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REHANA BALUCH

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER**

SHIRLEY GOEMAAT and REHANA BALUCH,
individually, and on behalf of all others similarly
situated,

Plaintiff,

vs.

ORANGE COUNTY ASSOCIATION FOR
MENTAL HEALTH, a California Corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No.: 30-2019-01106371-CU-BT-CXC

*[Assigned for all purposes to the Hon. Peter
Wilson, Dept. CX101]*

COMPLEX CLASS ACTION

**DECLARATION OF TARAS KICK IN
SUPPORT OF UNOPPOSED MOTION FOR
FINAL APPROVAL OF CLASS AND PAGA
ACTION SETTLEMENT**

Date: December 22, 2022
Time: 2:00 p.m.
Dept: CX101

Complaint filed: October 21, 2019
FAC filed: June 12, 2021
Trial date: None set

1 I, Taras Kick, declare:

2 1. I am an attorney licensed to practice before all courts of the State of California and a
3 shareholder with The Kick Law Firm, APC. The following is based on my personal knowledge, and, if
4 called as a witness, I could and would testify competently thereto.

5 2. I have been a member of the California State Bar since 1989, the year I graduated from the
6 University of Pennsylvania Law School. Prior to that, in 1986, I graduated from Swarthmore College,
7 from which I earned a Bachelor of Arts degree in Economics and Psychology. I have served as class
8 counsel in numerous national and California state class actions, including being appointed lead counsel
9 and a member of plaintiffs' executive committees. From 2012 to September 2017, I was a Commissioner
10 of the California Law Revision Commission, an independent state agency created by statute in 1953 to
11 assist the Legislature and Governor by examining California law and recommending needed reforms,
12 having been appointed by Governor Edmund G. Brown Jr. in 2012, and was Chairperson of the
13 Commission from September 2015 through September 2016 (although my role in this case is independent
14 of any aspect of my duties with the Commission and does not reflect one way or the other any positions
15 of the Commission). For over five years I was a member of the national Board of Directors of Public
16 Justice, including its Class Action Preservation Committee. I am or have been a member of numerous
17 other committees pertaining to consumer class actions, including the American Association for Justice
18 Class Action Litigation Sub-Group; the Consumer Attorneys of California Class Action Group; the
19 American Bar Association Committee on Class Actions & Derivative Suits; and, the State Bar of
20 California Antitrust and Unfair Competition Litigation section. The Kick Law Firm, APC primarily
21 represents plaintiffs in wage and hour and consumer class actions.

22 3. The class action cases in which this firm has been appointed either as lead counsel, or as
23 co-lead counsel, include the following: *Eaton v. Cavalia (USA) Inc., et al.*, San Francisco County Superior
24 Court, Case No. CGC-19-579421, assigned to Richard B. Ulmer (class and representative PAGA action,
25 final approval granted November 21, 2022); *Johnson v. Randy Taylor Consulting, LLC, et al.*, Los Angeles
26 County Superior Court Case No. 21SMCV00156, assigned to Hon. Helen Zukin, SSC-207 (class and
27 representative PAGA action, final approval granted November 2, 2022); *In Re Southern California Gas*

1 *Leak Cases*, Judicial Council Coordinated Proceeding No. 4861, assigned to Hon. Daniel J. Buckley,
2 Coordination Trial Judge, Dept. SSC-1 (co-lead counsel and member of the class action steering
3 committee, final approval granted April 29, 2022); *Samano v. Deleons Transport Inc.*, Los Angeles
4 County Superior Court, Case No. 19STCV44589, assigned for all purposes to Hon. Elihu M. Berle (class
5 and representative PAGA action; final approval granted January 22, 2022); *Johnson, et al., v. Angel View*,
6 San Bernardino County Superior Court, Case No. CIVDS1935378 (class and representative PAGA action;
7 final approval granted November 18, 2021); *Imperial Wage And Hour Cases*, San Bernardino County
8 Superior Court, Case No. JCPDS5130 (class and representative PAGA action; final approval granted
9 November 2, 2021); *Metzke v. Thermo Fisher Scientific, Inc.*, San Francisco County Superior Court, Case
10 No. CGC-19-581914 (class and representative PAGA action; final approval granted October 28, 2021);
11 *Story v. SEFCU*, United States District Court for the Northern District of New York, Case No. 1:18-cv-
12 00764 (an overdraft fee class action, final approval granted on February 25, 2021); *Daves, et al. v.*
13 *Amadeus Waterawys, Inc.*, Los Angeles County Superior Court, Case No. 19STCV25203, assigned for all
14 purposes to Hon. Ann I. Jones (wage & hour class action; final approval granted January 8, 2021); *Smith*
15 *v. Bank of Hawaii*, United States District Court for the District of Hawaii, Case No. 1:16-cv-00513 (an
16 overdraft fee class action, final approval granted on December 22, 2020); *Coleman-Weathersbee v.*
17 *Michigan State University Federal Credit Union*, United States District Court for the Eastern District of
18 Michigan, Case No. 2:19-cv-11674 (an overdraft fee class action, final approval granted on July 29, 2020);
19 *Walker v. People's United Bank*, United States District Court for the District of Connecticut, Case No.
20 3:17-cv-00304 (an overdraft fee class action, final approval granted on June 29, 2020); *Salls v. Digital*
21 *Federal Credit Union*, United States District Court for the District of Massachusetts, Case. No. 18-cv-
22 11262-TSH (an overdraft fee class action, final approval granted in January 2020); *Pingston-Poling v.*
23 *Advia Credit Union*, United States District Court for the Western District of Michigan, Case No. 1:15-
24 CV-1208 (an overdraft fee class action, final approval granted in January 2020); *Lloyd v. Navy Federal*
25 *Credit Union*, United States District Court for the Southern District of California, Case No. 3:17-cv-01280
26 (an overdraft fee class action, final approval granted May 18, 2019); *Ketner v. SECU Maryland*, Civil
27 No.:1:15-CV-03594-CCB (D. MD. 2017) (an overdraft fee class action, final approval granted January

11, 2018); *Towner v. 1st MidAmerica Credit Union*, No. 3:15-cv-1162 (S.D. Ill. 2017) (an overdraft fee class action, final approval granted in November 2017); *Lane v. Campus Federal Credit Union*, Case No. 3:16-cv-00037 (M.D. La. 2017) (an overdraft fee class action, final approval granted in August 2017); *Fry v. MidFlorida Credit Union*, United States District Court for the Middle District of Florida, Case No. 8:15-CV-2743 (an overdraft fee class action, final approval granted); *Ramirez v. Baxter Credit Union*, United States District Court for the Northern District of California, Case No. 16-cv-03765-SI (an overdraft fee class action, final approval granted); *Lynch v. San Diego County Credit Union*, San Diego County Superior Court, Case No. 37-2015-00008551 (an overdraft fee class action, final approval granted); *Gunter v. United Federal Credit Union*, United States District Court for the District of Nevada, Case No. 3:15-cv-00483-MMD-WGC (an overdraft fee class action, final approval granted); *Hernandez v. Point Loma Credit Union*, San Diego County Superior Court, Case No. 37-2013-00053519 (an overdraft fee class action, final approval granted); *Gray v. Los Angeles Federal Credit Union*, Los Angeles County Superior Court, Case No. BC625500 (an overdraft fee class action, final approval granted in); *Morales v. Kern Schools Federal Credit Union*, Kern County Superior Court, Case No. BCV-15-100538 (an overdraft fee class action, final approval granted in June 2017); *Manwaring v. Golden 1 Credit Union*, Sacramento County Superior Court, Case No. 34-2013-00142667 (an overdraft fee class action, final approval granted); *Casey v. Orange County Credit Union*, Orange County Superior Court No. 30-2013-00658493-CJ-BT-CXC (an overdraft fee class action, final approval granted); *Sewell v. Wescom Credit Union*, Los Angeles County Superior Court No. BC5860 (an overdraft fee class action, final approval granted); *Fernandez v. Altura Credit Union*, Riverside County Superior Court, Case No. RIC1610873 (an overdraft fee class action, final approval granted); *Hernandez v. Logix Federal Credit Union*, Los Angeles County Superior Court, Case No. BC628495 (an overdraft fee class action, final approval granted); *Bowens v. Mazuma Federal Credit Union*, United States District Court for the Western District of Missouri, Case No. 15-00758-CV-W-BP (an overdraft fee class action, final approval granted); *Santiago v. Meriwest Credit Union*, Sacramento County Superior Court, Case No. 34-2015-00183730 (an overdraft fee class action, final approval granted); *Howard v. Sage Software*, Los Angeles County Superior Court Case No. BC487140 (final approval granted); *Kirtley v. Wadekar*, United States District Court for the

1 District of New Jersey, Case No. 05-5383 (final approval granted); *Pereyra v. Mike Campbell &*
2 *Associates*, Los Angeles County Superior Court Case No. BC365631 (final approval granted); *Alston v.*
3 *Pacific Bell*, Los Angeles County Superior Court Case No. BC297863 (final approval granted); *Oshaben*
4 *v. Monster Worldwide, Inc.*, et al., San Francisco County Superior Court Case No. CGC-06-454538 (final
5 approval granted); *Cole v. T-Mobile USA, et al.*, Central District of California Case No. 06-6649 (final
6 approval granted).

7 4. Other attorneys at The Kick Law Firm, APC (“TKLF”) who worked on this matter include
8 Roy Suh, who was admitted to the California Bar in 2012 and since then has practiced exclusively in
9 plaintiffs’ employment and consumer cases and is very experienced in California wage and hour class
10 action litigation. Another TKLF attorney who worked on this matter is Karen Wallace, who was admitted
11 to the California Bar in 2010 and who since then has practiced exclusively in plaintiffs’ employment and
12 consumer cases. Another TKLF attorney who worked on this matter is Greg Taylor, a 2016 graduate of
13 UCLA School of Law who has represented plaintiffs in employment actions for approximately five years
14 before joining TKLF in 2022.

15 5. My hourly rate is \$900 an hour and has been approved by multiple courts across the
16 country, including recently in *In Re Southern California Gas Leak Cases*, Judicial Council Coordinated
17 Proceeding No. 4861, assigned to Hon. Daniel J. Buckley, Coordination Trial Judge, Dept. SSC-1 (co-
18 lead counsel and member of the class action steering committee, final approval granted April 29, 2022);
19 *Johnson v. Randy Taylor Consulting, LLC, et al.*, Los Angeles County Superior Court Case No.
20 21SMCV00156, assigned to Hon. Helen Zukin, Dept. SSC-207 (lead counsel for the class; final approval
21 granted November 2, 2022); and, *Eaton v. Cavalia (USA) Inc., et al.*, San Francisco County Superior
22 Court, Case No. CGC-19-579421, assigned to Richard B. Ulmer (lead counsel for the class; final approval
23 granted November 21, 2022). The other attorneys being included in the firm’s lodestar have also been
24 approved at the rates being presented in this motion.

25 6. To date, the lodestar of The Kick Law Firm, APC, in this matter is approximately \$186,290
26 after reductions for professional billing judgment, with a total of 282.6 hours expended by TKLF. This
27 includes 10.4 hours billed by me (which is after reduction based on billing judgment) at the rate of \$900

per hour; 178.3 hours for attorney Roy Suh, 44.5 hours for attorney Karen Wallace, and 49.4 hours for attorney Greg Taylor, all at \$650 per hour.

7. Based on my personal knowledge and review of case records in this matter, below is a summary and categorization of the hours expended in the prosecution of this case as follows:

<u>Task</u>	<u>Attorney Time</u>
Pre-suit investigation, Factual Development, Client Meetings and Correspondence <i>Researched potential causes of action; researched potentially applicable laws and regulations; researched CA state law; prepared letter to LWDA; internal correspondence</i>	TK – 1.5 RS – 47.8 KW – 0 GT – 0
Strategy, Case Analysis, Class Counsel Conferences and Status Conferences <i>Strategy meetings internally at the firm and with the proposed class representative throughout the case; meet and confer with opposing counsel in advance of case management conference; preparing and filing case management conference statements</i>	TK – 0.4 RS – 6.9 KW – 1 GT – 3.1
Pleadings <i>Researched, drafted, and edited complaint and amended complaint; related correspondence with client; providing notice of case reassignment</i>	TK – 3.2 RS – 23.1 KW – 0 GT – 0
Discovery <i>Internal correspondence re discovery; reviewed defendant's discovery requests; correspondence with class representative re discovery requests; drafting discovery responses; conferred re responses; requested, checked and analyzed timekeeping and payroll records produced by Defendant</i>	TK – 0.5 RS – 36.8 KW – 0 GT – 0
Settlement <i>Coordinated settlement strategy; engaged in settlement discussions with opposing counsel; prepared for and engaged in private mediation; negotiated and finalized settlement agreement and all associated documentation</i>	TK – 2 RS – 63.7 KW – 12.7 GT – 2.1

<u>Task</u>	<u>Attorney Time</u>
Preliminary Approval <i>Drafted motion for preliminary approval of class action settlement, accompanying declarations, and proposed order</i>	TK – 2.3 RS – 0 KW – 30.5 GT – 21.3
Class Notice <i>Worked with notice administrator to develop notice plan; drafted notices; oversaw notice process.</i>	TK – 0 RS – 0 KW – 0.3 GT – 2.1
Final Approval, Settlement Execution, Distribution of Common Fund (Estimated) <i>Prepare motion for final approval and all supporting declarations; related correspondence with class representative and administrator; prepare for and attend final approval hearing, work with settlement administrator to ensure proper distribution of funds to class members and PAGA members, prepare any post-final approval motions.</i>	TK – 0.5 RS – 0 KW – 0 GT – 20.8 (including 2 hours anticipated)
Totals	282.6 hours

8. The above hours and corresponding rates for each attorney at The Kick Law Firm, APC, including a reduction of hours for business judgment reasons, are broken down as follows:

Name	Hours	Rate	Total
Taras Kick (“TK”)	10.4	\$900	\$9,360
Roy Suh (“RS”)	178.3	\$650	\$115,895
Karen Wallace (“KW”)	44.5	\$650	\$28,925
Greg Taylor (“GT”)	49.4	\$650	\$32,110
TOTAL			\$186,290

9. Further, substantial non-attorney staff at The Kick Law Firm, APC worked on this matter, including in a paralegal capacity, which I can estimate if requested. None of that time is included in the firm’s lodestar, and I estimate it at over 20 hours to date. Additionally, and based on past experience, I know I personally will incur additional time in connection with this matter, including preparing for and appearing at the final approval hearing; post-final approval document review; potentially fielding

1 questions from class members; and, working with the settlement administrator. It is my best estimate this
2 will be about another 10 hours of my time.

3 10. In addition to the above, paragraphs 10 through 18 further describe the work done by
4 attorneys at The Kick Law Firm, APC leading up to the present. First, prior to the filing of the complaint,
5 there was initial investigation of the claims alleged and conducted extensive legal research regarding
6 Defendant's potential liability and defenses; and communications with class representative Shirley
7 Goemaat before filing the complaint, including working with her to gather documents and information. In
8 addition, on February 7, 2020, Plaintiff Goemaat provided notice to the Labor and Workforce
9 Development Agency ("LWDA") and Defendant, pursuant to the California Labor Code Private Attorneys
10 General Act of 2004 ("PAGA"), alleging Defendant violated various provisions of the California Labor
11 Code and IWC Wage Orders. A true and correct copy of this LWDA Notice dated February 7, 2020, and
12 confirmation of submission to the LWDA are attached as **Exhibit 3**.

13 11. Plaintiff Goemaat filed this action on October 21, 2019, and Defendant Orange County
14 Association for Mental Health ("Defendant") filed its Answer on January 17, 2020. On June 12, 2020,
15 Plaintiff amended the pleadings, with the filing of a First Amended Complaint ("FAC"), which added
16 Plaintiff Rehana Baluch as a proposed class representative and added a cause of action under PAGA.
17 Defendant has denied, and continues to deny, any liability and wrongdoing of any kind associated with
18 any of the allegations in the Action.

19 12. The investigation and discovery conducted in this matter have been adequate to give the
20 Plaintiffs and Class Counsel a sound understanding of the merits of their position, Defendant's defenses,
21 and to evaluate the reasonable value range of the claims of the Class. Counsel for the Parties used the pre-
22 mediation time period to investigate the veracity, strength, and scope of the claims, and also to prepare
23 the matter for class certification and trial.

24 13. The Parties engaged in formal discovery, and Class Counsel prepared and propounded on
25 Defendant interrogatories, requests for admissions, and production demands. In addition to formal
26 requests for production of documents, the Parties engaged in substantial informal discovery, which Class
27 Counsel used to evaluate the value of the claims. Defendant's production included relevant timekeeping
and payroll records for 56 randomly selected putative Class Members employed by Defendant during the

1 period from October 2015 to October 2020. Employee handbooks and other documents pertaining to
2 written policies and procedures were also produced.

3 14. Review of all records confirmed substantial violations, including Defendant's systemic
4 failure to record all hours worked. Defendant's violative policies and procedures are evidenced by the
5 uniformity of Defendant's virtually error-free timekeeping and payroll records. Class Counsel carefully
6 considered the class claims at issue and its analysis of violation rates for Defendant's sample of time and
7 payroll data based on facially violative policies. Based on the information gathered, including these
8 damages calculations, Class Counsel estimated the recovery the Class could potentially obtain, if Plaintiffs
9 were to prevail.

10 15. Based on good faith meet and confer efforts, the Parties agreed to proceed to mediation
11 with Steve Mehta, Esq., a well-respected and experienced mediator. On October 20, 2020, the Parties
12 attended a full-day, private mediation with Mr. Mehta. Given the contentious negotiations and the disputed
13 claims, the matter was not resolved that day. Thereafter, the Parties engaged in further negotiations, with
14 Mr. Mehta's assistance, which ultimately resulted in the proposed Settlement. On or about March 4, 2022,
15 the parties signed a settlement agreement, under which Defendant agreed to pay a gross settlement amount
16 of \$175,000.00 into a settlement fund. The Settlement is one which I believe is fair, adequate, and
17 reasonable, and in the best interest of the class members. Attached as **Exhibit 1** is a true and correct copy
18 of the fully executed Settlement Agreement.

19 16. On March 24, 2022, Plaintiffs filed an Unopposed Motion for Preliminary Approval of
20 Class Action Settlement ("MPA"), which was before this Court on May 5, 2022, and again on June 9,
21 2022. Following the hearing on May 5, 2022, the Parties made revisions as requested by the Court,
22 including amending the Settlement Agreement to clarify the release provisions. Following the hearing on
23 June 9, 2022, additional briefing and revisions were completed as the Court requested in its Order dated
24 June 9, 2022. Attached as **Exhibit 2** is a true and correct copy of the Amendment to the Settlement
25 Agreement.

26 17. On August 5, 2022, the Court entered the Order Granting Plaintiffs' Motion for Preliminary
27 Approval of Class Action and PAGA Settlement ("Preliminary Approval Order"), preliminarily approving

the terms of the Settlement Agreement, the Class Notice, and the proposed administration procedures and associated deadlines.

18. Thereafter, Plaintiffs drafted the concurrently filed Motion for Final Approval; and worked with the settlement administrator and opposing counsel on class notice and settlement administration issues.

19. The Kick Law Firm, APC undertook this case on a contingent basis, with the understanding that it would not be compensated for our efforts unless the case was successful. To date, TKLF has not been paid for any of its time spent on this matter. The time spent on this matter by the firm's attorneys has required considerable work that could have, and would have, been spent on other billable matters. As a result of having accepted and been devoted to this case, it is my informed belief this law firm wound up not representing parties in cases it otherwise would have, and which in my opinion would have compensated this firm at its hourly rates requested here.

20. The Kick Law Firm, APC is the only Class Counsel in this case, so there is no fee sharing.

21. The Parties are not aware of any other cases that may be impacted by the Settlement.

22. Class Counsel requests reimbursement of \$11,655.84 for actual costs advanced and necessarily incurred in connection with the prosecution and settlement of the Action to date, which is less than the "not to exceed" cost represented in the notice to Class Members as \$15,000. All of these out of these pockets were reasonably and necessarily incurred to pursue this Action and are detailed below:

Date	Vendor	Amount
10/15/2019	USPS Certified Mail	\$2.00
11/27/2019	GSO tracking 547104295	\$20.00
11/29/2019	Orange County Superior Court (Document Download)	\$7.50
2/7/2020	LWDA (PAGA fee)	\$75.00
2/21/2020	GSO tracking 547104295	\$20.00
5/20/2020	First Legal (complaint filing)	\$1,605.50
5/29/2020	One Legal	\$15.20
5/29/2020	One Legal	\$36.86
6/3/2020	One Legal	\$20.66
6/3/2020	Orange County Superior Court (Document Download)	\$20.00
6/12/2020	One Legal	\$15.20

7/1/2020	Orange County Superior Court (Document Download)	\$7.50
7/3/2020	One Legal	\$15.20
7/21/2020	CourtCall	\$94.00
8/4/2020	Mediator Steve Mehta inv#16514	\$7,500.00
8/5/2020	One Legal	\$15.20
8/5/2020	One Legal	\$12.95
12/3/2020	One Legal	\$14.20
12/3/2020	One Legal	\$12.20
3/25/2021	Mediator Steve Mehta inv#17053	\$1,560.00
4/28/2021	CourtCall	\$94.00
5/17/2021	CourtCall	\$94.00
8/13/2021	One Legal	\$14.67
2/3/2022	Orange County Superior Court (Document Download)	\$7.50
3/3/2022	CaseAnywhere	\$10.25
3/3/2022	CourtCall	\$94.00
5/14/2022	First Legal	\$11.00
7/13/2022	First Legal	\$77.00
7/13/2022	First Legal	\$11.00
7/13/2022	First Legal	\$11.00
7/19/2022	American Language Services Translation (notice)	\$95.00
10/9/2022	First Legal	\$11.00
10/9/2022	First Legal	\$11.00
10/9/2022	First Legal	\$11.00
10/9/2022	First Legal	\$11.00
10/9/2022	First Legal	\$1.25
11/1/2022	First Legal	\$11.00
11/1/2022	First Legal	\$11.00
	Total	\$11,655.84

23. As evidenced by their concurrently filed declarations, the proposed class representatives Shirley Goemaat and Rehana Baluch are typical of the settlement classes. They were employed by Defendant during the Class Period and were subject to the same uniform policies and procedures with respect to timekeeping and payroll that resulted in the alleged wage and hour violations. Moreover, Plaintiffs' interests are essentially identical, if not exactly identical, to those of the Class and there is no conflict between Plaintiffs or Class Counsel, on the one hand, and any other Class Member.

1 24. Additionally, Ms. Goemaat and Ms. Baluch have participated in this case actively. They
2 spent a substantial amount of time and effort in investigating the claims, gathering documents and other
3 information, aiding in the preparation for mediation, and making themselves available to provide the
4 attorneys further information the entire day of mediation and when requested. They were also prepared
5 and willing to testify on behalf of the class if necessary. They also demonstrated an understanding of the
6 case and their duties as class representatives to protect the absent class members. They have been very
7 helpful to the case and very responsive to all of Class Counsel's requests. Moreover, they willingly faced
8 reputational risks as a result of bringing the Action in order to champion the rights of their fellow workers.

9 25. The Parties propose that the funds represented by any uncashed or undeliverable checks be
10 distributed, subject to approval by the Court, to Public Counsel as the recipient of any *cy pres* award.
11 Public Counsel is a 501(c)(3) consumer advocacy organization that provides pro bono legal services at
12 sites across California. I believe such distribution is appropriate and fulfills the purposes of this wage and
13 hour class action by ensuring the non-reversionary nature of the GSA, which serves to deter the
14 misconduct alleged, and promotes justice for all Californians. Neither I nor any other member of my firm
15 is on the Board of Directors nor involved in the governance of the organization. I am not aware of any
16 financial interest or involvement by any counsel or party in the governance or work of Public Counsel.

17 26. Although I do believe this was a strong case, it had risks. Had the Action not settled,
18 Defendant would have challenged class certification and liability. Defendant contended that
19 individualized questions of fact predominate over any common issues, and these issues would pose
20 challenges to certification. Defendant would have likely argued again at trial, if any, that Plaintiffs' claims
21 were not appropriate for class-wide adjudication. On the other hand, Defendant also faced the risk of the
22 Court certifying a class and allowing a jury to decide Plaintiffs' claims on a class-wide basis. Additionally,
23 preparation for trial would have been expensive for all Parties.

24 27. Were litigation to proceed, there is a strong likelihood it would be protracted and
25 contentious, as Defendant disputes all aspects of Plaintiffs' claims. As a threshold matter, if the Agreement
26 is not approved, Plaintiffs will have to prepare and file a motion for class certification, which outcome is
27 uncertain based on Defendant's contentions, *inter alia*, that individual questions of fact predominate and

1 that Plaintiffs cannot show the “willfulness” requirement for Section 203 penalties. If the motion were
2 granted, Defendant would likely move for decertification, appeal certification, or move for Summary
3 Judgment.

4 28. To succeed on the merits, Plaintiffs would have to prove that Defendant actually engaged
5 in the practices and policies alleged and that those practices and policies violated the law. While Class
6 Counsel believe strong evidence exists showing Defendant’s liability, there remains a risk that the trier of
7 fact might find otherwise. If the case were to proceed to trial, additional discovery would be needed and
8 the Parties would thus incur significant additional expenses, which money could go instead to fund a
9 settlement for the benefit of the Class as a whole. Moreover, discovery disputes would have certainly
10 arisen, which would have cost the Parties additional time and money.

11 29. Further, regardless of which Party prevailed, appellate practice would no doubt ensue,
12 further delaying any possible recovery by Class Members. In other words, both Parties would likely incur
13 substantial attorneys’ fees and costs from continued litigation, likely approaching hundreds of thousands
14 of dollars. Furthermore, continued litigation would also have been expensive, including the expense of
15 expert witnesses and trial consultants, and, in my estimation, potentially hundreds of thousands of
16 additional dollars in attorney fees for both sides. Continued litigation also likely would have lasted
17 additional years.

18 30. Moreover, Defendant’s argument that any underpayment to its employees “willfully or
19 intentionally” done, would, if successful, preclude any recovery. It may be difficult to show that the
20 defense is unsupported by any evidence, unreasonable, or presented in bad faith.

21 31. In light of the above considerations, and given the risks inherent in continuing to litigate,
22 including 1) the possibility of an unfavorable, or less favorable, result at trial, 2) the likely possibility that
23 post-trial motions may similarly result in a less favorable result than at trial, and 3) the possibility of a less
24 favorable result on appeal, with the certainty that the appeal process would be lengthy, Class Counsel
25 believes the Agreement is a fair, adequate, and reasonable resolution for the Class as a whole.

26 32. Here, Class members all worked for Defendant during the Class Period and Defendants’
27 records readily identified the Class Members based on their dates of employment.

33. On November 29, 2022, my office submitted the Settlement Agreement, Amendment to the Settlement, and Notice of Motion and Unopposed Motion for Final Approval of Class and PAGA Action Settlement and supporting declarations to the California Labor and Workforce Development Agency (“LWDA”) pursuant to the Private Attorneys General Act (“PAGA”). A true and correct screenshot of the submission and submission confirmation email from the LWDA will be attached as **Exhibit 4** when filed with the Court.

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

Executed this 29th day of November 2022, at Los Angeles, California.

/s/ *Taras Kick*

Taras Kick

EXHIBIT 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER

SHIRLEY GOEMAAT and REHANA BALUCH,
individually, and on behalf of others similarly
situated and aggrieved,

Plaintiffs,

v.

ORANGE COUNTY ASSOCIATION FOR
MENTAL HEALTH, a California Corporation; and
DOES 1 through 50, inclusive,
Defendants.

Case No. 30-2019-01106371-CU-BT- CXC

*[Assigned for all purposes to the Hon. Peter
Wilson, Dept CX102]*

**STIPULATION OF CLASS AND
REPRESENTATIVE ACTION SETTLEMENT**

Action Filed:	October 21, 2019
PAGA Notice:	February 7, 2020
FAC Filed:	June 12, 2020
Trial Date:	None Set

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1 **CLASS AND REPRESENTATIVE ACTION SETTLEMENT**

2 **I. INTRODUCTION AND MUTUAL INTENT TO SETTLE**

3 1. Stipulating Parties and the Action. This Stipulation of Class and Representative Action
4 Settlement (“Settlement” or “Settlement Agreement”) is made by and between Plaintiffs Shirley Goemaat
5 and Rehana Baluch (“Plaintiffs”) and Defendant Orange County Association of Mental Health
6 (“Defendant”) (jointly, the “Parties”) in *Goemaat, et al., v. Orange County Association of Mental Health*,
7 Orange County Superior Court, Case No. 30-2019-01106371-CU-BT- CXC (the “Action”).

8 2. Stipulating Parties’ Joint Statement of Purpose and Intent to Settle. The Parties intend that
9 this Settlement Agreement, subject to Court approval, shall fully, finally, forever resolve, discharge, and
10 settle this Action and have agreed to work diligently and cooperatively to present this Settlement
11 Agreement to the Court so that it is finally approved and that the Action is finally adjudged.

12 **II. DEFINITIONS**

13 3. Action. “Action” means the putative class and representative action entitled *Goemaat, et*
14 *al., v. Orange County Association of Mental Health*, Orange County Superior Court, Case No. 30-2019-
15 01106371-CU-BT- CXC, filed on October 21, 2019.

16 4. Class. “Class” means all current and former non-exempt employees Defendant employed
17 in the State of California at any time during the Class Period.

18 5. Class Counsel. “Class Counsel” means The Kick Law Firm, APC including Taras Kick
19 Karen L. Wallace, and Jeffrey C. Bils.

20 6. Class Counsel Cost Award. “Class Counsel Cost Award” means the amount not exceeding
21 fifteen thousand dollars and zero cents (\$15,000.00), payable from the Gross Settlement Amount and due
22 to Class Counsel for reimbursement of Class Counsel’s reasonable litigation expenses incurred in
23 litigating and resolving the Action; if the Court finally approves a lesser amount, then the difference shall
24 remain part of the Net Settlement Amount.

25 7. Class Counsel Fee Award. “Class Counsel Fee Award” means the amount of no less than
26 fifty-eight thousand, three hundred thirty-three dollars and thirty-three cents (\$58,333.33) or one-third
27 (1/3) of the Gross Settlement Amount, whichever is greater, payable from the Gross Settlement Amount
28 and due to Class Counsel as reasonable attorneys’ fees for litigating and resolving the Action; if the Court

1 finally approves a lesser amount, then the difference shall remain part of the Net Settlement Amount.

2 8. Class List. “Class List” means a Microsoft Excel (or similar electronically manipulatable)
3 spreadsheet containing the following information regarding each Class Member: (1) full name; (2) last
4 known address; (3) last known telephone number; (4) social security number or taxpayer identification
5 number; (5) start and end dates of employment as a non-exempt employee of Defendant in the State of
6 California; (6) total Workweeks worked during the Class Period; (7) total PAGA Pay Periods worked
7 during the PAGA Period; and (8) any other information the Settlement Administrator reasonably requires
8 to carry out its settlement administration duties.

9 9. Class Member. “Class Member” means a current or former non-exempt employee of
10 Defendant employed in the State of California at any time during the Class Period.

11 10. Class Notice. “Class Notice” means the Notice of Class and Representative Action
12 Settlement, substantially in the form attached as **Exhibit 1**, summarizing this Settlement Agreement
13 including its key terms, its binding nature, procedures for opting out of the Settlement and release of
14 Released Claims that do not arise under PAGA, and the procedures for objecting to the Settlement.

15 11. Class Period. “Class Period” means the period commencing on October 21, 2015 and
16 ending on March 24, 2021.

17 12. Class Representative Service Awards. “Class Representative Service Award” means an
18 amount not to exceed ten thousand dollars and zero cents (\$10,00.00), made payable to each Plaintiff, for
19 a total of twenty thousand dollars and zero cents (\$20,000.00). These amounts shall be paid from the Gross
20 Settlement Amount, separate from any Individual Settlement Payment and Individual PAGA Payment,
21 for Plaintiffs’ efforts and risks in bringing and resolving the Action. If the Court finally approves a lesser
22 amount, then the difference shall remain part of the Net Settlement Amount.

23 13. Court. “Court” means the Superior Court of California for the County of Orange County
24 and the judicial officer presiding over this matter.

25 14. Cy Pres Recipient. “Cy Pres Recipient” means Public Counsel, a non-profit organization
26 who, among other things, provides pro bono legal services at sites in California, whom the Parties have
27 agreed to request the Court appoint as the designated *cy pres* recipient of uncashed funds pursuant to this
28 Settlement Agreement.

1 15. Defendant. “Defendant” means Defendant Orange County Association of Mental Health,
2 a California Corporation.

3 16. Defendant’s Counsel. “Defendant’s Counsel” means Manning & Kass Ellrod, Ramirez,
4 Trester LLP including Steven C. Amundson and Alina Sookasian.

5 17. Effective Date. “Effective Date” means the later of the following dates: (i) sixty-five (65)
6 days after the Court enters Final Judgment and no appeal, writ or other challenge to the finality of the
7 judgment has been filed; or (ii) five (5) day after the day when all appeals, writs or other challenges to the
8 Final Judgment have been resolved in a manner that affirms the finality of the judgment and the time for
9 the filing of any further appeals, writs or other challenges has lapsed.

10 18. Employer’s Share of Payroll Taxes. “Employer’s Share of Payroll Taxes” means the
11 amount of Defendant’s employer payroll tax obligations on the wage portion of Individual Settlement
12 Payments including withholdings and contributions for federal, state, local taxes, and any similar tax or
13 charge, payable from Defendant’s own accounts, separate from the Gross Settlement Amount, and due to
14 the applicable governing authorities.

15 19. Exhibits. “Exhibits” mean the four (4) exhibits attached to this Settlement Agreement
16 including Exhibit 1 (draft Class Notice); Exhibit 2 (draft Preliminary Approval Order); Exhibit 3 (draft
17 Final Approval Order); and Exhibit 4 (draft Final Judgment).

18 20. Final Approval Hearing. “Final Approval Hearing” means the hearing the Court sets
19 wherein Plaintiffs shall move the Court to find that the Settlement is fair, reasonable, and adequate and
20 enter a Final Approval Order and Final Judgment.

21 21. Final Approval Order. “Final Approval Order” means the Court’s order, substantially in
22 the form attached as **Exhibit 3**, which shall, among other things, finally approve the fairness,
23 reasonableness and adequacy of this Settlement Agreement.

24 22. Final Judgment. “Final Judgment” means the Court’s judgment, substantially in the form
25 attached as **Exhibit 4**, which shall, among other things, finally adjudge the Action as resolved pursuant to
26 this Settlement Agreement and deeming it binding as provided herein.

27 23. Gross Settlement Amount. “Gross Settlement Amount” means the non-reversionary
28 amount of no less than one hundred seventy-five thousand dollars and zero cents (\$175,000.00) that

Defendant shall pay as monetary consideration in exchange for releases of the Released Claims including released PAGA Claims and that shall be used to establish a common settlement fund for: (1) Individual Settlement Payments; (2) Settlement Administration Costs; (3) the PAGA Payment to the LWDA; (4) the PAGA Payment to PAGA Members; (5) the Class Representative Service Awards; (6) the Class Counsel Fee Award; and (7) the Class Counsel Cost Award payable under this Settlement.

24. Gross Settlement Amount Escalator. “Gross Settlement Amount Escalator” means the conditional provision that provides that if the actual number of Workweeks or Pay Periods worked by Class Members exceeds twenty-five thousand, one hundred twenty-four (25,124) Workweeks or eleven thousand, seven hundred eighty (11,780) PAGA Pay Periods by five percent (5%), then the Gross Settlement Amount shall increase proportionally by the percentage increase in excess of five percent (5%), such that if the actual Workweeks or PAGA Pay Periods worked by Class Members exceeds twenty-five thousand, one hundred twenty-four (25,124) Workweeks or eleven thousand, seven hundred eighty (11,780) by six percent (6%), for instance, then the Gross Settlement Amount shall increase by one percent (1%).

25. Individual PAGA Payment. “Individual PAGA Payment” means a PAGA Member’s pro rata share of the PAGA Payment to PAGA Members that is payable to PAGA Members from the Gross Settlement Amount, which shall be determined by dividing the PAGA Payment to PAGA Members by the aggregate number of PAGA Pay Period credits assigned to all PAGA Members, resulting in a PAGA Pay Period Dollar Value, and then multiplying the PAGA Pay Period Dollar Value by the number of PAGA Pay Period credits assigned to each PAGA Member.

26. Individual Settlement Payment. “Individual Settlement Payment” means a Participating Class Member’s pro rata share of the Net Settlement Amount that is payable to Participating Class Members from the Gross Settlement Amount, which shall be determined by dividing the Net Settlement Amount by the aggregate number of Workweek credits assigned to all Participating Class Members, resulting in the Workweek Dollar Value, and then multiplying the Workweek Dollar Value by the number of Workweek credits assigned to each Participating Class Member.

27. LWDA. “LWDA” means the California Labor and Workforce Development Agency.

28. Net Settlement Amount. “Net Settlement Amount” means the aggregate amount payable

1 to Participating Class Members, which shall be determined by subtracting the PAGA Payment, Settlement
2 Administration Costs, Class Representative Service Awards, Class Counsel Fee Award, and Class Counsel
3 Cost Award from the Gross Settlement Amount.

4 29. Objection. “Objection” means a Participating Class Member’s timely and valid written
5 objection to the terms and conditions of this Settlement Agreement.

6 30. Opt-Out Request. “Opt-Out Request” means a Class Member’s timely and valid written
7 request to be excluded from the Settlement and release of Released Claims that do not arise under PAGA.

8 31. PAGA. “PAGA” means the California Labor Code Private Attorneys General Act of 2004.

9 32. PAGA Claims. “PAGA Claims” means all claims or causes of action under PAGA that
10 could have been premised on the claims, causes of action, or legal theories of relief alleged in Plaintiffs’
11 February 7, 2020 PAGA notice to the LWDA and Defendant in LWDA Case No. LWDA-CM-771404-
12 20 and that were alleged or reasonably could have been alleged based on the facts asserted in the operative
13 complaint in the Action including, but not limited to, for violations of the California Labor Code and
14 California Industrial Welfare Commission Wage Orders.

15 33. PAGA Members. “PAGA Members” means all current and former non-exempt employees
16 Defendant employed in the State of California at any time during the PAGA Period.

17 34. PAGA Pay Period. “PAGA Pay Period” means any semi-monthly period starting from the
18 first day of each calendar month to the 15th day of that month and from the 16th day of a calendar month
19 to the final day of that calendar month during which a PAGA Member worked at least one (1) day or is
20 otherwise identifiable as Defendant’s employee in the state of California in Defendant’s records during
21 the PAGA Period, which the Settlement Administrator preliminarily and finally assigns as credits to
22 individual PAGA Members when calculating Individual PAGA Payments.

23 35. PAGA Pay Period Dollar Value. “PAGA Pay Period Dollar Value” means the dollar value
24 for each PAGA Pay Period credit assigned to PAGA Members, which shall be determined by dividing the
25 PAGA Payment to PAGA Members by the aggregate number of all PAGA Pay Period credits assigned to
26 all PAGA Members.

27 36. PAGA Payment. “PAGA Payment” means the amount of twenty thousand dollars and zero
28 cents (\$20,000.00) payable from the Gross Settlement Amount to the LWDA and PAGA Members,

seventy-five percent (75%) of which shall be distributed to the LWDA and twenty-five percent (25%) of which shall be distributed to PAGA Members on a pro rata basis.

37. PAGA Payment to PAGA Members. “PAGA Payment to PAGA Members” means the amount of five thousand dollars and zero cents (\$5,000.00), payable from the Gross Settlement Amount to all PAGA Members as their aggregate twenty-five percent (25%) share of the PAGA Payment.

38. PAGA Payment to the LWDA. “PAGA Payment to the LWDA” means the amount of fifteen thousand dollars and zero cents (\$15,000.00) payable from the Gross Settlement Amount and due to the LWDA as its seventy-five percent (75%) share of the PAGA Payment.

39. PAGA Period. “PAGA Period” means the period commencing on February 7, 2019 and ending on March 24, 2021.

40. PAGA Settlement. “PAGA Settlement” means the settlement and release of the PAGA Claims that arise under PAGA, which Plaintiff Goemaat brought against Defendant, as a deputized PAGA representative of the State of California, which shall bind the State of California and which PAGA Members shall not be entitled to opt out of.

41. Participating Class Members. “Participating Class Members” means Plaintiffs and all Class Members who do not submit a timely and valid Opt-Out Request.

42. Parties’ Counsel. “Parties’ Counsel” means the attorneys of record for Plaintiffs and Defendant.

43. Plaintiffs. “Plaintiffs” means Plaintiff Shirley Goemaat and Plaintiff Rehana Baluch.

44. Preliminary Approval Order. “Preliminary Approval Order” means the Court’s order, substantially in the form attached as **Exhibit 2**, which shall, among other things, preliminarily approve the fairness, reasonableness and adequacy of this Settlement Agreement.

45. Released Claims. “Released Claims” means all claims, rights, demands, liabilities and causes of action arising during the Class Period that were alleged or reasonably could have been alleged based on the facts asserted in the operative complaint in the Action, including the following claims or causes of action: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide required meal periods; (4) failure to provide required rest periods; (5) failure to indemnify employees for necessary expenditures incurred in discharge of duties; (6) failure to furnish accurate

itemized wage statements and maintain employment records; (7) failure to pay timely and all wages due to discharged and quitting employees; (8) unfair and unlawful business practices; and (9) civil penalties pursuant to PAGA and includes the release of PAGA Claims.

46. Released Parties. “Released Parties” means Defendant and all its present and former parent companies, subsidiaries, shareholders, owners, employees, officers, directors, agents, attorneys, insurers, successors and assigns, who could be held liable for any of the Released Claims.

47. Response Deadline. “Response Deadline” means the date sixty (60) calendar days after the postmarked date on Class Notices the Settlement Administrator initially mails to Class Members in bulk.

48. Settlement Administration Costs. “Settlement Administration Costs” means the amount not exceeding ten thousand dollars and zero cents (\$10,000.00), payable from the Gross Settlement Amount and due to the Settlement Administrator for the Settlement Administrator’s administration of the notice and distribution process pursuant to this Settlement Agreement and the Court’s orders; if the Court finally approves a lesser amount, then the difference shall remain a part of the Net Settlement Amount.

49. Settlement Administrator. “Settlement Administrator” means Simpluris, Inc., whom the Parties have agreed to request the Court appoint as the third-party settlement administrator to perform notice and settlement administration duties pursuant to this Settlement Agreement.

50. Workweek. “Workweek” means any calendar week commencing on Sunday and ending on the following Saturday during which a Class Member worked at least one (1) day or is otherwise identifiable as Defendant’s employee in the state of California in Defendant’s records during the Class Period, which the Settlement Administrator preliminarily and finally assigns as credits to individual Participating Class Members when calculating Individual Settlement Payments.

51. Workweek/PAGA Pay Period Dispute. “Workweek/PAGA Pay Period Dispute” means a Class Member’s timely and valid written dispute about the number of Workweeks and/or PAGA Pay Periods that the Settlement Administrator preliminarily credits to the affected Class Member.

52. Workweek Dollar Value. “Workweek Dollar Value” means the dollar value for each Workweek credit assigned to Participating Class Members, which shall be determined by dividing the Net Settlement Amount by the aggregate number of all Workweek credits assigned to all Participating Class Members.

1 **III. RELEVANT PROCEDURAL HISTORY**

2 53. Plaintiff Goemaat's Complaint. On October 21, 2019, Plaintiff Goemaat filed a putative
3 class action complaint alleging Defendant's: (1) failure to pay minimum wages; (2) failure to pay overtime
4 wages; (3) failure to provide required meal periods; (4) failure to provide required rest periods; (5) failure
5 to indemnify employees for necessary expenditures incurred in discharge of duties; (6) failure to furnish
6 accurate itemized wage statements and maintain employment records; (7) failure to pay timely and all
7 wages due to discharged and quitting employees; and (8) unfair and unlawful business practices.

8 54. Plaintiff Goemaat's PAGA Notice. On February 7, 2020, Plaintiff Goemaat sent a PAGA
9 notice to the LWDA and Defendant, in LWDA Case No. LWDA-CM-771404-20, alleging Defendant
10 violated various provisions of the California Labor Code and other laws along with the facts and theories
11 supporting the alleged violations including those alleged in the operative complaint in the Action.

12 55. Plaintiff Goemaat's First Amended and Operative Complaint. On June 12, 2021, Plaintiff
13 Goemaat filed her First Amended Complaint, the operative complaint in this Action, which added Plaintiff
14 Baluch as a named plaintiff and added a ninth cause of action, resulting in the operative complaint alleging
15 that Defendants (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide
16 required meal periods; (4) failure to provide required rest periods; (5) failure to indemnify employees for
17 necessary expenditures incurred in discharge of duties; (6) failure to furnish accurate itemized wage
18 statements and maintain employment records; (7) failure to pay timely and all wages due to discharged
19 and quitting employees; (8) unfair and unlawful business practices; and (9) for conduct giving rise to
20 PAGA civil penalties.

21 56. Plaintiffs' Discovery and Investigation. Prior to the filing of this Action, Plaintiffs and
22 Plaintiffs' counsel, engaged in substantial investigation about the Defendant's business practices in
23 California. After the Action was filed and prior to mediation, the Parties engaged in extensive informal
24 exchange of information. Plaintiffs obtained documents, data, and information from Defendant and other
25 resources, including and not limited to, a randomly-selected sampling of Class Member time and pay
26 records consisting of a large volume of data, consisting of hundreds of thousands of data points and
27 financial data supporting Defendant's claims about its inability to satisfy a potential judgment.

28 57. Mediation and Agreement to Settle the Action. On October 20, 2020, the Parties

1 participated in a private mediation session with an experienced wage and hour class action mediator,
2 Steven G. Mehta, Esq. However, given the contentious negotiations and the disputed claims, the Parties
3 did not resolve their differences that day. The Parties then engaged in further negotiations, with the
4 assistance of Mr. Metha, which led the Parties' March 24, 2021 agreement about the material terms of a
5 class and representative settlement, which formed the basis of this Settlement Agreement.

6 **IV. RECITALS AND REPRESENTATIONS**

7 58. This Settlement is Fair, Adequate and Reasonable. The Parties represent this Settlement
8 Agreement is a fair, adequate and reasonable settlement of the Action and that the Parties have arrived at
9 this Settlement Agreement after extensive arms-length negotiations while accounting for materially
10 relevant factors, present and potential. The Parties further agree that the consideration described herein
11 constitutes adequate consideration for the Settlement and releases described herein.

12 a. Numerosity of Potential Class Members. For purposes of settlement only, the
13 Parties agree that because the potential Class is so numerous, it is impossible or impractical to have each
14 Class Member execute this Settlement Agreement.

15 b. Notice and Opportunity to Respond Comporting with Due Process. For purposes
16 of settlement only, the Parties agree that because of the numerosity of the potential Class, the notice and
17 response procedure outlined in this Settlement Agreement provides the best and most practical notice to
18 Class Members and fully complies with due process.

19 c. Benefits of Settlement to Plaintiffs and Class Members. Plaintiffs recognize
20 continued litigation in the Action through trial, appeals and final judgment would be time consuming,
21 uncertain, risky and expensive. Plaintiffs recognize these uncertainties and risks include Plaintiffs' ability
22 to meet the burdens of proof necessary to establish liability, damages, penalties and other relief sought for
23 the causes of action asserted in the Action, generally and in response to Defendant's defenses thereto.
24 Plaintiffs also recognize Defendant's agreement to enter into a settlement may result in substantial benefits
25 for Class Members because it is a good faith compromise of highly disputed claims. Accordingly,
26 Plaintiffs, under Class Counsel's guidance has determined the Settlement is fair, adequate and reasonable,
27 and that it is in the best interests of the Class.

28 d. Defendant's Reasons for Settlement. Defendant recognizes continued defensive

1 litigation in the Action would be protracted and expensive for it. Defendant recognizes it would continue
2 to expend substantial time and expense to prove the merits of its defenses. While Defendant is confident
3 that it has done no wrong, continued litigation in the Action through trial, appeals, and final judgment
4 would be time consuming, uncertain, risky and expensive. Defendant continues to assert Plaintiffs'
5 allegations have no merit and do not give rise to Defendant's liability for damages, restitution, penalties,
6 or other payments and that this Settlement is a compromise of disputed claims. Defendant has agreed to
7 settle in the manner and upon the terms set forth in this Settlement Agreement to put the claims alleged in
8 the Action to rest.

9 e. No Admissions by Defendant or Plaintiff. Defendant denies all claims alleged in
10 the Action and denies all wrongdoing. Defendant contends it has complied with all applicable state, federal
11 and local laws, and reserves its right to assert all available defenses to Plaintiffs' claims in the Action.
12 Nothing contained in this Settlement Agreement, nor any documents referred to herein and no action that
13 the Parties have undertaken to effectuate this Settlement Agreement should be construed or used as an
14 admission by or against any of the Parties as to suitability of class or representative adjudication or about
15 the merits of the claims asserted in the Action. The Parties maintain that neither this Settlement
16 Agreement, nor any of its terms and conditions, nor any of the negotiations connected with it, is a
17 concession, admission, or inference regarding wrongdoing or that class certification is proper under the
18 standard applied to contested certification motions.

19 f. Certification for Settlement Purposes Only. The Parties agree to the certification of
20 the proposed class for settlement purposes only.

21 g. No Conflicts of Interest with Relevant Third-Parties. The Parties represent they do
22 not have any financial interest in the Settlement Administrator, the *Cy Pres* Recipient or otherwise have a
23 relationship with the Settlement Administrator, the *Cy Pres* Recipient or any third party that could create
24 an appearance of a conflict of interest.

25 59. No Tax Advice & Circular 230 Disclaimer. The Parties represent that no provision of this
26 Settlement Agreement or other communications or disclosures is, or was intended, to constitute tax advice
27 within the meaning of United States Treasury Department Circular 230 (31 C.F.R., Subtitle A, Part 10, as
28 amended). The Parties further represent they: (i) shall be solely responsible for reporting and paying any

1 applicable federal, state and/or local income tax, employment tax or any other withholding on all taxable
2 income or other benefit they individually receive as consideration exchanged pursuant to this Settlement
3 Agreement; (ii) have relied exclusively upon their own, independent legal and tax advisors for tax advice
4 in connection with this Settlement Agreement; and (iii) in keeping with their individual rights to due
5 process, shall not be entitled to rely upon any communication or disclosure by Plaintiff, Defendant or
6 Parties' Counsel to avoid the payment of any assessment, penalty, tax, attorneys' fees, or other amounts
7 based on the taxability of any consideration provided or exchanged pursuant to this Settlement Agreement.

8 **V. SETTLEMENT CONSIDERATION AND RELEASED CLAIMS ON AND AFTER**
9 **EFFECTIVE DATE**

10 60. No Release of Claims Against any Other Named Defendant. Because Defendant Orange
11 County Association of Mental Health is the only individual defined as a "Defendant" for the purposes of
12 this Settlement Agreement, there shall be no release of any claims of any nature against any other person
13 pursuant to this Settlement Agreement unless such person qualifies as one of the Released Parties and the
14 claim qualifies as a Released Claim.

15 61. Non-Reversionary Nature of Settlement Agreement. No portion of the Gross Settlement
16 Amount shall revert to Defendant.

17 62. No Claim-Submission Process. There shall be no claim or claim form submission process
18 or requirement and, as such, Class Members shall not receive nor shall they be required to submit a claim
19 form to be entitled to an Individual Settlement Payment and/or Individual PAGA Payment.

20 63. Releases of Claims Against Released Parties. For and in exchange for Defendant's
21 performance of its obligations during Settlement Administration and culminating in Defendant completely
22 remitting the entire Gross Settlement Amount to the Settlement Administrator, the Released Claims shall
23 be deemed released as follows.

24 a. Participating Class Members' Release of Released Claims. After Defendant remits
25 the Gross Settlement Amount in full to the Settlement Administrator, Plaintiffs and all other Participating
26 Class Members shall be deemed to have settled and released all Released Claims against the Released
27 Parties that do not arise under PAGA.

28 b. California's Release of PAGA Claims. After Defendant remits the Gross

Settlement Amount in full to the Settlement Administrator, the State of California, by and through Plaintiff Goemaat, its deputized PAGA representative, shall be deemed to have settled and released all PAGA Claims against the Released Parties.

64. No Release of Any Individual, Private Rights of Action under PAGA. No Class Member, Participating Class Member, or PAGA Member shall release any PAGA Claims or any individual, private rights of action that arise from PAGA against any person because of this Settlement Agreement and the PAGA Settlement component of the Released Claims. Furthermore, neither the Settlement Administrator's distribution of Individual PAGA Payment checks to, nor the use or enjoyment of any Individual PAGA Payment by Class Members, Participating Class Members, or PAGA Members shall constitute consideration offered or exchanged for the release of any Class Member, Participating Class Member, or PAGA Member's individual, private rights of action against any person.

VI. SETTLEMENT ADMINISTRATOR AND GENERAL SETTLEMENT ADMINISTRATION DUTIES

65. Appointment of Settlement Administrator. The Parties have agreed to request that the Court appoint Simpluris, Inc. as the third-party settlement administrator to perform settlement administration duties pursuant to this Settlement Agreement. The Parties represent that neither they nor their counsel have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create an appearance of a conflict of interest.

66. Settlement Administrator's Duties During Settlement Administration. The Settlement Administrator shall perform the express and implied Settlement Administration tasks as provided in this Settlement Agreement including: (i) printing and mailing Class Notices; (ii) collecting, validating and attempting to resolve Workweek/PAGA Pay Period Disputes; (iii) collecting and validating Opt-Out Requests and Objections; (iv) establishing a qualified settlement fund; (v) preparing and mailing tax forms to Class Members or other persons; (vi) computing and distributing all payments to be made under the Settlement; (vii) calculating and remitting all employee payroll tax obligations to the appropriate government agencies; and (viii) transferring uncashed Individual Settlement Payments and Individual PAGA Payments to the *Cy Pres* Recipient.

a. Settlement Administrator's Secure Recordkeeping and File Maintenance. The

1 Settlement Administrator shall secure and protect Class Member information from unauthorized access
2 to, use, deletion and modification including all information in the Class List. The Settlement Administrator
3 shall also exercise its best judgment and discretion to limit the disclosure of Class Member information to
4 only those persons who need it to implement the terms and conditions of this Settlement Agreement and
5 shall maintain all records related to the settlement administration duties it performs for at least four (4)
6 years after settlement administration has been completed.

7 b. Records of Communication with Class Members and Class List Maintenance. The
8 Settlement Administrator shall create and maintain records of all communications with Class Members or
9 other persons affected by this Settlement Agreement including by maintaining documents it sends to and
10 receives from Class Members and the Settlement Administrator's own notes describing oral or written
11 communications with all Class Members. The Settlement Administrator shall also promptly and
12 continuously update the Class List with all material notes and information to ensure it possesses the most
13 accurate information about Class Members throughout settlement administration.

14 c. Communications with Class Members in English and Spanish. The Settlement
15 Administrator shall undertake reasonable efforts to communicate with Spanish-speaking Class Members
16 in Spanish during oral or written communications if Class Members indicate that Spanish is their language
17 of choice.

18 **VII. CONTENTS OF CLASS NOTICE**

19 67. Class Notice Generally. The Parties have agreed to request that the Court approve a class
20 notice, substantially in the form attached as Exhibit 1, which shall provide, among other things: (1) a brief
21 explanation of the case, including the basic contentions or denials of the Parties; (2) a statement that the
22 Court will exclude the member from the Class if the Class Member so requests by the Response Deadline;
23 (3) a procedure for the Class Member to follow in requesting exclusion from the Class; (4) a statement
24 that a judgment, whether favorable or not, will bind all Class Member who do not request exclusion; and
25 (5) a statement that any Class Member who does not request exclusion may, if the Class Member so
26 desires, enter an appearance through counsel.

27 a. Notice and Binding Nature of Settlement Agreement. The Class Notice shall
28 indicate the potentially binding nature of this Settlement Agreement on all Class Members.

1 b. Settlement Administration Disputes Prior to the Final Approval Hearing Subject to
2 Court Review. The Class Notice shall indicate that the Settlement Administrator, who the Court has
3 appointed as a third-party to execute settlement administration duties, shall attempt to resolve all disputes
4 including all Workweek/PAGA Pay Period Disputes and all Opt-Out Request and Objection disputes,
5 prior to the Final Approval Hearing and that the Settlement Administrator's determinations or decisions
6 regarding the timeliness and validity of any dispute regarding this Settlement Agreement, shall be subject
7 to Court review.

8 c. Individualized Class Notices and Response Deadline. The Settlement
9 Administrator shall print Class Notices addressed to individual Class Members whose names appear on
10 the Class List along with information specifically applicable to Class Members including the number of
11 Workweek credits and PAGA Pay Period credits the Settlement Administrator intends on assigning Class
12 Members and shall expressly identify the Response Deadline, by providing a date certain, which shall
13 occur sixty (60) days after the Settlement Administrator's initial bulk mailing of Class Notices.

14 68. Gross Settlement Amount. The Class Notice shall indicate that the non-reversionary Gross
15 Settlement Amount shall be no less than one hundred seventy-five thousand dollars and zero cents
16 (\$175,000.00) that Defendant shall pay as monetary consideration for the release of the Released Claims
17 and that shall be used to establish a common settlement fund comprising: (1) Individual Settlement
18 Payments; (2) Settlement Administration Costs; (3) the PAGA Payment to the LWDA; (4) the PAGA
19 Payment to PAGA Members; (5) the Class Representative Service Awards; (6) the Class Counsel Fee
20 Award; and (7) the Class Counsel Cost Award payable under this Settlement.

21 a. Aggregate Workweek and Pay Period Estimate. The Class Notice shall provide the
22 aggregate number of Workweeks worked by Class Members and the aggregate number of PAGA Pay
23 Periods worked by PAGA Members according to Defendant's records.

24 b. Gross Settlement Amount Escalator Clause. The Class Notice shall indicate that if
25 the actual number of Workweeks or PAGA Pay Periods worked by Class Members exceeds twenty-five
26 thousand, one hundred twenty-four (25,124) Workweeks or eleven thousand, seven hundred eighty
27 (11,780) PAGA Pay Periods by five percent (5%), then the Gross Settlement Amount shall increase
28 proportionally by the percentage increase in excess of five percent (5%), such that if the actual Workweeks

1 or PAGA Pay Periods worked by Class Members exceeds twenty-five thousand, one hundred twenty-four
2 (25,124) Workweeks or eleven thousand, seven hundred eighty (11,780) by six percent (6%), for instance,
3 then the Gross Settlement Amount shall increase by one percent (1%).

4 69. Net Settlement Amount. The Class Notice shall indicate that the Net Settlement Amount,
5 which is estimated to be no less than sixty-six thousand, six hundred sixty-six dollars and sixty-seven
6 cents (\$66,666.67), shall be the aggregate amount payable to Participating Class Members, which shall be
7 determined by subtracting the PAGA Payment, Settlement Administration Costs, Class Representative
8 Service Awards, Class Counsel Fee Award and the Class Counsel Cost Award from the Gross Settlement
9 Amount.

10 a. Settlement Administration Costs. The Class Notice shall indicate that an amount
11 not exceeding ten thousand dollars and zero cents (\$10,000.00), which Defendant has agreed not to
12 oppose, shall be payable from the Gross Settlement Amount and due to the Settlement Administrator for
13 the Settlement Administrator's administration of the notice and distribution process pursuant to this
14 Settlement Agreement and that if the Court finally approves a lesser amount, then the difference shall
15 remain a part of the Net Settlement Amount.

16 b. Class Representative Service Awards. The Class Notice shall indicate that an
17 amount not exceeding ten thousand dollars and zero cents (\$10,000.00), payable from the Gross
18 Settlement Amount and due to each of the Plaintiffs, for a total of twenty thousand dollars and zero cents
19 (\$20,000.00), which Defendant has agreed not to oppose, shall be payable from the Gross Settlement
20 Amount and due to Plaintiffs, separate from any Individual Settlement Payment and Individual PAGA
21 Payment, for Plaintiffs' efforts and risks in bringing and resolving the Action and that if the Court finally
22 approves a lesser amount, then the difference shall remain part of the Net Settlement Amount.

23 c. Class Counsel Fee Award. The Class Notice shall indicate that an amount of no less
24 than fifty-eight thousand, three hundred thirty-three dollars and thirty-three cents (\$58,333.33) or one-
25 third (1/3) of the Gross Settlement Amount, whichever is greater, which Defendant has agreed not to
26 oppose, shall be payable from the Gross Settlement Amount and due to Class Counsel as reasonable
27 attorneys' fees for litigating and resolving the Action and that if the Court finally approves a lesser amount,
28 then the difference shall remain part of the Net Settlement Amount.

1 d. Class Counsel Cost Award. The Class Notice shall indicate that an amount not
2 exceeding fifteen thousand dollars and zero cents (\$15,000.00), which Defendant has agreed not to oppose,
3 shall be payable from the Gross Settlement Amount and due to Class Counsel for reimbursement of Class
4 Counsel's reasonable litigation expenses incurred in litigating and resolving the Action and that if the
5 Court finally approves a lesser amount, then the difference shall remain part of the Net Settlement Amount.

6 e. PAGA Payment to the LWDA. The Class Notice shall indicate that fifteen thousand
7 dollars and zero cents (\$15,000.00), which Defendant has agreed not to oppose, shall be payable from the
8 Gross Settlement Amount and due to the LWDA as its seventy-five percent (75%) share of the PAGA
9 Payment.

10 70. Individual PAGA Payments Reported on IRS Form 1099-MISC. The Class Notice shall
11 indicate that five thousand dollars and zero cents (\$5,000.00) shall be payable from the Gross Settlement
12 Amount to all PAGA Members as their aggregate twenty-five percent (25%) share of the PAGA Payment,
13 which the Settlement Administrator shall report as one hundred percent (100%) non-wage income on IRS
14 Form 1099-MISC.

15 a. Individual PAGA Payments Calculations Based on PAGA Pay Period Credits. The
16 Class Notice shall indicate that Individual PAGA Payments due to PAGA Members shall be determined
17 by the following three-step process: (i) the Settlement Administrator shall credit each PAGA Member
18 with PAGA Pay Period credits based on the data in the Class List, which shall be presumed accurate,
19 subject to the Workweek/PAGA Pay Period Dispute process; (ii) the Settlement Administrator shall
20 determine the PAGA Pay Period Dollar Value by dividing the PAGA Payment to PAGA Members by the
21 number of PAGA Pay Periods credited to all PAGA Members; and (iii) the Settlement Administrator shall
22 determine the Individual PAGA Payment due to each PAGA Member by multiplying the number of
23 PAGA Pay Periods credited to the individual PAGA Member by the PAGA Pay Period Dollar Value.

24 b. Individualized PAGA Payment Amount Estimates. The Class Notice shall indicate
25 the estimated Individual PAGA Payment due to each PAGA Member based on the PAGA Pay Period
26 credits that the Settlement Administrator intends on assigning to each PAGA Member, subject to the
27 Workweek/PAGA Pay Period Dispute process.

28 71. Individual Settlement Payments Reported on IRS Form W-2 (25%) and IRS Form 1099-

1 MISC (75%). The Class Notice shall indicate that Net Settlement Amount, which is estimated to be no
2 less than sixty-six thousand, six hundred sixty-six dollars and sixty-seven cents (\$66,666.67), shall be the
3 aggregate amount payable to Participating Class Members, which the Settlement Administrator shall
4 report as twenty-five percent (25%) wages, subject to reduction for applicable employee payroll taxes and
5 customary withholdings, reportable on IRS Form W-2s and seventy-five percent (75%) non-wage income
6 on IRS Form 1099-MISC.

7 a. Individual Settlement Payments Based on Workweek Credits. The Class Notice
8 shall indicate that Participating Class Members shall be paid based on their respective pro rata shares of
9 the Net Settlement Amount, which shall be determined by the following three-step process: (i) the
10 Settlement Administrator shall credit each Participating Class Member with Workweek credits based on
11 the data in the Class List, which shall be presumed accurate, subject to the Workweek/PAGA Pay Period
12 Dispute process; (ii) the Settlement Administrator shall determine the Workweek Dollar Value by dividing
13 the Net Settlement Amount by the number of Workweeks credited to all Participating Class Members;
14 and (iii) the Settlement Administrator shall determine the Individual Settlement Payment due to each
15 Participating Class Member by multiplying the number of Workweeks credited to the individual
16 Participating Class Member by the Workweek Dollar Value.

17 b. Individualized Settlement Payment Amount Estimates. The Class Notice shall
18 indicate the estimated Individual Settlement Payment due to each Class Member based on the Workweek
19 credits that the Settlement Administrator intends on assigning to each PAGA Member, subject to the
20 Workweek/PAGA Pay Period Dispute process.

21 72. Individual Settlement Payment and Individual PAGA Payment Checks Void After 180
22 Days. The Class Notice shall indicate that all Individual Settlement Payment checks to Participating Class
23 Members and Individual PAGA Payment checks to PAGA Members shall be valid for one hundred eighty
24 (180) calendar days after the Settlement Administrator's initial bulk mailing and that if any Individual
25 Settlement Payment or Individual PAGA Payment check has not been cashed or deposited by that time,
26 then they shall become void.

27 a. Void Individual Settlement Payment and Individual PAGA Payment Checks Still
28 Binding. The Class Notice shall indicate that if any Individual Settlement Payment or Individual PAGA

1 Payment checks are not cashed, deposited or received by Participating Class Members or PAGA Members
2 after the Settlement Administrator receives the entire Gross Settlement Amount in full and before the date
3 they become void, then all affected Participating Class Members and PAGA Members shall still remain
4 bound to the Settlement to the fullest extent under the law.

5 b. Transfer of Void Individual Settlement Payment and Individual PAGA Payment
6 Amounts to the Cy Pres Recipient. The Class Notice shall indicate that the Settlement Administrator shall,
7 after the date that Individual Settlement Payment checks and Individual PAGA Payment checks become
8 void, transfer all amounts associated with the voided checks via secure wire transfer to Public Counsel, a
9 non-profit organization, who, among other things, provides pro bono legal services at sites across
10 California, and with whom the Parties and Parties' Counsel have no connection or affiliation that could
11 create an appearance of a conflict of interest.

12 73. No Tax Advice in Class Notice. The Class Notice shall indicate that the Parties make no
13 representations concerning the taxability, tax treatment, or legal effect of any tax laws on any
14 consideration provided or exchanged pursuant to the Settlement Agreement including any Individual
15 Settlement Payments or any Individual PAGA Payments and that Class Members should consult with their
16 own tax advisors concerning the tax consequences of their receipt of any payment under the Settlement
17 Agreement.

18 74. Workweek/PAGA Pay Period Disputes. The Class Notice shall indicate that if a Class
19 Member wishes to dispute the number of Workweeks or PAGA Pay Periods credited to the affected Class
20 Member in the Class Notice, then the affected Class Member must submit a timely and valid written
21 Workweek/PAGA Pay Period Dispute to the Settlement Administrator by United States Mail, facsimile
22 and/or in other written form by no later than the Response Deadline.

23 a. Timeliness of Workweek/PAGA Pay Period Disputes. The Class Notice shall
24 indicate that the Settlement Administrator shall determine whether a Workweek/PAGA Pay Period
25 Dispute is timely based on the postmarked date on the mailing envelope, or by other indicia of timeliness.

26 b. Validity of Workweek/PAGA Pay Period Disputes. The Class Notice shall indicate
27 that the Settlement Administrator shall determine whether a Workweek/PAGA Pay Period Dispute is valid
28 based on whether it is in writing and includes the following five (5) enumerated items: (1) the Class

1 Member's full name; (2) the Class Member's approximate dates of employment; (3) the Class Member's
2 current contact information (e.g., a current residential or personal mailing address and home or personal
3 telephone number); (4) a statement indicating the number of Workweeks and/or PAGA Pay Periods that
4 the affected Class Member contends should be credited along with documentary evidence to support the
5 affected Class Member's contentions, if any; and (5) the Class Member or Class Member's legal
6 representative's signature.

7 c. Untimely or Invalid Workweek/PAGA Pay Period Disputes. The Class Notice shall
8 indicate that if a Workweek/PAGA Pay Period Dispute is not submitted in a timely and valid manner, then
9 it may result in an affected Class Member being credited with fewer Workweeks or PAGA Pay Periods
10 than the affected Class Member may be entitled to.

11 75. Opt-Out Requests. The Class Notice shall indicate that if a Class Member wishes to be
12 excluded from the Settlement and release of Released Claims (that do not arise under PAGA), then the
13 affected Class Member must submit a timely and valid written Opt-Out Request to the Settlement
14 Administrator by United States Mail, facsimile and/or in other written form by no later than the Response
15 Deadline. The Class Notice shall also indicate that if a Class Member submits a timely and valid Opt-Out
16 Request, then the Class Member shall not be entitled to any benefits under the Settlement, other than an
17 entitlement to an Individual PAGA Payment (if the Class Member qualifies as a PAGA Member) and the
18 Class Member shall have no right to object to the Settlement Agreement or appeal the Final Judgment.

19 a. Timeliness of Opt-Out Requests. The Class Notice shall indicate that the Settlement
20 Administrator shall determine whether an Opt-Out Request is timely based on the postmarked date on the
21 mailing envelope, or by other indicia of timeliness.

22 b. Validity of Opt-Out Requests. The Class Notice shall indicate that the Settlement
23 Administrator shall determine whether a Workweek/PAGA Pay Period Dispute is valid based on whether
24 it is in writing and includes the following five (5) enumerated items: (1) the Class Member's full name;
25 (2) the Class Member's approximate dates of employment; (3) the Class Member's contact information
26 (e.g., current residential or personal mailing address and home or personal telephone number); (4) the
27 Class Member's statement in no exact words but, nevertheless, substantially in a form and substance
28 indicating a desire to be excluded from the Settlement Agreement (e.g., "I wish to be excluded from the

1 settlement.”; “I opt out from the settlement.”; or “I do not want to be part of the settlement.”); and (5) the
2 Class Member or Class Member’s legal representative’s signature.

3 c. Untimely or Invalid Opt-Out Requests. The Class Notice shall indicate that if an
4 Opt-Out Request is not submitted in a timely and valid manner, then it may result in an affected Class
5 Member being deemed a Participating Class Member who is bound by the Settlement and release of all
6 Released Claims.

7 76. Objections. The Class Notice shall indicate that if a Class Member wishes to object to the
8 Settlement Agreement, then the Class Member must submit a timely and valid written Objection to the
9 Settlement Administrator by United States Mail, facsimile and/or in other written form by no later than
10 the Response Deadline and that any Class Member may hire an attorney at his or her own expense as a
11 representative, who may assist the Class Member in submitting or advancing any objection. The Class
12 Notice shall also indicate that if a Class Member submits a timely and valid Objection, then the Class
13 Member may still be bound by the terms of the Settlement, the release of Released Claims and the Final
14 Judgment as a Participating Class Member.

15 a. Timeliness of Objections. The Class Notice shall indicate that the Settlement
16 Administrator shall determine whether an Objection is timely based on the postmarked date on the mailing
17 envelope, or by other indicia of timeliness.

18 b. Validity of Objections. The Class Notice shall indicate that the Settlement
19 Administrator shall determine whether an Objection is valid based on whether it is in writing and includes
20 the following five (5) enumerated items: (1) the Class Member’s full name; (2) the Class Member’s
21 approximate dates of employment; (3) the Class Member’s current contact information (e.g., a current
22 residential or personal mailing address and home or personal telephone number); (4) the Class Member’s
23 statement indicating the grounds for the objection; and (5) the Class Member or Class Member’s legal
24 representative’s signature.

25 c. Untimely or Invalid Objections. The Class Notice shall indicate that if an Objection
26 is not submitted in a timely and valid manner, then it may result in an affected Class Member’s objection
27 not being considered by the Court and that the affected Class Member may be deemed to have waived any
28 right to object to the Settlement and prohibited from voicing any objection to the Settlement at any hearing.

**VIII. PRELIMINARY APPROVAL AND CLASS NOTICE ADMINISTRATION AFTER
PRELIMINARY APPROVAL ORDER**

77. Motion for Preliminary Approval of Settlement. No later than sixteen (16) court days before the Preliminary Approval Hearing, Plaintiffs shall file a motion for preliminary approval, seeking, among other things, entry of a Preliminary Approval Order, substantially in the form attached as Exhibit 2, conditionally certifying the Class for settlement purposes only, appointing Plaintiffs as representatives of the Class, appointing Class Counsel as counsel for the Class, appointing the Settlement Administrator, setting a Final Approval Hearing date and ordering the Settlement Administrator to mail the Class Notice to Class Members.

a. Defendant's Provision of Updated Number of Class Members, Workweeks, PAGA Members and PAGA Pay Periods. No later than five (5) business days before the filing deadline for Plaintiffs' motion for preliminary approval, Defendant shall provide Class Counsel the updated number of Class Members, Workweeks worked by Class Members, PAGA Members and PAGA Pay Periods worked by PAGA Members that will be subject to this Settlement Agreement.

b. Defendant's Provision of a Kullar Declaration. No later than five (5) business days before the filing deadline for Plaintiffs' motion for preliminary approval, Defendant shall provide Class Counsel with a "Kullar" declaration under penalty of perjury regarding Defendant's financial condition, changes to its timekeeping and wage payment policies and practices during the pendency of the Action, and/or other facts about the Class and Defendant's wage payment policies and practices, signed by a declarant with personal knowledge to support Plaintiffs' agreement to settle at a discount, which Plaintiffs shall disclose to the Court, as necessary, to secure preliminary or final approval of the Settlement.

c. Defendant's Provision of the Class List to the Settlement Administrator. Within seven (7) calendar days after the Court's entry of a Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the Class List.

78. Mailing of Class Notice by Bulk First Class U.S. Mail. Within fourteen (14) calendar days after receiving the Class List, the Settlement Administrator shall mail copies of the Class Notice in English and Spanish to all Class Members via bulk First Class United States Mail, forwarding service requested.

a. Verification of Class Member Current Addresses and Presumption of Accuracy.

1 Prior to mailing Class Notices to Class Members, the Settlement Administrator shall search the National
2 Change of Address Database maintained by the United States Postal Service and perform skip tracing or
3 other verification procedures to verify Class Members' current addresses. The addresses the Settlement
4 Administrator determines as Class Members' current mailing addresses shall be presumed accurate.

5 b. IRS Form W-9 and Additional Withholdings for Unverified Social Security or
6 Taxpayer Identification Numbers. Prior to mailing Class Notices to Class Members, the Settlement
7 Administrator shall use verification procedures to verify Class Member social security numbers and/or
8 taxpayer identification numbers and shall update the Class List accordingly. If the Settlement
9 Administrator is unable to verify a Class Member's social security number and/or taxpayer identification
10 number prior to its initial mailing of Class Notices, then the Settlement Administrator shall enclose an
11 IRS Form W-9 along with each affected Class Member's Class Notice and a writing which shall inform
12 the affected Class Member that the Settlement Administrator was unable to verify the affected Class
13 Member's social security number and/or taxpayer identification number and that the affected Class
14 Member must submit a completed and executed IRS Form W-9 to the Settlement Administrator on or
15 before the Response Deadline to avoid additional withholdings and potential delays in distribution of any
16 payments the affected Class Member may be entitled to under the Settlement.

17 c. Re-Mailing of Undelivered Class Notices. If the Settlement Administrator receives
18 a Class Notice returned as undelivered on or before the Response Deadline, then, within three (3) business
19 days of receipt of the returned Class Notice, the Settlement Administrator shall attempt to determine
20 another mailing address for the affected Class Member by use of skip tracing or other verification or search
21 procedures using the name, address, telephone number, social security number and/or taxpayer
22 identification number of the affected Class Member. If the Settlement Administrator identifies another
23 mailing address for the affected Class Member as a result, then it shall re-mail the Class Notice to the
24 affected Class Member at that address by no later than the next business day. If the Settlement
25 Administrator does not identify another mailing address for the affected Class Member as a result, then
26 the Settlement Administrator shall be deemed to have satisfied its obligations to attempt to re-mail the
27 undelivered Class Notice to that affected Class Member. The Settlement Administrator shall maintain
28 records of undelivered Class Notices including the dates it receives each undelivered Class Notice and re-

1 mails Class Notices.

2 79. Settlement Administrator's Weekly Reports Regarding Class Notice Mailings,
3 Workweek/PAGA Pay Period Disputes, Opt-Out Requests and Objections. After its initial mailing of
4 Class Notices in bulk, the Settlement Administrator shall provide the Parties a weekly report, which shall
5 include information including statistics about the number of Class Notices it has mailed, Class Notices
6 that have been returned as undelivered, Class Notices it has re-mailed, Workweek/PAGA Pay Period
7 Disputes it has received, Opt-Out Requests it has received and Objections it has received. The Settlement
8 Administrator shall and continuously provide the Parties such weekly reports until at least ten (10)
9 calendar days after the Response Deadline.

10 80. Determination of Timeliness and Validity of Workweek/PAGA Pay Period Disputes.
11 Subject to Parties' Counsel and Court review, the Settlement Administrator shall determine whether the
12 submission of a Workweek/PAGA Pay Period Dispute is timely and valid.

13 a. Workweek/PAGA Pay Period Dispute Timeliness. The Settlement Administrator
14 shall determine whether a Workweek/PAGA Pay Period Dispute is timely based on the postmarked date
15 on the mailing envelope, or by other indicia of timeliness. If the postmarked date or other indicia shows
16 the dispute was submitted after the Response Deadline, then the Settlement Administrator shall conclude
17 that the submission was untimely, which may render the submission null, void and ineffective.

18 b. Workweek/PAGA Pay Period Dispute Validity. The Settlement Administrator shall
19 determine whether a Workweek/PAGA Pay Period Dispute is valid based on whether it is in writing and
20 includes the five (5) enumerated items required for validity. If the dispute is submitted orally or a written
21 submission is ambiguous or arguably constitutes an otherwise valid Workweek/PAGA Pay Period Dispute
22 but for the lack of any of the five (5) enumerated items required for validity, then the Settlement
23 Administrator shall conclude that the submission is invalid, which may render the submission null, void
24 and ineffective.

25 c. Workweek/PAGA Pay Period Dispute Cure Notices and Notice to the Court. If the
26 Settlement Administrator concludes that a Workweek/PAGA Pay Period Dispute is untimely or invalid
27 prior to the Final Approval Hearing, then the Settlement Administrator shall, within three (3) business
28 days, attempt to communicate with the affected Class Member to request that the affected Class Member

1 cure any deficiencies in writing. Regardless of the timeliness or validity of any Workweek/PAGA Pay
2 Period Dispute, the Parties shall ensure that all Workweek/PAGA Pay Period Disputes or any other written
3 statements arguably constituting a timely and valid Workweek/PAGA Pay Period Dispute are brought to
4 the Court's attention in advance of the Final Approval Hearing.

5 81. Workweek/PAGA Pay Period Dispute Notice, Investigation and Resolution. If the
6 Settlement Administrator receives a Workweek/PAGA Pay Period Dispute prior to the Final Approval
7 Hearing, then the Settlement Administrator shall promptly investigate and attempt to resolve the dispute.
8 Unless the Settlement Administrator has good cause to limit the disclosure of an affected Class Member's
9 personal information in consideration of factors such as the affected Class Member's stated or unstated
10 privacy interests, the Settlement Administrator shall, within three (3) business days, notify the Parties via
11 electronic mail or facsimile, of its receipt of all Workweek/PAGA Pay Period Disputes, which shall
12 include the identity and contact information of the affected Class Member and any evidence submitted by
13 the affected Class Member.

14 a. Submission and Evaluation of Further of Evidence. Defendant shall, within five (5)
15 business days of receipt of the Settlement Administrator's notice of a Workweek/PAGA Pay Period
16 Dispute, review its records and provide the Settlement Administrator with all relevant information it
17 possesses about the affected Class Member's contentions. Plaintiff, including Class Counsel, given Class
18 Counsel's fiduciary duties owed to Class Members, may undertake reasonable efforts to communicate
19 with and obtain information from the affected Class Member (or the Class Member's representative) to
20 support the affected Class Member's contentions. The Settlement Administrator shall then evaluate the
21 evidence submitted by the affected Class Member and the Parties and, in consultation with the Parties'
22 Counsel, shall render a final decision regarding the Workweek/PAGA Pay Period Dispute.

23 b. Notice to Affected Class Members Regarding Workweek/PAGA Pay Period
24 Dispute Investigation and Resolution. The Settlement Administrator shall, within three (3) business days
25 of rendering its final decision regarding a Workweek/PAGA Pay Period Dispute, send the affected Class
26 Member written notice of its decision via United States Mail, facsimile and/or email, which shall: (a)
27 indicate whether the Settlement Administrator found the Workweek/PAGA Pay Period Dispute wholly or
28 partly meritorious, unmeritorious, or that it was unable to make a merits determination and the reasons

1 why it made such a finding; (b) indicate the amount of Workweeks and/or PAGA Pay Periods that the
2 Settlement Administrator presently intends to credit the affected Class Member including the number of
3 additional Workweeks or PAGA Pay Periods, if any, and any corresponding changes to the estimated
4 Individual Settlement Payment or Individual PAGA Payment that the affected Class Member may receive;
5 and (c) indicate that the Settlement Administrator's final decision is subject to Court review and that the
6 Final Approval Hearing may be the best and final opportunity for the affected Class Member to seek the
7 Court's review or intervention.

8 82. Determination of Timeliness and Validity of Opt-Out Requests. Subject to Parties' Counsel
9 and Court review, the Settlement Administrator shall determine whether the submission of an Opt-Out
10 Request is timely and valid.

11 a. Opt-Out Request Timeliness. The Settlement Administrator shall determine
12 whether an Opt-Out Request is timely based on the postmarked date on the mailing envelope, or by other
13 indicia of timeliness. If the postmarked date or other indicia shows the request was submitted after the
14 Response Deadline, then the Settlement Administrator shall conclude that the submission was untimely,
15 which may render the submission null, void and ineffective.

16 b. Opt-Out Request Validity. The Settlement Administrator shall determine whether
17 an Opt-Out Request is valid based on whether it is in writing and includes the five (5) enumerated items
18 required for validity. If the request is submitted orally or a written submission is ambiguous or arguably
19 constitutes an otherwise valid Opt-Out Request but for the lack of any of the five (5) enumerated items
20 required for validity, then the Settlement Administrator shall conclude that the submission is invalid,
21 which may render the submission null, void and ineffective.

22 c. Opt-Out Request Cure Notices and Notice to the Court. If the Settlement
23 Administrator concludes that an Opt-Out Request is untimely or invalid prior to the Final Approval
24 Hearing, then the Settlement Administrator shall, within three (3) business days, attempt to communicate
25 with the affected Class Member to request that the affected Class Member cure any deficiencies in writing.
26 Regardless of the timeliness or validity of any Opt-Out Request, the Parties shall ensure that all Opt-Out
27 Requests or any other written statements arguably constituting a timely and valid Opt-Out Request are
28 brought to the Court's attention in advance of the Final Approval Hearing.

83. Determination of Timeliness and Validity of Objections. Subject to Parties' Counsel and Court review, the Settlement Administrator shall determine whether the submission of an Objection is timely and valid.

a. Objection Timeliness. The Settlement Administrator shall determine whether an Objection is timely based on the postmarked date on the mailing envelope, or by other indicia of timeliness. If the postmarked date or other indicia shows the objection was submitted after the Response Deadline, then the Settlement Administrator shall conclude that the submission was untimely, which may render the submission null, void and ineffective.

b. Objection Validity. The Settlement Administrator shall determine whether an Objection is valid based on whether it is in writing and includes the five (5) enumerated items required for validity. If the request is submitted orally or a written submission is ambiguous or arguably constitutes an otherwise valid Objection but for the lack of any of the five (5) enumerated items required for validity, then the Settlement Administrator shall conclude that the submission is invalid, which may render the submission null, void and ineffective.

c. Objection Cure Notices and Notice to the Court. If the Settlement Administrator concludes that an Objection is untimely or invalid prior to the Final Approval Hearing, then the Settlement Administrator shall, within three (3) business days, attempt to communicate with the affected Class Member to request that the affected Class Member cure any deficiencies in writing. Regardless of the timeliness or validity of any Objection, the Parties shall ensure that all Objections or any other written statements arguably constituting a timely and valid Objection are brought to the Court's attention in advance of the Final Approval Hearing.

IX. FINAL APPROVAL AND FINAL JUDGMENT

84. Motion for Final Approval of Settlement. No later than sixteen (16) court days before the Final Approval Hearing, Plaintiffs shall file a motion for final approval, seeking, among other things, entry of a Final Approval Order, substantially in the form attached as Exhibit 3, finally certifying the Class for settlement purposes only, ordering Defendant to remit the Gross Settlement Amount to the Settlement Administrator, approving and ordering the Settlement Administrator to distribute the amounts payable pursuant to the Settlement, and setting a date for the Court's review of the Settlement fund distribution.

85. Final Judgment. At the time Plaintiffs move for final approval of the Settlement, Plaintiffs shall also move the Court to enter a Final Judgment, substantially in the form attached as Exhibit 4, which shall among other things, finally adjudge this Action and include a provision for the retention of the Court's jurisdiction over the Parties including the Class to enforce the terms of the judgment.

a. Settlement Administrator's Report in Advance of Final Approval Hearing. The Settlement Administrator shall, prior to the Final Approval Hearing and at the Parties' request, provide written reports or declarations to the Parties describing, among other things, the process and results of the settlement administration process, the number of Opt-Out Requests received (both timely and valid or otherwise), the total number of Objections received (both timely and valid or otherwise), the number of Workweeks/Pay Periods Disputes received (both timely and valid or otherwise), and the actual or projected Settlement Administration Costs to date, which report or declarations Plaintiffs may file with the Court prior to the Final Approval Hearing.

b. Notice of Final Approval Order and Final Judgment. If the Court enters the Final Judgment, then the Settlement Administrator shall post copies of the Final Approval Order and Final Judgment for two hundred forty (240) calendar days on its website and Plaintiffs shall cause copies of the Final Approval Order and Final Judgment to be submitted to the LWDA. No individualized notice regarding the entry of the Final Approval Order and Final Judgment shall be required to be provided to the Class.

X. SETTLEMENT ADMINISTRATION AFTER THE EFFECTIVE DATE

86. Establishment of a Qualified Settlement Fund After the Effective Date. The Settlement Administrator shall, on the day after the Effective Date, establish a qualified settlement fund, account, or trust pursuant to applicable state and federal rules and regulations to hold the Gross Settlement Amount and distribute payments therefrom.

a. Defendant's Payment of the Gross Settlement After the Effective Date. Defendant shall, within seven (7) calendar days of the Effective Date, be responsible for paying or remitting the Gross Settlement Amount in its entirety to the Settlement Administrator via secure wire transfer or by other secure means and the Settlement Administrator shall report to the Parties whether it received the entire Gross Settlement Amount in a timely manner within three (3) business days of the Effective Date

1 and periodically thereafter until it receives the Gross Settlement Amount in its entirety.

2 b. Distribution Process and Court Intervention if Gross Settlement Amount is
3 Untimely or Incomplete. If Defendant fails to remit the entire Gross Settlement Amount to the Settlement
4 Administrator in full on the date it is due or within a reasonable time thereafter, then the Settlement
5 Administrator shall refrain from distributing any part of the Gross Settlement Amount until the Parties
6 provide further instruction including by way of the Court's intervention or further orders.

7 c. Interest on Gross Settlement Amount that is Untimely or Incomplete. If Defendant
8 fails to remit the entire Gross Settlement Amount to the Settlement Administrator in full on the date it is
9 due, then Defendant shall be obligated to pay the legal rate of interest on all amounts due and owing until
10 Defendant remits the entire Gross Settlement Amount to the Settlement Administrator along with the
11 accrued interest; the accrued interest shall remain part of the Net Settlement Amount and shall be
12 distributed to Participating Class Members.

13 87. Settlement Fund Distribution. The Settlement Administrator shall, within seven (7)
14 calendar days of receiving the Gross Settlement Amount in full, distribute all payments from the
15 Settlement fund. The Parties and Parties' Counsel shall have the right to monitor and review the
16 administration of the Settlement to verify that monies allocated under this Settlement Agreement are
17 distributed to the correct persons and in correct amounts in keeping with the Final Approval Order and
18 Final Judgment.

19 a. Settlement Administration Costs Distribution. The Settlement Administrator shall
20 distribute Settlement Administration Costs to itself for the Settlement Administrator's execution of
21 settlement administration duties.

22 b. Class Representative Service Awards Distribution. The Settlement Administrator
23 shall distribute the Class Representative Service Awards to Plaintiffs via a checks in their respective
24 names, but to mailed to Class Counsel, separate from any Individual Settlement Payment and Individual
25 PAGA Payment, for Plaintiffs' efforts and risks in bringing and resolving the Action and the for the release
26 of Plaintiffs' Further Released Claims, which the Settlement Administrator shall report as one hundred
27 percent (100%) non-wage income on IRS Form 1099-MISC.

28 c. Class Counsel Fee Award Distribution. The Settlement Administrator shall

1 distribute the Class Counsel Fee Award to Class Counsel via secure wire transfer as reasonable attorneys’
2 fees for litigating and resolving the Action, which the Settlement Administrator shall report as one hundred
3 percent (100%) non-wage income on IRS Form 1099-MISC.

4 d. Class Counsel Cost Award Distribution. The Settlement Administrator shall
5 distribute the Class Counsel Fee Award to Class Counsel via secure wire transfer for reimbursement of
6 Class Counsel’s reasonable litigation expenses incurred in litigating and resolving the Action, which the
7 Settlement Administrator shall report as one hundred percent (100%) non-wage income on IRS Form
8 1099-MISC.

9 e. PAGA Payment to the LWDA Distribution. The Settlement Administrator shall
10 distribute the PAGA Payment to the LWDA via secure wire transfer or by other secure means to the
11 LWDA as its seventy-five percent (75%) share of the PAGA Payment.

12 f. Individual PAGA Payment Distribution. The Settlement Administrator shall
13 distribute Individual PAGA Payment checks to all PAGA Members via bulk First Class United States
14 Mail addressed to each intended recipient’s last known mailing based on data in the Class List including
15 all updated data resulting from Class Members’ timely and valid Opt-Out Requests and the resolution of
16 Workweek/PAGA Pay Period Disputes, which the Settlement Administrator shall report as one hundred
17 percent (100%) non-wage income on IRS Form 1099-MISC.

18 g. Individual Settlement Payment Distribution. The Settlement Administrator shall
19 distribute Individual Settlement Payment checks to all Participating Class Members via bulk First Class
20 United States Mail addressed to each intended recipient’s last known mailing based on data in the Class
21 List including all updated data resulting from Class Members’ timely and valid Opt-Out Requests and the
22 resolution of Workweek/PAGA Pay Period Disputes, which the Settlement Administrator shall report as
23 twenty-five percent (25%) wages, subject to reduction for applicable employee payroll taxes and
24 customary withholdings, reportable on IRS Form W-2s and seventy-five percent (75%) non-wage income
25 on IRS Form 1099-MISC.

26 88. 120-Day Reminder Postcard for Uncashed Individual Settlement Payment and Individual
27 PAGA Payment Checks Void. The Settlement Administrator shall, within one hundred and twenty (120)
28 calendar days of mailing Individual Settlement Payment and Individual PAGA Payment checks in bulk,

1 mail a reminder postcard to all Participating Class Members and PAGA Members, who have not cashed
2 or deposited their Individual Settlement Payment or Individual PAGA Payment checks, indicating that if
3 the outstanding Individual Settlement Payment or Individual PAGA Payment check is not cashed or
4 deposited before the date they become void, then they shall become void.

5 a. Check Reissuance and Re-Mailing Prior to Void Date. The Settlement
6 Administrator shall, prior to the date that all Individual Settlement Payment or Individual PAGA Payment
7 checks become void, reissue any misrouted, misplaced, lost or stolen Individual Settlement Payment check
8 or Individual PAGA Payment check to an affected Participating Class Member or PAGA Member, so
9 long as the affected Participating Class Member or PAGA Member's original Individual Settlement
10 Payment check or Individual PAGA Payment check has not been cashed or deposited.

11 b. Transfer of Void Individual Settlement Payment and Individual PAGA Payment
12 Amounts to the Cy Pres Recipient. The Settlement Administrator shall, within ten (10) business days of
13 the date that Individual Settlement Payment checks and Individual PAGA Payment checks become void,
14 transfer all amounts associated with the voided checks via secure wire transfer to Public Counsel, a non-
15 profit organization, who, among other things, provides pro bono legal services at sites across California,
16 and with whom the Parties and Parties' Counsel have no connection or affiliation that could create an
17 appearance of a conflict of interest.

18 89. Settlement Administrator's Report Following Settlement Fund Distribution. The
19 Settlement Administrator shall, following settlement fund distribution and at the Plaintiffs' request,
20 provide written reports or declarations to Plaintiffs and Class Counsel describing, among other things, the
21 process and results of the settlement fund distribution process, including statistics regarding distribution
22 of: (1) Individual Settlement Payments; (2) Settlement Administration Costs; (3) the PAGA Payment to
23 the LWDA; (4) Individual PAGA Payments; (5) the Class Representative Service Awards; (6) the Class
24 Counsel Fee Award; and (7) the Class Counsel Cost Award payable under this Settlement as well as the
25 transfer of all residue to the Cy Pres Recipient, which report or declarations Plaintiffs may file with the
26 Court.

27 **XI. ADDITIONAL SETTLEMENT PROVISIONS**

28 90. Intent to be Binding. The Parties intend this Settlement Agreement to be fully binding on

1 each other and that the Court shall have jurisdiction to enforce the terms and conditions of the Settlement
2 Agreement pursuant to Code of Civil Procedure section 664.6 (or the federal equivalent) upon noticed
3 motion. If any of the Parties breach any terms of this Settlement Agreement and an action is brought to
4 enforce its terms, then the prevailing party in any enforcement action shall be entitled to recover
5 reasonable attorneys' fees and costs.

6 a. Interim Stay of Action. The Parties agree to stay and shall request that the Court
7 stay all proceedings in the Action, except such proceedings necessary to obtain preliminary and final
8 approval of the Settlement to fully implement this Settlement Agreement up to the time the Court enters
9 Final Judgment and the distribution of Settlement funds occurs.

10 b. Effect of Settlement Not Being Final. If this Settlement Agreement does not
11 become final by way of entry of a Final Judgment or by a denial of a preliminary approval or a final
12 approval with prejudice that binds the Parties from exercising their rights to renegotiate a settlement over
13 the same or similar subject matter, then it shall be rendered null and void ab initio. If this Settlement
14 Agreement is rendered null and void ab initio pursuant to this paragraph, then no Class Member or person
15 shall use this Settlement Agreement to support any claim or request for class certification in the Action or
16 in any other civil proceeding against Defendant. The Parties shall, accordingly, proceed in all respects as
17 if this Settlement Agreement had not been executed, except that Plaintiffs, on the one hand, and Defendant,
18 on the other hand, shall pay the Settlement Administration Costs incurred to date to the Settlement
19 Administrator in fifty percent (50%) shares.

20 c. Agreement to Cooperate if Court Fails to Approve Settlement. If the Court does not
21 finally approve this Settlement for any reason and in a manner that does not bind the Parties from
22 exercising their rights to renegotiate a settlement over the same or similar subject matter, then the Parties
23 agree to cooperate to reach a settlement that may be approved by the Court.

24 91. Defendant's Notice and Option to Rescind or Void Settlement. If more than ten percent
25 (10%) of Class Members submit timely and valid Opt-Out Requests, then Defendant may, in its discretion,
26 rescind or terminate its obligations under this Settlement Agreement, subject to payment of all Settlement
27 Administration Costs incurred to date. Defendant must exercise this right within fourteen (14) calendar
28 days after the Settlement Administrator notifies the Parties of the number of timely and valid Opt-Out

1 Requests received, which the Settlement Administrator must do within seven (7) calendar days after the
2 Response Deadline.

3 a. Further Discovery About Defendant's Financial Condition. Defendant shall
4 provide 2018, 2019 and 2020 tax returns and audited financial statements to the Court upon the Court's
5 request. Defendant shall also provide Class Counsel a declaration under penalty of perjury regarding
6 Defendant's financial condition by a declarant with personal knowledge, which Defendant consents
7 Plaintiffs may use to inform the Court when justifying a reduced settlement sum and/or the payment plan.
8 Defendant shall also engage in confirmatory discovery regarding the data, documents, and sampling
9 exchanged for mediation purposes.

10 b. Neutral Employment Reference. If Defendant receives any oral and/or written
11 requests from prospective employers or other persons about Plaintiffs' employment with Defendant, then
12 Defendant shall provide a neutral and objective employment reference, which may include no more than
13 the substance of the following information: that Defendant currently or formerly employed Plaintiffs; the
14 start date and end date of Plaintiffs' respective periods of employment; Plaintiffs' job title(s) while
15 employed; and Plaintiffs' current or final pay rates. Defendant shall refrain from subjectively
16 characterizing Plaintiffs' personal characteristics, qualities, or job performance in any manner and shall
17 not refer to the Action or this Settlement Agreement.

18 c. Best Efforts and Cooperation. The Parties and Parties' Counsel agree to use their
19 best efforts to carry out the terms of this Settlement Agreement and administration thereof including by
20 timely delivering documents and information to each other. Defendant agrees that it shall not oppose
21 Plaintiffs' motion for preliminary approval or motion for final approval nor any motions or requests for
22 fees, costs, or awards so long as Plaintiffs' motions and requests are materially consistent with the terms
23 and provisions of this Settlement Agreement.

24 d. Resolution of Disputes. If the Parties are unable to reach agreement on the form or
25 content of any document needed to implement the Settlement, or on any supplemental provision that may
26 become necessary to effectuate the terms of this Settlement Agreement, then the Parties may seek the
27 assistance of the Court and/or mediator Steven G. Mehta to resolve such disagreement.

28 e. No Discouragement of Class Member Participation or Obstruction of Settlement.

1 The Parties and Parties' Counsel agree not to encourage Class Members to file Opt-Out Requests,
2 Objections, oppositions or other motions that oppose the entry of a Preliminary Approval Order or a Final
3 Approval Order that approves this Settlement Agreement, appeal the entry of the Final Judgment or
4 otherwise obstruct the full and final settlement of the Action including by refraining from obtaining
5 waivers or *Pick Up Stix* agreements from Class Members.

6 f. Continuing Jurisdiction of the Court. Following entry of Final Judgment, the Court
7 shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of
8 this Settlement Agreement and all orders and directives entered in connection therewith. Furthermore, the
9 Parties and Parties' Counsel shall submit to the jurisdiction of the Court for purposes of interpreting,
10 implementing, and enforcing this Settlement Agreement and all orders and directives entered in
11 connection therewith.

12 g. Authorization to Enter into Settlement Agreement. Parties' Counsel warrant and
13 represent they were expressly authorized by the Parties whom they respectively represent to negotiate this
14 Settlement Agreement and to take all appropriate actions required or permitted to be taken, on behalf of
15 the Class, to effectuate its terms. The person signing this Settlement Agreement on behalf of Defendant
16 represents and warrants that he or she is authorized to sign this Settlement Agreement on behalf of
17 Defendant. Plaintiffs represent and warrant that Plaintiffs have not assigned any claim, or part of a claim,
18 covered by this Settlement Agreement to any third-party.

19 h. Method of Signature and Counterparts. This Settlement Agreement may be
20 executed by facsimile, electronic, document scan, or other means, in one or more counterparts or
21 duplicates of originals, and each of them shall be deemed an original and shall constitute one instrument.

22 i. Binding on Successors and Assigns. This Settlement Agreement shall be binding
23 upon, and inure to the benefit of, the Parties' successors and assigns.

24 j. Amendment or Modification. This Settlement Agreement shall not be amended or
25 modified in any material respect unless by a written instrument signed by the Parties.

26 k. California Law Governs. All terms of this Settlement Agreement and the Exhibits
27 attached hereto shall be governed by and interpreted according to the laws of the State of California.
28 However, if any material inconsistencies or ambiguities arise during the construction and interpretation of

1 the terms and provisions of any of the Exhibits as compared to the terms and provisions in this Settlement
2 Agreement, then the terms and provisions in this Settlement Agreement shall control.

3 l. Headings. The descriptive headings of any paragraphs or sections of this Settlement
4 Agreement including the capitalized terms therein are inserted for convenience only.

5 m. Construction. The Parties have drafted this Settlement Agreement together. Hence,
6 in any construction of this Settlement Agreement, the same shall not be construed against any of the Parties
7 by reason of any claim that one of the Parties drafted the Settlement Agreement.

8 n. Invalidity of Any Provision. If any term or provision of this Settlement Agreement
9 is deemed invalid, then the Parties agree that the Court should strike the invalid term or provision and then
10 fully construe the remaining terms and provisions valid and in a manner resulting in a construction giving
11 all remaining terms and provisions of this Settlement Agreement validity and enforceability.

12 o. Waivers. The waiver of any breach of this Settlement Agreement shall not be
13 deemed or construed as a waiver of any other breach of this Settlement Agreement, whether prior,
14 subsequent, contemporaneous or continuing.

15 p. Confidentiality Limitation on Public Statements About Settlement. The Parties and
16 Parties' Counsel agree to keep the terms of the Settlement confidential until the filing of Plaintiffs' motion
17 for preliminary approval.

18 92. Severability. If one or more of the provisions contained in this Settlement Agreement is
19 deemed or held invalid, illegal, or unenforceable in any respect, then the invalid, illegal, or unenforceable
20 provisions shall be deemed stricken and the remaining provisions shall remain valid, illegal and
21 enforceable including if Defendants' Counsel and Class Counsel, on behalf of the Parties and the Class,
22 mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been
23 included in this Settlement Agreement, as necessary, or in lieu of written amendment or modification.

24 93. Entire Agreement. This Settlement Agreement and the attached Exhibits constitute the
25 entire agreement between the Parties. The Exhibits to this Settlement Agreement are an integral part of
26 the Settlement. No oral or written representations, warranties, or inducements have been made to Plaintiffs
27 or Defendant concerning this Settlement Agreement other than the representations, warranties, and
28 covenants contained and memorialized in this Settlement Agreement. No other prior or contemporaneous

1 written or oral agreements shall be deemed binding on the Parties.

2 **IT IS SO STIPULATED.**

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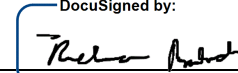
1 DATED: 2/18/2022

Plaintiff SHIRLEY GOEMAAT

2 By: 
3 SHIRLEY GOEMAAT

4 DATED: 2/18/2022

Plaintiff REHANA BALUCH

5 By: 
6 REHANA BALUCH

7 DATED: _____

Defendant ORANGE COUNTY ASSOCIATION
FOR MENTAL HEALTH, a California Corporation

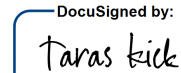
9 By: _____
10 JEFFREY A. THRASH

11 Chief Executive Officer, ORANGE COUNTY
ASSOCIATION OF MENTAL HEALTH

12 **APPROVED AS TO FORM:**

13 DATED: 2/17/2022

THE KICK LAW FIRM, APC

14 By: 
15 TARAS KICK

16 Attorneys for Plaintiffs SHIRLEY GOEMAAT and
17 REHANA BALUCH, individually, and on behalf of
18 all others similarly situated and aggrieved

19 DATED: _____

MANNING & KASS ELLROD, RAMIREZ,
TRESTER LLP

21 By: _____
22 STEVEN C. AMUNDSON
ALINA SOOKASIAN

23 Attorneys for Defendant ORANGE COUNTY
24 ASSOCIATION OF MENTAL HEALTH, a
25 Delaware Limited Liability Company

1 DATED: _____

Plaintiff SHIRLEY GOEMAAT

2
3 By: _____
SHIRLEY GOEMAAT

4 DATED: _____

Plaintiff REHANA BALUCH

5
6 By: _____
REHANA BALUCH

7 DATED: _____

Defendant ORANGE COUNTY ASSOCIATION
FOR MENTAL HEALTH, a California Corporation

8
9 By:  _____
JEFFREY A. THRASH

10
11 Chief Executive Officer, ORANGE COUNTY
ASSOCIATION OF MENTAL HEALTH

12 **APPROVED AS TO FORM:**

13 DATED: _____

THE KICK LAW FIRM, APC

14
15 By: _____
TARAS KICK

16
17 Attorneys for Plaintiffs SHIRLEY GOEMAAT and
REHANA BALUCH, individually, and on behalf of
all others similarly situated and aggrieved

18 DATED: March 4, 2022

MANNING & KASS ELLROD, RAMIREZ,
TRESTER LLP

19
20 
21 By: _____
STEVEN C. AMUNDSON
ALINA SOOKASIAN

22
23 Attorneys for Defendant ORANGE COUNTY
ASSOCIATION OF MENTAL HEALTH, a
Delaware Limited Liability Company

EXHIBIT 2

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Attorneys for Defendant ORANGE COUNTY
 ASSOCIATION FOR MENTAL HEALTH, a
 California Corporation

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER

SHIRLEY GOEMAAT and REHANA BALUCH,
 individually, and on behalf of others similarly
 situated and aggrieved,

Plaintiffs,

v.

ORANGE COUNTY ASSOCIATION FOR
 MENTAL HEALTH, a California Corporation; and
 DOES 1 through 50, inclusive,

Defendants.

Case No. 30-2019-01106371-CU-BT- CXC

*[Assigned for all purposes to the Hon. Peter
 Wilson, Dept CX102]*

**AMENDMENT TO STIPULATION OF CLASS
 AND REPRESENTATIVE ACTION
 SETTLEMENT**

Action Filed:	October 21, 2019
FAC Filed:	June 12, 2020
Trial Date:	None Set

AMENDMENT TO SETTLEMENT AGREEMENT

INTRODUCTION

1. On or around March 4, 2022, Plaintiffs Shirley Goemaat and Rehana Baluch (“Plaintiffs”) and Defendant Orange County Association of Mental Health (“Defendant”) (jointly, the “Parties”) executed the Stipulation of Class and Representative Action Settlement (“Agreement”) in *Goemaat, et al., v. Orange County Association of Mental Health*, Orange County Superior Court, Case No. 30-2019-01106371-CU-BT- CXC (the “Action”).

2. The Parties intend to amend the Agreement according to the terms and conditions set forth in this amending agreement (“Amendment”).

3. In consideration of the Parties’ agreeing to amend their obligations in the existing Agreement, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to keep, perform, and fulfill the promises, conditions, and agreements set forth below.

AMDENDMENTS

The Agreement is amended as follows:

1. The following provisions from the original Agreement are hereby **changed** and shall hereafter be read as follows:

10. Class Notice. “Class Notice” means the Notice of Class and Representative Action Settlement, substantially in the form attached as Exhibit 1, summarizing this Settlement Agreement including its key terms, its binding nature, procedures for opting out of the Settlement and release of Released Claims, and the procedures for objecting to the Settlement.

30. Opt-Out Request. “Opt-Out Request” means a Class Member’s timely and valid written request to be excluded from the Settlement and release of Released Claims, excluding PAGA claims.

63. Releases of Claims Against Released Parties. For and in exchange for Defendant’s performance of its obligations during Settlement Administration and culminating in Defendant completely remitting the entire Gross Settlement Amount to the Settlement

Administrator, the Released Claims shall be deemed released as follows.

- a. Participating Class Members' Release of Released Claims. After Defendant remits the Gross Settlement Amount in full to the Settlement Administrator, Plaintiffs and all other Participating Class Members shall be deemed to have settled and released all Released Claims against the Released Parties.

75. Opt-Out Requests. The Class Notice shall indicate that if a Class Member wishes to be excluded from the Settlement and release of Released Claims, excluding PAGA claims, then the affected Class Member must submit a timely and valid written Opt-Out Request to the Settlement Administrator by United States Mail, facsimile, or other written form no later than the Response Deadline. The Class Notice shall also indicate that if a Class Member submits a timely and valid Opt-Out Request, then the Class Member shall not be entitled to any benefits under the Settlement, excluding the Individual PAGA Payment.

- a. Class Members who also qualify as PAGA Members may not opt-out of the PAGA component of the Settlement and remain entitled to an Individual PAGA Payment.

- b. Class Members who exclude themselves from the Settlement, excluding the PAGA component, shall have no right to object to the Settlement Agreement or appeal the Final Judgment.

2. The following provisions are hereby **deleted** from the Agreement:

64. No Release of Any Individual, Private Rights of Action under PAGA. No Class Member, Participating Class Member, or PAGA Member shall release any PAGA Claims or any individual, private rights of action that arise from PAGA against any person because of this Settlement Agreement and the PAGA Settlement component of the Released Claims. Furthermore, neither the Settlement Administrator's distribution of Individual PAGA Payment checks to, nor the use or enjoyment of any Individual PAGA Payment by Class Members, Participating Class Members, or PAGA Members shall constitute consideration offered or exchanged for the release of any Class Member, Participating Class Member, or PAGA Member's individual, private rights of action against any person.

76. c. Untimely or Invalid Objections. The Class Notice shall indicate that if an Objection is not submitted in a timely and valid manner, then it may result in an affected Class Member's objection not being considered by the Court and that the affected Class Member may be deemed to have waived any right to object to the Settlement.

ENFORCEMENT OF TERMS

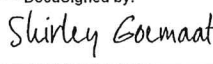
1. The signatories hereto represent that they are fully authorized to enter into this Amendment and bind the Class Representatives, the Settlement Class, and Defendant to all terms stated herein.

2. This Amendment may be executed in one or more counterparts and by facsimile or DocuSign. All executed copies of this Amendment and the Agreement, and photocopies thereof, shall have the same force and effect and shall be as legally binding and enforceable as the original.

3. This Amendment has been drafted jointly by Class Counsel and Defense Counsel and, therefore, in any construction or interpretation of this Amendment or the Agreement, the same shall not be construed against any of the Parties.

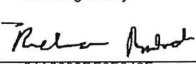
DATED: 5/20/2022

Plaintiff SHIRLEY GOEMAAT

By: 
SHIRLEY GOEMAAT

DATED: 5/20/2022

Plaintiff REHANA BALUCH

By: 
REHANA BALUCH

DATED: 5/26/2022

Defendant ORANGE COUNTY ASSOCIATION
FOR MENTAL HEALTH, a California Corporation

By: 
JEFFREY A. THRASH

Chief Executive Officer, ORANGE COUNTY
ASSOCIATION OF MENTAL HEALTH

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1 **APPROVED AS TO FORM:**

2 DATED: May 27, 2022

THE KICK LAW FIRM, APC

3
4 By: Taras Kick
5 TARAS KICK

6 Attorneys for Plaintiffs SHIRLEY GOEMAAT and
7 REHANA BALUCH, individually, and on behalf of
all others similarly situated and aggrieved

8 DATED: May 27, 2022

MANNING & KASS ELLROD, RAMIREZ,
TRESTER LLP

9
10 By: 
11 STEVEN C. AMUNDSON
12 ALINA SOOKASIAN

13 Attorneys for Defendant ORANGE COUNTY
14 ASSOCIATION OF MENTAL HEALTH, a
Delaware Limited Liability Company

EXHIBIT 3

The Kick Law Firm

A Professional Corporation

815 Moraga Drive
Los Angeles, CA 90049
310 395 2988 / Fax: 310 395 2088

February 7, 2020

Via Online Submission @ <https://dir.tfaforms.net/207>

Labor Workforce Development Agency, Department of Industrial Relations

Attn: PAGA Administrator
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102

Via Certified Mail - Return Receipt Requested & E-Mail

ORANGE COUNTY ASSOCIATION FOR MENTAL HEALTH

care of Steven C. Amundson, Esq. (sca@manningllp.com)
MANNING & KASS ELLROD, RAMIREZ, TRESTER LLP
801 South Figueroa Street, 15th Floor
Los Angeles, California 90017
Telephone: (213) 624-6900
Facsimile: (213) 624-6999
Direct: (213) 486-2217

Re: Notice Pursuant to California Labor Code § 2699.3

Employee: Plaintiff Shirley Goemaat

Employer: Defendant Orange County Association for Mental Health

To Whom It May Concern:

The Kick Law Firm, APC (“TKLF”) represents Plaintiff Shirley Goemaat (“Employee” or “Plaintiff”), a current or former employee of Defendant Orange County Association for Mental Health (“Defendant”, “OCAMH” or “Employer”).¹ Plaintiff filed an October 21, 2019 “wage and hour” complaint (“Complaint”) against Defendant in the County of Orange, Case No. 30-2019-01106371-CU-BT-CXC, that Defendant has answered by and through its attorney of record, Mr. Steven C. Amundson, Esq. Pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et seq.*, this letter sets forth the specific provisions of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Order No. 4-2001, any other applicable IWC Wage Order, which Employee alleges Employer has violated, including the facts and theories to support the alleged violations.

Please be advised that this letter constitutes written notice required by Labor Code § 2699.3, subdivisions (a)(1)(A) and (c)(1)(A) and may lead to immediate action against Employer in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Employer. Enclosed, please find a draft of Employee’s proposed complaint, which is incorporated by reference into this notice.

Under separate cover, TKLF is sending a check in the amount of \$75.00 to the Accounting Unit of the Department of Industrial Relations for the requisite filing fee, pursuant to Labor Code § 2699.3, subdivisions (a)(1)(B) and (c)(1)(B).

This letter also serves as notice to Employer of Employee’s demand for preservation and non-spoilation of evidence pursuant to which Employee requests that Employer take all reasonable steps to promptly save and preserve all relevant documents and data including all electronic files and hard-copy documents that are related to Employee’s employment and potential claims including those of similarly-situated and aggrieved employees, even without a court order. Spoliation of evidence may result in legal claims for damages and monetary and evidentiary sanctions, including “adverse inference” jury instructions. Furthermore, intentional spoliation of evidence may carry criminal consequences pursuant to California Penal Code § 135.

Employee serves this notice on behalf of all persons who are, were, or will be non-exempt employees of Employer, or any related or alter-ego company, corporation, partnership, and/or business entity at any time from

¹ *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 811 holds that an individual owner of a business or other person may be held liable for PAGA penalties for violations of Labor Code § 558(a) (overtime wage payment violations) and section 1197.1(a) (minimum wage payment violations). (824; 828-829.) *Atempa* also holds that it was not reversible error for plaintiffs to recover attorney fees and costs and interest from an individual under PAGA. (829-831.)

four years prior to the date of this notice in the State of California. Correspondingly, Employee serves this notice to Employer and any and all related and/or alter ego companies, corporations, partnerships, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, entities or other persons who are or may be liable under California law for any of the violations alleged herein including at any location where non-exempt employees worked for Employer in the State of California, who may be held liable for the violations of California law as alleged herein during the relevant statutory periods.

This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the Labor Code, the applicable IWC Wage Order, or any applicable regulation which may be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

Employee, on behalf of Employee and all other similarly-situated current and former non-exempt employees of Employer in the State of California during the four years preceding the date of the Complaint, is investigating a potential class and representative action on behalf of Employer’s current and former non-exempt employees in the State of California regarding, among other things, the following violations:

- (1) Failure to pay employees minimum wages for all hours worked in violation of Labor Code §§ 1182.12, 1197, 1198 and IWC Wage Order No. 4-2001, § 4;
- (2) Failure to pay employees overtime wages in violation of Labor Code §§ 510, 1198 and IWC Wage Order No. 4-2001, § 3;
- (3) Failure to provide meal periods to employees, or to pay one additional hour of compensation at the employee’s regular rate of compensation for each workday that a meal period was not provided, in violation of Labor Code §§ 226.7, 512, 1198 and IWC Wage Order No. 4-2001, § 11;
- (4) Failure to provide rest periods to employees,² or to pay one additional hour of compensation at the employee’s regular rate of compensation for each workday that a rest period was not provided, in violation of Labor Code §§ 226.7, 512, 1198 and IWC Wage Order No. 4-2001, § 12;
- (5) Failure to indemnify employees for necessary expenditures incurred in discharge of duties in violation of Labor Code § 2802(a), 1198 and IWC Wage Order No. 4-2001, § 9;
- (6) Failure to furnish accurate itemized wage statements to employees in violation of Labor Code §§ 226(a), 226(e)(2)(B), 1198, and IWC Wage Order No. 4-2001, § 7;
- (7) Failure to timely pay all wages due to discharged and quitting employees in violation of Labor Code §§ 201(a), 202, and 203;
- (8) Engagement in unlawful, unfair or fraudulent business acts or practices in violation of California Business and Professions Code §§ 17200, *et seq.*; and
- (9) Failures to comply with various Labor Code and IWC Wage Order No. 4-2001 provisions stated above and below warranting the assessment of PAGA civil penalties pursuant to Labor Code §§ 2698, *et seq.* including violations of:
 - i. Labor Code § 201 (failure to timely pay all wages due at time of discharge);
 - ii. Labor Code § 202 (failure to timely pay all wages due at time of quitting or within 72 hours thereof);
 - iii. Labor Code § 203 (failure to pay wages of the employee as continuing penalty up to 30 days after discharge or quitting);
 - iv. Labor Code § 204 (failure to timely pay all wages due during employment);
 - v. Labor Code § 226 (failure to furnish accurate itemized wage statements and maintain accurate records);
 - vi. Labor Code § 226.7 (failure to timely pay all meal period and rest period wages due during employment);
 - vii. Labor Code § 510 (failure to pay all overtime wages due);
 - viii. Labor Code § 512 (failure to provide timely first and second meal periods);

² “[T]he statement that defendant has not provided its employees with proper rest periods states both the facts and the theory.” (*Gutierrez v. California Commerce Club, Inc.* (2010) 187 Cal.App.4th 969, 979 n.5.)

- ix. Labor Code § 1102.5 (retaliation for disclosing information reasonably believed to be a violation of state or federal law);
- x. Labor Code § 1174(d) (failure to keep accurate payroll records in a central location in California);
- xi. Labor Code § 1194 (failure to pay all minimum and overtime wages);
- xii. Labor Code § 1197 (failure to pay all minimum wages); and
- xiii. Labor Code § 2802 (failure to indemnify employees).

In short, but as explained in greater detail below, Employer’s unlawful employment practices and policies have deprived its employees of earned wages and other compensation, including civil penalties, and have subjected Employee and/or others similarly situated or aggrieved employees to working conditions prohibited under California law based on the facts and theories described in greater detail below.

(1) Failure to Pay Minimum Wages

Pursuant to California Labor Code §§ 1182.12, 1197, 1198 and IWC Wage Order No. 4-2001, § 4, California has fixed minimum wage rates, has required employers in California to pay their employees no less than the minimum for all hours worked in the payroll period, has provided that minimum wages for employees fixed by the IWC or by state law, is the minimum wage to be paid to employees, and that payment of a lower wage than the minimum so fixed is unlawful.

Employee and/or other similarly situated and aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 1182.12, 1197, 1198 and IWC Wage Order No. 4-2001, § 4. Employer failed to pay Employee and/or other similarly situated and aggrieved employees minimum wages for all hours worked by, among other things: requiring, suffering or permitting Employee and/or other similarly situated and aggrieved to work off-the-clock; requiring, suffering or permitting Employee and/or other similarly situated and aggrieved employees to work during their purportedly duty-free meal periods but not compensating them for this time; illegally and inaccurately recording time worked by Employee and/or other similarly situated and aggrieved employees; failing to properly maintain Employee and/or other similarly situated and aggrieved employees’ records; failing to provide accurate itemized wage statements to Employee and/or other similarly situated and aggrieved employees for each pay period; failing to pay Employee and/or other similarly situated and aggrieved employees all commission wages earned and due; and other methods to be discovered.

Employer’s conduct violates §§ 1182.12, 1197, 1198 and IWC Wage Order No. 4-2001, § 4 because Employer has knowingly and willfully refused to perform their obligations to compensate Employee and/or other similarly situated and aggrieved employees for all wages earned and all hours worked and because Employer has employed Employee and/or other similarly situated and aggrieved employees under conditions of labor prohibited by an IWC Wage Order.

(2) Failure to Pay Overtime Wages

Pursuant to California Labor Code §§ 510, 1198 and IWC Wage Order No. 4-2001, § 3, California has required employers to pay their employees at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

Employee and/or other similarly situated and aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 510, 1198 and IWC Wage Order No. 4-2001. Employer failed to compensate Employee and/or other similarly situated and aggrieved employees for all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) times or double the regular rate of pay when required; requiring, suffering or permitting Employee and/or other similarly situated and aggrieved employees to work off-the-clock; requiring, suffering or permitting Employee and/or other similarly situated and aggrieved employees to work during their purportedly duty-free meal periods but not compensating them for this time; illegally and inaccurately recording time worked by Employee and/or other similarly situated and aggrieved employees; failing to properly maintain Employee and/or other similarly situated and aggrieved employees’ employment records through falsifying hours worked; failing to provide accurate itemized statements to Employee and/or other similarly situated and aggrieved employees for each pay period; and other methods to be discovered.

Employer’s conduct violates Labor Code §§ 510 and 1194 and Wage Order No. 4-2001, § 3 because Employer has refused to perform its obligations to compensate Employee and/or other similarly situated and aggrieved employees for all wages earned and all hours worked and because Employer has employed Employee

and/or other similarly situated and aggrieved employees under conditions of labor prohibited by an IWC Wage Order.

(3) Failure to Provide Meal Periods

Pursuant to California Labor Code §§ 226.7, 512, 1198 and IWC Wage Order No. 4-2001, § 11, California has prohibited employers from employing a person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work, the meal period may be waived by mutual consent of the employer and the employee. California has also prohibited employers from employing a person for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. California has also required that unless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. Moreover, if an employer fails to provide an employee a meal period in accordance with the applicable provisions of the relevant IWC Wage Order, then the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

Employee and/or other similarly situated and aggrieved employees are non-exempt employees and are entitled to the protections of California Labor Code §§ 226.7, 512, 1198 and IWC Wage Order No. 4-2001, § 11. Employer failed to provide Employee and/or other similarly situated and aggrieved employees meal periods, or to pay one (1) additional hour of compensation at Employee and/or other similarly situated and aggrieved employees’ regular rates of compensation for each workday that a meal period was not provided, as required under the foregoing provisions of the California Labor Code and IWC Wage Order by, among other things: requiring, permitting or suffering Employee and/or other similarly situated and aggrieved employees to work past five (5) hours from the starts of their shifts before starting a meal period; requiring, permitting or suffering Employee and/or other similarly situated and aggrieved employees to work past ten (10) hours from the starts of their shifts before starting a second meal period; requiring, permitting or suffering Employee and/or other similarly situated and aggrieved employees to take on-duty meal periods of less than 30 minutes or that were otherwise not duty-free inasmuch as Employer failed to relieve Employee and/or other similarly situated and aggrieved employees of all of their duties or maintained control over them during that time; failing to count all times that Employer failed to provide Employee and/or other similarly situated and aggrieved employees duty-free 30-minute meal periods as time worked for the purposes of minimum wage and overtime wage payments; failing to pay Employee and/or other similarly situated and aggrieved employees one (1) hour of pay at their regular rates of compensation for each workday that the meal period was not provided; and by other methods to be discovered.

Employer’s conduct violates Labor Code §§ 226.7, 512, 1198 and IWC Wage Order No. 4-2001, § 11 because Employer has knowingly and willfully refused to perform their obligations to compensate Employee and/or other similarly situated and aggrieved employees for all wages earned and all hours worked and because Employer has employed Employee and/or other similarly situated and aggrieved employees under conditions of labor prohibited by an IWC Wage Order.

(4) Failure to Authorize and Permit Rest Periods

Pursuant to California Labor Code §§ 226.7, 1198, and IWC Wage Order No. 4-2001, § 12, California has required that employers shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period, that the authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof, that a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours, and that authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages. California has also required that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of and IWC Wage Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not authorized and permitted.

Employee and/or other similarly situated and aggrieved are current and former non-exempt employees entitled to the protections of California Labor Code §§ 226.7, 1198, and IWC Wage Order No. 4-2001. Employer failed to provide Employee and/or other similarly situated and aggrieved employees rest periods, or to pay one (1) additional hour of compensation at Employee and/or other similarly situated and aggrieved employees’ regular rates of compensation for each workday that a rest period was not provided, as required under the foregoing provisions of the California Labor Code and IWC Wage Order by, among other things: requiring, permitting or suffering Employee and/or other similarly situated and aggrieved employees to work past three and one-half (3 ½) hours from the starts of their shifts without authorizing and permitting them to take a timely and fully uninterrupted first rest

period; requiring, permitting or suffering Employee and/or other similarly situated and aggrieved employees to work past six (6) hours from the starts of their shifts without authorizing and permitting them to take a timely and fully uninterrupted second rest period; requiring, permitting or suffering Employee and/or other similarly situated and aggrieved employees to work past ten (10) hours from the starts of their shifts without authorizing and permitting them to take a timely and fully uninterrupted third rest period; requiring, permitting or suffering Employee and/or other similarly situated and aggrieved employees to take rest periods of less than 10 minutes or that were otherwise not duty-free inasmuch as Employer failed to relieve Employee and/or other similarly situated and aggrieved employees of all of their duties or maintained control over them during that time; failing to pay Employee and/or other similarly situated and aggrieved employees one (1) hour of pay at their regular rates of compensation for each workday that a rest period was not authorized and permitted; and by other methods to be discovered.

Employer's conduct violates Labor Code §§ 226.7, 1198, and IWC Wage Order No. 4-2001, § 12 because Employer has refused to perform its obligations to compensate Employee and/or other similarly situated and aggrieved employees for all wages earned and all hours worked and because Employer has employed Employee and/or other similarly situated and aggrieved employees under conditions of labor prohibited by an IWC Wage Order.

(5) Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties

Pursuant to California Labor Code §§ 2802(a), 1198, and IWC Wage Order No. 4-2001, § 9, California requires has required that employers indemnify employees for all necessary expenditures or losses incurred by an employee in direct consequence of the discharge of her his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

Employee and/or other similarly situated and aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 2802(a), 1198, and IWC Wage Order No. 4-2001, § 9. Employer knowingly and willfully failed to indemnify Employee and/or other similarly situated and aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of Employer including, but not limited to, by failing to reimburse Employee and/or other similarly situated and aggrieved employees for expenses they incurred in complying with Employer's uniform wear requirements, personal cellular phone use, and mileage or personal vehicle use requirements, and by other methods to be discovered.

Employer's conduct violates §§ 2802(a), 1198, and IWC Wage Order No. 4-2001, § 9 because Employer has knowingly and willfully refused to perform its obligations to indemnify Employee and/or other similarly situated and aggrieved for all monies they expended in necessary expenditures or losses incurred and because Employer has employed Employee and/or other similarly situated and aggrieved employees under conditions of labor prohibited by an IWC Wage Order.

(6) Failure to Furnish Accurate Itemized Wage Statements

Pursuant to California Labor Code §§ 226(a), 226(e)(2)(B), 1198, and IWC Wage Order No. 4-2001, California has required that employers semimonthly or at the time of each payment of wages furnish each of its employees an accurate itemized wage statement in writing showing: (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, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only 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. California law has stated that an employee is deemed to suffer injury for purposes of Labor Code § 226(a) if the employer fails to provide accurate and complete information as required by any one or more of items of the foregoing nine (9) enumerated items and the employee cannot promptly and easily determine from the wage statement alone, *inter alia*, the amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to enumerated items (2) to (4), inclusive, (6), and (9).

Employee and/or other similarly situated and aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 226(a), 226(e)(2)(B), 1198, and IWC Wage Order No. 4-2001, § 7. Employer failed to provide Employee and/or other similarly situated and aggrieved employees accurate itemized wage statements as required under the foregoing provisions of the California Labor Code and IWC Wage Order by, among other things: failing to provide *accurate* writings showing each and every one of the

nine (9) enumerated items required by Labor Code § 226(a) including as a result of the unrecorded and uncompensated off-the-clock minimum wage and overtime wage payments earned and due as alleged herein, the uncompensated meal period and rest period premium payments earned and due for each workday a meal period was not provided and each workday a rest break was not authorized and permitted as alleged herein, failing to provide accurate writings enabling Employee and/or other similarly situated and aggrieved employees to promptly and easily determine from the wage statement alone their total hours worked, all deductions, the inclusive dates for which they were paid, and/or all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; and by other methods to be discovered.

Employer’s conduct violates §§ 226(a), 226(e)(2)(B), 1198, and IWC Wage Order No. 4-2001, § 7 because Employer has knowingly and willfully refused to perform its obligations to provide Employee and/or other similarly situated and aggrieved with timely, accurate, and itemized wage statements and because Employer has employed Employee and/or other similarly situated and aggrieved employees under conditions of labor prohibited by an IWC Wage Order.

(7) Failure to Timely Pay All Wages Due to Discharged and Quitting Employees

Pursuant to California Labor Code §§ 201(a), 202, and 203, California has required that employers pay their employees all wages earned and unpaid at the time of discharge, or if an employee quits, not later than 72 hours thereafter, unless the employee has given 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, and that if an employer willfully fails to timely pay any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but those penalty wages shall not continue for more than 30 days.

Employee and/or other similarly situated and aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 201(a), 202, and 203. Employer failed to timely pay Employee and/or other similarly situated and aggrieved employees all wages due at the times they were discharged or at the times they quit under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay all earned wages to Employee and/or other similarly situated and aggrieved employees in full; failing to pay all earned wages to Employee and/or other similarly situated and aggrieved employees at the time Employer discharged them or within 72 hours of the times they quit; and by failing to pay Employee and/or other similarly situated and aggrieved employees’ wages as penalties from the due dates thereof at the same rate until paid; and by other methods to be discovered.

Employer’s conduct violates §§ 201, 202 and 203 because Employer has knowingly and willfully refused to perform its obligations to provide Employee and/or other similarly situated and aggrieved employees with timely and full payment of all wages earned and unpaid at the time of discharge or quitting.

(8) Engagement in Unlawful, Unfair or Fraudulent Business Acts or Practices

Pursuant to California Business and Professions Code §§ 17200, *et seq.*, also known as California’s Unfair Competition Law (“UCL”), California has prohibited employers from engaging in unlawful, unfair or fraudulent business acts or practices, which may include an employer’s violations of the California Labor Code sections, which prohibit employers from unlawfully withholding wages from an employee.³ Pursuant to § 17203, any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction to prevent the use or employment by any person of any practice which constitutes unfair competition, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition. Furthermore, § 17203 provides that any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of § 17204 and complies with Code of Civil Procedure § 382.

Employee and/or other similarly situated and aggrieved employees are current and former non-exempt employees who, along with members of the general public, are entitled to the protections of California Business and Professions Code §§ 17200, *et seq.* Employer knowingly and willfully engaged in unlawful, unfair or fraudulent business acts or practices including, but not limited to, by (1) willfully failing and refusing to pay Employee and/or other similarly situated and aggrieved employees minimum wages earned and due, (2) willfully failing and refusing

³ *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163, 177-178 (holding: “[w]e conclude that orders for payment of wages unlawfully withheld from an employee are also a restitutionary remedy authorized by section 17203. The employer has acquired the money to be paid by means of an unlawful practice that constitutes unfair competition as defined by section 17200. The employee is, quite obviously, a ‘person in interest’ (§ 17203) to whom that money may be restored.”)

to pay Employee and/or other similarly situated and aggrieved employees overtime wages earned and due, (3) willfully failing and refusing to provide Employee and/or other similarly situated and aggrieved employees meal periods or pay premium wages in lieu thereof, (4) willfully failing and refusing to provide Employee and/or other similarly situated and aggrieved employees rest periods or pay premium wages in lieu thereof, (5) willfully failing and refusing to indemnify Employee and/or other similarly situated and aggrieved employees for necessary business expenses, (6) willfully failing and refusing to furnish Employee and/or other similarly situated and aggrieved employees with accurate itemized wage statements, and (7) willfully failing and refusing to timely pay Employee and/or other similarly situated and aggrieved employees all wages due at time of discharge or quitting. Furthermore, Employer has failed to record, report, and pay the correct sums of assessment to the state authorities under the California Labor Code and other applicable regulations. As a result of Employer’s unfair and unlawful business practices, Employer has reaped unfair and illegal profits at the expense of Employee and/or other similarly situated and aggrieved employees and members of the general public.

Employer’s conduct violates California Business and Professions Code §§ 17200, *et seq.* because Employer has knowingly and willfully engaged in the foregoing Labor Code violations repeatedly, over a significant period of time, and in a systematic manner, to the detriment of Employee and/or other similarly situated and aggrieved employees and members of the general public.

(9) Failures to Comply with Labor Code and IWC Wage Order No. 4-2001 Provisions Warranting PAGA Civil Penalties

Pursuant to California Labor Code §§ 2698 *et. seq.*, also known as PAGA, California has stated that notwithstanding any other provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of the Labor Code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in §§ 2699⁴ and 2699.3.⁵

Employee on behalf of Employee and/or other aggrieved employees incorporates the preceding paragraphs into Employee’s allegations that follow, which give rise to Employer’s liability for PAGA civil penalties.⁶

i. Underlying Violations of Labor Code § 201 (Failure to Timely Pay All Wages Due at Time of Discharge)

Labor Code § 201(a) provides, in part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 201(a). As stated above, and for the reasons set forth above, Employee is

⁴ Pursuant to Labor Code § 2699 subdivision (a), California has stated: “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.”

⁵ Pursuant to Labor Code § 2699.5, California has stated: “The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.4, 6310, 6311, and 6399.7.”

⁶ An employee affected by at least one labor code violation may pursue penalties on behalf of the state for unrelated violations by the same employer. (*Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745.)

informed and believes that Employer failed to timely pay Employee and/or other aggrieved employees all wages due at the times they were discharged.

Employer’s conduct violates Labor Code § 201(a) because Employer has knowingly and willfully refused to perform its obligations to provide Employee and/or other aggrieved employees with timely and full payment of all wages earned and unpaid at the time of discharge, which entitle the State of California, Employee and other aggrieved employees to PAGA civil penalties.

ii. Underlying Violations of Labor Code § 202 (Failure to Timely Pay All Wages Due at Time of Quitting or Within 72 Hours Thereof)

Labor Code § 202(a) provides, in part: “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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.”

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 202(a). As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to timely pay Employee and/or other aggrieved employees all wages due at the times they quit.

Employer’s conduct violates Labor Code § 202(a) because Employer has knowingly and willfully refused to perform its obligations to provide Employee and/or other aggrieved employees with timely and full payment of all wages earned and unpaid at the time of quitting, which entitle the State of California, Employee and other aggrieved employees to PAGA civil penalties.

iii. Underlying Violations of Labor Code § 203 (Failure to Pay Wages of the Employee as Continuing Penalty Up to 30 Days After Discharge or Quitting)

Labor Code § 203(a) provides, in part: “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 203(a). As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed perform its obligations to timely pay Employee and/or other aggrieved employees all final wages and the corresponding penalties that are still due as a result owed at their same respective rates of pay, for up to 30 days.

Employer’s conduct violates Labor Code § 203(a) because Employer has knowingly and willfully refused to perform its obligations to provide Employee and/or other aggrieved employees with timely and full payment of all continuing wages as penalties, sometimes called “waiting time penalty” wages, which entitle the State of California, Employee and other aggrieved employees to PAGA civil penalties.

iv. Underlying Violations of Labor Code § 204 (Failure to Timely Pay All Wages Due During Employment)

Labor Code § 204(a) provides, in part: “All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 204(a). As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to timely pay Employee and/or other aggrieved employees all wages due throughout their respective periods of employment including on days that Employer designated in advance as the regular paydays.

Employer’s conduct violates Labor Code § 204(a) because Employer has knowingly and willfully refused to perform its obligations to provide Employee and/or other aggrieved employees with timely and full payment of

all wages earned throughout their respective periods of employment, which entitle the State of California, Employee and other aggrieved employees to PAGA civil penalties.⁷

v. Underlying Violations of Labor Code § 226 (Failure to Furnish Accurate Itemized Wage Statements and to Maintain and Timely Provide Accurate Employment Records)

In addition to requiring employers to provide employees with accurate itemized wage statements, discussed above, Labor Code § 226(a) provides, in part: “The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, “copy” includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.”⁸

Labor Code § 226(b) provides: “An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer. The employer may take reasonable steps to ensure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.”

Labor Code § 226(c) provides: “An employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction. Impossibility of performance, not caused by or a result of a violation of law, shall be an affirmative defense for an employer in any action alleging a violation of this subdivision. An employer may designate the person to whom a request under this subdivision will be made.”⁹

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 226. As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to provide Employee and/or other aggrieved employees accurate itemized wage statements and failed to create and maintain accurate records, as required under Labor Code § 226(a). Employee is further informed and believes that Employer failed to provide Employee and/or other aggrieved employees copies of their employment records including those required by Labor Code § 226(a) upon their oral and written requests as soon as practicable, but no later than 21 calendar days from the date of the request, as required under Labor Code § 226(b) and (c).

⁷ Labor Code § 210 provides: “(a) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: [¶] (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. [¶] (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. [¶] (b) The penalty shall be recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties pursuant to this chapter or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and the attorneys thereof may proceed and act for and on behalf of the people in bringing these actions. Twelve and one-half percent of the penalty recovered shall be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General Fund.”

⁸ Labor Code § 226.3 provides: “Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law. In enforcing this section, the Labor Commissioner shall take into consideration whether the violation was inadvertent, and in his or her discretion, may decide not to penalize an employer for a first violation when that violation was due to a clerical error or inadvertent mistake.”

⁹ Labor Code § 226(f) provides: “A failure by an employer to permit a current or former employee to inspect or receive a copy of records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.”

Employer’s conduct violates Labor Code § 226 because Employer has knowingly and willfully refused to perform its obligations to provide Employee and/or other aggrieved employees with accurate itemized wage statements, to maintain accurate employment records, and to timely and fully comply with written or oral requests for inspection or receipts of copies of employment records, which entitle the State of California, Employee and other aggrieved employees to PAGA civil penalties.

vi. Underlying Violations of Labor Code § 226.7 (Failure to Timely Pay All Meal Period and Rest Period Wages Due During Employment)

Labor Code § 226.7(c) provides: “If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 226.7(c). As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to provide Employee and/or other aggrieved employees one (1) hour of pay at their regular rates of compensation for each workday that a meal period was not provided and for each workday that a rest period was not authorized or permitted.

Employer’s conduct violates Labor Code § 226.7(c) because Employer has knowingly and willfully refused to perform its obligations to compensate Employee and/or other aggrieved employees for all wages earned and all hours worked, which entitle the State of California, Employee and other aggrieved employees to PAGA civil penalties.

vii. Underlying Violations of Labor Code § 510 (Failure to Pay All Overtime Wages Due)

Labor Code § 510(a) provides, in part: “Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 510(a). As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to pay Employee and/or other aggrieved employees for all overtime hours worked.

Employer’s conduct violates Labor Code § 510 because Employer has refused to perform its obligations to compensate Employee and/or other aggrieved employees for all wages earned and all hours worked, which entitles the State of California, Employee and other aggrieved employees to PAGA civil penalties.¹⁰

viii. Underlying Violations of Labor Code § 512 (Failure to Provide Timely First and Second Meal Periods)

Labor Code § 512(a) provides: “An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except

¹⁰ California Labor Code § 558(a) and subparagraphs (1) and (2) provide “(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: [¶] (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. [¶] (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”

that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 512(a). As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to provide Employee and/or other aggrieved employees timely, uninterrupted, and duty-free first and second meal periods during their shifts.

Employer’s conduct violates Labor Code § 512 because Employer has refused to perform its obligations to provide Employee and/or other aggrieved employees timely, uninterrupted, and duty-free first and second meal periods during their shifts, which entitles the State of California, Employee and other aggrieved employees to PAGA civil penalties.¹¹

ix. Underlying Violations of Labor Code § 1102.5 (Retaliation for Disclosing Information Reasonably Believed to be a Violation of State or Federal Law)

Labor Code § 1102.5(a) provides: “An employer, or any person acting on behalf of the employer, shall not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, or from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee’s job duties.”

Labor Code § 1102.5(b) provides: “An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee’s job duties.”

Labor Code § 1102.5(c) provides: “An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.”

Labor Code § 1102.5(d) provides: “An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for having exercised his or her rights under subdivision (a), (b), or (c) in any former employment.”

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 1102.5. Employee is informed and believes that Employer adopted and/or enforced rules, regulations or policies designed to prevent or retaliate against Employee and/or other aggrieved employees from disclosing violations of, or participating in investigations, hearings, or inquiries concerning, Employer’s violation of California wage and hour laws as alleged herein or other workplace conditions and/or occurrences including the suffering of adverse actions for medically covered workplace absences suffered by Employee and/or other aggrieved employees.

Employer’s conduct violates Labor Code § 1102.5 because Employer has refused to perform its obligations to refrain from adopting or enforcing rules designed to prevent disclosure of California wage and hour violations

¹¹ California Labor Code § 558(a) and subparagraphs (1) and (2) provide “(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: [¶] (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. [¶] (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”

and/or retaliating against employees to make such disclosures, which entitles the State of California, Employee and other aggrieved employees to PAGA civil penalties.¹²

x. Underlying Violations of Labor Code § 1174(d) (Failure to Keep Accurate Payroll Records in a Central Location in California)

Labor Code § 1174 and subdivision (d) provide: “Every person employing labor in this state shall: [¶] . . . (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 1174(d). As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to keep Employee and/or other aggrieved employees’ accurate payroll records including the hours they worked daily.

Employer’s conduct violates Labor Code § 1174(d) because Employer has refused to perform its obligations to keep accurate payroll records, which entitles the State of California, Employee and other aggrieved employees to PAGA civil penalties.¹³

xi. Underlying Violations of Labor Code § 1194 (Failure to Pay All Minimum and Overtime Wages)

Labor Code § 1194(a) provides: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 1194(a). As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to pay Employee and/or other aggrieved employees for all hours worked, including hours entitling them to minimum wages and overtime wages.

Employer’s conduct violates Labor Code § 1194(a) because Employer has refused to perform its obligations to compensate Employee and/or other aggrieved employees for all wages earned and all hours worked, including hours entitling them to minimum wages and overtime wages, which entitles the State of California, Employee and other aggrieved employees to PAGA civil penalties.¹⁴

¹² California Labor Code § 1102.5(f) provides: “(f) In addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section.”

¹³ California Labor Code § 1174.5 provides “Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

¹⁴ California Labor Code § 1197.1(a) and subparagraphs (1) to (3) provide: “(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows: [¶] (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. [¶] (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. [¶] (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.”

xii. Underlying Violations of Labor Code § 1197 (Failure to Pay All Minimum Wages)

Labor Code § 1197 provides: "The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity."

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 1197. As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to pay Employee and/or other aggrieved employees for all hours worked, including hours entitling them to minimum wages.

Employer's conduct violates Labor Code § 1197 because Employer has refused to perform its obligations to compensate Employee and/or other aggrieved employees for all wages earned and all hours worked, including hours entitling them to minimum wages, which entitles the State of California, Employee and other aggrieved employees to PAGA civil penalties.¹⁵

xiii. Underlying Violations of Labor Code § 2802 (Failure to Indemnify Employees)

Labor Code § 2802(a) provides: "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 2802. As stated above, and for the reasons set forth above, Employee is informed and believes that knowingly and willfully failed to indemnify Employee and/or aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties.

Employer's conduct violates Labor Code § 2802 because Employer has refused to perform its obligations to indemnify Employee and/or other aggrieved for all monies they expended in necessary expenditures or losses incurred, which entitles the State of California, Employee and other aggrieved employees to PAGA civil penalties.

* * *

This notice shall further represent Employee's reasonable attempt to settle Employee's dispute with Employer prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, this notice serves to apprise Employer of Employee's aforementioned grievances and the proposed remedies as detailed below, while affording Employer reasonable opportunity to meet Employee's demands.

Demand is hereby made that Employer shall agree, in writing received at this office no later than 30 calendar days from the postmark date of this notice, as follows:

1. Employer shall pay Employee and all other similarly-situated persons employed by Employer at any time during the past 48 months back pay and compensation for the above-referenced violations.
2. Employer shall comply with all California labor laws and ensure that its/their non-exempt employees are paid proper overtime compensation and given required meal and rest periods.
3. Employer shall conduct a survey or interview all current and former non-exempt employees in California during the past 48 months to obtain information from them regarding the number of minimum wage

¹⁵ California Labor Code § 1197.1(a) and subparagraphs (1) to (3) provide: "(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows: [¶] (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. [¶] (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. [¶] (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee."

The Kick Law Firm, APC

LWDA, DIR; Orange County Association for Mental Health (“Defendant”, “OCAMH” or “Employer”)

February 7, 2020

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hours that were not paid, the number of overtime wage hours that were not paid, the number of meal periods which were not provided, the number of rest periods which were not authorized and permitted, and the number of employees who were required to pay for wear requirements, personal cellular phone use, and mileage or personal vehicle use requirements or other expenditures in the discharge of their duties, the number of employees who were not paid all wages due at time of discharge or quitting, with the investigation to be completed within 60 days.

4. Employer shall pay each employee one hour of pay for each workday he or she was not authorized and permitted one or more rest periods, as required by Labor Code § 226.7. Employer also shall pay each employee one hour of pay for each workday he or she was not provided one or more and meal periods, as required by Labor Code § 226.7.

5. Employer shall reimburse those employees who were forced to pay for any business expenses incurred for Employer’s benefit, as well as those items employees were compelled and coerced to purchase from Employer or other persons in relation to their employment.

6. Employer shall pay waiting time penalties, equal to thirty days of pay, to each former employee who was not paid all wages due as described herein.

7. Employer shall pay accrued interest to all employees at the rate of ten percent per annum for said unpaid wages.

8. Employer shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code § 2698 *et seq.* including, but not limited to, penalties under Labor Code §§ 210, 225.5, 226(f), 226.3, 226.8(2), 558(a), 1102.5(f), 1174.5, 1197.1, and 2699 and Wage Order No. 4-2001, § 20.

If the Department of Industrial Relations including the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please notify this office of that decision by certified mail addressed to The Kick Law Firm, APC, 815 Moraga Drive, Los Angeles, California 90049. Additionally, please advise us if the Agency or Employer require additional information regarding Employee’s complaints.

Thank you for your prompt attention to this matter.

Very truly yours,
THE KICK LAW FIRM, APC



TARAS KICK
DANIEL J. BASS
ROY K. SUH

Attorneys for Plaintiff SHIRLEY GOEMAAT,
individually, and on behalf of others similarly situated
and aggrieved

Thank you for your initial PAGA notice submission to the Labor and Workforce Development Agency on 02/07/2020 01:41:07 PM submitted by The Kick Law Firm, APC representing Shirley Goemaat against Orange County Association For Mental Health. An email will be sent to you confirming your submission and provided your Case Number for future reference and submissions.