

**PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT AND RELEASE**

This Private Attorneys General Act Settlement Agreement and Release (“Agreement” or “Settlement”) is made by and between Plaintiff Yolanda Cruz Aceves (“Plaintiff”), individually, and on behalf of all other aggrieved employees (the “Aggrieved Employees,” as described below), and as a private attorney general on behalf of the State of California pursuant to Labor Code section 2699, *et seq.*, the California Private Attorneys General Act (“PAGA”) on the one hand, and Defendant Lyons Magnus LLC (“Defendant”), on the other hand. Plaintiff and Defendant are collectively referred to herein as “the Parties.”

This Agreement, and the settlement embodied herein, shall be binding on Plaintiff, the Aggrieved Employees she represents, and Defendant, subject to the approval of the Court.

WHEREAS, on January 8, 2020, Plaintiff filed a class action complaint in the Superior Court of California, Fresno County entitled *Aceves v. Lyons Magnus LLC*, Case No. 20CECG0095 (the “Lawsuit”). On March 13, 2020, Plaintiff filed her First Amended Complaint (“Complaint”) adding a case of action for civil penalties under the California Private Attorneys General Act (“PAGA”). On July 17, 2020, Plaintiff filed an application to dismiss Plaintiff’s claims one through seven against Defendant without prejudice since Plaintiff signed an arbitration agreement with class action waiver. Plaintiff then proceeded with a single cause of action for civil penalties under PAGA. Even though the Lawsuit asserts representative claims for civil penalties payable to herself, other aggrieved employees, and the State of California pursuant to PAGA, based on allegations that Defendant: (1) failed to pay minimum and regular rate wages; (2) failed to pay overtime compensation; (3) failed to provide meal periods; (4) failed to authorize and permit rest breaks; (5) failed to timely pay final wages at termination; (6) failed to furnish accurate itemized wage statements, and (7) failed to reimburse necessary business expenses, the Parties intent is to limit this Agreement to allegations that Defendant: (1) failed to pay the correct rate for unpaid double-time compensation; (2) failed to pay meal premiums at the correct regular rate of compensation; and (3) all claims under PAGA associated with any and all claims for unpaid double-time compensation and failure to pay meal premiums at the regular rate of compensation, or any regular rate claim that could have been pled in the Complaint based on the alleged facts, including all and any PAGA penalties arising from such factual predicates, primary rights, or claims (“PAGA Claims”). Specifically, the PAGA Claims are claims asserted or which could have been asserted in the Complaint and both or either of Plaintiff’s PAGA Notices filed with the LWDA, including all PAGA claims associated with unpaid double-time compensation and failure to pay meal premiums at the regular rate of compensation, stated expressly or by implication in both of the PAGA Notices filed with the LWDA or that could have been alleged based on the facts and circumstances associated with all claims for unpaid double-time compensation and failure to pay meal premiums at the regular rate of compensation. The applicable PAGA Notices related to the Lawsuit are attached hereto as **Exhibits A and B**.

WHEREAS, on January 6, 2020, Plaintiff timely sent notice to the LWDA of her intent to pursue representative actions pursuant to PAGA, on behalf of herself, other aggrieved employees, and the State of California as well as on behalf of a group of aggrieved employees. See **Exhibit A**. On August 27, 2021, Plaintiff amended the LWDA Notice to add additional factual and legal basis for sought penalties for meal premiums at the regular rate of compensation. See **Exhibit B**. (the notices by Plaintiff to the LWDA are collectively referred to as the “PAGA Notices” herein).

WHEREAS, during the pendency of the Lawsuit, the Parties conducted significant investigation of the facts and law and engaged in formal and informal discovery exchange prior to mediation. In response to Plaintiff's Counsel's informal discovery requests, Defendant provided Plaintiff's Counsel with information and documents pertaining to Plaintiff and the Aggrieved Employees, and the claims in the Lawsuit, including time punch and payroll data, to provide Plaintiff's counsel the opportunity to investigate Plaintiff's allegations and the PAGA Claims.

WHEREAS, on October 9, 2023, the Parties attended a full day mediation with experienced wage-and-hour mediator Hon. Carl West (Ret.). As a result, the Parties agreed to settle Plaintiff's representative PAGA Claims taking into account all known facts and circumstances including the difficulty of proving some of Plaintiff's PAGA Claims, potential defenses asserted by Defendant, the uncertainty associated with litigation, the risks of significant delay, and numerous potential appellate issues.

WHEREAS, for purposes of this Settlement, the Aggrieved Employees are defined as: "All persons who were employed by Defendant in a non-exempt position in California, and who were paid double-time wages and/or meal break premiums below the applicable correct rate at any time from January 6, 2019, to September 29, 2021."

WHEREAS, for purposes of this Settlement, PAGA Period is defined as the period from January 6, 2019, to September 29, 2021.

WHEREAS, the Parties understand, acknowledge, and agree that this PAGA settlement constitutes a compromise of Plaintiff's PAGA Claims, and that it is the desire and intention of the Parties to effect a final and complete resolution of the PAGA Claims that Plaintiff and the Aggrieved Employees have or may have against Defendant and any parent, subsidiary, affiliate, predecessor or successor, and all agents, employees, contracting parties, joint employers, officers, directors and attorneys thereof (collectively, the "Released Parties"). The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission by Defendant or the Released Parties of any wrongdoing or liability. Specifically, Defendant and the Released Parties deny any liability or wrongdoing of any kind associated with the claims alleged in the Lawsuit and/or the PAGA Notices. Defendant and the Released Parties, among other things, contend that they have complied at all times with the California Labor Code and all applicable California laws.

WHEREAS, the Parties believe and agree that this Agreement provides for a fair, adequate, and reasonable resolution of the PAGA Claims, and have arrived at the settlement after extensive, arms-length negotiations, taking into account all relevant factors, present and potential.

WHEREAS, California Labor Code § 2699(k)(2) requires Court review and approval of any settlement of a civil action filed pursuant to PAGA.

WHEREAS, based on their own independent investigations and evaluations, Defendant and Plaintiff and their respective counsel are of the opinion that the amount and terms of the Settlement are fair, reasonable, and adequate and are in the best interests of the Plaintiff, the Aggrieved Employees, and Defendant in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues. Further, counsel for Plaintiff and the Aggrieved Employees, Moon Law Group, PC, believes that the settlement amount entered into is in the best interests of the

Aggrieved Employees and that the settlement for each Aggrieved Employee is fair, reasonable, and adequate, given the inherent risk of litigation.

WHEREAS, the Parties: (1) believe and agree that this Agreement provides for a fair, adequate, and reasonable resolution of the PAGA Claims, (2) have investigated the facts relevant to this settlement and this Agreement, and all matters pertaining thereto, and (3) have arrived at the settlement through extensive, arms-length negotiations, taking into account all relevant factors, present and potential.

WHEREAS, the Parties recognize that in accordance with Labor Code section 2699(l), Court approval is required in the event of a settlement of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. *See also Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074 (2017) (“PAGA authorizes a representative action without the need for class certification”); *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014) (“a PAGA suit is fundamentally different than a class action” in that PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action); *Williams v. Sup. Ct.*, 3 Cal. 5th 531, 546-47 (2017) (“PAGA does not make other potentially aggrieved employees parties or clients of plaintiff’s counsel, does not impose on a plaintiff or counsel any express fiduciary obligations, and does not subject a plaintiff or counsel to scrutiny with respect to the ability to represent a large class”).

Therefore, in consideration of the promises and agreements contained herein, and to avoid the uncertainty, risks, costs, and delays associated with further litigation, the Parties agree and covenant as follows:

1. **Effective Date.** The effective date (“Effective Date”) of this Agreement shall mean the date of entry of the order of the court approving this Agreement and the PAGA Settlement.

2. **PAGA Released Claims/Effect of Judgment on Aggrieved Employees and LWDA.**

The Parties agree and acknowledge that, to the maximum extent permitted by law, the final judgment entered pursuant to this settlement will bind all those who would be bound by a judgment if the action had been brought by the LWDA, including Plaintiff, the LWDA, and the Aggrieved Employees, with respect to the recovery of civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, *et. seq.* only, against the Released Parties. It is expressly understood and agreed that this settlement only includes a full release of the PAGA Claims asserted in the Lawsuit and both of Plaintiff’s Complaint and/or PAGA Notices filed with the LWDA attached as **Exhibits A and B**, during the time period from January 6, 2019, to September 29, 2021 arising out of the PAGA Claims asserted in the Complaint and/or the PAGA Notices based upon the following: all claims for unpaid double-time compensation and failure to pay meal premiums at the correct regular rate of compensation, or any regular rate claim that could have been pled in the Complaint based on the alleged facts, including all and any PAGA penalties arising from such factual predicates, primary rights, or claims (all of the foregoing are collectively referred to as “Released PAGA Claims”). With the exception of Plaintiff, who will execute an individual settlement that includes a general release of all claims, this settlement shall not impact Aggrieved Employees’ ability to assert claims other than PAGA Claims arising from the alleged foregoing violations of the Labor

Code. Defendant agrees to enter into a separate individual settlement agreement with Plaintiff for general release of her claims in consideration for general release payment ("General Release Payment"). The PAGA Penalty Fund ("PPF") does not include the General Release Payment to Plaintiff.

3. Notice to LWDA. Pursuant to California Labor Code § 2699(k)(2), the Parties shall submit to the LWDA a copy of this Agreement at the same time that the Parties submit it to the Court for approval.

4. No Right to Opt Out. The Parties agree that there is no statutory right for any Aggrieved Employee to opt out or otherwise exclude themselves from the Settlement.

5. PAGA Penalty Fund ("PPF"). Defendant agrees to pay, in accordance with the terms set forth herein, the total sum of \$255,000.00 as the non-reversionary PPF (the "PPF") in full settlement of the Lawsuit. PPF, which represents the total amount payable under this Settlement by Defendant (subject to the Escalator Clause described below), will be allocated as follows:

- a. PAGA Counsel's attorneys' fees and costs request of up to 33.33% (1/3) of the PPF (\$85,000.00) ("PAGA Counsel's Fees") and PAGA Counsel's separate request for reasonable litigation costs incurred in this matter ("PAGA Counsel's Costs") not to exceed \$30,000.00. Defendant will not oppose these requests. To the extent that the Court approves less than the amount of attorney's fees and costs that PAGA Counsel requests, any reduced amount shall revert to the PAGA Fund.
- b. Administration costs estimated not to exceed \$20,000.00 to be paid to the Settlement Administrator ("Administration Costs").
- c. The remainder of the PPF (the "PAGA Fund") after deducting items (a) and (b) shall be designated as PAGA Penalties to be allocated between the LWDA and the Aggrieved Employees pursuant to Labor Code section 2699(i), with 75% paid to the LWDA (the "LWDA PAGA Portion") and 25% paid to the Aggrieved Employees (the "Aggrieved Employees' PAGA Portion") on a pro-rata basis as set forth in Paragraph 6 below.

6. Allocation Adjustment. The Parties agree that should the Court deny approval of the PPF and/or the Net Settlement Amount the Parties agree to renegotiate the allocation of funds in good faith in an effort to obtain approval of the settlement.

7. Allocation and Calculation of the PAGA Penalties. To calculate the amount each Aggrieved Employee will receive based on their individual PAGA Pay Periods (defined as a 14-day period during which an Aggrieved Employee was employed by Defendant), the Aggrieved Employees' PAGA Portion will be divided by the total number of PAGA Pay Periods by all Aggrieved Employees during the PAGA Period and then allocated on a pro rata basis (i.e., according to the PAGA Pay Periods worked by each of the individual Aggrieved Employees during the PAGA Period).

8. Escalator Clause: Prior to the mediation, the Parties exchanged data and estimated that Aggrieved Employees had worked approximately 8,556 compensable pay periods and this

estimate serves as the basis for Plaintiff's accepting the settlement. In the event the number of pay periods worked increases by more than 20%, then the Gross Settlement Amount shall be increased proportionally by the pay periods in excess of 10,267 (which is 20% more than 8,556) multiplied by the per period value or Defendant may modify the applicable end date of the PAGA Period to a date prior to incurring the pro rata increase to keep the maximum pay periods at 10,267 (which is 20% more than 8,556 pay periods)

9. Tax Treatment of Settlement Amounts. With regard to settlement payments to Aggrieved Employees, IRS Form 1099s will be issued by the Settlement Administrator, if applicable. IRS Form 1099s are used for payments of miscellaneous income that is not considered wages, such as the penalty payments at issue in this Settlement. Nothing in this Settlement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Defendant, their counsel and Plaintiff's and the Aggrieved Employees' counsel are not responsible for any employee tax obligations regarding the allocation of the settlement payments. Payment of the portion allocated to PAGA Counsel's fees and costs will be reflected in a Form 1099 to PAGA Counsel, who shall assume full responsibility and liability for the payment of taxes due on such payments.

10. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS OR ITS OWN, INDEPENDENT LEGAL AND TAX ADVISERS FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

11. PAGA Settlement Payment Procedures.

- a. Within 30 calendar days of the Effective Date, Defendant shall deposit the PPF of \$255,000.00 with the Settlement Administrator. Within 30 calendar days of the Effective Date, Defendant shall also provide the Settlement Administrator with a list

of all Aggrieved Employees with each listed employee's full name, last known mailing address, last known telephone number, social security number or employee ID, the actual number of compensable pay periods worked by them during the PAGA Period. The Settlement Administrator shall run all the addresses of Aggrieved Employees through the United States Postal Service NCOA database to obtain current address information and shall skip trace and re-mail all returned, undelivered mail within ten (10) days of receiving notice that a notice was undeliverable.

- b. Within 14 calendar days from the date the PPF has been deposited with the Settlement Administrator as well as the information provided in Paragraph 10 (a), the Settlement Administrator shall:
 - i. Distribute a total of Twenty-Five percent (25%) of the PAGA Fund to the Aggrieved Employees, along with the Notice of PAGA Representative Action Settlement (attached hereto as **Exhibit C**). Aggrieved Employees shall not be required to make claims to receive their share of the PAGA settlement. The payment checks shall be sent to each Aggrieved Employee by U.S. First Class mail to the Aggrieved Employee's last known mailing address with directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to the Settlement Administrator. It will be conclusively presumed that an Aggrieved Employee's individual settlement payment check was received if the payment check has not been returned within thirty (30) days of the original mailing. All uncashed settlement checks shall be sent to Valley Children's Hospital as the designated *cy pres* recipient.
 - ii. Distribute a total of Seventy-Five percent (75%) of the PAGA Fund to the LWDA.
 - iii. Distribute PAGA counsel's fees and costs, as approved by the Court.
 - iv. Distribute payment to itself for services as Settlement Administrator, as approved by the Court.
 - v. Distribute General Release Payment to Plaintiff.
- c. Settlement Checks issued to Aggrieved Employees pursuant to this Agreement will expire one hundred and eighty (180) days from the date they are mailed by the Settlement Administrator. All money represented by uncashed settlement checks shall be sent to Valley Children's Hospital as the designated *cy pres* recipient.
- d. The Parties and their counsel shall not bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

12. Settlement Administrator. The Settlement Administrator shall be responsible for sending notices, calculating settlement payments, preparing all checks and mailings, and complying

with all requirements set forth herein. As noted above, the costs of the Settlement Administrator shall be paid out of the PPF, and the Parties agree to use PHOENIX CLASS ACTION ADMINISTRATION SOLUTION as the Settlement Administrator.

13. Duties of the Parties Related to Approval. Promptly upon execution of this Agreement, Plaintiff shall file her motion for approval of the proposed Settlement and for the entry of an order approving this Settlement as required by Labor Code section 2699(l). The approval motion will request Court approval of the following: (1) the terms of this Agreement, (2) PAGA Counsel's Fees and PAGA Counsel's Costs, (3) payments to Aggrieved Employees and the LWDA, (4) payment to the Settlement Administrator, and (5) Final Judgment. In conjunction with the approval motion, Plaintiff shall submit a proposed Final Judgment to the Court.

14. Interim Stay of Proceedings. The Parties agree to refrain from further litigation of this matter, except such proceedings necessary to implement and obtain Final Judgment.

15. Invalid without Court Approval. In the event this Agreement is not approved by the Court, it shall be deemed null and void, of no force and effect, and of no probative or evidentiary value, and the Parties hereto represent, warrant, and covenant that it will not be used or referred to for any purpose whatsoever. In the event that the Agreement does not become final for any reason, this Agreement shall be null and void and any order entered by the Court in furtherance thereof shall be treated as void ab initio. In such a case, the Parties shall return to the status quo as if they had not entered into this Agreement. The Settlement Administrator will be paid by Defendant for its costs through the date it is notified that the Settlement will not proceed.

16. Non-Admission of Wrongdoing. The Parties agree that this Agreement does not constitute an admission by Defendant or any Released Party, of any of the matters alleged in the Lawsuits or of any violation by any of them of any federal, state or local law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or wrongdoing whatsoever. Neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Plaintiff, Defendant or the Released Parties.

17. Waiver and Amendment. The Parties may not waive, amend, or modify any provision of this Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Agreement will not constitute a waiver of any other provision.

18. Covenants and Representations. Plaintiff represents and warrants he has not assigned or transferred or purported to assign or transfer, to any person or entity, any claim, right, liability, demand, obligation, expense, action, or causes, or portion thereof, or interest therein, which is or may be subject to this Settlement. Plaintiff acknowledges he has read this Settlement, fully understands her rights, privileges, and duties under the Settlement, and enters into this Settlement freely and voluntarily, and without duress. Plaintiff further acknowledges he had the opportunity to consult with her attorney to explain the terms of this Settlement and the consequences of signing this Settlement.

19. Termination of Settlement. If the Court does not approve the Settlement or does not enter judgment as provided for in this Settlement or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or, except as otherwise set forth

herein, if one or more of the terms of the Settlement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within ten (10) days of written notice thereof to elect to terminate the Settlement, in which case the Settlement shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement.

20. Enforcement. The Parties agree that following entry of the Final Judgment, this Agreement shall be enforceable by the Court and the Court shall retain exclusive and continuing jurisdiction of the Lawsuit over all Parties and the Aggrieved Employees to interpret and enforce the terms, conditions, and obligations of the Agreement pursuant to California Code of Civil Procedure section 664.6. In the event that one or more of the Parties to this Settlement institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorney's fees and costs, including expert witness fees incurred in connection with any enforcement actions.

21. Costs and Fees. The Parties shall each bear their own costs, attorneys' fees, expert fees, mediator fees, and other fees incurred in connection with this Settlement, the Action and Plaintiff's claims, except as otherwise set forth specifically herein.

22. Entire Agreement. This Agreement, as well as the separate individual settlement agreement between Defendant and Plaintiff Yolanda Cruz Aceves, contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts and writings prior to the date hereof relating to the subject matters hereof. Any representation, promise or agreement not specifically included in this Agreement shall not be binding upon or enforceable against either Party. This is a fully integrated agreement. No other promises or agreements shall be binding or shall modify this Agreement unless in writing and signed by the Parties, except for the terms of the separate individual settlement agreement between Defendant and Plaintiff Yolanda Cruz Aceves.

23. Severability. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Agreement that can be given effect without the invalid provisions or application, and to this end, the provisions of this Agreement are declared to be severable. Notwithstanding the foregoing, no portion of any release contained herein may be deemed severed or deleted from this Agreement, except upon waiver in writing by the applicable Released Party.

24. No Construction Against the Drafter. Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party on the basis that the Party was the drafter.

25. Choice of Law. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California without regard to principles of conflict of laws.

26. Counterparts. This Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

27. Plaintiff and her counsel will keep the operative complaint, PAGA letters and this settlement confidential through final approval by the Court. Thereafter, Plaintiff and her counsel will further agree to keep this settlement, operative complaint(s) and the PAGA letters confidential, including without limitation no disclosures to current or former employees of the Released Parties, to the media, or on any websites, blogs, social media, and/or online platforms. Exceptions to the obligation of confidentiality in this section are: (i) disclosures necessary to comply with the law, judicial process, or for financial planning or tax preparation purposes; (ii) to obtain and seek approval of this settlement in court and as is necessary to provide settlement information to Aggrieved Employees, and (iii) if any party seeks to enforce any term or condition of this Agreement against any other party. Nothing herein shall prevent Plaintiff's counsel from disclosing this settlement for purposes of describing their qualifications as counsel in other cases or as required by a court, nor shall any terms herein preclude Plaintiff's Counsel from communicating with and fulfilling its obligations to Aggrieved Employees.

28. Cooperation. Each Party, on behalf of themselves, and their respective business entities, heirs, executors, and assigns, agrees that they will abide by this Agreement and will do all such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to carry out the stated objectives of this Agreement.

29. Contingent Upon Execution of Individual Settlement. This Agreement is contingent upon the execution by Plaintiff of an Individual Settlement Agreement and General Release.

Dated: 1/26/2024

DocuSigned by:



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Plaintiff Yolanda Cruz Aceves

Dated: 02 / 08 / 2024



Defendant Lyons Magnus LLC

By: Ellie Obregon

Its: Vice President, Human Resources

APPROVED AS TO FORM AND CONTENT:

Dated: 1/26/2024

MOON LAW GROUP, PC

By: _____
Kane Moon
Lilit Ter-Astvatsatryan

Attorneys for Plaintiff Yolanda Cruz Aceves, and
Aggrieved Employees

Dated:

SAGASAR, WATKINS & WIELAND, PC

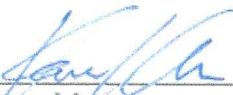
By: _____
Ian Wieland
David Litman

Attorneys for Defendant Lyons Magnus LLC

APPROVED AS TO FORM AND CONTENT:

Dated: 1/26/2024

MOON LAW GROUP, PC

By: 
Kane Moon
Lilit Ter-Astvatsatryan

Attorneys for Plaintiff Yolanda Cruz Aceves, and
Aggrieved Employees

Dated: 2-8-2024

SAGASAR, WATKINS & WIELAND, PC

By: 
Ian Wieland
David Litman

Attorneys for Defendant Lyons Magnus LLC

Exhibit A

MOON & YANG, APC

ATTORNEYS AT LAW
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Kane Moon, Esq.
kane.moon@moonyanglaw.com

January 6, 2020

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL

Lyons Magnus, LLC
3158 E. Hamilton Avenue
Fresno, CA 93702

Notice of Labor Code Violations and PAGA Penalties

Re: *Yolanda Cruz Aceves v. Lyons Magnus, LLC*

To Whom It May Concern:

Please be advised that my office has been retained by Yolanda Cruz Aceves ("Plaintiff") to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, Lyons Magnus, LLC. ("Defendant"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant's aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of herself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the "Aggrieved Employees").

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

LWDA
Notice of Labor Code Violations and PAGA
January 6, 2020
Page 2 of 8

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Fresno County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiff worked for Defendant as a quality control employee from approximately January 2019 to November 2019, primarily in Fresno County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 to 7 days per workweek, and approximately 12 hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the time period involved in this case, Defendants maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees the correct amount of overtime pay in compliance with California law by failing to include all applicable remuneration in calculating the regular rate of pay. Throughout the statutory period, Plaintiff and the Aggrieved Employees worked more than 8 hours in a workday and more than 40 hours in a workweek. In addition, Plaintiff and the Aggrieved Employees earned non-discretionary bonuses. Defendants, however, did not include these bonuses when calculating Plaintiff and the Aggrieved Employees' regular rate of pay when paying them for overtime wages, instead paying Plaintiff and the Aggrieved Employees an overtime rate that was only based on their base hourly wage. On information and belief, Defendants' failure to pay Plaintiff overtime correctly was a result of its policy and

LWDA
Notice of Labor Code Violations and PAGA
January 6, 2020
Page 3 of 8

practice failing to include all applicable remuneration in calculating the regular rate of pay when paying overtime to Plaintiff and the Aggrieved Employees. Further, Plaintiff and the Aggrieved Employees informed and believes, and thereon allege that Defendants failed to pay overtime wages and double-time wages for all hours worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

LWDA
Notice of Labor Code Violations and PAGA
January 6, 2020
Page 4 of 8

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further, Defendant did not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of each work period. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records

LWDA
Notice of Labor Code Violations and PAGA
January 6, 2020
Page 5 of 8

showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

LWDA
Notice of Labor Code Violations and PAGA
January 6, 2020
Page 6 of 8

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees." (Lab. Code § 226(e)(1).)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

LWDA
Notice of Labor Code Violations and PAGA
January 6, 2020
Page 7 of 8

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
6. Labor Code § 226 by failing to provide accurate itemized wage statements.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, as indicated on the first page.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

LWDA
Notice of Labor Code Violations and PAGA
January 6, 2020
Page 8 of 8

Sincerely,

MOON & YANG, APC

A handwritten signature in blue ink, appearing to read 'Kane Moon', is written over the printed name.

Kane Moon
Attorney at Law

Exhibit B

MOON & YANG, APC

ATTORNEYS AT LAW
WWW.MOONYANGLAW.COM

1055 W. SEVENTH ST., SUITE 1880
LOS ANGELES, CALIFORNIA 90017
TELEPHONE: (213) 232-3128
FACSIMILE: (213) 232-3125

Kane Moon, Esq.
kane.moon@moonyanglaw.com

August 27, 2021

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL

Lyons Magnus, LLC
3158 E. Hamilton Avenue
Fresno, CA 93702

AMENDED Notice of Labor Code Violations and PAGA Penalties

Re: *Yolanda Cruz Aceves v. Lyons Magnus, LLC*
Case No. LWDA-CM-764754-20

To Whom It May Concern:

Please be advised that my office has been retained by Yolanda Cruz Aceves (“Plaintiff”) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, Lyons Magnus, LLC. (“Defendant”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of herself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

LWDA
Notice of Labor Code Violations and PAGA
August 27, 2021
Page 2 of 8

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Fresno County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiff worked for Defendant as a quality control employee from approximately January 2019 to November 2019, primarily in Fresno County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 to 7 days per workweek, and approximately 12 hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the time period involved in this case, Defendants maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees the correct amount of overtime pay in compliance with California law by failing to include all applicable remuneration in calculating the regular rate of pay. Throughout the statutory period, Plaintiff and the Aggrieved Employees worked more than 8 hours in a workday and more than 40 hours in a workweek. In addition, Plaintiff and the Aggrieved Employees earned non-discretionary bonuses and shift differentials. Defendants, however, did not include these bonuses and shift differentials when calculating Plaintiff and the Aggrieved Employees' regular rate of pay when paying them for overtime

LWDA

Notice of Labor Code Violations and PAGA

August 27, 2021

Page 3 of 8

wages and double-time wages, instead paying Plaintiff and the Aggrieved Employees an overtime rate and double time rate that was only based on their base hourly wage. On information and belief, Defendants' failure to pay Plaintiff overtime and double time correctly was a result of its policy and practice failing to include all applicable remuneration in calculating the regular rate of pay when paying overtime and double time to Plaintiff and the Aggrieved Employees. Further, Plaintiff and the Aggrieved Employees informed and believes, and thereon allege that Defendants failed to pay overtime wages and double-time wages for all hours worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Throughout the time period involved in this case, Defendants maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees the correct amount of meal break premiums in compliance with California law by failing to include all applicable remuneration in calculating the regular rate of pay. Defendants did not include bonuses and shift differentials when calculating Plaintiff and the Aggrieved Employees' regular rate of pay when paying them meal premium pay, instead paying Plaintiff and the Aggrieved Employees a rate that was only based on their base hourly wage. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the

LWDA
Notice of Labor Code Violations and PAGA
August 27, 2021
Page 4 of 8

Aggrieved Employees were taking their required meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Throughout the time period involved in this case, Defendants maintained a policy and practice of failing to pay Plaintiff and the Aggrieved Employees the correct amount of rest break premiums in compliance with California law by failing to include all applicable remuneration in calculating the regular rate of pay. Defendants did not include bonuses and shift differentials when calculating Plaintiff and the Aggrieved Employees' regular rate of pay when paying them meal premium pay, instead paying Plaintiff and the Aggrieved Employees a rate that was only based on their base hourly wage. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further, Defendant did not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of

LWDA
Notice of Labor Code Violations and PAGA
August 27, 2021
Page 5 of 8

each work period. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

LWDA
Notice of Labor Code Violations and PAGA
August 27, 2021
Page 6 of 8

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be

LWDA

Notice of Labor Code Violations and PAGA

August 27, 2021

Page 7 of 8

aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” (Lab. Code § 226(e)(1).)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant’s failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;

LWDA

Notice of Labor Code Violations and PAGA

August 27, 2021

Page 8 of 8

3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
6. Labor Code § 226 by failing to provide accurate itemized wage statements.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, as indicated on the first page.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

MOON & YANG, APC



Kane Moon
Attorney at Law

Exhibit C

NOTICE OF PAGA ACTION SETTLEMENT*Aceves v. Lyons Magnus LLC, Fresno County Superior Court Case No. 20CECG0095**This is not a solicitation by a lawyer. You are not being sued.*

IF YOU ARE OR WERE EMPLOYED AS A NON-EXEMPT EMPLOYEE BY DEFENDANT LYONS MAGNUS LLC (“DEFENDANT”) DURING THE PAGA PERIOD (JANUARY 6, 2019, TO SEPTEMBER 29, 2021), THIS PAGA SETTLEMENT AFFECTS YOUR RIGHTS.

A settlement (the “Settlement”) has been reached in the lawsuit entitled *Aceves v. Lyons Magnus LLC, Fresno County Superior Court Case No. 20CECG0095* (the “Action”), asserting claims under the Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.* (“PAGA”). The purpose of this Notice is to advise you as to why you have received a portion of the Settlement proceeds. The Settlement resolves the Action.

Who is affected by this proposed Settlement?

The Court has designated, for settlement purposes only, the following persons as “Aggrieved Employees”:

All non-exempt employees employed by Defendant in California at any time during the PAGA Period (the “PAGA Period” refers to the period of January 6, 2019, to September 29, 2021).

According to Defendant’s records, you are one of the Aggrieved Employees.

What is this case about?

In the Action, Plaintiff Yolanda Cruz Aceves (“Plaintiff”) asserted claims that Defendant violated provisions of the Labor Code giving rise to civil penalty liability under the Labor Code Private Attorneys General Act of 2004 (“PAGA”) [Lab. Code § 2699, *et seq.*].

Defendant denied all liability and was confident that it had strong legal and factual defenses to these claims, but Defendant recognized the risks, distractions, and costs associated with continued litigation.

This Settlement is a compromise reached after good faith, arm’s-length negotiations between Plaintiff and Defendant (the “Parties”), through their attorneys and is not an admission of liability on the part of Defendant.

The Court has not ruled on the merits of Plaintiff’s claims or Defendant’s defenses but did approve the Settlement.

What are the Settlement terms?

Defendant will pay **\$255,000.00** (the “Gross Settlement Amount”) for: (a) payment of \$----- to the Labor and Workforce Development Agency (“LWDA”) as its 75% share of PAGA penalties; (b) payment of \$----- to Aggrieved Employees as their 25% share of PAGA penalties, (c) payment of attorney’s fees of **\$85,000.00** and litigation costs of **\$30,000.00**; and, (d) payment of administration costs of **\$20,000.00** to the Settlement Administrator.

By operation of the Settlement’s terms, it is expressly understood and agreed that this settlement only includes a full release of the PAGA Claims asserted in the Lawsuit and both of Plaintiff’s Complaint and/or PAGA Notices filed with the LWDA, during the time period from January 6, 2019, to September 29, 2021 arising out of the PAGA Claims asserted in the Complaint and/or the PAGA Notices based upon the following: all claims for unpaid double-time compensation and failure to pay meal premiums at the regular rate of compensation, or any regular rate claim that could have been pled in the Complaint based on the alleged facts, including all and any PAGA penalties arising from such factual predicates, primary rights, or claims (all of the foregoing are collectively referred to as “Released PAGA Claims”).

The Settlement Payments to Aggrieved Employees are classified as other miscellaneous income and will be reported on IRS Form 1099-MISC, if required.¹ Your share was calculated based on the number of pay periods you worked for Defendant during the PAGA Period.

All checks will remain valid and negotiable for one hundred eighty (180) days from the date of the checks’ issuance and shall thereafter automatically be void if not cashed within that time. Uncashed checks will be sent to the approved *cy pres* recipient Valley Children’s Hospital.

¹ One hundred percent (100%) of your Individual PAGA Payment under this Settlement will be considered penalties, and may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors as to the tax consequences, if any, of your individual PAGA payment. Neither Plaintiff nor Defendant has made any representations or warranties regarding the taxation of your Individual PAGA payment. Nothing within this notice or any other communication shall constitute or be construed or relied upon as tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended).

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.