableness of the fee request, as does the caliber of opposing counsel. Plaintiff’s
14 counsel’s previous experience in similar matters was integral in evaluating the strengths and
15 weaknesses of the case against Defendants and the reasonableness of the Settlement. Because it
16 is reasonable to compensate Plaintiff’s counsel commensurate with their skill, reputation, and
17 experience, attorney’s fees of approximately one-third of the Gross Settlement Amount is
18 reasonable. Likewise, the caliber and experience of opposing counsel in labor and employment
19 litigation, Anne McWilliams of Zaller Law, supports the fairness and reasonableness of the
20 requested fee award. Messrelian Decl., ¶ 25.

21 The award of attorney’s fees sought by Plaintiff’s Counsel is justified by the contingency
22 nature of the attorney-client relationship, the experience of Plaintiff’s Counsel, the number of
23 attorney hours Plaintiff’s Counsel have spent on this lawsuit with a negative multiplier, the
24 percentage of attorney’s fees to the overall recovery, the high caliber of defense counsel, the risks
25 of non-payment and non-reimbursement, the delay in payment and cost reimbursement, and the
26 great results Plaintiff’s Counsel has achieved for the Aggrieved Employees. Messrelian Decl., ¶
27 26.

1 In addition, Plaintiff's Counsel incurred costs of \$1,641.25 to date, which consist of data
2 analysis fees and filing fees. As the evidence submitted herewith shows, all of these costs are
3 documented and reasonably incurred. Messrelian Decl., ¶ 27. Accordingly, they warrant the
4 Court's approval.

5 **VI. PAGA SETTLEMENT ADMINISTRATION**

6 **A. Distribution of the Settlement Funds**

7 Aggrieved Employee Data. Within 20 days of the Effective Date (i.e., the Court enters
8 a Judgment on its Order Approving the PAGA Settlement), Defendants will confidentially
9 deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel
10 spreadsheet.

11 Funding of Gross Settlement Amount. Defendants shall fully fund the Gross
12 Settlement Amount by transmitting the funds to the Administrator no later than 14 days after
13 the Effective Date.

14 Payments from the Gross Settlement Amount. Within 14 days after Defendants fund
15 the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA
16 Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA
17 Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment
18 shall not precede disbursement of Individual PAGA Payments.

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

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

For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and
cancelled after the void date, the Administrator shall transmit the funds represented by such
checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved
Employee, following the rules of the California State Controller's Office - Unclaimed Property

1 Fund with regard to transferring the value of the uncashed checks to the State.

2 In following the above timeline, the Administrator will issue to the PAGA Group
3 Members, their Individual PAGA Payment together with a letter explaining the Individual PAGA
4 Payment in a form substantially similar to **Exhibit 1**, attached to the declaration of Harout
5 Messrelian, which is submitted herewith under separate cover.

6 **B. The PAGA Settlement Administration Costs Are Reasonable.**

7 Furthermore, the Declaration of Lisa Mullins with attached exhibits, including ILYM's
8 bid, filed under separate cover, sets forth ILYM Group, Inc.'s qualifications and costs to
9 administer the settlement. *See generally* Declaration of Lisa Mullins. Messrelian Decl., ¶ 28.

10 **C. Released Claims**

11 Upon the approval by the Court of this Settlement, Plaintiff, the State of California and
12 each Aggrieved Employee shall fully release and forever discharge Defendants and the Released
13 Parties from any and all claims, rights, demands, liabilities for violation of PAGA (Labor Code
14 § 2699, et seq.) that arose during the Release Period as it relates to Labor Code section 2698, et
15 seq. for alleged violations of California Labor Code sections 201, 202, 203, 204, 226, 226.3,
16 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2800, 2802, 2698 and 2699 et
17 seq., California Code of Regulations Title 8, section 11050, et seq. and the applicable Industrial
18 Welfare Commission Orders including, but not limit to, Order No. 5-2001.

19 Plaintiff entered into a confidential individual settlement agreement with Defendants to
20 settle her individual claims. As part of this confidential agreement, Plaintiff also provided
21 Defendants with a general release of all claims, whether known or unknown, including
22 unknown claims covered by Civil Code Section 1542. Messrelian Decl., ¶ 22.

23 **VII. CONCLUSION**

24 Plaintiff respectfully requests the Court grant this Motion.

25 Respectfully Submitted,

26 MESSRELIAN LAW INC.

27 DATED: October 19, 2023

28 By _____

Harout Messrelian, Esq.
Attorneys for Plaintiff
CALYNDRA DAVIS



Court Reservation Receipt

Reservation

Reservation ID:

341812301108

Status:

RESERVED

Reservation Type:

Motion re: (Approval of PAGA Settlement)

Number of Motions:

1

Case Title:

CALYNDRA DAVIS vs KAM ENTERPRISES LLC, et al.

Filing Party:

Calyndra Davis (Plaintiff)

Location:

Stanley Mosk Courthouse - Department 34

Date/Time:

November 14th 2023, 8:30AM

Confirmation Code:

CR-WFSP5IINTHBRL2VZU

Fees

Description	Fee	Qty	Amount
Reschedule Fee	20.00	1	20.00
Credit Card Percentage Fee (2.75%)	0.55	1	0.55
TOTAL			\$20.55

Payment

Amount:

\$20.55

Type:

Visa

Account Number:

XXXX7690

Authorization:

032412

Payment Date:

2023-09-12

[← Back to Main](#)

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within entitled action. My business address is 500 North Central, Suite 840, Glendale, California 91203.

On **October 20, 2023**, I served the foregoing document(s) described as **PLAINTIFF'S NOTICE OF UNOPPOSED MOTION FOR APPROVAL OF PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** on the interested parties in this action by placing an ☐ original or ☒ true copies thereof in a sealed envelope and addressed as follows:

Anne McWilliams, Esq.

**Attorneys for Defendants, KAM Enterprises
LLC; Leeza Jayne Brazier**

ZALLER LAW GROUP, PC

999 N. Pacific Coast Highway, Suite 525

El Segundo, CA 90245E

mail: amcwilliams@zallerlaw.com

☐ **(BY MAIL)** I caused such envelope to be deposited in the mail at Glendale, California. The envelope was mailed with postage thereon fully paid. As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence from mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Glendale, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

☐ **(BY OVERNIGHT DELIVERY)** I caused such envelope to be delivered via overnight delivery to the addressee listed above.

☒ **(BY ELECTRONIC TRANSMISSION)** I transmitted the document(s) electronically to the person (s) at the email address(es) above. Transmission was reported as complete and without error.

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

I served the documents by the means described above on **October 20, 2023**.

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

Harout Messrelian
(TYPE OR PRINT NAME)


(SIGNATURE OF DECLARANT)