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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

8/19/2024 8:23:11 AM

Clerk of the Superior Court
By V. Navarro ,Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

JESSE LOPEZ, an individual,

Plaintiff,

v.

CALBIZ DEVELOPMENT CORP; EJAZ
MOHAMMAD, an individual; AZRA
MOHAMMAD, an individual; and DOES 1
through 50, inclusive,

Defendants.

CASE NO.: 37-2022-00042635-CU-OE-NC

**STIPULATION RE: COURT
APPROVAL OF SETTLEMENT OF
PLAINTIFF'S PRIVATE ATTORNEYS
GENERAL ACT ("PAGA") CLAIM;
MEMORANDUM OF POINTS AND
AUTHORITIES, DECLARATION OF
RODOLFO RUIZ-VELASCO IN
SUPPORT THEREOF; [PROPOSED]
ORDER**

I/C: Hon. Michael D. Washington
Dept.: N-31

Date of First Paper: October 24, 2022
Trial date: September 13, 2024

[IMAGED FILE]

1 IT IS HEREBY STIPULATED by and between Plaintiff JESSE LOPEZ ("Plaintiff")
2 and Defendants CALBIZ DEVELOPMENT CORP, AZRA MOHAMMAD, and EJAZ
3 MOHAMMAD (collectively, "Defendants"), on the other hand, (Plaintiff and Defendants are
4 referred to collectively as the "Parties"), by their respective attorneys of record, with reference to
5 the following facts:
6

7 1. WHEREAS, Plaintiff was previously employed by Defendants;

8 2. WHEREAS, on August 8, 2022, Plaintiff sent an administrative claim to the
9 California Labor & Workforce Development Agency ("LWDA") and to Defendants with case
10 no. LWDA-CM-900246-22 that alleged certain Labor Code violations pursuant to the Private
11 Attorneys General Act of 2004 or "PAGA," codified at Labor Code sections 2698, et seq.;

12 3. WHEREAS, the Labor and Workforce Development Agency did not notify
13 Plaintiff that the agency intends to pursue said allegations within 65 days of the postmark date on
14 Plaintiff's written notice per Labor Code section 2669.3(a)(2)(A).

15 4. WHEREAS, on October 24, 2022, Plaintiff commenced a lawsuit in the San
16 Diego County Superior Court, entitled Jesse Lopez, Plaintiff, vs. Calbiz Development Corp, et
17 al., Defendants, San Diego County Superior Court Case No. 37-2022-00042635-OE-NC (the
18 "Complaint" or the "Litigation"), in which Plaintiff made, among other things, individual claims
19 for wage and hour violations, and the representative PAGA claim, where Plaintiff alleged that he
20 was owed unpaid minimum and overtime compensation (wages), premium pay for meal and rest
21 periods, damages for records violations, and related damages arising out of his employment with
22 Defendants;

23 5. WHEREAS, the Complaint generally seeks various damages and penalties in
24 connection with Plaintiff's claims, including claims under PAGA;

25 6. WHEREAS, Defendants at all times disputed and denied, and continue to dispute
26 and deny that they ever were liable to Plaintiff, or any other person, for any of the claims
27 asserted in the Complaint, including the claims for civil penalties under PAGA;

28 /././

1 7. WHEREAS, the Parties entered into a confidential settlement agreement pursuant
2 to which Plaintiff agreed to dismiss with prejudice all claims for civil penalties under PAGA in
3 exchange for Defendants' payment of \$5,000.00;

4 8. WHEREAS, counsel for the Parties agree that the reasonable settlement value of
5 Plaintiff's claims for civil penalties under PAGA, if any, is \$5,000, with 75% of that amount
6 (\$3,750.00) made payable to the LWDA, and 25% of that amount (\$1,250.00) made payable to
7 the aggrieved employees. This value is based on the Parties' negotiations, and considerations
8 including: (1) Defendants' dispute that any penalties under PAGA are due; (2) Defendants have
9 agreed to pay the Plaintiff and other aggrieved employees for their owed wages and premium
10 wages; (3) Defendants claim they have financial inability to pay more in civil penalties; (4)
11 Plaintiff gave the LWDA the opportunity to investigate Plaintiff's claims and the LWDA
12 declined to do so; and (5) an award of PAGA civil penalties is in the discretion of the Court;

13 9. WHEREAS, the aggrieved employees are defined as all nonexempt employees
14 who worked for Defendant CALBIZ DEVELOPMENT CORP from August 8, 2021 to the date
15 this case is dismissed (the "PAGA Period");

16 10. WHEREAS, the Parties have agreed that Defendants' counsel's office will
17 distribute the PAGA civil penalties to the aggrieved employees in this case given the small
18 amount of aggrieved employees and shall provide a copy of the notice of settlement of PAGA
19 action to them that conforms to the notice attached hereto as Exhibit A; and

20 11. WHEREAS, in order to satisfy the requirements of Labor Code section
21 2699(1)(2), which requires Court approval of any settlement for civil penalties sought pursuant to
22 PAGA, the Parties have agreed that acceptable PAGA civil penalties in the present case total
23 \$5,000.00, and the amount of \$3,750.00 (75% x \$5,000) shall be distributed to the LWDA by
24 Plaintiff's counsel's office within 7 days of receipt of the payment from Defendants, and the
25 amount of \$1,250.00 (25% x \$5,000) shall be distributed by Defendants' counsel's office to the
26 aggrieved employees pro rata according to the amount of pay periods that they each worked
27 during the PAGA Period.
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RUIZ-VELASCO LAW

DATED: July 30, 2024

By: /s/ Rodolfo Ruiz-Velasco
RODOLFO RUIZ-VELASCO
Attorney for Plaintiff JESSE LOPEZ

COLLINS & KHAN LLP

DATED: July 30, 2024

By: /s/ Azim Khanmohamed
MARC COLLINS
AZIM KHANMOHAMED
Attorneys for Defendants CABLIZ
DEVELOPMENT CORP, et al.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION & BACKGROUND**

3 Mr. Jesse Lopez ("Plaintiff") was employed with Defendants as a food preparer and
4 cashier at a Subway franchise location in Oceanside, California. Mr. Lopez filed this lawsuit for
5 damages making individual wage and hour claims. Plaintiff, as a representative for the State of
6 California, also claims for civil penalties pursuant to PAGA on behalf of the State of California
7 and all current and former aggrieved employees of Defendants in his seventh (7th) cause of action
8 in his Complaint. The PAGA damage period is as follows: August 8, 2021 to the date this case is
9 dismissed (for purposes of calculation the date of July 30, 2024 was used) for aggrieved
10 employees who worked for Defendant CALBIZ DEVELOPMENT CORP (the "PAGA Period").
11 Defendants employed on average 6 employees each pay period during the PAGA Period.

12 Plaintiff alleges multiple wage and hour Labor Code violations such as nonpayment of
13 minimum wages, overtime wages, meal and rest period premiums, inaccurate wage statements,
14 and waiting time penalties. Defendants deny all allegations.

15 This case represents the pinnacle of the goals of litigation: contentious arms'-length
16 negotiations, production of records, service of written discovery, extensive meet and confer and
17 supplemental responses, a discovery motion, two full day depositions, which revealed the
18 strengths and weaknesses of each side's case, leading to resolution of the dispute. In this fashion,
19 the parties avoid incurring additional attorneys' fees and costs to reach a reasonable settlement at
20 the earliest opportunity. The Parties agreed to settle the case in full, including Plaintiff's
21 individual claims, Defendants agreed to take remedial measures and pay all owed wages to the
22 Plaintiff and the other aggrieved employees and to stop violations, and the Parties agreed to settle
23 the PAGA claim for a gross settlement sum of \$5,000, of which 75% or \$3,750 is to be
24 distributed to the State LWDA and 25% or \$1,250 to the aggrieved employees.

25 Accordingly, Plaintiff respectfully requests that the Court approve this PAGA claim
26 settlement which provides benefits to both the State of California and to the aggrieved
27 employees.

28 /././

1 **II. PROCEDURAL HISTORY**

2 On August 8, 2022, Plaintiff notified the Labor and Workforce Development Agency
3 ("LWDA") regarding his Labor Code claims pursuant to PAGA and filed and served his PAGA
4 Action (LWDA Case No. LWDA-CM-900246-22) (the "PAGA Action" or "PAGA Claim") (A
5 true and correct copy of the PAGA notice is attached as Exhibit 1 to the Complaint in this case,
6 ROA Docket No. 1, Exhibit 1). The LWDA did not respond, so Plaintiff thereafter filed his
7 complaint on October 24, 2022 with his individual claims and the PAGA Claim, found in his
8 seventh (7th) cause of action in his Complaint (ROA Docket No. 1).

9 The Parties settled the case in full after propounding written discovery, meeting and
10 conferring and submitting supplemental responses, filing a motion to compel depositions, taking
11 two depositions, and producing documents regarding the Plaintiff and the other aggrieved
12 employees. After multiple negotiations between the Parties' counsel, the Parties resolved this
13 case in full, including the seventh cause of action regarding the PAGA Claim.

14 The Parties now respectfully present this Stipulation and Order for the Court's Approval
15 of Settlement of the PAGA Claim. The Parties will dismiss this entire lawsuit with prejudice
16 after approval by the Court of this PAGA claim settlement.

17 **III. PAGA CLAIMS CANNOT BE SETTLED WITHOUT COURT**

18 **APPROVAL**

19 Pursuant to Labor Code Section 2699(1)(2): "The superior court shall review and approve
20 any settlement of any civil action filed pursuant to this part."

21 **IV. THE COURT HAS WIDE DISCRETION IN APPROVING PAGA**
22 **PENALTIES THAT ARE BINDING**

23 Pursuant to Labor Code Section 2699(e) the Court has discretion as it pertains to the
24 amount of the penalty and "may award a lesser amount than the maximum civil penalty amount
25 specified by this part, based on the facts and circumstances of the particular case" because "to do
26 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."

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V. THE PROPOSED PAGA CIVIL PENALTIES ARE REASONABLE GIVEN THAT DEFENDANTS HAVE COOPERATED WITH PLAINTIFF'S INVESTIGATION, HAVE TAKEN REMEDIAL MEASURES REGARDING THE VIOLATIONS, THAT DEFENDANTS CLAIM THEY HAVE FINANCIAL TROUBLES, AND THAT THE PARTIES WOULD LIKE TO COMPROMISE TO SAVE ON FEES AND COSTS THAT WOULD INCREASE SIGNIFICANTLY UPON FURTHER LITIGATION

“[The] Legislature's purpose in enacting the PAGA was to augment the limited enforcement capability of the Agency by empowering employees to enforce the Labor Code as representatives of the Agency.” *Iskanian*, supra, 59 Cal.4th at 383.

Labor Code section 2699 allows for a maximum penalty of one-hundred dollars (\$100) for the first pay period in which there was violation of applicable sections and two-hundred dollars (\$200) per pay check for each pay period thereafter pursuant to subsection (f)(2), “except those for which a civil penalty is specifically provided” pursuant to subsection (f).

In the instant action there were four main categories of violations claimed by Plaintiff: overtime wage violations, meal periods violations, rest period violations, and records violations.

Labor Code section 2699.3 requires that the representative employee(s) “give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.” Labor Code section 2699.3(1)(A). Plaintiff gave said notice on August 8, 2022. See Decl. of Rodolfo Ruiz-Velasco, ¶2.

The Parties were able to compromise the claims reaching a global confidential settlement of the entire action, including the individual wage and hour claims and the PAGA Claim. A total of five thousand dollars (\$5,000.00) has been deemed and agreed by the Parties to be an appropriate allotted amount to settle the 7th cause of action for PAGA civil penalties.

The Parties have agreed that Plaintiff's counsel distribute 75% or three thousand seven hundred and fifty dollars (\$3,750.00) of the civil penalties to the California LWDA, and that Defendants' counsel distribute 25% or one thousand two hundred fifty dollars (\$1,250) of the civil penalties to the aggrieved employees who worked during the PAGA Period on a pro rata

1 basis, depending on the number of pay periods that each aggrieved employee worked during the
2 PAGA Period.

3 Here, Defendants own and operate a Subway franchise location in Oceanside, California.
4 Plaintiff was employed by Defendants as a food preparer and cashier. Plaintiff and the other
5 employees were paid biweekly. Plaintiff claims that Defendants underpaid his and the other
6 aggrieved employees' hours worked and earned. Specifically, that Defendants did not pay him
7 and other aggrieved employees for overtime hours worked at the overtime rate of pay, but were
8 instead paid at the regular rate of pay for overtime hours worked, and that the wages for overtime
9 pay were paid under a category of pay in the wage statements called "Bonus". These overtime
10 violations were admitted by Defendants at their depositions. Plaintiff also claims that he and the
11 other employees were not fully relieved of duties during their meal and rest periods as they were
12 not allowed nor able to because they would not be able to finish their required work duties in
13 time. The above violations caused the employees' records to be inaccurate.

14 The total potential PAGA civil penalties Plaintiff calculated are at least \$187,200 for 6
15 employees for the PAGA Period from August 8, 2021 to July 30, 2024, calculated as 78 pay
16 periods (156 weeks, biweekly is $156/2 = 78$ biweekly pay periods) x 6 aggrieved employees x
17 \$100 x 4 violations = at least \$187,200 in potential PAGA civil penalties. (Ruiz-Velasco Decl.,
18 ¶6).

19 Defendants have agreed to pay Plaintiff and the other aggrieved employees the owed
20 overtime wages and meal and rest period premium wages found in the records they produced to
21 Plaintiff as part of the remedial measures according to this settlement with Plaintiff. Defendants
22 claim that their business is going through financial troubles, including lowered profits given the
23 rise in minimum wages.

24 All of Plaintiffs' individual causes of action along with the PAGA cause of action were
25 resolved in a confidential settlement on or about July 8, 2024. Plaintiff does not object to the
26 \$5,000 total amount in PAGA civil penalties because (1) the Defendants cooperated with
27 Plaintiff's investigation by complying with discovery and producing records, (2) the Defendants
28 have taken remedial measures in agreeing to pay the owed wages and premium wages to Plaintiff

1 and the other aggrieved employees, (3) Defendants claim that they are undergoing financial
2 troubles, and (4) the Parties have decided to compromise to save on attorneys' fees and costs
3 because further litigating this case would significantly increase fees and costs for the Parties
4 making settlement less likely.

5 The PAGA Period was used as the time period in question to reflect the one-year statute
6 of limitations for penalties from the time of filing the written PAGA notice with the LWDA to
7 the time this case is dismissed (see above). Of the one five thousand dollars in civil penalties
8 (\$5,000), three thousand seven hundred and fifty dollars (\$3,750) or seventy-five percent (75%)
9 will be paid to the California Labor Workforce Development Agency ("LWDA") and one
10 thousand two hundred and fifty dollars (\$1,250) or twenty-five percent (25%) will be paid to the
11 three aggrieved employees.

12 The Parties were able to reach a compromised confidential settlement after Defendants
13 produced records and discovery, the Parties propounding at least 12 sets of written discovery and
14 responding to the discovery with multiple meet and confer correspondence required to resolve
15 discovery disputes, after filing a discovery motion, Plaintiff taking the depositions of the
16 Defendants, and multiple settlement communications with Defendants' counsel directly required
17 to finally settle all causes of action for the Plaintiff, including his individual six causes of action
18 as follows for (1) failure to pay wages, (2) failure to timely furnish accurate itemized wage
19 statements in violation of Labor Code section 226(a), (3) unfair business practices, (4) waiting
20 time penalties per Labor Code section 203, (5) meal and rest period violations, (6) failure to
21 produce employee file and records, along with the representative seventh cause of action for
22 PAGA civil penalties.

23 VI. DEFINITION OF AGGRIEVED EMPLOYEES

24 The aggrieved employees are defined as: Any and all nonexempt employees of
25 Defendants who were employed during the PAGA Period ("PAGA Aggrieved Employees").
26 There are approximately 17 individuals that compose the PAGA Aggrieved Employees.

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1 **DECLARATION OF RODOLFO RUIZ-VELASCO IN SUPPORT**

2 I, Rodolfo Ruiz-Velasco, declare as follows:

3 1. I am an attorney licensed to practice law in the state of California and am the
4 attorney of record for Plaintiff JESSE LOPEZ ("Plaintiff") in the above referenced action.

5 2. On or about August 8, 2022, on behalf of Plaintiff, I sent Defendants CALBIZ
6 DEVELOPMENT CORP, AZRA MOHAMMAD, and EJAZ MOHAMMAD (collectively,
7 "Defendants") via certified mail a written notice of Plaintiff's intent to bring a claim for PAGA
8 civil penalties, and filed it with the California Labor Workforce Development Agency
9 ("LWDA") via online submission through their website (A true and correct copy of the written
10 notice for the PAGA claim is attached to the Complaint in this action, see ROA Docket No. 1,
11 Exhibit 1). The LWDA provided Case No. LWDA-CM-900246-22 for the PAGA Action. The
12 LWDA did not respond within the requisite 65 days.
13
14

15 3. On or about October 24, 2022 Plaintiff filed his Complaint in this case alleging
16 individual claims for (1) failure to pay wages, (2) failure to furnish accurate itemized wage
17 statements in violation of Labor Code section 226(a), (3) unfair business practices, (4) waiting
18 time penalties per Labor Code section 203, (5) meal and rest period violations, and (6) failure to
19 produce employee file and records upon written request, (7) along with the representative
20 seventh cause of action for PAGA civil penalties pursuant to Labor Code section 2698, et seq.
21

22 4. Plaintiff served at least 7 sets of written discovery, and took the depositions of the
23 three Defendants. Defendants' counsel served 5 sets of discovery on Plaintiff's counsel. The
24 Parties produced and exchanged hundreds of pages of documents, including the wage records
25 and time records of the aggrieved employees. Defendants also produced financial documents
26 which they claim show that Defendants' business is undergoing financial troubles.
27

28 /././

1 5. Plaintiff claims that Defendants did not pay Plaintiff and the other aggrieved
2 employees for overtime hours worked, that they were not paid with a wage statement containing
3 all of the information required of Labor Code Section 226, that they were not relieved of duties
4 during meal and rest periods, and that Defendants failed to timely produce Plaintiff's employee
5 file and records in response to his written request. Defendants dispute many of the violations.
6

7 6. I personally reviewed the pay and time records that Defendants produced to my
8 office regarding Plaintiff and for the aggrieved employees who worked for Defendants during
9 the PAGA Period, and found that Defendants owed Plaintiff and the other aggrieved employees
10 overtime wages, since the overtime wages were being paid at the regular rate of pay under a
11 category in the wage statements called "Bonus". I also found that Defendants were not paying
12 meal and rest period premium wages for meal and rest period violations. Defendants admitted
13 the owed overtime wages at their depositions. Defendants have agreed to pay the owed overtime
14 and meal and rest premium wages above to Plaintiff and to the aggrieved employees and to stop
15 the violations as part of this settlement. Therefore, given Defendants' cooperation and remedial
16 measures, Plaintiff accepted the settlement offer of \$5,000 in PAGA civil penalties.
17

18 7. The total potential PAGA civil penalties Plaintiff calculated are at least \$184,800
19 for 6 employees for the PAGA Period from August 8, 2022 to July 30, 2024, calculated as 78
20 pay periods (156 weeks, biweekly is $156/2 = 78$ biweekly pay periods) x 6 aggrieved employees
21 x \$100 x 4 violations = at least \$187,200 in potential PAGA civil penalties.
22

23 8. Despite the above differences and disputes regarding the viability of said claims,
24 on or about July 8, 2024, the Parties were able to reach a compromised confidential settlement
25 after the Parties exchanged and produced written discovery and records, Plaintiff propounding at
26 least 7 sets of discovery and taking the depositions of the three Defendants, Defendants
27 propounding 5 sets of discovery, plus multiple settlement communications required to finally
28

1 settle all causes of action. Upon Court approval of this settlement of the PAGA Claim, Plaintiff
2 will request to dismiss this case in its entirety with prejudice.

3 9. Of the five thousand dollars (\$5,000) in civil penalties agreed to by the Parties,
4 three thousand seven hundred and fifty dollars (\$3,750) or seventy-five percent (75%) will be
5 paid to the California LWDA and one thousand two hundred and fifty (\$1,250) or twenty-five
6 percent (25%) will be paid to the three aggrieved employees.
7

8 10. On or about July 30, 2024, I submitted a copy of this stipulation re: Court
9 approval of settlement of PAGA Claim, the memorandum of points and authorities, declaration
10 and order to the LWDA through their website [https://www.dir.ca.gov/Private-Attorneys-General-](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)
11 [Act/Private-Attorneys-General-Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html) as required by the LWDA's procedure and Labor Code
12 section 2699(1)(2). See also the proof of service filed herewith.
13

14 I declare under penalty of perjury under the laws of the state of California that foregoing
15 is true and correct and based upon my personal knowledge.

16 Dated: July 30, 2024

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18 
19 Rodolfo Ruiz-Velasco, Esq.
20 Attorney for Plaintiff,
21 Jesse Lopez
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8 **~~PROPOSED~~ ORDER**

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10 **GOOD CAUSE APPEARING, IT IS SO ORDERED.**

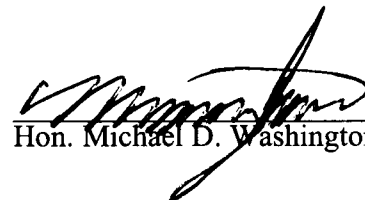
11 1. The Parties' agreement to settle any and all claims available under Labor Code
12 sections 2698, et seq. (the Private Attorneys General Act or "PAGA") pursuant to Plaintiff's
13 seventh (7th) cause of action in his Complaint for \$5,000.00 is approved by this Court.

14 2. The aggrieved employees are defined as all nonexempt employees who worked
15 for Defendant CALBIZ DEVELOPMENT CORP from August 8, 2021 to the date this case is
16 dismissed (the "PAGA Period").

17 3. The civil penalties amount of \$5,000.00 shall be distributed as follows: Plaintiff's
18 counsel shall distribute 75% of that amount (\$3,750.00) to the California Labor Workforce &
19 Development Agency ("LWDA"), and Defendants' counsel shall distribute 25% of that amount
20 (\$1,250.00) to the aggrieved employees pro rata according to the number of pay periods that
21 each employee worked during the PAGA Period.
22

23 **IT IS SO ORDERED.**

24 Dated: Aug. 19, 2024


Hon. Michael D. Washington

Lopez v. Calbiz Development Corp, et al.
Superior Court Case No. 37-2022-00042635-CU-OE-NC

PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over eighteen years of age and not a party to this action; my business address is 600 W. Broadway Suite 700, San Diego, California, 92101. On **July 30, 2024**, I served a true copy of the foregoing document(s):

STIPULATION RE: COURT APPROVAL OF SETTLEMENT OF PLAINTIFF'S PRIVATE ATTORNEYS GENERAL ACT ("PAGA") CLAIM; MEMORANDUM OF POINTS AND AUTHORITIES, DECLARATION OF RODOLFO RUIZ-VELASCO IN SUPPORT THEREOF; [PROPOSED] ORDER

on all interested parties in this action as follows:

COLLINS & KHAN LLP Marc A. Collins Azim Khanmohamed R. Michael Collum 3435 Wilshire Blvd., Ste. 2600 Los Angeles, CA 90010-2246 akhan@collinskhan.com mcollins@collinskhan.com ssaleh@collinskhan.com	Attorneys for Defendants CALBIZ DEVELOPMENT CORP, EJAZ MOHAMMAD, and AZRA MOHAMMAD
California Labor Workforce Development Agency 455 Golden Gate Ave, 9th Floor San Francisco, CA 94102 (by online submission only at https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)	California Labor Workforce Development Agency (LWDA)

☒ **E-mail service/E-service:** I have e-served the above-documents to the e-mail(s) of counsel above.

☒ **Online submission:** I submitted the above-documents online via the website above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **July 30, 2024**.


Rodolfo Ruiz-Velasco