

**Electronically Filed
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Case #20CV363828
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

FRANKLIN AMOG, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

vs.

EL CAMINO HOSPITAL, a California
nonprofit public benefit corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 20CV363828

(Assigned to the Honorable Patricia M. Lucas,
Dept. 3)

**DECLARATION OF KRISTEN M. AGNEW IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS AND
REPRESENTATIVE ACTION SETTLEMENT**

Date: June 23, 2021

Time: 1:30 p.m.

Dept.: 3

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I, Kristen Agnew, declare as follows:

1. I am an attorney at law, duly licensed to practice before all Courts in the State of Virginia, and am with the law firm Diversity Law Group, P.C., counsel of record for Plaintiff in Amog (“Plaintiff”). I have personal knowledge of the facts set forth below and if called by I could and would do so competently.

PROCEDURAL HISTORY

2. From the inception of the case, Plaintiff's counsel has zealously represented the interests of the putative class.

3. On February 5, 2020, Plaintiff sent notice to the Labor & Workforce Development Agency (“LWDA”) and Defendant El Camino Hospital (“Defendant”) alleging Defendant violated Labor Code section 226(a), pursuant to Labor Code section 2699 (the “Notice”).

4. On February 10, 2020, Plaintiff initiated this class and representative PAGA action in the Superior Court of California for the County of Santa Clara. In the Complaint, Plaintiff asserts two causes of action for: (1) violation of Labor Code section 226(a); and (2) violation of Labor Code section 2698, *et seq.* predicated on Defendant's alleged violation of Labor Code section 226(a).

5. Plaintiff contends that Defendant failed to provide employees with accurate wage statements. Plaintiff alleges that whenever shift differential wages and/or per diem wages were paid, the corresponding wage statements identified the wrong total hours worked. More specifically, Plaintiff alleges that these wage statements improperly list redundant hours worked, such that an employee cannot simply add the hours listed on the wage statement to arrive at the correct total hours worked during the pay period. Plaintiff seeks statutory and punitive damages under the California Labor Code and PAGA, as well as attorneys' fees and costs.

6. On or about February 16, 2020, Defendant filed its Answer to the Complaint. As its third affirmative defense, Defendant alleged that “it is exempt from the wage and hour provisions of California’s Labor Code and Industrial Welfare Commission’s Wage Orders.”

7. In advance of the initial status conference, I met and conferred with counsel for Defendant regarding the legal and factual bases for the parties' respective claims and defenses. Defendant's counsel shared that Defendant intended to assert multiple defenses to liability, including that Defendant is exempt from the wage and hour provisions of California's Labor Code. More specifically, counsel asserted that Defendant qualifies for the public entity exemption under Labor Code section 226(i), which provides that "this section does not apply to the state, to any city, county, city and county, district, or to any other governmental entity." I spent a significant amount of time researching the alleged exemption.

8. On June 12, 2020, the parties appeared at the initial status conference. Defense counsel advised the Court that Defendant intended to bring a dispositive motion regarding the public entity exemption. The Court lifted the stay on discovery as to Defendant's status as a governmental entity under Section 226(i).

9. On August 12, 2020, Plaintiff propounded Requests for Production of Documents (Set One), Form Interrogatories – Employment Law (Set One), Special Interrogatories (Set One), and Requests for Admissions (Set One). Among other things, the discovery called for Defendant to state all facts in support of the claimed exemption from Labor Code section 226(a) and produce supporting documents.

MEDIATION

10. On or about September 8, 2020, the Parties agreed to participate in private mediation with Steven J. Serratore, a well-regarded neutral with experience mediating wage and hour matters.

11. In advance of the mediation, Defendant provided documents and information relating to its alleged status as a “governmental entity,” including a decision from the Public Employment Relations Board holding that Defendant is a “public agency.” Defendant also produced wage statements representative of those issued to Class Members, and data relating to the number of Class Members and wage statements issued to each Class Member. Using the data provided by Defendant, I conducted a full damage analysis.

12. On January 29, 2021, the Parties participated in private mediation with Mr.

1 Serratore. During the mediation, counsel zealously advocated on behalf of their respective
2 clients. The Parties gained valuable insight and exchanged significant information about their
3 respective positions, as well as the independent views on all of these topics expressed by the
4 neutral mediator. The Parties extensively discussed the factors that the Court would consider in
5 order to determine whether Defendant qualifies for the Labor Code section 226(i) exemption.
6 Defense counsel identified several factors weigh in favor of applying the exemption, including
7 whether the entity performs “an essential governmental function for a public purpose,” “whether
8 the entity is governed by an elected board of directors,” and “whether it is subject to open
9 meeting laws and public disclosure of records.”

10 13. The parties also discussed the merits of the alleged wage statement violation
11 itself. Defense counsel argued that under *Morgan v. United Retail, Inc.*, employers are not
12 required to expressly list a total of hours worked to comply with Labor Code section 226. 186
13 Cal. App. 4th 1136, 1147 (2010). Counsel further argued that, even if Plaintiff established a
14 technical violation of the statute, the alleged violation was not a “knowing and intentional
15 failure” by Defendant to comply with Labor Code section 226(a), and penalties are therefore
16 unwarranted. As framed by defense counsel, there was no injury because employees could
17 promptly and easily determine from the wage statements alone the total hours worked, and no
18 employees were underpaid for any hours worked. Defense counsel maintained that employees
19 fully understand the shift differential and per diem notations, and actively bargained for them
20 through the union. Furthermore, because the alleged violation did not result in the underpayment
21 of wages, defense counsel argued that any award of PAGA penalties would be subject to
22 significant reduction. In this respect, counsel argued that several factors supported the award of
23 modest, if not nominal, penalties, including: Defendant’s public healthcare mission; the on-going
24 COVID-19 pandemic; the complicated nature of the payroll system for hospital employees; and
25 the absence of willfulness

26 14. After a full day of negotiation, the Parties were able to reach an agreement for
27 settlement and the key terms. The Parties thereafter worked to memorialize the terms of the
28 settlement in a long-form settlement agreement.

1 **SUMMARY OF THE MONETARY TERMS OF THE PROPOSED SETTLEMENT**

2 15. Attached hereto as **Exhibit A** is true and correct copy of the Joint Stipulation of
3 Class and Representative Action Settlement (the “Settlement Agreement” or “Settlement”).

4 16. As defined by the Settlement Agreement, the Class consists of “all current and
5 former employees of Defendant in the State of California who were paid shift differential and/or
6 per diem wages at any time during the Class Period (February 10, 2019 through September 21,
7 2019).” *See* Joint Stip. §§ A-3, A-7. The Class is comprised of approximately 2,469 individuals.
8 *See* Joint Stip. § A-3.

9 17. The Settlement Agreement requires Defendant to pay the Maximum Settlement
10 Amount of One Million Dollars (\$1,000,000.00). *See* Joint Stip. § A-16. This is a non-
11 reversionary settlement and the entirety of the Maximum Settlement Amount will be fully paid
12 out. *See* Joint Stip. § C-1.

13 18. The Settlement Agreement allocates Forty Thousand Dollars (\$40,000.00) of the
14 Maximum Settlement Amount to PAGA penalties. *See* Joint Stip. § A-21. Pursuant to the PAGA,
15 seventy-five percent of the PAGA Payment, *i.e.* the sum of Thirty Thousand Dollars
16 (\$30,000.00), shall be paid to the LWDA. *See id.* The remaining twenty-five percent of the
17 PAGA Payment, *i.e.* the sum of Ten Thousand Dollars (\$10,000.00), shall be distributed to
18 Settlement Class Members (*i.e.* Class Members who do not opt-out). *See id.*

19 19. The balance of the Maximum Settlement Amount remaining after deduction of
20 the approved Service Payment to Plaintiff, Settlement Administration Costs, the LWDA portion
21 of the PAGA Payment, and Class Counsel Award (“Net Settlement Amount”), will be available
22 for distribution to Settlement Class Members. *See* Joint Stip. § A-18. The Individual Settlement
23 Payments will be proportionally based upon the number of wage statements reflecting the
24 payment of shift differential and/or per diem wages Settlement Class Members received during
25 the Class Period. *See* Joint Stip. § C-7. This is fair, as it directly allocates greater penalties to
26 individual Class Members who have allegedly suffered greater harm.

27 20. As part of the Settlement Agreement, Defendant does not object to Plaintiff’s
28 request for an Enhancement Payment of Ten Thousand Dollars (\$10,000.00). *See* Joint Stip. at §

1 A-14. This amount is to compensate Plaintiff for his efforts and work in prosecuting this case,
2 including meeting and communicating with his counsel, reviewing the PAGA Notice and
3 pleadings in this case, and for executing a general release under California Civil Code section
4 1542. Both Plaintiff and Class Counsel expressly acknowledge that the Court has final discretion
5 in any fee award or Class Representative Enhancement Payment. *See* Joint Stip. §§ A-5, A-14.

6 21. Pursuant to the Settlement Agreement, Defendant also agrees to not oppose Class
7 Counsel's request for an award of attorney's fees up to one-third (1/3) of the Maximum
8 Settlement Amount, *i.e.* the sum of Three Hundred Thirty-Three Thousand Three Hundred
9 Thirty-Three Dollars and Thirty-Three Cents (\$333,333.33), plus up to Twenty Thousand
10 Dollars (\$20,000.00) for reimbursement of litigation costs, subject to the Court finally approving
11 this Settlement. *See* Joint Stip. § A-5. Any portion of the Class Counsel Award not awarded to
12 Class Counsel shall be added to the Net Settlement Amount.

13 22. Finally, the Settlement Agreement provides for the payment of the fees and
14 expenses reasonably incurred by the Settlement Administrator. The Parties have received a quote
15 from Phoenix Settlement Administrators for a fee of approximately Eighteen Thousand Five
16 Hundred Dollars (\$18,500.00). *See* Joint Stip. §§ A-29, A-30. Any portion of the Settlement
17 Administration Costs not used or approved by the Court shall be added to the Net Settlement
18 Amount. The Parties believe that the administration fee is reasonable and should be approved.

19 **PAYMENTS TO SETTLEMENT CLASS MEMBERS**

20 23. Assuming that the Court approves the Class Representative Enhancement
21 Payment (\$10,000.00), attorney's fees (\$333,333.33), litigation costs (\$20,000.00), the payment
22 to the LWDA (\$30,000.00) and the Settlement Administrator's costs (\$18,500.00), I estimate
23 that the Net Settlement Amount will total \$588,166.67.

24 24. Based on the number of Class Members (2,469) and the number of wage
25 statements at issue (25,928), employees will be entitled to recover, on average, up to \$238.22
26 each or \$22.68 per wage statement reflecting the payment of shift differential and/or per diem
27 wages issued during the Class Period. The amount any particular Class Member will be entitled
28 to recover will be greater or lower than this average, depending on the number of wage

1 statements he or she received during the Class Period and the number of opt-outs received.

2 25. All Individual Settlement Payments to Class Members that remain un-cashed after
3 one hundred twenty (120) days of the mailing of settlement checks will be paid out pursuant to
4 California Code of Civil Procedure section 384 to the following *cy pres* recipient: El Camino
5 Health Foundation – Hospital Employee Assistance Fund. *See* Joint Stip. § C-22. In the event
6 that the Court does not approve the designated *cy pres* recipient. The Parties agreed to select
7 Legal Aid of Silicon Valley as an alternate *cy pres* recipient. *Id.* I do not have a relationship or
8 connection with or to either El Camino Health Foundation – Hospital Employee Assistance Fund
9 or Legal Aid at Work.

10 **POTENTIAL STATUTORY AND CIVIL PENALTIES**

11 26. I calculated the potential statutory penalties for Defendant’s alleged violation of
12 Labor Code section 226(a). Defendant issued 25,928 wage statements reflecting the payment of
13 shift differential and/or per diem wages to 2,469 Class Members during the Class Period. Thus,
14 the total penalties under Labor Code section 226(e) amount to \$2,469,350 $[(2,469 \times \$50) +$
15 $(25,928 - 2,469) \times 100]$.

16 27. The Section 226(e) penalty calculation assumes that Plaintiff will prevail both on
17 class certification and the merits. However, Plaintiff’s claims are contested. Furthermore, this
18 calculation assumes that the Court would find that the Class suffered “injury” as a result of the
19 alleged violation, and also that the violation was “knowing and intentional.” As explained above,
20 Defendant strongly disputes that Plaintiff can establish either on a class-wide basis.

21 28. I calculated potential civil penalties for Plaintiff’s PAGA claim. I estimated that
22 Defendant could face civil penalties of up to a maximum \$6,482,000. The payroll data indicates
23 that there were 25,928 pay periods in which Defendant issued a wage statement reflecting the
24 payment of shift differential and/or per diem wages. Pursuant to Labor Code section 226.3, I
25 applied the \$250 penalty per violation.

26 29. However, courts have wide discretion to award less than the full civil penalty, if
27 “based on the facts and circumstances of the particular case, to do otherwise would result in an
28 award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(e)(2).

1 Here, Defendant has articulated several arguments in support of its position that full PAGA
2 penalties would not be award, including that: 1) the alleged violation is a technical one and did
3 not result in the underpayment of wages to employees; 2) the award of both statutory and civil
4 penalties for the same “technical” violation would be confiscatory; 3) Defendant operates a
5 hospital that requires the use of a complicated payroll system; and 4) Defendant serves an
6 important public function during the COVID-19 pandemic. Based on the particular
7 circumstances of this case and the nature of Defendant’s business, I appreciate the substantial
8 risk that Defendant could present a persuasive argument to reduce the amount of PAGA penalties
9 at trial.

10 30. I am also aware that Courts routinely award far less than the statutory maximum
11 amount of civil penalties, even where an underlying violation of the Labor Code is found. For
12 example, in *Fleming v. Covidien, Inc.*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12,
13 2011), while the plaintiff ultimately prevailed in a PAGA trial predicated on a violation of Labor
14 Code section 226(a), *i.e.*, inaccurate wage statements, the Court assessed only 17% of the
15 maximum penalties. Additionally, Judge Carville of the Alameda Superior Court in the matter of
16 *Parr v. Golden State Overnight*, Alameda Superior Court Case No. RG12618103, assessed
17 PAGA penalties upon the defendant of approximately 7% of the total maximum penalties—
18 again, this was only after plaintiff had prevailed at trial. Thus, the \$6,482,000 penalty calculation
19 does not factor in the likelihood that the Court would reduce the amount of penalties at trial.

20 31. Based on the data provided by Defendant, I estimate that Defendant’s maximum
21 liability exposure is approximately \$8,951,350. However, this number assumes that Section
22 226(e) statutory penalties and full PAGA penalties are awarded.

23 **THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

24 32. The Maximum Settlement Amount is approximately 11.17% of the maximum
25 recovery of the class and representative PAGA claims.

26 33. I strongly believe that a class can be certified and that Plaintiff can prevail at trial.
27 However, Defendant’s anticipated Motion for Summary Judgment presented an immediate
28 challenge to Plaintiff’s ability to obtain a favorable determination on the merits. An adverse

1 ruling on the motion for summary judgment would have been dispositive on the claims alleged
2 by Plaintiff. Thus, after taking into account sharply disputed factual and legal issues involved in
3 this litigation, the risks attending further prosecution and the substantial benefits to be received
4 pursuant to the compromise and settlement of the litigation, I have concluded that settlement on
5 the terms set forth in the Settlement Agreement is appropriate and in the best interests of Plaintiff
6 and the Class.

7 **ATTORNEY EXPERIENCE**

8 34. Class Counsel has a great deal of experience in wage and hour class action
9 litigation and has been approved as class counsel in a number of class actions. My co-counsel
10 and I can and will adequately represent the Class Members in this action. I have no conflicts with
11 the Class and will adequately represent the Class.

12 35. My qualifications are as follows: I was the 2003 recipient of the Spelman
13 Presidential Scholarship to Emory University School of Law. During law school, I was a summer
14 associate at the law firm of Sonnenschein, Nath and Rosenthal, and clerked with the Atlanta
15 office of the Equal Employment Opportunity Commission. I received my J.D. from Emory
16 University in 2006 and was admitted to the California Bar in December 2006. Following law
17 school, I was an associate at Sonnenschein from September 2006 to May 2009.

18 36. Since 2009, my primary area of practice has been employment litigation. I have
19 practiced law at two preeminent employment defense firms. From May 2009 to June 2011, I was
20 an associate at Ogletree, Deakins, Nash, Smoak & Stewart, P.C. I was also an associate, and then
21 senior associate, in the labor and employment practice group of Seyfarth Shaw, LLP from June
22 2011 to May 2016. At both Ogletree and Seyfarth, I represented a wide array of fortune 500
23 companies in employment litigation in both state and federal courts, as well as before
24 government agencies, including the California Department of Labor. My practice included the
25 defense of single plaintiff and multi-plaintiff lawsuits involving claims under the California Fair
26 Employment and Housing Act, the California Labor Code and the Fair Labor Standards Act. I
27 also handled a number of wage and hour class actions.

28 37. As an associate at Ogletree and Seyfarth, I served as the lead associate on a

1 number of wage and hour class actions, including *Martha Cardenas v. Gold's Gym*, Los Angeles
2 County Superior Court Case No. BC445112; *Nathaniel Werner v. Crown Equipment*
3 *Corporation*, Los Angeles County Superior Court Case No. BC439428; *Christopher Williams v.*
4 *Allstate Insurance Co.*, Los Angeles County Superior Court Case No. BC382577; *Hwang v.*
5 *Caltech*, Los Angeles County Superior Court Case No. BC464894; *Melissa Roberts v. Zale*
6 *Delaware, Inc.*, Los Angeles Superior Court Case No. BC523610; *Michael Oliver v. Konica*
7 *Minolta Business Solutions U.S.A., Inc.*, Santa Clara County Superior Court Case No. 114-CV-
8 263183; *Tessa Hodge v. Zale Delaware, Inc., d/b/a Piercing Pagoda*, San Bernardino Superior
9 Court Case No CIVVS1301632; *Warren v. Paychex, Inc.*, N.D. Cal. Case No. 3:10-cv-02006;
10 *Tapia v. Zale Delaware Inc. et al*, S.D. Cal. Case No. 3:13-cv-01565; and *Benjamin Burgess et*
11 *al v. Tesoro Refining and Marketing Company et al*, C.D. Cal. Case No. 2:10-cv-05870.

12 38. I also second chaired two jury trials where I represented the prevailing defendant.
13 Both cases involved employees who brought claims against their former employers pursuant to
14 the Fair Employment & Housing Act. The cases are: *Jeff Cowell v. Eaton Aerospace LLC et al*,
15 Los Angeles County Superior Court Case No. BC401543; and *Richard Gulden v. Pratt &*
16 *Whitney Rocketdyne Inc. et al.*, Los Angeles County Superior Court Case No. BC468909.

17 39. In June 2016, I joined Diversity Law Group, P.C. where I spend most of my time
18 handling employment cases. I primarily represent employees.

19 40. I have been approved as class counsel in numerous wage/hour class actions that
20 have been granted class certification and final approval, including: *Antonio Becerra-Mata v. PSC*
21 *Industrial Outsourcing, LP*, San Benito County Superior Court Case No. CU-15-00030; *Kosal*
22 *So v. Owens-Brockway Glass Container, Inc.*, Los Angeles County Superior Court Case No.
23 BC608609; *Sarah Rodriguez v. Manpower, Inc.*, Santa Clara County Superior Court Case No. 1-
24 16-CV-294904; *Shannon Sanchez v. American Para Professional Systems, Inc.*, Santa Clara
25 County Superior Court Case No. 17CV306751; *Foaad Hanna v. Equinix, LLC*, Santa Clara
26 County Superior Court Case No. 18CV339365; *Alicia Harris v. 24 Seven LLC*, Los Angeles
27 County Superior Court Case No. BC720144; *Mary Della Maggiora v. Watsonville Community*
28 *Hospital*, Santa Cruz Superior Court Case No. 18CV00191; *Michael Randolph v. Pacific Racing*

1 *Association*, Alameda County Superior Court Case No. RG18908139; *Cody Wirbick v. Sundt*
2 *Construction, Inc.*, U.S. District Court for the Eastern District of California Case No. 2:19-cv-
3 02067-MCE-CKD; *Jose Vasquez Ruiz v. Perdue Foods, LLC*, Sonoma County Superior Court
4 Case No. SCV 264649; *Delmer Wood III v. Reeve Trucking Company Inc.*, San Joaquin
5 Superior Court Case No. STK-CV-UOE-2018-0004414; *Eric Chavez v. Converse, Inc.*, U.S.
6 District Court for the Northern District of California Case No. 15-cv-03746-NC; *Jharett Siron v.*
7 *Raypak, Inc.*, Ventura County Superior Court Case No. 56-2019-00527959-CU-OE-VTA;
8 *Prexxie Pascual and Arturo Fonseca v. Satellite Healthcare, Inc.*, Santa Clara Superior Court
9 Case No. 19CV345211; and *Markham v. Quik Stop Markets, Inc.*, Santa Clara Superior Court
10 Case No. 19CV341582.

11 **NOTICE TO THE LWDA**

12 41. Concurrent with the filing of the Motion for Preliminary Approval of Class and
13 Representative Action Settlement, my office uploaded the Motion, Settlement Agreement, and
14 proposed order to the LWDA's website.

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

17 Executed on this 1st day of June 2021, at Los Angeles, California.

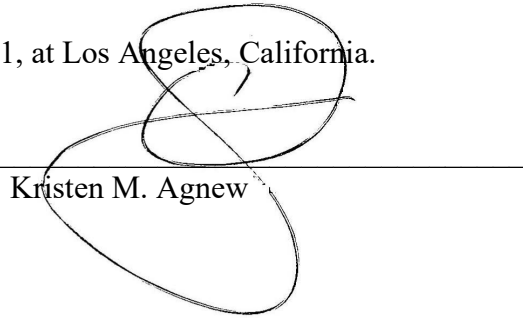
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21 Kristen M. Agnew
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EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

FRANKLIN AMOG, as an individual and
on behalf of all others similarly situated,

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DOES 1 through 50, inclusive,

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Case No. 20CV363828

(Assigned to the Honorable Patricia M. Lucas,
Dept. 3)

**JOINT STIPULATION OF CLASS AND
REPRESENTATIVE ACTION SETTLEMENT**

Complaint Filed: February 10, 2020

JOINT STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

This Joint Stipulation of Class and Representative Action Settlement ("Agreement" or "Settlement Agreement") is made and entered into by and between Plaintiff Franklin Amog ("Plaintiff") and Defendant El Camino Hospital ("Defendant"). Plaintiff and Defendant collectively are referred to in the Agreement as "the Parties."

A. DEFINITIONS

The following definitions are applicable to this Agreement. Definitions contained elsewhere in this Agreement shall also be effective:

1. "Action" means *Franklin Amog v. El Camino Hospital*, filed on February 10, 2020 in the Superior Court State of California, County of Santa Clara Case No. 20CV363828.
2. "Agreement" or "Settlement Agreement" means this Joint Stipulation of Class and Representative Action Settlement.
3. "Class" or "Class Member(s)" means all current and former employees of Defendant in the State of California who were paid shift differential and/or per diem wages at any time during the Class Period. Defendant has determined that there are approximately 2,469 individuals that comprise the Class.
4. "Class Counsel" means Larry W. Lee, Kristen M. Agnew and Nicholas Rosenthal of Diversity Law Group, P.C., and William L. Marder of Polaris Law Group.
5. "Class Counsel Award" means such award of fees and costs and expenses as the Court may authorize to be paid to Class Counsel for the services they have rendered and will render to Plaintiff and the Class in the Action. Defendant agrees not to oppose Class Counsel Award of up to one-third (1/3) of the Maximum Settlement Amount (\$1,000,000.00), *i.e.* the sum of Three Hundred Thirty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$333,333.33), and costs in the amount of up to Twenty Thousand Dollars (\$20,000.00), subject to the Court finally approving this Settlement.
6. "Class List and Data" means a true and complete list of all Class Members that Defendants will compile, based on its business records, and provide to the Settlement Administrator within five (5) business days after the Court grants preliminary approval of the

1 Settlement. The Class List shall be formatted in Microsoft Office Excel and shall include each
2 Class Member's full name, his or her last known home address, Social Security Number, beginning
3 and ending dates of employment, and number of wage statements that include payment of shift
4 differential and/or per diem wages the employee received during the Class Period.

5 7. "Class Period" means the period from the pay period beginning February 10, 2019
6 (with a wage statement issued March 1, 2019) through the pay period ending September 21, 2019
7 (with a wage statement issued September 27, 2019).

8 8. "Class Representative" or "Plaintiff" means Plaintiff Franklin Amog.

9 9. "Complaint" means the operative Class and Representative Action Complaint filed
10 by Plaintiff in this Action.

11 10. "Counsel for Defendant" or "Defense Counsel" means Fletcher C. Alford and Seth
12 Weisburst of Gordon Rees Scully Mansukhani, LLP.

13 11. "Court" means the Superior Court for the State of California, County of Santa
14 Clara, or any other court taking jurisdiction of the Action.

15 12. "Defendant" means El Camino Hospital.

16 13. "Effective Date" shall mean either: 1) if no appeal is taken from the order and
17 judgment finally approving this settlement, then the day on which the deadline for filing such an
18 appeal expires unmet; or 2) if an appeal is taken from the order and judgment finally approving
19 this settlement, the day such appeal finally concludes in a manner that affirms in full the order and
20 judgment finally approving this settlement.

21 14. "Enhancement Payment" or "Service Payment" means the amount that the Court
22 authorizes to be paid to Plaintiff, in addition to his Individual Settlement Payment, in recognition
23 of his efforts and risks in assisting with the prosecution of the Action. Subject to the Court granting
24 final approval, the Parties agree that Plaintiff shall be paid up to Ten Thousand Dollars
25 (\$10,000.00) from the Maximum Settlement Amount.

26 15. "Final Approval" means that the Final Approval Order and Judgment have been
27 entered by the Court.

28 16. "Maximum Settlement Amount" means the maximum settlement amount of One

1 Million Dollars (\$1,000,000.000) to be paid by Defendant as a result of this Stipulation. The
2 Maximum Settlement Amount includes all Individual Settlement Payments to Settlement Class
3 Members, the Enhancement Payment to Plaintiff, Settlement Administration Costs to the
4 Settlement Administrator, the PAGA Payment, and Class Counsel Award. Defendant shall have
5 no monetary responsibility of any kind in connection with this settlement other than payment of
6 the Maximum Settlement Amount.

7 17. "Individual Settlement Payment" means the amount payable from the Net
8 Settlement Amount to each Settlement Class Member.

9 18. "Net Settlement Amount" means the balance of the Maximum Settlement Amount
10 remaining after deduction of the approved Enhancement Payment to Plaintiff, Settlement
11 Administration Costs, the California Labor and Workforce Development Agency's ("LWDA")
12 portion of the PAGA Payment, and Class Counsel Award. The entire Net Settlement Amount is
13 the maximum amount that will be available for distribution to Settlement Class Members.

14 19. "Notice of Objection" means a Class Member's valid and timely written objection
15 to the Settlement. For the Notice of Objection to be valid, it must include: (a) the case name and
16 number; (b) the objector's full name, signature, address, and telephone number; (b) a written
17 statement of basis for the objection; and (c) any copies of papers, briefs, or documents upon which
18 the objection is based. The Notice of Objection must be returned by mail to the Settlement
19 Administrator at the specified address indicated in the Notice Packet as well as the Clerk of the
20 Court, and must be postmarked by the Response Deadline.

21 20. "Notice Packet" means the Notice of Class Action Settlement, substantially in the
22 form attached as Exhibit A.

23 21. "PAGA Payment" means the portion of the Maximum Settlement Amount that the
24 Parties have agreed will be allocated to resolve all claims, penalties, and remedies under the Private
25 Attorneys General Act of 2004 (Cal. Lab. Code § 2698, *et seq.*, "PAGA"). The amount of the
26 PAGA Payment is subject to Court approval pursuant to California Labor Code section 2699(l).
27 The Parties have agreed that Forty Thousand Dollars (\$40,000.00) of the Maximum Settlement
28 Amount shall be allocated to the resolution of claims arising under PAGA. Pursuant to the PAGA,

seventy-five percent (75%) of the PAGA Payment, *i.e.* the sum of Thirty Thousand Dollars (\$30,000.00), shall be paid to the LWDA, and twenty-five percent (25%) of the PAGA Payment, *i.e.* the sum of Ten Thousand Dollars (\$10,000.00), shall be part of the Net Settlement Amount to be distributed to Settlement Class Members.

22. "Parties" means Plaintiff, on behalf of himself and Settlement Class Members, and Defendant collectively.

23. "Preliminary Approval" means the Court's order granting preliminary approval of the Settlement.

24. "Released Claims" means the following: all claims, including penalties, costs and attorneys' fees related thereto, that could have been brought under the facts and allegations made in the operative Complaint, including claims for violation of Labor Code section 226 and penalties under the California Private Attorneys' General Act predicated on alleged violation of Labor Code section 226, that accrued at any time from February 5, 2019 through the date of Preliminary Approval.

25. "Released Parties" means Defendant and Defendant's affiliates, parents, and each of their company-sponsored employee benefit plans, and their respective successors and predecessors in interest, all of their respective officers, directors, employees, administrators, fiduciaries, trustees and agents, and each of their past, present and future officers, directors, shareholders, employees, agents, principals, heirs, representatives, attorneys, accountants, auditors, consultants, attorneys, insurers and reinsurers.

26. "Request for Exclusion" means a timely letter submitted by a Class Member indicating a request to be excluded from the Settlement. The Request for Exclusion must: (a) clearly state that the Class Member does not wish to be included in the Settlement; (b) set forth the name and contact information of the Class Member requesting exclusion; (c) be signed by the Class Member; (d) be returned by mail to the Settlement Administrator at the specified address indicated in the Notice Packet; and (e) be postmarked on or before the Response Deadline.

27. "Response Deadline" means sixty (60) days after the Settlement Administrator initially mails the Notice Packet to Class Members, and the last date on which Class Members may

1 submit Requests for Exclusion or Notices of Objections to the Settlement.

2 28. "Settlement" means the agreement among the Parties to resolve the Action, as set
3 forth in this Stipulation.

4 29. "Settlement Administration Costs" means the fees and expenses reasonably
5 incurred by the Settlement Administrator as a result of the procedures and processes expressly
6 required by this Agreement, which are estimated at Eighteen Thousand Five Hundred Dollars
7 (\$18,500.00). Any portion of the Settlement Administration Costs not used or approved by the
8 Court shall be added to the Net Settlement Amount.

9 30. "Settlement Administrator" means Phoenix Settlement Administrators.

10 31. "Settlement Class" or "Settlement Class Members" means all Class Members who
11 do not submit valid and timely Requests for Exclusion.

12 32. "Settlement Payment Check" means the payment of the Individual Settlement
13 Payment to Settlement Class Members.

14 **B. FACTUAL BACKGROUND**

15 1. On February 5, 2020, Plaintiff filed a written notice to the LWDA alleging that
16 Defendant violated Labor Code section 226(a), pursuant to Labor Code section 2699 ("PAGA
17 Notice").

18 2. On February 10, 2020, Plaintiff initiated this action in Santa Clara County Superior
19 Court. The Complaint alleged causes of action for (i) violation of Labor Code section 226(a) and
20 (ii) violation of Labor Code section 2698, *et seq.*, predicated on the underlying violation of Labor
21 Code section 226(a). Specifically, Plaintiff alleges that Defendant issued wage statements that
22 failed to include accurate total hours worked whenever shift differential and/or per diem wages
23 were paid, in violation of Labor Code section 226(a)(2). As alleged in the Complaint, Plaintiff
24 seeks to represent the Class and other aggrieved employees. Plaintiff further seeks damages,
25 penalties, attorneys' fees, and costs.

26 3. The Parties engaged in formal and informal discovery. Plaintiff propounded
27 Requests for Production of Documents (Set One), Form Interrogatories – Employment Law (Set
28 One), Special Interrogatories (Set One), and Request for Admissions (Set One).

1 4. On or about September 8, 2020, the Parties agreed to participate in private
2 mediation. In connection with the mediation, Defendant produced an employee handbook and
3 other documents related to its payroll practices, and data relating to the number of Class Members
4 and wage statements issued to each Class Member, which allowed Plaintiff's counsel to conduct a
5 full damage analysis.

6 5. On January 29, 2021, the Parties engaged in mediation with Steven J. Serratore, an
7 experienced wage and hour class action mediator. After the exchange of further information and
8 extended negotiations, Plaintiff and Defendant reached the present class-wide settlement. The
9 settlement discussions were conducted at arm's-length.

10 6. The Parties recognize the risk, expense, and delay in continuing the Action, and
11 therefore believe the Settlement to be fair, reasonable, and adequate. Accordingly, the Parties
12 desire to settle, compromise, and discharge all disputes and claims arising from or relating to the
13 Action.

14 **C. PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT**

15 1. Settlement Consideration. Defendant shall pay the sum of the Maximum Settlement
16 Amount as specified in this Agreement, which shall be used to pay: (1) Individual Settlement
17 Payments; (2) Class Counsel Award; (3) Enhancement Payment; (4) Settlement Administration
18 Costs; and (5) the PAGA Payment. Defendant shall have no monetary responsibility of any kind
19 in connection with this settlement other than payment of the Maximum Settlement Amount. The
20 Parties agree that this is a non-reversionary Settlement and that no portion of the Maximum
21 Settlement Amount shall revert to Defendant.

22 2. Funding of the Maximum Settlement Amount. Within two (2) business days after
23 the Effective Date, Defendant shall make a one-time deposit of the Maximum Settlement Amount
24 into a Qualified Settlement Fund to be established by the Settlement Administrator.

25 3. Class Counsel Award. Defendant agrees not to oppose any application or motion
26 by Class Counsel for attorneys' fees of up to one-third (1/3) of the Maximum Settlement Amount
27 (\$1,000,000.00), *i.e.* the sum of Three Hundred Thirty-Three Thousand Three Hundred Thirty-
28 Three Dollars and Thirty-Three Cents (\$333,333.33), and costs in the amount of up to Twenty

1 Thousand Dollars (\$20,000.00), which shall be paid from the Maximum Settlement Amount. It is
2 understood by Class Counsel that the Court has final discretion in any fee award. The Settlement
3 Administrator shall issue an IRS Form 1099 to Class Counsel reflecting the awarded attorneys'
4 fees, costs, and expenses. Any portion of the Class Counsel Award not awarded to Class Counsel
5 shall be added to the Net Settlement Amount and shall be distributed to Settlement Class Members
6 as provided in this Agreement. Notwithstanding any other provision of this Agreement, if the Court
7 should fail to award attorneys' fees to Class Counsel in the full amount provided for in this
8 Agreement, such shall not constitute grounds for cancellation or termination of the Agreement or
9 grounds for limiting any other provision of the Judgment. It is agreed that no order of the Court,
10 including any order concerning attorneys' fees, may alter or otherwise increase the Maximum
11 Settlement Amount.

12 4. Class Representative Enhancement Payment. Defendant agrees not to oppose any
13 application or motion by Plaintiff for an Enhancement Payment of up to Ten Thousand Dollars
14 (\$10,000.00) to Plaintiff. The Enhancement Payment shall be paid from the Maximum Settlement
15 Amount and shall be paid in addition to Plaintiff's Individual Settlement Payment as a Settlement
16 Class Member. It is understood by Class Counsel and Plaintiff that the Court has final discretion
17 in any Enhancement Payment. The Settlement Administrator shall issue an IRS Form 1099 to
18 Plaintiff reflecting the Enhancement Payment. Plaintiff shall be solely and legally responsible to
19 pay any and all applicable taxes on his Enhancement Payment and shall hold harmless Defendant
20 from any claim or liability for taxes, penalties, or interest arising as a result of the Enhancement
21 Payment. Any portion of the Enhancement Payment not awarded to Plaintiff shall be added to the
22 Net Settlement Amount and shall be distributed to Class Members as provided in this Agreement.
23 Notwithstanding any other provision of this Agreement, if the Court should fail to award an
24 Enhancement Payment in the full amount provided for in this Agreement, such shall not constitute
25 grounds for cancellation or termination of the Agreement or grounds for limiting any other
26 provision of the Judgment. It is agreed that no order of the Court, including any order concerning
27 the Enhancement Award, may alter or otherwise increase the Maximum Settlement Amount.

28 5. Settlement Administration Costs. The Settlement Administrator shall be paid for

1 the reasonable costs of administration of the Settlement from the Maximum Settlement Amount,
2 currently estimated at Eighteen Thousand Five Hundred Dollars (\$18,500.00). These costs, which
3 shall be paid from the Maximum Settlement Amount, shall include, *inter alia*, the required tax
4 reporting on the Individual Settlement Payments, the issuing of 1099 IRS Forms, establishing a
5 Qualified Settlement Fund, administering and distributing the Maximum Settlement Amount and
6 Class Counsel Award, and providing necessary reports and declarations. Any portion of the
7 Settlement Administration Costs not allowed shall be added to the Net Settlement Amount and
8 shall be distributed to Settlement Class Members as provided in this Agreement.

9 6. PAGA Payment. Subject to Court approval, the Parties agree that the amount of
10 Forty Thousand Dollars (\$40,000.00) of the Maximum Settlement Amount shall be designated for
11 satisfaction of claims for civil penalties under the PAGA. The Settlement Administration shall pay
12 seventy-five percent (75%) of the PAGA Payment, *i.e.* the sum of Thirty Thousand Dollars
13 (\$30,000.00), to the LWDA. The remaining twenty-five percent (25%), *i.e.* the sum of Ten
14 Thousand Dollars (\$10,000.00), shall be part of the Net Settlement Amount to be distributed to
15 Settlement Class Members as per this Agreement.

16 7. Net Settlement Amount. The Net Settlement Amount shall be used to satisfy
17 Individual Settlement Payments to Settlement Class Members in accordance with the terms of this
18 Agreement. The Settlement Administrator will allocate the Individual Settlement Payments by
19 first dividing the Net Settlement Amount by the total number of wage statements reflecting the
20 payment of shift differential and/or per diem wages issued to Class Members during the Class
21 Period. That value will then be multiplied by the number of wage statements reflecting the
22 payment of shift differential and/or per diem wages that each respective Class Member received
23 during the Class Period. Settlement Class Members are entitled to 100% of the Net Settlement
24 Amount. Defendant maintains no reversionary right to any portion of the Net Settlement
25 Amount. If there are any timely submitted Requests for Exclusion, the Settlement Administrator
26 shall proportionately increase the Individual Settlement Payments for each Settlement Class
27 Member so that the amount actually distributed to Settlement Class Members equals 100% of
28 the Net Settlement Amount.

1 8. Calculation of Maximum Settlement Amount. The Maximum Settlement Amount
2 was calculated with, and is premised on, Defendant's representation that approximately 2,469
3 Class Members received 25,928 wage statements reflecting the payment of shift differential and/or
4 per diem wages during the Class Period. In the event the number of wage statements reflecting the
5 payment of shift differential and/or per diem wages during the Class Period exceeds 28,521,
6 Defendant will have the option to either proportionally increase the Maximum Settlement Amount
7 or rescind the Settlement Agreement.

8 9. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
9 Settlement Class Members under this Agreement, the Enhancement Payment made to Plaintiff, as
10 well as any other payments made pursuant to this Agreement, shall not be utilized to calculate any
11 additional benefits under any benefit plans to which any Class Members may be eligible, including,
12 but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation
13 plans, sick leave plans, PTO plans, and any other benefit plans. Rather, it is the Parties' intention
14 that this Settlement will not affect any rights, contributions, or amounts to which any Class
15 Members may be entitled under any benefit plans.

16 10. Settlement Administration Process. The Parties agree to cooperate in the
17 administration of the Settlement and to make all reasonable efforts to control and minimize the
18 costs and expenses incurred in the administration of the Settlement. The Settlement Administrator
19 shall provide the following services:

- 20 a. Establish and maintain a Qualified Settlement Fund account;
- 21 b. Verify the last known address for each Class Member through a generally
22 utilized, national address update database prior to mailing the Notice Packet;
- 23 c. Print and mail the Notice Packet;
- 24 d. Conduct additional address searches for mailed Notice Packets that are
25 returned as undeliverable and, to the extent new and more current addresses are found, also reprint
26 and re-mail Notice Packets accordingly;
- 27 e. Establish and maintain a toll-free informational telephone support line to
28 assist Class Members who have questions regarding the Notice Packet;

1 f. Field inquiries from Class Members, and administer any Requests for
2 Exclusion;

3 g. Provide weekly status reports to counsel for the Parties, including: (a) the
4 number of Notices mailed (including information regarding undeliverable and/or emailed
5 Notices); (b) the number of disputes received (and sending copies of said disputes); (c) the number
6 of objections received; and (d) the number of requests for exclusion received;

7 h. Calculate Individual Settlement Payments;

8 i. Distribute and pay the Enhancement Payment, Individual Settlement
9 Payments, the PAGA Payment to the LWDA, and fees and costs awarded to Class Counsel;

10 j. Prepare and issue 1099 tax forms;

11 k. Provide declarations and/or other information to the Court as requested;

12 l. Maintain the Class List and Data (including particularly, but not limited to,
13 social security numbers) confidentially and in a secure manner, guarding against unauthorized
14 access or data breaches, and agreeing in writing to be bound by the Protective Order issued by the
15 Court in this case;

16 m. Agree to defend and indemnify Defendant and Defendant's officers,
17 employees, and agents against any unauthorized access or data breaches; and

18 n. Maintain insurance in a minimum amount of \$2 million, naming Defendant
19 as an additional insured and covering any errors, omissions, or other liabilities arising from or in
20 any way related to the administration of this Settlement, including but not limited to any claims
21 arising from or in any way related to any alleged unauthorized access to or release of the Class
22 List and Data including social security numbers

23 11. Delivery of the Class List and Data. Within five (5) business days of Preliminary
24 Approval, Defendant shall provide the Class List and Data to the Settlement Administrator.

25 12. Notice by First-Class U.S. Mail. Within five (5) business days after receiving the
26 Class List and Data from Defendant, the Settlement Administrator shall mail a Notice Packet to
27 all Class Members via regular First-Class U.S. Mail, using the most current, known mailing
28 addresses identified in the Class List.

1 13. Confirmation of Contact Information in the Class List. Prior to mailing, the
2 Settlement Administrator shall perform a search based on the National Change of Address
3 Database for information to update and correct for any known or identifiable address changes.

4 14. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice
5 Packet will provide: (1) information regarding the nature of the Action; (2) a summary of the
6 Settlement's principal terms; (3) the Class definition; (4) each Class Member's estimated
7 Individual Settlement Payment and the formula for calculating Individual Settlement Payments, if
8 they do not request to be excluded; (5) the dates that comprise the Class Period; (6) instructions
9 on how to submit valid Requests for Exclusion, or objections; (7) the deadlines by which the Class
10 Member must submit a Request for Exclusion or Notice of Objection to the Settlement; (8) the
11 date for the final approval hearing; and (9) the claims to be released. The Notice Packet will also
12 inform Class Members that, in order to receive the Individual Settlement Payment, they do not
13 need to do anything except keep the Settlement Administrator apprised of their current mailing
14 addresses.

15 15. Re-Mailing of Returned Notices. Any Notice Packets returned to the Settlement
16 Administrator as non-deliverable on or before the Response Deadline shall be re-sent promptly via
17 regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement
18 Administrator shall indicate the date of such re-mailing on the Notice Packet. If no forwarding
19 address is provided, the Settlement Administrator shall promptly attempt to determine the correct
20 address using a skip-trace, or other search using the name, address and/or Social Security Number
21 of the Class Member involved and shall then perform a re-mailing. Those Class Members who
22 receive a re-mailed Notice Packet shall have their Response Deadline extended fifteen (15) days
23 from the original Response Deadline.

24 16. Request for Exclusion Procedures. Any Class Member, other than Plaintiff, may
25 opt-out from the Settlement by submitting a written Request for Exclusion to the Settlement
26 Administrator postmarked by the Response Deadline. A Request for Exclusion must: (1) contain
27 the name, address, telephone number, and the last four digits of the Social Security Number of the
28 person requesting exclusion; (2) clearly state that the Class Member does not wish to be included

1 in the Settlement; (3) be signed by the Class Member; (4) be returned by mail to the Settlement
2 Administrator at the specified address; and (5) be postmarked on or before the Response Deadline.
3 The date of the postmark shall be the exclusive means to determine whether a Request for
4 Exclusion is timely. By submitting such a Request for Exclusion, a Class Member shall be deemed
5 to have exercised his or her option to opt out of the Action and not be bound by this Agreement.
6 Accordingly, a Class Member who timely submits a valid Request for Exclusion will not be
7 entitled to any payments under this Settlement and will not be bound by the terms of the Settlement.
8 Any Class Member who fails to submit a valid and timely Request for Exclusion on or before the
9 Response Deadline shall be deemed a Settlement Class Member and will be bound by all terms of
10 the Settlement to the fullest possible extent if the Settlement is granted final approval by the Court.
11 At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class
12 Members to submit a Request for Exclusion. Class Counsel shall not represent any Class Members
13 with respect to any such request.

14 17. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
15 Member who does not affirmatively opt-out of the Settlement by submitting a valid and timely
16 Request for Exclusion shall be bound by all terms of the Settlement to the fullest possible extent,
17 including those pertaining to the Released Claims, as well as any Judgment that may be entered
18 by the Court.

19 18. Objection Procedures. Any Class Member who does not opt-out of this Settlement
20 shall be entitled to object to the Settlement. To object to the Settlement, a Class Member must
21 return by mail a written statement of objection to the Settlement Administrator at the specified
22 address by the Response Deadline. The Notice of Objection must include: (a) the objector's full
23 name, signature, address, and telephone number; (b) a written statement of the basis for the
24 objection; and (c) any copies of papers, briefs, or documents upon which the objection is based.
25 The Notice of Objection must be returned by mail to the Settlement Administrator at the specified
26 address indicated in the Notice Packet as well as the Clerk of the Court, and must be postmarked
27 by the Response Deadline. Alternatively, a Class Member may appear at the Final Approval
28 Hearing and present his or her objection to the Court orally, even without written objection, as

1 long as the Class Member has notified the Court of his or her intention to appear

2 At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage
3 Class Members to submit written objections to the Settlement or appeal from the Order and
4 Judgment. Class Counsel shall not represent any Class Members with respect to any such
5 objections to this Settlement. Any Class Member who submits a valid Request for Exclusion shall
6 not be allowed to object to this Settlement. No later than five (5) days after the Response Deadline,
7 the Settlement Administrator shall provide Defense Counsel with a complete list of all Class
8 Members who have timely and properly requested exclusion from the Class.

9 19. Defendant's Right to Rescind. If more than five percent (5%) of the Class Members
10 submit a timely and valid Request for Exclusion, Defendant will have the right, but not the
11 obligation, to revoke and void this Agreement at its discretion. Defendant must exercise the option
12 to rescind within ten (10) business days of Defense Counsel receiving notification from the
13 Settlement Administrator that more than five percent (5%) of the Class Members have submitted
14 timely and valid Requests for Exclusion from the Settlement. If Defendant exercises this right to
15 void the Agreement, then the Parties will have no further obligations under the Agreement,
16 including, without limitation, any obligation by Defendant to pay the Maximum Settlement
17 Amount, or any amounts that otherwise would have been owed under this Agreement, except that
18 Defendant shall pay all Settlement Administration Costs incurred by the Settlement Administrator.
19 In the event the Settlement is terminated, the Parties shall proceed in all respects as if this
20 Agreement had not been executed. The Parties agree that they will not encourage any Class
21 Member to object to the Settlement or to opt out.

22 20. Settlement Administrator's Reports of Information. The Settlement Administrator
23 shall provide Defense Counsel and Class Counsel a weekly report which certifies the number of
24 Class Members who have submitted valid Requests for Exclusion. Additionally, the Settlement
25 Administrator will provide to counsel for both Parties any updated reports regarding the
26 administration of the Settlement as needed or requested. The Settlement Administrator shall also
27 forward to Parties' counsel any Notices of Objection received immediately upon receipt. Further,
28 the Settlement Administrator shall immediately forward any Request for Exclusion to the Parties'

1 counsel so that they can determine whether the Request for Exclusion is valid and timely.

2 21. Distribution Timing of Individual Settlement Payments. No earlier than the
3 Effective Date, and no later than fifteen (15) calendar days after the Effective Date, the Settlement
4 Administrator shall issue payments to (1) Settlement Class Members; (2) the Labor and Workforce
5 Development Agency; (3) Plaintiff; and (4) Class Counsel. The Settlement Administrator shall
6 also issue a payment to itself for services performed in connection with the Settlement.

7 22. Uncashed Settlement Payment Checks. Any Settlement Payment Checks issued by
8 the Settlement Administrator to Settlement Class Members shall be negotiable for not less than
9 one hundred twenty (120) calendar days from the date of their issuance. This is a non-reversionary
10 settlement. All Individual Settlement Payments to Class Members that remain un-cashed after one
11 hundred twenty (120) days of the mailing of Settlement Payment Checks by the Settlement
12 Administrator shall be paid out pursuant to California Code of Civil Procedure section 384 to the
13 following *cy pres* recipient: El Camino Health Foundation – Hospital Employee Assistance Fund.
14 In such event, those Class Members will nevertheless remain bound by the Settlement.

15 Defendant shall submit a declaration to the Court during the settlement approval process
16 explaining why this organization is an appropriate *cy pres* recipient. Should the Court reject El
17 Camino Health Foundation – Hospital Employee Assistance Fund as a viable *cy pres* recipient, the
18 Parties agree to select Legal Aid of Silicon Valley as an alternate *cy pres* recipient.

19 23. Certification of Completion. Upon completion of administration of the Settlement,
20 the Settlement Administrator shall provide a written declaration under oath to certify such
21 completion to the Court and counsel for all Parties.

22 24. Administration Costs if Settlement Fails or is Delayed. If an objection to the
23 Settlement is filed with the Court, regardless of the ultimate outcome of any appeals taken, or if
24 the Settlement is voided or rescinded, any costs incurred by the Settlement Administrator shall be
25 borne equally by Defendants and Plaintiff, unless otherwise specified in this Agreement.

26 25. Treatment of Individual Settlement Payments. All Individual Settlement Payments
27 shall be allocated as 100% as interest, penalties, and other non-wage damages. The amount of
28 payment shall be reported on an IRS Form 1099 by the Settlement Administrator.

1 26. Administration of Tax Reporting by the Settlement Administrator. The Settlement
2 Administrator shall be responsible for issuing to Plaintiff, Settlement Class Members, and Class
3 Counsel, 1099 forms or other tax forms as may be required by law for all amounts paid pursuant
4 to this Agreement.

5 27. Tax Liability. Defendant, Defense Counsel, the Settlement Administrator, and
6 Plaintiff's counsel make no representation as to the tax treatment or legal effect of the payments
7 called for hereunder, and Plaintiff and Settlement Class Members are not relying on any statement,
8 representation, or calculation by Defendant, Defense Counsel, Plaintiff's counsel, or by the
9 Settlement Administrator in this regard. Plaintiff and Settlement Class Members understand and
10 agree that they will be solely responsible for the payment of any and all taxes and penalties
11 assessed on their respective payments described herein and will defend, indemnify, and hold
12 Defendant, Defense Counsel, Plaintiff's counsel and the Settlement Administrator free and
13 harmless from and against any claims resulting from treatment of such payments as non-taxable
14 penalties/damages.

15 28. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
16 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
17 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
18 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
19 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
20 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
21 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE
22 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
23 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR
24 PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
25 EXCLUSIVELY UPON HIS OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL
26 FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT,
27 (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
28 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO

1 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
2 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
3 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
4 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
5 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
6 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
7 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
8 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
9 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
10 AGREEMENT.

11 29. No Prior Assignments. The Parties and their counsel represent, covenant, and
12 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to
13 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
14 action, cause of action or right herein released and discharged.

15 30. Release of Claims by Plaintiff. As a condition of obtaining the Enhancement
16 Payment provided for herein, Plaintiff (on behalf of himself and his spouse, heirs, executors,
17 administrators, trustees, and/or permitted assigns) also agrees to a general release of any and all
18 claims against Defendant and the Released Parties—which shall include without limitation any
19 and all claims which in any way relate to his employment with Defendant, under State or Federal
20 law, in tort, common law, statute, contract, or equity, whether pled in the Complaint or not,
21 including but not limited to any claims under the FLSA, Title VII, ADA, FEHA, ADEA, PAGA,
22 California Labor Code, or any Industrial Welfare Commission Wage Order—now existing or
23 arising in the future, based on any act, omission, event, occurrence, or nonoccurrence from the
24 beginning of time to the date of execution hereof. Plaintiff further expressly waives and
25 relinquishes, to the fullest extent permitted by law, the provisions, rights and benefits of Section
26 1542 of the California Civil Code, which provides: “**A general release does not extend to claims**
27 **that the creditor or releasing party does not know or suspect to exist in his or her favor at**
28 **the time of executing the release and that, if known by him or her, would have materially**

1 **affected his or her settlement with the debtor or released party.”** Plaintiff may hereafter
2 discover facts in addition to or different from those he now knows or believes to be true with
3 respect to the subject matter of the Released Claims, but upon the funding of the Maximum
4 Settlement Amount, shall be deemed to have, and by operation of the contemplated final judgment
5 shall have, fully, finally, and forever settled and released any and all of the Released Claims,
6 whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now
7 exist, or heretofore have existed, upon any theory of law or equity now existing, including, but not
8 limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty,
9 law or rule, without regard to the subsequent discovery or existence of such different or additional
10 facts.

11 31. Release of Claims by Settlement Class Members. As of the date of the funding of
12 the Maximum Settlement Amount, Plaintiff and all Settlement Class Members, as well as their
13 spouses, heirs, executors, administrators, trustees, and/or permitted assigns, hereby do and shall
14 be deemed to have fully, finally and forever released, settled, compromised, relinquished and
15 discharged, to the fullest extent possible, any and all of the Released Parties of and from any and
16 all Released Claims.

17 32. Nullification of Settlement. In the event that the Settlement does not become final
18 for any reason, then this Agreement, and any documents generated to bring it into effect, shall be
19 null and void. Any order or judgment entered by the Court in furtherance of this Agreement shall
20 likewise be treated as void from the beginning.

21 33. Disputes Regarding Individual Settlement Payments. In the event that Class
22 Members have a dispute as to the data provided by the Defendant, Class Members will have the
23 opportunity to provide documentation and/or an explanation. If there is a dispute, the Settlement
24 Administrator will consult with the Parties to determine whether an adjustment is warranted. The
25 Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual
26 Settlement Payments under the terms of this Agreement, and that determination shall be binding.

27 34. Disputes Regarding Administration of Settlement. Any disputes not resolved by the
28 Settlement Administrator concerning the administration of the Settlement will be resolved by the

1 Court under the laws of the State of California. Prior to any such involvement of the Court, counsel
2 for the Parties will confer in good faith to resolve the disputes without the necessity of involving
3 the Court. No further award of attorney fees or costs shall be sought by or made to Class Counsel
4 in connection with any such further proceedings.

5 35. Preliminary Approval Hearing. Plaintiff shall obtain a hearing before the Court to
6 request the Preliminary Approval of the Settlement, conditional certification of the Class, and the
7 entry of a Preliminary Approval Order: (i) approving of the proposed Settlement, and (ii) setting a
8 date for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order shall
9 provide for the Notice Packet to be sent to all Class Members as specified herein. In conjunction
10 with the Preliminary Approval hearing, Plaintiff shall submit this Agreement, which sets forth the
11 terms of this Settlement, and will include the proposed Notice Packet, attached to this Agreement
12 as Exhibit A.

13 36. Final Settlement Approval Hearing. Upon expiration of the deadlines to submit
14 Requests for Exclusion or Notices of Objections to the Settlement, and with the Court's
15 permission, a Final Approval/Settlement Fairness Hearing shall be conducted to determine the
16 Final Approval of the Settlement along with the amounts properly payable for (i) Individual
17 Settlement Payments; (ii) the LWDA Payment; (ii) the Class Counsel Award; (iii) the
18 Enhancement Payment; and (iv) Settlement Administration Costs. Class Counsel will be
19 responsible for drafting all documents necessary to obtain final approval. Class Counsel will also
20 be responsible for drafting the attorneys' fees and costs application to be heard at the Final
21 Approval Hearing.

22 37. Entry of Judgment and Continued Jurisdiction of the Court. Concurrent with the
23 Motion for Final Approval, the Parties shall also jointly seek the entry of Judgment consistent with
24 the terms of this Agreement. After entry of the Judgment, the Court shall have continuing
25 jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms
26 of the Settlement, (ii) Settlement administration matters, and (iii) such post-Judgment matters as
27 may be appropriate under court rules or as set forth in this Agreement.

28 38. Exhibits Incorporated by Reference. The terms of this Agreement include the terms

1 set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth
2 herein. Any Exhibits to this Agreement are an integral part of the Settlement.

3 39. Confidentiality Preceding Preliminary Approval. The Parties and their counsel
4 agree that they will not issue any press releases, initiate any contact with the press, respond to any
5 press inquiry, post information on any social media or website, or have any communication with
6 the press or media about the fact, amount, or terms of the Settlement.

7 40. Entire Agreement. This Agreement and any attached Exhibits constitute the entirety
8 of the Parties' Settlement terms. No other prior or contemporaneous written or oral negotiations
9 or agreements may be deemed binding on the Parties.

10 41. Disputes Regarding Language of Final Settlement Agreement. If the Parties have a
11 dispute with regard to the language of the Agreement, the Parties agree to attempt to informally
12 resolve the dispute by engaging Steve Serratore to mediate such dispute.

13 42. Amendment or Modification. This Agreement may be amended or modified only
14 by a written instrument signed by the Parties or their successors-in-interest.

15 43. Authorization to Enter into Agreement. Counsel for all Parties warrant and
16 represent they are expressly authorized by the Parties whom they represent to negotiate this
17 Agreement and to take all appropriate actions required or permitted to be taken by the Parties
18 pursuant to this Agreement to effectuate its terms and to execute any other documents required to
19 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each
20 other and use their best and good-faith efforts to effect the implementation of the Settlement. If
21 the Parties are unable to reach agreement on the form or content of any document needed to
22 implement the Settlement, or on any supplemental provisions that may become necessary to
23 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve
24 such disagreement.

25 44. Binding on Successors and Assigns. This Agreement shall be binding upon, and
26 inure to the benefit of, the successors, heirs, or assigns of the Parties hereto, as previously defined.

27 45. California Law Governs. All terms of this Agreement and Exhibits hereto shall be
28 governed by and interpreted according to the laws of the State of California.

1 46. Execution and Counterparts. This Agreement is subject only to the execution of all
2 Parties. However, the Agreement may be executed in one or more counterparts. All executed
3 counterparts and each of them, including facsimile and scanned copies of the signature page, shall
4 be deemed to be one and the same instrument provided that counsel for the Parties shall exchange
5 among themselves original signed counterparts.

6 47. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
7 this Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this
8 Settlement after arm's-length negotiations, mediation, and in the context of adversarial litigation,
9 taking into account all relevant factors, present and potential. The Parties further acknowledge that
10 they are each represented by competent counsel and that they have had an opportunity to consult
11 with their counsel regarding the fairness and reasonableness of this Agreement.

12 48. Invalidity of Any Provision. Before declaring any provision of this Agreement
13 invalid, the Court shall first attempt to construe the provision as valid to the fullest extent possible
14 consistent with applicable precedents so as to define all provisions of this Agreement valid and
15 enforceable. Any invalid, illegal, or unenforceable provision determined by the Court shall in no
16 way affect any other provision if Defendant and Class Counsel, on behalf of the Parties and the
17 Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable
18 provision had never been included in this Agreement.

19 49. Modification of Material Terms. In the event that the terms or conditions of this
20 Settlement, other than the terms pertaining to Class Counsel's Award and/or the Service Payment,
21 are materially modified by the Court, any party in its sole discretion may declare this Settlement
22 null and void within seven (7) calendar days after such a material modification. For purposes of
23 this provision, material modifications include any modifications to the definitions of the Maximum
24 Settlement Amount, Class Members, Class Period, Released Parties, or Released Claims.

25 50. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however,
26 that Plaintiff or Class Counsel may appeal any reduction in the Class Counsel's Award below the
27 amount Class Counsel requests, and either Party may appeal any order that materially alters the
28 Agreement's terms.

1 51. Class Certification For Settlement Purposes Only. The Parties are agreeing to class
2 certification for settlement purposes only. This Agreement shall not constitute, in this or any other
3 proceeding, an admission of any kind by Defendant, including without limitation, that Defendant
4 committed any violation of statute or other wrongdoing, that Defendant is liable to Plaintiff or to
5 any other Class Members, that certification of a class for trial or any other purpose is appropriate
6 or proper or that Plaintiff or any Class Member can establish any of the requisite elements for class
7 treatment of any of the claims in this Action. If, for any reason, the Settlement is not finally
8 approved, this Agreement will be void and the Parties will be restored to their respective positions
9 in the lawsuit as if they had not entered into this Agreement. The Parties further agree that this
10 Agreement or any documents or orders issued related to this Settlement will not be admissible,
11 other than according to the Settlement's terms, in this or any other proceeding as evidence that
12 either: (i) a class action should be certified, or (ii) Defendant is liable to Plaintiff or any Class
13 Member.

14 52. Non-Admission of Liability. The Parties enter into this Agreement to resolve the
15 dispute that has arisen between them and to avoid the burden, expense and risk of continued
16 litigation. In entering into this Agreement, Defendant does not admit, and specifically denies, that
17 it has violated any federal, state, or local law; violated any regulations or guidelines promulgated
18 pursuant to any statute or any other applicable laws, regulations or legal requirements; breached
19 any contract; violated or breached any duty; engaged in any misrepresentation or deception; or
20 engaged in any other unlawful conduct with respect to its employees. Neither this Agreement, nor
21 any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as
22 an admission or concession by Defendant of any such violations or failures to comply with any
23 applicable law, regulation, or legal requirement. Except as necessary in a proceeding to enforce
24 the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or
25 received as evidence in any action or proceeding to establish any liability or admission of any
26 nature on the part of Defendant, or to establish the existence of any condition constituting a
27 violation of, or a non-compliance with, federal, state, local or other applicable law.

28 53. Captions. The captions and section numbers in this Agreement are inserted for the

1 reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
2 provisions of this Agreement.

3 54. Waiver. No waiver of any condition or covenant contained in this Agreement or
4 failure to exercise a right or remedy by any of the Parties hereto shall be considered to imply or
5 constitute a further waiver by such party of the same or any other condition, covenant, right or
6 remedy.

7 55. Enforcement Actions. In the event that one or more of the Parties institutes any
8 legal action or other proceeding against any other Party or Parties to enforce the provisions of this
9 Settlement, or to declare rights and/or obligations under this Settlement, the prevailing Party or
10 Parties shall be entitled to recover from the non-prevailing Party or Parties reasonable attorneys'
11 fees and costs, including expert witness fees incurred in connection with any enforcement actions.

12 56. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
13 and conditions of this Agreement. Accordingly, this Agreement shall not be construed more strictly
14 against one Party than another merely by virtue of the fact that it may have been prepared by
15 counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations
16 between the Parties, all Parties have contributed to the preparation of this Agreement.

17 57. Representation by Counsel. The Parties acknowledge that they have been
18 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
19 and that this Agreement has been executed with the consent and advice of counsel. Further,
20 Plaintiff and Class Counsel warrant and represent that there are no liens on the Agreement.

21 58. Cooperation and Execution of Necessary Documents. All Parties shall cooperate in
22 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of
23 this Agreement.

24 59. Binding Agreement. The Parties warrant that they understand and have full
25 authority to enter into this Agreement, and further intend that this Agreement shall be fully
26 enforceable and binding on all Parties and agree that it shall be admissible and subject to disclosure
27 in any proceeding to enforce its terms.

28 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this

1 Joint Stipulation of Class Action Settlement Between Plaintiff and Defendant as of the date(s) set
2 forth below:

3 **SIGNATURES**

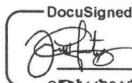
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5 **READ CAREFULLY BEFORE SIGNING**

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7 DATED:

8 5/14/2021

9 **PLAINTIFF FRANKLIN AMOG**

10 DocuSigned by:

11 

12 Plaintiff Franklin Amog

13 DATED:

14 **DEFENDANT EL CAMINO HOSPITAL**

15
16 Please Print Name of Authorized Signatory

17 **APPROVED AS TO FORM**

18 DATED: 5/17/2021

19 **DIVERSITY LAW GROUP, P.C.**

20 By:

21 Larry W. Lee

22 Kristen M. Agnew

23 Nicholas Rosenthal

24 Attorneys for Plaintiff and the Class

25 DATED: May 14, 2021

26 **POLARIS LAW GROUP**

27 By:

28 William L. Marder

Attorneys for Plaintiff and the Class

1 Joint Stipulation of Class Action Settlement Between Plaintiff and Defendant as of the date(s) set
2 forth below:

3 **SIGNATURES**

4 **READ CAREFULLY BEFORE SIGNING**

5
6
7 DATED:

PLAINTIFF FRANKLIN AMOG

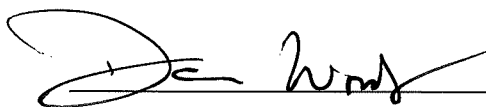
8 _____

9 _____
Plaintiff Franklin Amog

10
11 DATED:

DEFENDANT EL CAMINO HOSPITAL

12 May 14, 2021

13 

14 Dan Woods, CEO

Please Print Name of Authorized Signatory

15
16 **APPROVED AS TO FORM**

17
18 DATED: _____

DIVERSITY LAW GROUP, P.C.

19
20 By: _____

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff and the Class

21
22
23 DATED: _____

POLARIS LAW GROUP

24
25 By: _____

William L. Marder

Attorneys for Plaintiff and the Class

1 DATED: May 13, 2021

GORDON REES SCULLY MANSUKHANI, LLP

2
3 By: 

Fletcher C. Alford

Seth Weisburst

4 Attorneys for Defendant El Camino Hospital
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EXHIBIT A

Franklin Amog v. El Camino Hospital
Superior Court of California, County of Santa Clara
(Case No. 20CV363828)

NOTICE OF CLASS ACTION SETTLEMENT (“NOTICE”)

IF YOU ARE A CURRENT OR FORMER EMPLOYEE OF EL CAMINO HOSPITAL IN THE STATE OF CALIFORNIA AND WERE PAID SHIFT DIFFERENTIAL AND/OR PER DIEM WAGES DURING THE PAY PERIOD BEGINNING FEBRUARY 10, 2019, THROUGH THE PAY PERIOD ENDING SEPTEMBER 21, 2019, YOU MAY BE ABLE TO COLLECT MONEY FROM A CLASS ACTION SETTLEMENT.

The Santa Clara County Superior Court (“Court”) authorized this Notice to be sent by Phoenix Settlement Administrators (“Settlement Administrator”). This is not an advertisement. This is not a solicitation from a lawyer.

DEFENDANT CANNOT AND WILL NOT RETALIATE AGAINST YOU IN ANY WAY FOR PARTICIPATING IN THIS SETTLEMENT.

«BarcodeString»
SIMID «SIMID»

ATTN: «FirstName» «LastName»
«Address1» «Address2»
«City» «Abbrev» «Zip»

**YOU ARE ESTIMATED TO RECEIVE
APPROXIMATELY
\$«MERGED_EstSettAmnt_CALC»
THROUGH THIS CLASS ACTION
SETTLEMENT**

- Franklin Amog (“Named Plaintiff”), has sued El Camino Hospital (“Defendant”) on behalf of himself and all other similarly situated employees.
- The parties to the lawsuit have reached a tentative settlement, and the Court has preliminarily approved it.
- The settlement resolves the lawsuit.
- Your legal rights are affected whether you act or do not act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

You Can DO NOTHING	You will receive a payment from the settlement. If you do nothing, you continue your participation in this lawsuit, and you will be impacted by the outcome of this case. You will receive a settlement payment; however, you will lose any rights to sue Defendant separately for the same legal claims made in the lawsuit. The estimated amount of your settlement payment is shown above. To receive your settlement payment, all you need to do is keep the Settlement Administrator informed of your current mailing address. Once the Court grants final approval of the settlement, the Settlement Administrator will mail your check to the address on file for you.
You Can ASK TO BE EXCLUDED FROM THE SETTLEMENT	If you ask to be excluded from the settlement, you will get no payment from the class settlement, but you will keep any rights to sue Defendant

(Deadline: _____, 2021)	separately for the same legal claims made in this lawsuit. Important: You cannot ask to be excluded <u>and</u> still get a class settlement payment.
You Can OBJECT TO THE SETTLEMENT (Deadline: _____, 2021)	If you do not like the settlement, you can send a written objection to the Settlement Administrator by the deadline. If your objection is overruled, you will still be bound by the terms of the settlement and will receive a settlement payment. Important: If you object to the settlement, you cannot also ask to be excluded.

THESE RIGHTS AND OPTIONS—AND THE DEADLINES TO EXERCISE THEM—ARE EXPLAINED IN THIS NOTICE.

The Court is in charge of this lawsuit and still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after appeals, if any, are resolved. **Please be patient.**

1. Why Should You Read This Notice?

You should read this Notice because you may be entitled to money from a class action settlement.

2. What is This Lawsuit About?

In the lawsuit, the Named Plaintiff claimed that Defendant failed to provide accurate itemized wage statements to Class Members, in violation of California Labor Code section 226(a). Specifically, Plaintiff alleges that the wage statements did not identify the correct total hours worked when shift differential and/or per diem wages were paid. Defendant denies the allegations in the lawsuit and denies it has engaged in any wrongdoing. Defendant asserts that it complied with all legal requirements, but is resolving this action in order to avoid the costs of further legal proceedings.

3. Why is This a Class Action?

This lawsuit is a class action. In a class action, one or more persons, called a class representative (in this case, Franklin Amog), sue on behalf of people who allegedly have similar claims. All these people are a class or class members. One case resolves the issues for all class members, except for those who exclude themselves from the class. The Santa Clara County Superior Court is in charge of the case. The lawsuit is known as *Franklin Amog v. El Camino Hospital*, Case No. 20CV363828.

4. Why is There a Settlement?

The Court did not decide in favor of Named Plaintiff or Defendant. Named Plaintiff thinks he could have won at trial. Defendant thinks that it would have won at trial. But there was no trial. Instead, both parties agreed to a settlement. That way, they avoid the cost of litigation, and the individuals potentially affected will get compensation. The class representative and the attorneys think the settlement is best for class members.

5. How Do I Know If I Am Part of the Settlement?

The Court has decided that any current or former employee of El Camino Hospital in the State of California who received the payment of shift differential and/or per diem wages at any time between the pay period beginning

February 10, 2019 and ending September 21, 2019 (the “Class Period”) is a class member.

6. What Does the Settlement Provide?

The proposed settlement provides for a payment by Defendant of \$1,000,000.00 to fully and finally resolve all claims in the lawsuit (referred to as the “Maximum Settlement Amount”). The total amount to be distributed to class members who can be located, and who do not exclude themselves from the settlement, will be the value of the Maximum Settlement Amount after deducting the following (the “Net Settlement Amount”): (a) settlement administration costs not to exceed \$18,500.00; (b) class representative service award to Named Plaintiff not to exceed \$10,000.00 for his work and efforts in prosecuting this case, and for undertaking the risks of costs (in the event the outcome of this lawsuit was not favorable); (c) Class Counsel’s attorneys’ fees not to exceed \$333,333.33; (d) Class Counsel’s actual litigation costs and expenses as supported by declaration not to exceed \$20,000.00; and (f) payment of \$30,000.00 to the Labor and Workforce Development Agency. **Class Counsel’s attorneys’ fees and costs, and Named Plaintiff’s class representative service award, remain subject to Court approval.**

No portion of the Net Settlement Amount will be returned to Defendant under any circumstances.

7. How Much Will My Payment Be?

Your estimated share of the settlement is shown above and is based on the number of wage statements reflecting the payment of shift differential and/or per diem wages you received from Defendant during the pay period beginning February 10, 2019 and ending September 21, 2019, as compared to the total number of wage statements received by all class members in that same period. Based upon Defendant’s records, the number of applicable wage statements you received is determined to be **. If this information appears correct, you do not need to do anything further to receive your settlement payment. If you disagree with the number of wage statements with payment for wages, see below (Question 9).

8. How Do I Get a Payment?

To qualify for payment, you need not do anything. The Settlement Administrator will mail you a check within about forty-five days after the Court enters a judgment based on this settlement, but possibly later depending on whether there is any appeal of the judgment entered by the Court.

9. What If I Believe the Information is Inaccurate?

If you believe the number of wage statements you received that included payment for shift differential and/or per diem wages during the pay period beginning February 10, 2019 and ending September 21, 2019 is inaccurate, you may dispute it by sending a letter to [REDACTED] [ADMINISTRATOR’S ADDRESS] no later than _____, 2021. Be sure to include your name, address, telephone number, last four digits of your Social Security Number, and a statement as to what and why you are disputing. Also attach a copy of any documentation you want to include to support your dispute.

10. What Am I Giving Up to Get a Settlement Payment?

Unless you request to be excluded from the settlement, you remain a part of the settlement class, and that means you cannot sue, continue to sue, or be part of any other lawsuit against Defendant for any legal claims that are based on the facts alleged by Named Plaintiff in the lawsuit, or any claims that could have been brought under the facts and allegations made in the lawsuit. Specifically, you will be giving up or “releasing” the claims

described below:

All claims, including penalties, costs and attorneys' fees related thereto, that could have been brought under the facts and allegations made in the operative Complaint, including claims for violation of Labor Code section 226 and penalties under the California Private Attorneys' General Act predicated on alleged violation of Labor Code section 226, that accrued any time from February 5, 2019 through [REDACTED] [THE date of PRELIMINARY APPROVAL].

11. How Do I Exclude Myself from the Settlement?

To exclude yourself from the settlement (also referred to as "opt-out"), you must mail a letter to the Settlement Administrator saying that you want to be excluded from the *Franklin Amog v. El Camino Hospital* settlement.

Be sure to include your name, contact information, and your signature. You must mail your exclusion letter postmarked no later than _____, 2021, to the Settlement Administrator at [REDACTED].

If you submit a timely and valid "opt-out" request, you will no longer be a member of the class and you will not receive any money from the class portion of the settlement, or be able to object to the settlement, but you will not be legally bound by anything that happens regarding the class action portion of this lawsuit. You will keep any rights to sue (or continue to sue) Defendant in the future for the same legal claims made in this lawsuit, at your own expense.

12. If I Don't Exclude Myself, Can I Sue Defendant or Get Money from the Settlement?

If you do not exclude yourself from the settlement, you cannot sue Defendant for any of the claims that this settlement resolves. If you have a pending lawsuit against Defendant, speak to your lawyer in that case immediately. You may have to exclude yourself from this case to continue on with your own lawsuit. Remember, the exclusion deadline is _____, 2021.

If you exclude yourself from the Settlement, you will not receive any money from the settlement of the class action claims in this matter.

13. How Do I Tell the Court that I Don't Believe that the Settlement is Fair?

If you are a class member and you do not exclude yourself from the settlement, you can object to the settlement if you believe that the settlement is unfair or inadequate. You can give reasons why you think the Court should not approve the settlement. If you object and follow the procedures set out in this section, your objection will be considered.

If you decide to object to the proposed settlement, you may do so in writing. All objections must be signed by you and must include: (1) your full name, address, and telephone number; (2) a written statement of the basis for your objection; and (3) any copies of papers, briefs, or documents upon which the objection is based. You must mail your objection postmarked no later than _____, 2021, to the Settlement Administrator at [REDACTED] as well as to the Court at the following address: Clerk of the Court, Superior Court of California, County of Santa Clara, 191 N. 1st Street, San Jose, CA 95113. You may then also appear at the final approval hearing for the settlement (see section 17 below for details as to when this hearing will take place), either in person or through an attorney at your own expense.

Alternatively, you may appear at the final approval hearing for the settlement and present your objection to the Court orally, even without written objection. If you plan to appear you must send a notice to appear in advance of your appearance to Clerk of the Court, Superior Court of California, County of Santa Clara, 191 N. 1st Street, San Jose, CA 95113.14.

14. What Is the Difference Between Objecting and Excluding?

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the class. Excluding yourself, on the other hand, is telling the Court that you don't want to be part of the class. If you exclude yourself, you have no basis to object because the case no longer affects you. However, if you file an objection, you will still receive settlement benefits under the settlement if it is approved by the Court.

15. Do I Have a Lawyer in this Case?

The Court decided that the law firms of Diversity Law Group and Polaris Law Group, both of which represent the Named Plaintiff, are also qualified to represent you and all class members. You will not be charged for these lawyers. These law firms are referred to as "Class Counsel." If you want to be represented by your own lawyer, you may hire one at your own expense.

16. How Will the Attorneys for the Class and the Class Representative be Paid?

The attorneys for the Named Plaintiff and the class will be paid from the Maximum Settlement Amount. Class Counsel will ask for up to \$333,333.33 in attorneys' fees and for actual litigation costs incurred up to a maximum of \$20,000.00, the actual amount of which will be determined by the Court at the final approval hearing (see section 17 below for details as to when this hearing will take place). Class members (like you) do not have to pay the fees and costs of Class Counsel. **If you elect, however, to hire your own lawyer, you have to make your own arrangements to compensate your lawyer.**

If approved by the Court, a service payment for the Named Plaintiff of an amount up to \$10,000.00 will be paid from the Maximum Settlement Amount for his work and efforts in prosecuting this case, and for undertaking the risks of costs (in the event the outcome of this lawsuit was not favorable).

17. Notice of Hearing on Final Approval and Objections to Class Action Settlement.

The Court has preliminarily approved the settlement and will hold a final approval hearing to decide whether to give final approval to the settlement. This hearing will be held before the Honorable Patricia M. Lucas on _____, 2021, at ____ a.m., in Department 3 of the Superior Court of California for the County of Santa Clara, 191 N. First Street, San Jose, California 95113, to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the settlement. We do not know how long this decision will take. The final approval hearing may be continued without further notice. The Court may adjourn or continue the hearing from time to time, without further notification, as the Court may direct.

Once final approval is granted by the Court, the Court will enter judgment against Defendant, and all class members who have not requested exclusion will be deemed to have waived the Released Claims set forth above.

18. How Do I Get More Information?

This Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by contacting Class Counsel or the Settlement Administrator: Phoenix Settlement Administrators, [Address], Toll-Free Phone Number: [insert]

19. What is the Contact Information for the Court and Class Counsel?

The address for the Court and Class Counsel are as follows:

COURT	CLASS COUNSEL
Clerk of Court Superior Court of California, County of Santa Clara 191 N. First San Jose, CA 95113	DIVERSITY LAW GROUP, P.C. Larry W. Lee Kristen M. Agnew Nicholas Rosenthal 515 S. Figueroa Street Suite 1250 Los Angeles, California 90071 Telephone: (213) 488-6555 Facsimile: (213) 488-6554 POLARIS LAW GROUP William L. Marder 501 San Benito Street Suite 200 Hollister, California 95023 Telephone: (831) 531-4214 Facsimile: (831) 634-0333

WHAT IF I HAVE QUESTIONS?

If you have any questions about the settlement, you may contact the Settlement Administrator:

Franklin Amog v. El Camino Hospital
c/o Phoenix Settlement Administrators.
Address
City, CA, Zip
Toll-Free Phone Number: [insert]

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE COURT CLERK FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS.