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JESUS MARTINEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

JESUS MARTINEZ, an individual,

Plaintiffs,

v.

JONDO LTD, a California corporation,
JONDO HOLDINGS LLC, a California
limited liability company, and DOES 1
through 50, inclusive,

Defendants.

CASE NO. 30-2022-01285408-CU-WT-CXC

**SUPPLEMENTAL BRIEFING IN SUPPORT
OF MOTION TO APPROVE PAGA
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
THEREOF**

**[Supplemental Declaration of Pouya Chami,
Declaration of Jesus Martinez, and
Declaration of Scott Lacunza filed
concurrently herewith]**

Judge: Hon. William Claster
Dept.: CX101
Complaint Filed: October 7, 2022
Trial Date: November 4, 2024

**Hearing Date: October 25, 2024
Hearing Time: 9:00 a.m.
Reservation ID: 74353645**

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Following the agreement between Plaintiff Jesus Martinez (“Plaintiff”) and defendants Jondo LTD and Jondo Holdings, LLC, Jondo Global Holdings, Inc., (collectively “Jondo”) and John S. Doe (“Mr. Doe”) (Jondo and Mr. Doe are collectively referred to as “Defendants”), regarding claims under the California Labor Code Private Attorneys General Act of 2004, Cal. Labor Code §2699, *et seq.* (“PAGA”), the Court has asked for additional information to assist it in analyzing and approving the settlement of Defendants and Plaintiff (Defendants and Plaintiff are collectively referred to as the “Parties”).

On or about September 4, 2024, the Court issued an Order requesting additional information and revisions, which the Parties address herein. The Order specifically states as follows:

Plaintiff’s motion for approval of PAGA settlement is CONTINUED to October 25, 2024 at 9:00 a.m. in Department CX101 to permit the parties to respond to the following items of concern. Any supplemental briefing shall be filed on or before October 15, 2024. If a revised settlement agreement and/or proposed notice is submitted, a redline version showing all changes, deletions and additions must be submitted as well. In addition, Plaintiff must provide proof of service of any revised settlement agreement and supplemental papers on the LWDA.

1. Are there any other cases, whether class, individual, or PAGA (including in the pre-filing LWDA stage) that may be affected by this settlement?

2. Plaintiff filed a Doe amendment identifying “John S. Doe” as Doe 1. Mr. Doe is both a named defendant in the agreement and a signatory. Is this a pseudonym, or Mr. Doe’s real name? If this is a pseudonym, is there authority that permits the release of PAGA claims against a pseudonymous defendant?

3. Counsel represents that the Jondo entities wound down operations in November 2022 when they were acquired by a competitor. The PAGA period, however, extends through approval of this settlement, and the “Released Parties” are defined to include Defendants’ successors-in-interest, i.e., the company that acquired the Jondo entities. As drafted, it appears the release not only bars successor liability PAGA claims (i.e., PAGA claims against the purchaser arising from Defendants’ conduct), but PAGA claims against the purchaser arising from the purchaser’s own conduct. If the settlement is meant to release claims against the purchaser arising from the purchaser’s own conduct, then the parties must identify the purchaser, and counsel must (1) explain the investigation he undertook of the purchaser’s conduct/liability and (2) value claims against the purchaser arising

1 from the purchaser's conduct. Alternatively, the parties may rewrite the release to
2 clarify that it covers only successor liability claims against the purchaser.

3 4. Counsel's valuation of the PAGA claim is inadequate for the Court to discharge
4 its approval duties. "[A] trial court should evaluate a PAGA settlement to determine
5 whether it is fair, reasonable, and adequate in view of PAGA's purposes to
6 remediate present labor law violations, deter future ones, and to maximize
7 enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72
8 Cal.App.5th 56, 77.) To that end, for each predicate Labor Code violation, please
provide further information about the strengths and weaknesses of Plaintiffs' claims
and Defendant's expected defenses, including the evidence supporting both sides'
cases. (See *ibid.* (citing *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
116 and *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794).)

9 5. Plaintiff's complaint alleged that he and other aggrieved employees were
10 misclassified as exempt. Neither the agreement nor the supporting declaration of
11 counsel mentions misclassification. Is this agreement intended to settle PAGA
claims arising from misclassification? If so, those claims must be valued as well.

12 6. Please provide a copy of Plaintiff's individual settlement for in camera review.

13 7. Please produce contemporaneously made billing records for lodestar cross-check
14 purposes.

15 8. If Plaintiff wishes to receive an enhancement, he must provide a declaration
16 addressing the enhancement factors set forth in *Golba v. Dick's Sporting Goods,*
17 *Inc.* (2015) 238 Cal.App.4th 1251 and *Clark v. Am. Residential Servs. LLC* (2009)
175 Cal.App.4th 785, including the amount of time and effort spent on the
litigation.

18 9. The administrator's bid says the notice will not be translated. Does notice need
19 to be given in any languages other than English?

20 10. The notice should identify all parties currently named as Defendants, not simply
21 the two Defendants from the original complaint.

22 Court orders clerk to give notice.

23 **II. RELEVANT FACTS**

24 As a brief review, on October 7, 2022, Plaintiff filed a PAGA complaint, which also
25 brought individual claims for disability discrimination and other claims under the Fair
26 Employment and Housing Act (Govt. Code § 12940, *et seq.*).

27 The individual claims (Causes of Action 1 through 12), which included all claims other
28 than the PAGA claim, were settled as part of a private mediation with mediator Joe Lovretovich

of Signature Resolution on March 20, 2024.¹ The Parties then agreed to conduct a second full day mediation with Mr. Lovretovich on May 13, 2024, to address the PAGA Claim (Cause of Action 13). The parties were unable to reach a settlement of the PAGA claim at the second mediation and Plaintiff continued conducting discovery, including take key depositions of Jondo’s owner and operator, and conducting further written discovery. On July 8, 2024, the Parties reached a settlement of the PAGA claim, following the acceptance of a mediator’s proposal on June 28, 2024.

Defendants agreed to pay a Gross Settlement Amount of \$200,000.00 to resolve the PAGA Claims covering approximately 73 Aggrieved Employees working approximately 3,107, pay periods in the aggregate during the PAGA Period. **(Supplemental Declaration of Pouya Chami in Support of Motion to Approve PAGA Settlement [“Supp. Chami Decl.”], ¶3, Exhibit A.).**

III. ADDITIONAL ARGUMENT IN FAVOR OF THE PARTIES’ REQUEST FOR THE COURT TO REVIEW AND APPROVE THE SETTLEMENT OF THE PAGA CLAIM.

1. Other Cases That May Be Affected By This Settlement.

The Parties are not aware of any other cases, whether class, individual, or PAGA (including in the pre-filing LWDA stage) that may be affected by this settlement.

2. Defendant John S. Doe is Not a Pseudonym.

Plaintiff filed a “Doe” amendment on May 17, 2024, naming John S. Doe, an individual, as Doe number 1. John S. Doe is not a pseudonym, and is Mr. Doe’s real name. **(Declaration of Scott Lacunza, ¶4).** It is purely a coincidence that Mr. Doe’s last name is the same as the fictitious “Doe” name utilized by litigants for an unknown party in conjunction with a civil complaint and/or Amendment to Complaint. *Id.*

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¹ The Settlement Agreement for Plaintiff’s Non-PAGA claims is being forwarded to the Court via electronic mail for in-camera review, as requested in Item No. 6 of the September 4, 2024 Order.

1 **3. The PAGA Release Has Been Revised to Bar Only Successor Liability Claims.**

2 The Parties have executed an Addendum to the Settlement Agreement which indicates
3 that the PAGA Settlement, if approved, shall release only claims of successor liability against the
4 entity that purchased the Jondo defendants' assets. **(Supp. Chami Decl., ¶4, Exhibit B).**

5 The Parties' Addendum states, in pertinent part, that: "[t]he following provision hereby
6 replaces the original provision set forth as paragraph 1.T. on pages 2-3 of the PAGA Settlement
7 Agreement regarding the definition of 'Released Claims:'

8 T. 'Released Claims' means any and all claims asserted and unasserted arising during
9 the PAGA Period for civil penalties under California Labor Code section 2698, *et*
10 *seq.*, as well as any interest, fees, and costs available under PAGA, based on the
11 factual allegations in the Action and in Plaintiff's January 17, 2022, PAGA letter
12 including, but not limited to, for failure to pay wages, failure to pay overtime,
13 failure to provide compliant meal periods and associated premiums, failure to
14 provide compliant rest periods and associated premiums, failure to timely pay
15 wages during employment, failure to timely pay wages upon termination, failure to
16 provide compliant wage statements, failure to maintain requisite payroll records,
17 failure to indemnify or reimburse for business expenses, and for violations of
18 Labor Code sections 201, 202, 203, 226(a), 226.3, 226.7, 226.8, 246.5, 510, 551,
19 552, 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1199, and 6409.6, and all applicable
20 Wage Orders. With respect to any successor-in-interest, the Released Claims as
21 defined herein includes only successor liability PAGA claims against the
22 successor, and does not include PAGA claims arising from the successor's own
23 conduct."

24 **(Supp. Chami Decl., ¶4, Exhibit B)**

25 **4. Valuation of PAGA Claim.**

26 As noted by the Court in its Minute Order, "a trial court should evaluate a PAGA settlement
27 to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate
28 present labor law violations, deter future ones, and to maximize enforcement of state labor laws."
29 *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77 (2021). Pursuant to the Court's directive,
30 Plaintiff provides the following supplemental information regarding the strengths and weaknesses
31 of Plaintiff's claims and Defendant's anticipated defenses in support of the PAGA settlement.

32 Prior to the mediation, in order to evaluate the potential value of the claims, the Parties
33 engaged in efforts to obtain the facts regarding the claims asserted, including Defendants' relevant
34 wage and hour policies, the exchange of statistical data regarding shifts worked by Plaintiff and the

PAGA Members, and the exchange of detailed briefing and analysis in connection with the mediation.

Prior to reaching a resolution of the PAGA claim and to evaluate the value of the claims, Plaintiff conducted significant discovery, including multiple rounds of written discovery, obtaining hundreds of pages of payroll records and related records. Plaintiff also brought multiple discovery motions, conducted the deposition of key witnesses, and obtained key personnel and payroll data necessary to determine the number of employees that would make up the PAGA class, their dates of employment, their job titles and classifications, the policies and procedures affecting their employment and related data necessary to evaluate the potential value of the PAGA claim.

Following the unsuccessful PAGA mediation on May 13, 2024, the parties continued conducting discovery, including conducting the deposition of Jondo's former founder, owner and operator, Defendant John S. Doe which yielded material information concerning the scope of the PAGA class, Defendants' potential defenses to the claims at bar, the operation and sale of the Jondo entities and the availability of funds to satisfy a PAGA settlement. Thereafter, through continued follow up efforts by mediator Joe Lovretovich, Esq., on June 28, 2024, the Parties accepted a mediator's proposal to settle the PAGA claim for \$200,000.00, which led to the memorializing the settlement in a long form agreement that was fully executed on July 8, 2024.

a. Meal Period Predicate Claim

This evidence in support of the meal period predicate claim will be based primarily on the relevant time records, Defendant's written policies, Plaintiff's testimony, and witness testimony from Aggrieved Employees. Based on Plaintiff's analysis of the relevant time records and other data, the potential violation rate for the aggrieved employees is approximately 25% for the 3,107 pay periods during the limited liability period, equating to 754 pay periods in which a violation occurred. Accordingly, based on Plaintiff's analysis, the exposure for civil penalties based on the meal period predicate claim is **\$78,950**, as follows:

- PAGA penalty for 1st violation: $50 \times 73 \text{ employees} = \mathbf{\$3,650}$.
- PAGA penalty for 2nd violation: $100 \times 753 \text{ pay periods} = \mathbf{\$75,300}$.

1 **b. Rest Period Predicate Claim**

2 This evidence in support of the rest period predicate claim will be based primarily on
3 Defendant's written policies, Plaintiff's testimony, and witness testimony from Aggrieved
4 Employees. Based on Plaintiff's analysis the rest period predicate claim, a reasonable potential
5 violation rate for the aggrieved employees would be approximately 40% to 50% of the pay periods.
6 Applying a 40% violation rate for the 3,600 pay periods (or 1,440 pay periods in which a violation
7 occurred), the exposure for civil penalties based on the rest period predicate claim is **\$154,350**, as
8 follows:

- 9 • PAGA penalty for 1st violation: \$50 x 73 employees = **\$3,650**.
10 • PAGA penalty for 2nd violation: \$100 x 1439 pay periods = **\$150,700**.

11 **c. Wage Statement Predicate Claim**

12 This evidence in support of the wage statement derivative claim will be based primarily on
13 the relevant itemized wage statements and payroll data. Labor Code section 226(a) requires that
14 all applicable hourly rates in effect during the pay period and the corresponding number of hours
15 worked be accurately stated on employee wage statements. For each pay period that Plaintiff and
16 the aggrieved employees were not paid properly as hourly employees, then the information listed
17 on their wage statements is incorrect.

18 PAGA penalties for wage statement violations are calculated at a rate of \$250 for the initial
19 violation, and \$1,000 for every subsequent violation thereafter. Accordingly, Defendants' exposure
20 to PAGA penalties for incorrect wage statements provided to employees during the PAGA liability
21 period is potentially **\$3,034,250**, calculated as follows:

- 22 • PAGA penalty for 1st violation: \$250 x 73 employees = **\$18,250**
23 • PAGA penalty for 2nd violation: \$1000 x 3,016 pay periods = **\$3,016,000**.

24 **d. Strengths/Weaknesses of Plaintiff's Claims and Defendants' Defenses**

25 Based on the above, Defendants' exposure to potential PAGA civil penalties for the meal
26 period claim, rest period claim and wage statement claim is between **\$500,000** to **\$3,000,000**, not
27 including Plaintiff's attorney's fees and costs.

28 As set forth in the Motion, Plaintiff and his counsel believe the PAGA settlement of

\$200,000 is fair and reasonable due to a number of factors:

- Discretion of Court to Award Lesser Amount of Civil Penalties: California Labor Code Section 2699(e)(1) permits a Court to award a lesser amount than the maximum civil penalty if based on the facts and circumstances to do otherwise would result in an award that is “unjust, arbitrary and oppressive or confiscatory.” This element creates substantial uncertainty for Plaintiff, as other cases have shown that trial courts have reduced PAGA civil penalty awards by 50% to 90% depending on the circumstances of the case and claims. Before and during the mediation, Defendants argued, among other things, that it was unlikely that the Court would award more than the actual amounts owed on the claims, let alone the full \$100 or \$200 per violation. In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018), the Court of Appeal affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay period. Therefore, at trial, any PAGA penalties awarded in this case could be significantly less than Plaintiff’s calculations, even had Plaintiff prevailed on the PAGA claim.
- Manageability/Proof Issues for Plaintiff at Trial: In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 WL 379413 *3 (C.D. Cal. 2011) (“Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant.”). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for each period the employee worked in relation to meal period violations, rest period violations, and itemized wage statement violations. Based on the applicable law, the issues of proof associated with Plaintiff’s meal period claim are stronger than the rest period claim due to the existence of time records. With no time records of rest periods, the rest period claim will need to be proven by individualized inquiries and witness testimony, which could render that claim unmanageable at trial.

- 1 • Merits of Defendants' Defenses: Defendants dispute and deny Plaintiff's
2 underlying predicate Labor Code claims. Defendants have maintained during this
3 litigation that Plaintiff and the Aggrieved Employees signed in at the start of their
4 shift and signed out at the end of their shift and maintained accurate records of hours
5 worked during the shift, including meal periods. Plaintiff anticipates that
6 Defendants will present evidence consisting of time records and witness testimony
7 from Aggrieved Employees and managers/supervisors to demonstrate and rebut the
8 violation presumption pursuant to the California Supreme Court's decision in
9 *Donohue v. AMN Services, LLC*, 11 Cal.5th 58 (2021). Based on its own
10 investigation and witness statements, Defendants have also maintained that the
11 Aggrieved Employees were provided with proper rest periods, and that they did not
12 violate the Labor Code. Defendants have also argued that no penalties prior to the
13 PAGA notification should be awarded because the violations were not intentional,
14 and at least one court has so ruled. These defenses present a risk to the PAGA claim
15 and the potential that some or all of the PAGA penalties sought may not be awarded.
- 16 • Litigation Uncertainty: The settlement was negotiated in light of the known facts
17 and circumstances and the uncertainty associated with litigation – including the risk
18 of Plaintiff not being able to maintain representative claims.
- 19 • Arm's Length Negotiations: The PAGA Settlement was negotiated by experienced
20 counsel at arm's length with the assistance of an experienced and reputable mediator,
21 Joe Lovretovich.
- 22 • Judgment Collection Issues: Defendants have provided evidence that Jondo, and its
23 affiliated entities, have wound down their operations following the sale of the
24 company to a competitor in November 2022. Accordingly, there is uncertainty of
25 collecting any judgment from a company that is no longer operating.
- 26 • Protracted Timeline if Judgment is Appealed: Even if Plaintiff is able to secure a
27 judgment against Defendants at trial, if there is an appeal, there would be a
28 significant delay in collecting that judgment and increased costs associated with the

1 appellate process.

2 Based on the foregoing and for the reasons set forth in the Motion, Plaintiff respectfully
3 submits that the PAGA settlement is fair, reasonable and adequate in view of PAGA's purpose to
4 remediate labor law violations, deter future ones, and to maximize enforcement of state labor law.

5 **5. Plaintiff's Misclassification Claim.**

6 Plaintiff contends that he was misclassified as an exempt employee for a brief period of
7 time in 2021. As a result of him being promoted to an exempt management position employee,
8 and then a reversal of his promotion, with no material change in his work responsibilities,
9 Plaintiff alleged that he was denied earned overtime wages for a brief period of time given the
10 unique circumstances of his employment. Due to Plaintiff's unique factual circumstances during
11 that short period of time, the agreement is intended to settle PAGA claims arising from his
12 alleged misclassification only, and is the misclassification claim is valued at \$2,500 (\$10,000.00 x
13 25% potential success rate). Since the definition of "Aggrieved Employees" in the PAGA
14 Settlement Agreement only encompasses hourly non-exempt employees, no other claims of
15 alleged misclassification will be impacted or covered by this settlement.

16 **6. Plaintiff's Individual Settlement Agreement.**

17 As requested by the Court, Plaintiff's individual settlement agreement is being provided to
18 the Court for review in-camera. A true and correct copy of the individual settlement agreement
19 shall be emailed by Plaintiff's counsel, to the Court's clerk, with a copy to all counsel of record.

20 **7. Plaintiff's Counsel's Request for Attorneys' Fees and Costs.**

21 Plaintiff's counsel submits contemporaneously made billing records in support of
22 Plaintiff's counsel's request for attorneys' fees in the amount of \$70,000 and costs of \$4,213.67.
23 **(Supp. Chami Decl., ¶¶5-9, Exhibit C).** Plaintiff's lead counsel, Pouya Chami's, hourly rate on
24 this matter was deemed to be reasonable at \$675.00 per hour by this Court in its June 23, 2023
25 Order relative to Plaintiff's discovery motions. **(Supp. Chami Decl., ¶8).** The Court ultimately
26 applied a blended rate of \$475.00 per hour for Mr. Chami's work and his associate's work in the
27 June 23, 2023 Order. *Id.* As set forth in Plaintiff's counsel's supplemental declaration and per
28 the itemized billing sheet attached as **Exhibit "C"** to the supplemental declaration, even if

1 applying a blended rate of \$475.00 per hour to the total number of hours (441.50) spent by
2 Plaintiff's attorneys in prosecuting the PAGA claim, the resulting lodestar for attorneys' fees is
3 \$209,712.50 ($\$475.00 \times 441.50 = 209,712.50$), well above the \$70,000.00 in attorneys' fees
4 requested through the instant Motion. **(Supp. Chami Decl., ¶9).**

5 **8. Plaintiff's Request for an Incentive Payment.**

6 In support of his request for an incentive payment of \$7,500.00, Plaintiff submits a
7 declaration addressing the enhancement factors set forth in *Golba v. Dick's Sporting Goods, Inc.*
8 (2015) 238 Cal.App.4th 1251 and *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th
9 785. **(Declaration of Jesus Martinez, ¶¶1-9).**

10 **9. The PAGA Administrator's Revised Bid to Translate the Notice of Settlement.**

11 The Settlement Administrator (ILYM) has agreed to translate the Notice into Spanish and
12 has submitted a revised bid of \$4,350.00, which is still below the agreed-upon maximum cost
13 charge of \$6,000.00, as set forth in the Settlement Agreement at §1(Y), §§10-12. **(Supp. Chami**
14 **Decl., at ¶¶3, 10, Exhibits. A, D.).**

15 **10. The Revised Notice Identifies All Named Defendants.**

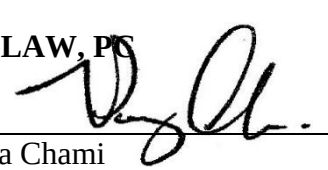
16 The Parties have prepared a revised Notice that identifies all named Defendants,
17 specifically, Jondo LTD, Jondo Holdings, LLC, Jondo Global Holdings, Inc., and John S. Doe.
18 (Supp. Chami Decl., at ¶11, Exhibit E). Plaintiff's counsel has uploaded and served the revised
19 Notice, the Addendum to the Settlement Agreement, and the instant Supplemental Briefing in
20 Support of Plaintiff's Motion for Approval of the PAGA Action, to the Labor Workforce
21 Development Agency. **(Supp. Chami Decl., at ¶12, Exhibit F).**

22 **IV. CONCLUSION**

23 Based on the foregoing, Plaintiff respectfully requests this Court approve the PAGA
24 settlement as set forth in the Settlement Agreement and enter the proposed order and judgment
25 submitted herewith.

26
27 DATED: October 15, 2024

By: _____

CHAMI LAW, PC

Pouya Chami
Attorneys for Plaintiff Jesus Martinez

PROOF OF SERVICE

I declare that: I am and was at the time of service of the papers herein, over the age of eighteen (18) years and am not a party to the action. I am employed in the County of Los Angeles, and my business address is 11845 W. Olympic Blvd., Suite 1125, Los Angeles, California 90064.

On **October 15, 2024**, I caused to be served the following documents:
SUPPLEMENTAL BRIEFING IN SUPPORT OF MOTION TO APPROVE PAGA SETTLEMENT

On **SEE ATTACHED SERVICE LIST**

X VIA MAIL: By placing a copy thereof for delivery in a separate envelope addressed to each addressee, respectively, as follows:

BY FIRST-CLASS MAIL (Code of Civ. Proc. §§ 1013 and 1013(a))

X VIA EMAIL OR ELECTRONIC TRANSMISSION: Pursuant to California Code of Civil Procedure § 1010.6 requiring parties, who have appeared in this action, to accept electronic service of documents, I caused the documents to be sent to the person at the e-mail address listed below. Within a reasonable time after the transmission, I did not receive any electronic message or other indication that the transmission was unsuccessful

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **October 15, 2024** at Los Angeles, California.

_____/s/_____
Rosina Gonzalez

SERVICE LIST

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