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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER

DAVID ZAZUETA, individually and on behalf of other aggrieved current and former employees, Plaintiff(s), v. A MANOUSELIS, INC., ANGELO'S BURGERS, GEORGE MANOUSELIS, MANOUSOS MANOUSELIS, and DOES 1 to 50, Defendants.	Case No.: 30-2023-01324404-CU-OE-CXC Hon. Melisa McCormick, Dept. CX-104 Compliant Filing Date: May 10, 2023 **NOTICE OF UNOPPOSED MOTION AND MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004; DECLARATION OF ZORIK MOORADIAN; AND ORDER [PROPOSED].** Motion Hearing: 09/11/2025 @ 2:00 p.m. Reservation No.: 74570336

TO THER COURT, PARTIES AND ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, pursuant to Cal. Lab. Code §2699, on September 11, 2025, at 2:00 p.m. or as soon thereafter as the matter may be heard in Department CX 104 of the above-entitled Court, the Honorable Melisa McCormick, presiding, Plaintiff David Zazueta ("Plaintiff"), on behalf himself and other aggrieved employees, will move this Court for entry of an Order:

1. Approving the settlement entered between Plaintiff David Zazueta and Defendants A Manouselis, Inc., dba Angelo's Burgers, George Manouselis, Manousos Manouselis ("Defendants") for representative claims under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), as reflected by the duly executed PAGA Settlement Agreement ("Settlement Agreement" or "SA"), **Exhibit A** to the Decl. of Zorik Mooradian ("ZM Decl."). ZM Decl. ¶2, Ex. A.

2. Approving distribution of a Gross Settlement Sum of **$105,000.00**, as follows: 35% or $36,750.00 in attorneys' fees; $6,812.80 in litigation costs; $2,750.00 to Phoenix Class Action Administration Solutions ("Settlement Administrator"); $5,000 as enhancement payment to Plaintiff; and from remaining $53,687.20, $40,265.40 or 75% to the State of California (LWDA) and $13,421.80 or 25% to the PAGA class (average payout of $142.79). ZM Decl. ¶¶ 13 and 14.

This Motion is based on this Notice, Memorandum of Points and Authorities, Declaration of Zorik Mooradian with Exhibits, the [Proposed] Order and any arguments or supplemental briefings as called upon by the Court.

Respectfully submitted,

Dated: May 22, 2025

MOORADIAN LAW, APC

Zorik Mooradian

By: ______________________________

Zorik Mooradian,
Attorneys for Plaintiff David Zazueta,
individually and on behalf
of the Aggrieved Employees

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MEMORANDUM OF POINTS AND AUTHORITIE

I. INTRODUCTION

Plaintiff David Zazueta seeks court approval of a settlement of a pending PAGA claim, which was initiated by Plaintiff's notice to LWDA, dated March 6, 2023, and as further set forth in the operative Complaint. The scope of the PAGA settlement is limited to civil penalties, does not include any individual relief under Labor Code Section 558(a) (2-3), and does not act as a waiver to any employee's individual claims except that of Plaintiff.

The **$105,000** PAGA Settlement is for **94** aggrieved employees during the period of 03/06/2022 to 07/11/2024. The settlement is for a total of **2,106 pay periods**. The allocation for civil penalties is fair, adequate, and reasonable and constitutes a noteworthy recovery for what is a largely defensible PAGA claim for a one location Angelo's Berger.

II. PROCEDURAL HISTORY AND ANALYSIS

The Intake from Mr. Zazueta is dated 07/12/2022 – the initial contact. Records were received and reviewed over the following months. There were identifiable wage and hour violations, pervasive enough to give rise to Private Attorney General Act penalties under the Labor Code. In conformity with Labor Code §2699.3, Plaintiff submitted a PAGA Notice for said violations with LWDA on 03/06/2023. The PAGA notice was served upon multiple Defendants via certified mail as required by statute. Mr. Zazueta was a dishwasher and cleaning employee, from 09/2021 through 12/2023, at Angelo's Bergers and Mexican Food, at 11511 Westminster Ave., Garden Grove, California 92843. Pursuant to Labor Code §226, records of Mr. Zazueta were requested from Defendants and no response. ZM Decl. ¶ 6.

On May 10, 2023, Plaintiff filed a wage and hour Complaint for damages, penalties and other relief, which is the Operative Complaint, entitled *David Zazueta v. A Manouselis, Inc., dba Angelo's Burgers, George Manouselis, Manousos Manouselis, DOES 1 to 50*, bearing Orange County Superior Court Case No. 30-2023-01324404-CU-OE-CXC. Complaint is comprised of nine causes of action , alleging claims for (1) failure to pay overtime, (2) failure to pay minimum wages, (3) meal period violations, (4) rest break violations, (5) failure to pay owed tips, (6) failure to pay wages for all time worked, (7) failure

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to provide accurate wage statements, (8) failure to provide employment records, and (9) violations of Labor Laws Giving Rise to an Action Under Private Attorney General Act ("PAGA"). ZM Decl. ¶ 7. Defendants were the employers/joint employers of David Zazueta. Defendants' entity address is the restaurant location of Angelo's Bergers and Mexican Food, 11511 Westminster Ave., Garden Grove, California 92843. ZM Decl. ¶ 8.

On 07/11/2024, the Parties participated at a mediation before attorney Laurie Saldaña which led to the settlement of the case. In sum, the settlement was for $120,000, $105,000 of which was allocated to PAGA and $15,000 to the individual wage and hour claims of Mr. Zazueta. Considering Mr. Zazueta's job duties[1] and considerable individual wage and hour violations, the allocated sum of $15,000 was a compromise. ZM Decl. ¶ 9. It was represented by Defendants that PAGA class size is **94 current and former non-exempt employees for 2,106 pay periods from 03/06/2022 to 07/11/2024**, also known as PAGA Period per the Settlement Agreement, as defined below or (SA, Prov. 1.21). ZM Decl. ¶ 10.

III. <u>SETTLEMENT AND DISTRIBUTION</u>

The settlement agreements were executed, Individual Settlement Agreement ("Individual Settlement Agreement") and PAGA Settlement Agreement (The "Settlement Agreement" or "SA"), **Exhibit A.** The Settlement Agreement has 12 separate Provisions: 1) Definitions; 2) Recitals; 3) Monetary Terms; 4) Settlement Funding and Payments; 5) Releases of Claims; 6) Motion for Application for Approval of Settlement; 7) Settlement Administration; 8) Aggrieved Employee Size Estimates and Escalation Clause; 9) (skipped); 10) Nullification of Agreement; 11) Continuing Jurisdiction of the Court; and 12) Additional Provisions. Generally, SA follows LASC approved model PAGA agreement. ZM Decl. ¶ 12.

The settlement allocates **$105,000.00** for settlement of the Released PAGA Claims or the Gross Settlement Amount (SA, Prov. 3.1.). The agreed attorneys' fees are up to 35% of

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[1] Mr. Zazueta was basically the primary dish washing and cleaning employee of Defendants at the Angelo's Berger ad Mexican Food restaurant. He washed the dishes, organized them, put them on the racks, and maintained inventory. He also cleaned and mopped the bathrooms, the kitchen floor and counters, other locations of the restaurant and the parking lot. Mr. Zazueta also rotated in the kitchen on as needed basis in terms of breaking eggs, cutting vegetables and keeping the poultry and other perishable goods cold and ready and fresh for the orders.

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the gross recovery or **$36,750.00** (SA, Provs. 3.2.1.). The costs were agreed up to $10,000.00 (SA, Provs. 1.11 and 3.2.1.) and the cost of Mooradian Law, APC is **$6,812.80**, as set forth in **Exhibit E**, lodestar of Zorik Mooradian. The Settlement Administrator has submitted an invoice for **$2,750.00 (Exhibit B)** for administration of the settlement for up to 100 class employees, Exhibit B, less than the agreed $5,000.00 (SA, Provs. 1.3 and 3.2.2.). The Parties will not oppose an incentive award of **$5,000.00** or less for Plaintiff if the Court is inclined to grant it, especially since there will be a savings of $5,437.20. ZM Decl. ¶ 13.

The above computation will leave a net balance of **$53,687.20**, of which 75% or **$40,265.40** will be paid to the State of California (LWDA) (SA, Prov. 3.2.3.1 for an estimated sum), and the remaining 25% or **$13,421.80** will be distributed to the PAGA class [for an average to **$142.79** per member ($13,421.80/94)]. ZM Decl. ¶ 14.

The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. (SA, Prov. 3.2.3.1). The escalation clause will not be triggered since the pay periods are fixed at 2,106 for 3/6/22 to 7/11/24. ZM Decl. ¶ ¶ 15 and 16.

Within 15 calendar days after the Court grants Approval of the PAGA Settlement, Defendants will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. (SA, Prov. 4.2). Defendants shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator, either no later than 30 calendar days after the Effective Date or, after the Effective Date, but no earlier than July 11, 2025, whichever date is later. (SA, Prov. 4.3). ZM Decl. ¶ ¶ 18 and 19.

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

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disbursement of Individual PAGA Payments. (SA, Prov. 4.4). ZM Decl. ¶ 20.

The Administrator will issue checks for the Individual PAGA Payments and mail via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. (SA, Prov. 4.4.1). ZM Decl. ¶ 21.

The PAGA payments will be accompanied by the Notice of PAGA Settlement (**Exhibit C** – ZM Decl. ¶ 24). The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are retuned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail 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. (SA, Provs. 4.4.2 and 3). ZM Decl. ¶ 22.

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. The payment of Individual PAGA Payments shall not oblige Defendants to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement. (SA, Provs. 4.4.4 and 5). ZM Decl. ¶ 23.

Effective full funding of the entire Gross Settlement Amount Plaintiff and PAGA Counsel will release claims against all Released Parties as follows: ZM Decl. ¶ 25.

<u>Plaintiff's Release.</u> Plaintiff and his respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators,

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successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the PAGA Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them. (SA, Prov. 5.1)

Release by Aggrieved Employees. All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice. (SA, Prov. 5.2)

The Parties have agreed for the Court to retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law. (SA, Prov. 11). The Parties further have agreed to a stay of the litigation and an extension of the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process. (SA, Prov. 12.17). ZM Decl. ¶¶ 25, 26 & 27.

IV. THE SETTLEMENT IS ADEQUATE, REASONABLE AND FAIR

The Ninth (9th) Cause of Action of the Operative Complaint for PAGA violations is comprised of thirteen counts as follows: Defendants failed to pay Plaintiff and California non-exempt Aggrieved Employees all wages due including all overtime and minimum wages

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in violation of Labor Code §§ 510, 1194, and 1197; failed to provide legally compliant meal periods and pay the corresponding premium penalties to Plaintiff and Aggrieved Employees in violation of Labor Code §§ 226.7 and 512; failed to provide legally compliant rest breaks and pay the corresponding premium penalties to Plaintiff and Aggrieved Employees in violation of Labor Code § 226.7; failed to pay tips and/or service fees in violation of Labor Code §§ 350 and 351; failed to timely pay Plaintiff and California non-exempt Aggrieved Employees their lawful wages in violation of Labor Code §§ 200 and 204; failed to provide Plaintiff and California non-exempt Aggrieved Employees accurate wage statements in violation of Labor Code §§ 226 (a) and 226.3; failed to lawfully deduct sums from the wage statements in violation of Labor Code §§ 221 and 224; failed to provide/pay Plaintiff and California non-exempt Aggrieved Employees their lawful sick leave benefits in violation of Labor Code §§ 233, 246 and 246.5; failed to indemnify the employees for business expenses in accordance with Labor Code §§ 2800, 2802, and 2699; failed to pay wages owed at separation in violation of Labor Code §§ 201, 202 and 203; failed to provide Plaintiff and California non-exempt Aggrieved Employees suitable seating; and failed to lawfully classify the employees and for misclassification of employees in accordance with Labor Code § 515 and 8 CCR 11040 and applicable IWOs. ZM Decl. ¶ 28.

The claims were disputed at the mediation. On June 6, 2024, pursuant to an agreed confidential informal exchange of data, Defendants uploaded 1559 pages of payroll records, up to 25 complete folders, comprised of raw time records as well as Payroll Journal (wage statements) of aggrieved employees. The records were marked as ZAZUETA-MEDIATION-AMI-000001 through ZAZUETA-MEDIATION-AMI-001559. A consultant was not retained. Attorneys at Mooradian Law, APC reviewed and analyzed the data. ZM Decl. ¶ 29.

In accordance with a detailed review of the PAGA records produced by Defendants for the Mediation, Defendants regularly engaged in illegal rounding of the times worked by the employees up through June 4, 2023. Only after receiving Plaintiff's PAGA Notice Letter in March of 2023, did Defendants stop their rounding practices and start using a punch clock. Accordingly, all the wage statements issued before June 4, 2023, seemed to be inaccurate and

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in violation of Labor Code § 226. Moreover, because Defendants consistently failed to provide employees with the rest breaks and meal periods mandated by law and failed to pay their employees the premium pay owed for rest break and meal period violations, even the wage statements provided after June 4, 2023, were inaccurate to a significantly lesser range. In combination, the meal and rest break violations could reach 70% rate. Series of samples were produced as Exhibits at the Mediation. ZM Decl. ¶ 30.

Defendants argued that they are a small family business operation and take great pride in maintaining employee trust. Employees were required to take their breaks regularly and were discouraged from continuing to work or carrying on their duties during meal or rest periods. Defendants' maximum exposure could stretch to $300,000 based on the following analysis: 2,146 pay periods at 70% violation or $\$100 \times 2{,}146 \times 0.7 = \$150{,}220 \times 2$ (meal and rest breaks) = $300,440.00, at the maximum allowable penalty rate of $100 (as opposed to $200) per pay period. The exposure for the remaining claims would not have added much to the computation or stacking argument; thus, the additional violations would not have served as a surcharge to the penalties. ZM Decl. ¶ 31.

Significantly, under PAGA the court has discretion to reduce penalties if they are found to be unjust, arbitrary, oppressive, or confiscatory. There is an absence of legal authority guiding courts in this determination. Courts rarely award 100% of the PAGA penalties proven at trial, a rare occurrence in any event, and frequently reduce the collective penalties considerably. Defendants have made clear if any penalties were awarded in this case, they would argue the penalties would be unjust, arbitrary, and oppressive or confiscatory, requesting the court award zero – aside from their inability to pay regardless of the outcome. ZM Decl. ¶ 32.

With the dynamic PAGA authorities, there is also lack of clear legal weight on how the penalties are calculated, including whether multiple penalties can be awarded in the same pay period and when a "subsequent" penalty can be assessed. In possession of this information. Plaintiff had to consider the extended delay caused by resolving these novel legal issues and risking zero recovery even after a successful trial. While Plaintiff maintains

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that his PAGA claims have merit, in reaching the settlement, Plaintiff through counsel considered the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded as litigation continued. ZM Decl. ¶ 33.

In addition to the factors presented above, the proposed Settlement does not possess any obvious deficiencies. The Settlement contemplates entry of an order (submitted concurrently) which approves the Settlement. The dismissal with prejudice should only follow after full funding and distribution of the entire settlement proceeds. ZM Decl. ¶ 34.

Based on the circumstances set forth in this Motion and experience of Plaintiff's counsel, a gross PAGA settlement of <u>$105,000.00 for 94 employees and 2,106 pay periods</u> is fair, reasonable, especially considering the strong possibility there would be no recovery without this settlement. That averages to about $50 in penalties per pay period, which is well within the better range of PAGA settlements. Even upon prevailing, Plaintiff would face the potential of discretionary reduction of maximum penalties by the Court and reported cases, especially if Defendants' failure to comply with wage statement requirements under Labor Code Sect. 226 was neither intentional nor willful. ZM Decl. ¶ 35.

As to the attorneys' fees and set forth in **Exhibit E** (Lodestars of attorneys Zorik Mooradian and Andrina G. Hanson), three attorneys from Mooradian Law, APC have worked on this file/case for the past 35 months, with a lodestar of 62 hours (exclusive of final work on the Motion for Approval papers) for attorney Zorik Mooradian (35 + years as a practicing attorney in the state of California with an hourly rate of $650), 88.25 hours for attorney Andrina G. Hanson (36 years of practicing attorney in the State of California with an hourly rate of $550), and 11.5 hours for attorney Nanor C. Kamberian (8 years of practicing attorney in CA with an hourly rate of $350). That adds up to $92,862.50. ZM Decl. ¶ 36.

The attorneys' time on the case/file may be summarized as follows: Communications with the client, office staff meetings, drafting of pleadings, PAGA submission and research, analysis of the pre-mediation production, communications re follow up production, settlement negotiations, preparation for and participation at mediation, drafting settlement papers, review of the terms with the client, as well as preparation of the approval papers.

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Plaintiff's counsel in a sum has an actual fee statement of $92,862.50 (62×$650 + 88.25×$550 + 11.5×$350), which is more than the **$36,750.00** in fees sought from this Court as part of the approval. Moreover, said billable rates are reduced rates to those of the *Laffey Matrix* (for attorneys of like experience and years of practice in the Los Angeles County), and there is no need for an application of a multiplier to match the requested fee. ZM Decl. ¶ 37.

Mooradian Law, APC does not have any fee-splitting agreement with other counsel for this matter. There is a signed retainer agreement with Plaintiff, which is for a contingency recovery of up to 45% of the gross recovery. Both California State and Federal Courts have recognized that an appropriate method in determining an attorney fee award may be based on the percentage on the total value of the benefits conferred by the settlement. Serrano v. Priest (1997) 20 Cal. 3d 25-34 [Serrano III]; Boeing Company v. Van Gemert (1980) 344 U.S. 472, 478; Vincent v. Hughes Airwest, Inc. (9th Cir. 1977) 557 F.2d 759, 769. ZM Decl. ¶ 38.

The California Supreme Court endorsed a fee award as a percentage of the common Fund. The Court clarified "that when an attorney fee is awarded out of a common fund preserved or recovered by means of litigation (internal citation omitted), the award is not per se unreasonable merely because it is calculated as a percentage of the common fund." Laffitte v. Robert Half Int'l. Inc. (2016) 1 Cal. 5th 480, 486. Also "[t]hat the recognized advantages of the percentage method…convince us that the percentage method is a valuable tool that should not be denied in our trial courts." Id. at 503. ZM Decl. ¶ 39.

The Common Fund Doctrine is predicated on the principle of preventing unjust enrichment. When a litigant's efforts create or preserve, or generate a fund from which others derive benefits, he may require the passive beneficiaries to compensate those who created the fund. Both California State and Federal Courts have embraced this Doctrine. Serrano III, supra, at 35; Vincent, supra, at 769. Since Serrano III, supra, there has been a ground swell of support for mandating the percentage of the fund approach in common fund cases. Both State and Federal Court have found the percentage approach preferable to the Lodestar because; (1) it aligns the interest of counsel and absent parties (PAGA Counsel and the LWDA here); (2) it encourages efficient resolution of the litigation by providing an incentive

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for early, yet reasonable, settlement; and (3) it reduces the demand on judicial resources. In re Activision Sec. Litig. (N.D. Cal. 1989) 723 F Supp. at 1378-79. ZM Decl. ¶ 40.

As to the requested incentive award of up to $5,000, Mr. Zazueta has been a very cooperative client not only for his individual wage and hour claims but for and on behalf of PAGA class of aggrieved employees. Apart from the communications with the attorneys, Ms. Claudia Ginsburg of Mooradian Law, APC has also had at least 25 telephone calls with Mr. Zazueta, with an average call of ten minutes. Plaintiff has been very forthcoming; he provided his attorneys with data and guidance through the day-to-day activities of Defendants' restaurant operation. Mr. Zazueta was a rank-and-file employee and aware of the intricacies of the Defendants' business. An enhancement award is well deserved given his contribution and the conferred benefits to the State of California and coworkers. ZM Decl. ¶ 41.

Exhibit D to the ZM Decl. (¶ 2) is proof of the records submitted to LWDA, which are the original PAGA Notice, the Complaint and the Settlement Agreement. Upon filling of this Motion, Plaintiff will submit a complete copy of the Motion with LWDA as well and will file a proof of service with the Court.

V. <u>CONCLUSION</u>

Plaintiff submits that the PAGA settlement is fair, adequate and reasonable and so too the requested distributions. An Order in conformity is *respectfully* requested.

Dated: May 22, 2025

MOORADIAN LAW, APC

By: Zorik Mooradian

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