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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES**

10 MARICEL BELONIO WATERS,

11 *Plaintiff,*

12 vs.

13 COLLEGE VISTA, LLC dba COLLEGE
14 VISTA POST-ACUTE; SUN-MAR
15 HEALTH CARE, INC.; SUN-MAR
16 NURSING CENTERS; and DOES 1 to 25,
17 inclusive,

18 *Defendant(s).*

Case No.: 20STCV23520

**MOTION FOR APPROVAL OF PAGA
SETTLEMENT AND RELEASE**

Action filed: 6/22/20

Hearing Date: 9/2/22

Hearing Time: 8:30am

Hearing Dept: 26, Hon. Elaine Lu

Reservation ID: 264430698207

Submitted Herewith Under Separate Cover:

1. Declaration of Harout Messrelian In Support of Motion for Approval of PAGA Settlement and Release;
2. [Proposed] Order

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I. INTRODUCTION

Plaintiff Maricel Belonio Waters (“Plaintiff”) and Defendant College Vista, LLC dba College Vista Post-Acute (“College Vista” or “Defendant(s)”) have reached an agreement to settle the above-captioned action (the “Action”). The parties have memorialized the terms of this settlement in a Settlement Agreement (the “Settlement Agreement”). Attached as **Exhibit “A”** is a copy of the PAGA Settlement Agreement. By this Motion and pursuant to California Labor Code § 2699(l), Plaintiff seeks an order permitting settlement on the terms outlined in the Settlement Agreement. Plaintiff and Defendants are collectively referred to as the “Parties” and any one of them individually may be referred to as a “Party.”

Defendants adamantly deny any liability or wrongdoing of any kind whatsoever associated with the Action, and further deny that, for any purpose other than settling the Action, the Action is appropriate for representative treatment. It is the desire of the Parties to fully, finally, and forever compromise, and discharge all claims known or unknown related to those alleged in the Action.

II. ALLEGATIONS AND INVESTIGATION

A. Defendant College Vista operates a post-acute nursing home. Plaintiff was hired to work for Defendant as a Licensed Vocational Nurse (LVN) on or around November 2019. Plaintiff’s employment with Defendant ended on or around March 25, 2020. At all times during her employment, Plaintiff was considered an hourly, non-exempt employee.

B. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”). On March 27, 2020, Plaintiff, on behalf of herself and Defendant’s other current and former non-exempt employees who were employed by Defendant in California (hereafter collectively the “Aggrieved Employees” or “Aggrieved Employee” as singular, defined as all current and former non-exempt employees of Defendant (including, but not limited to, Plaintiff), who were employed by Defendant in California at any time during the “Covered Period” running from April 18, 2019 to January 25, 2022) gave written notice by electronic service to the California Labor and Workforce Development Agency (“LWDA”) and via certified mail to Defendant of her claims against Defendant. In her notice to the LWDA,

1 Plaintiff asserted on behalf of herself and the Aggrieved Employees that Defendant committed
2 the following labor violations against the Aggrieved Employees, including herself: (1) failure
3 to pay all wages for all hours worked, including, but not limited to, minimum wages; (2) failure
4 to pay all overtime; (3) failure to provide compliant rest periods; (4) failure to provide
5 compliant meal periods; (5) failure to timely pay all wages during employment as required by
6 applicable law; (6) failure to timely pay all wages at termination, and failure to pay applicable
7 waiting time penalties; (7) failure to provide compliant, complete and accurate itemized wage
8 statements; (8) failure to maintain accurate and complete timekeeping and payroll records; and
9 (9) failure to reimburse all necessary business expenses, losses and/or costs. Plaintiff filed her
10 initial lawsuit on June 22, 2020 in the Superior Court for the State of California, County of Los
11 Angeles, Case No. 20STCV23520 with one cause of action for penalties under PAGA under
12 the following legal theories: (1) failure to pay all wages for all hours worked, including, but not
13 limited to, minimum wages; (2) failure to pay all overtime; (3) failure to provide compliant rest
14 periods; (4) failure to provide compliant meal periods; (5) failure to timely pay all wages
15 during employment as required by applicable law; (6) failure to timely pay all wages at
16 termination, and failure to pay applicable waiting time penalties; (7) failure to provide
17 compliant, complete and accurate itemized wage statements; (8) failure to maintain accurate
18 and complete timekeeping and payroll records; and (9) failure to reimburse all necessary
19 business expenses, losses and/or costs.

20 C. According to Defendant's records, it has employed approximately 260
21 Aggrieved Employees from April 18, 2019 through January 25, 2022, and it is estimated that
22 these Aggrieved Employees worked approximately 6842 pay periods for that same time
23 period.

24 D. Defendant denies any liability or wrongdoing of any kind whatsoever
25 associated
26 with the lawsuit and the Representative PAGA Claim. It is the desire of the Parties to fully,
27 finally, and forever compromise, and discharge all claims known or unknown related to those
28 alleged in Plaintiff's lawsuit.

E. On January 25, 2022, the Parties attended a full day mediation session with

1 experienced wage-and-hour mediator Kelly Knight. At the mediation, the Parties agreed to
2 settle the Representative PAGA claim for violation of Labor Code § 2698, *et seq.* Before
3 agreeing to the terms of the Settlement, the Parties engaged in informal discovery regarding
4 Defendant's policies, practices, operations, time and payroll information and other topics. In
5 advance of mediation, Defendant produced Plaintiff's personnel file, including time and
6 payroll data for Plaintiff and also produced the time records and payroll records for 191
7 aggrieved employees. Through extensive arm's length negotiations at the mediation and only
8 after discovery and investigation were performed, the Parties agreed to settlement terms.

9 F. The Parties conducted investigation of the facts and law both before and after
10 the
11 lawsuit was filed. Counsel for the Parties have further investigated the applicable law as
12 applied to the facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor
13 Code violations claimed by Plaintiff. Based on their own independent investigations and
14 evaluations, the Parties and their respective counsel are of the opinion that the Settlement for
15 the consideration and on the terms set forth in this PAGA settlement agreement are fair,
16 reasonable and adequate and are in the best interests of the State of California, Plaintiff, and
17 the Aggrieved Employees in light of all known facts and circumstances and the risks inherent
18 in litigation, especially in light of the *Viking River* ruling, which will be discussed further
19 below.

20 G. Plaintiff further recognizes that the issues presented in the Representative
21 PAGA Claim are likely only to be resolved with extensive and costly pretrial and trial
22 proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay,
23 and expense disproportionate to the maximum potential benefits that may be received in
24 connection with the Representative PAGA Claim, especially in light of the pandemic era and
25 the business climate. *See* Declaration of Harout Messrelian, Plaintiff's counsel, at paragraph
26 10, filed concurrently.

27 **III. FAIRNESS OF THE SETTLEMENT**

28 A. While the *Waters* lawsuit has a Representative PAGA Claim, the Parties are not
obligated to follow the class action procedural rules for obtaining approval of this settlement.
Arias v. Superior Court (Angelo Dairy) (2009) 46 Cal.4th 969.

B. Plaintiff alleges that the strongest claims are that Plaintiff and other Aggrieved

1 Employees were not provided timely, uninterrupted meal and rest breaks. The meal break claim
2 can be proven on paper based on Defendant's time records, but not the rest break claim. In
3 terms of Plaintiff's other claims for minimum wage violations, failure to compensate for all
4 hours worked, and failure to pay overtime, no rounding or overtime issues were observed in the
5 sample. Furthermore, Defendant's written meal and rest break policies were compliant and the
6 analyzed sample did include meal break premiums being paid to employees. Additionally, the
7 other associated PAGA claims are derivative to the meal/rest break allegations for which
8 Defendant would not have additional liability for inaccurate pay stubs, failure to pay all wages
9 owed, failure to keep accurate payroll records, and failure to pay wages at the end of
employment.

10 C. Plaintiff contends that the civil penalty statutes applicable to the Representative
11 PAGA Claim are Labor Code §§ 210, 226.3, 248.5, 256, 558, 1174.5, 1197.1, 2802 and
12 2699(f)(2). Under these civil penalty statutes, an employee who suffers a Labor Code
13 violation, may be awarded a sum of money for each pay period in which he or she was
14 underpaid. However, under Labor Code § 2699(e)(2), the Court can reduce an award of civil
penalties if the award is unjust, arbitrary, oppressive, or confiscatory.

15 D. Under the civil penalty formulas applicable under PAGA, Plaintiff estimated a
16 maximum potential exposure of approximately \$131,450 for civil penalties for what Plaintiff
17 contends are Plaintiff's strongest disputed claims of failure to provide meal and rest. Plaintiff's
18 analysis, which Defendant vehemently disputes, revealed a 14% violation rate for either late,
19 short, or interrupted meal periods for shifts over 6 hours. Since 87.6% of shifts in the sample
20 were over 6 hours, then the applicable pay periods here would be 5,994 pay periods (which
21 87.6% of 6842 pay periods). As such, with the 14% violation rate, the maximum exposure
22 would be \$41,950, which is calculated as \$50 penalty multiplied by 839 pay periods (14% of
23 the 5994 pay periods). It is important to note that Defendant refutes Plaintiff's above analysis
24 and calculations for the meal period violations. Assuming that Plaintiff's calculations and
25 analysis is accurate, the maximum exposure presumes that the Court will not reduce the penalty
26 award as unjust, arbitrary, oppressive, or confiscatory. As far as the claim for rest breaks, since
27 there was no violation rate on paper in that Plaintiff and other employees did not clock in and
28 clock out for rest periods, Plaintiff extrapolated the same 14% meal period violation rate and
attributed that to rest periods. Since 93.4% of shifts in the sample were over 3.5 hours, then the

1 applicable pay periods here for the rest period calculation would be 6,390 pay periods (which
2 93.4% of 6842 pay periods). As such, with the 14% violation rate attributed for rest breaks, the
3 maximum exposure would be \$89,500, which is calculated as \$100 penalty multiplied by 895
4 pay periods (14% of the 6390 pay periods). It is important to note that Defendant refutes
5 Plaintiff's above analysis and calculations for the rest period violations. Assuming that
6 Plaintiff's calculations and analysis is accurate, the maximum exposure presumes that the Court
7 will not reduce the penalty award as unjust, arbitrary, oppressive, or confiscatory. In addition,
8 per the analyzed sample, Defendant did pay 1937 meal period premiums for a total of \$44,551,
9 in essence providing Plaintiff and the other aggrieved employees with premium pay when they
did in fact miss or take short or late meal periods.

10 E. Moreover, Plaintiff is aware of no California state courts awarding
11 Plaintiff multiple PAGA penalties for the same violation for the same pay period under
12 different Labor Code provisions. As such, one of the risks Plaintiff faces is that the Court
13 would refuse to "stack" civil penalties arising under the various Labor Code statutes.
14 Furthermore, judges have awarded extremely small sums to PAGA claimants in the past. In
15 addition, Defendant would make an argument that at the time of the mediation in January 2022,
16 under *Naranjo v. Spectrum Security Services, Inc.*, 40 Cal. App. 5th 444 (Cal. App. 2d Dist.,
17 Sept. 26, 2019) and other similar cases, that meal period or rest period violations are not a
18 predicate for civil penalties for improper wage statements and untimely final wages under
19 Labor Code secs.201-203, 226, 226.3, and 2699. Defendant also adamantly disputes all of
Plaintiff's allegations in the operative Complaint.

20 F. The source of penalties available is under PAGA, which allows
21 employees
22 to seek civil penalties for certain violations of the Labor Code so long as the penalties are not
23 unjust, arbitrary, oppressive, or confiscatory. There are no State Court decisions under the
24 PAGA to date with substantial awards of civil penalties. There is a substantial risk that the
25 Court could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's
26 evidence of willful and intentional conduct. The PAGA expressly counsels against such
27 awards. See Lab. Code § 2699(e)(2) ("...a court may award a lesser amount than the maximum
28 civil penalty amount specified by this part if, based on the facts and circumstances of the
particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,

1 or confiscatory.”). Further, although, class certification is not required for a PAGA claim,
2 Defendant could contend that Plaintiff should show that the PAGA claims are manageable.

3 G. As such, Defendant could also convince the Court to dismiss the claims
4 due to unmanageability. In *Ortiz v. CVS Caremark Corp.*, the court dismissed a PAGA claim
5 because it was unmanageable. 2014 WL 1117614, at *3–4 (N.D. Cal. 2014). The *Ortiz* court
6 cited the “multitude of individualized assessments” that case would have required in ordering
7 dismissal. *Id.* at *4. Several other courts have adopted *Ortiz*, and dismissed PAGA claims
8 where, as here, there are a large number of allegedly aggrieved individuals whose claims
9 require individual assessments. See, e.g., *Litty v. Merrill Lynch & Co.*, 2014 WL 5904904, at
10 *3 (C.D. Cal. 2014); *Bowers v. First Student, Inc.*, 2015 WL 1862914, at *4 (C.D. Cal. 2015);
11 see also *Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396, at *2–4 (E.D. Cal. 2014)
12 (bifurcating trial of plaintiff’s claim from representative claims: “in light of the number of
13 potential aggrieved employees, judicial economy favors deferring the representative portion of
14 the PAGA claim”); *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal. May
15 13, 2015). *DS*, ¶ 24. The risk of an unmanageable trial is heightened in a representative PAGA
16 claim because the burden of proof rests with the plaintiff to establish violations of the Labor
17 Code “with respect to each and every individual on whose behalf [they] seek[] to recover civil
18 penalties.” *Molina v. Dollar Tree Stores, Inc.*, 2013 U.S. Dist. LEXIS 138642, at *33-34 (C.D.
19 Cal. Aug. 9, 2013); *Hibbs-Rines v. Seagate Techs, LLC*, 2009 WL 513496, at *4 (N.D. Cal.
20 Mar. 2, 2009). Moreover, in a PAGA case the plaintiff must prove liability with respect to
21 “each and every individual” through representative evidence – but without sacrificing the
22 defendant’s due process right to present proof of their affirmative defenses. *Elkins v. Superior*
23 *Court*, 41 Cal. 4th 1337, 1357 (2007); *Walmart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2561
24 (2011); *Duran v. U.S. Bank Nat’l Ass’n*, 59 Cal. 4th 1, 33-34 (2014). Plaintiff is required to
25 establish a violation of the Labor Code in each pay period of each and every one of the
26 approximately 260 employees. The Court could find that this is an impractical task and require
27 the aggrieved employees to bring individual claims instead of a PAGA representative claim.

28 H. On or around June 15, 2022, the U.S. Supreme Court issued its decision
in *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. ____ [142 S.Ct. 1906]. In construing
the Federal Arbitration Act in *Viking River Cruises*, the Court held that the rule of *Iskanian v.*
CLS Transportation Los Angeles, LLC (2014) 59 Cal.4th 348 is preempted “insofar as it

precludes division of PAGA actions into individual and non-individual claims through an agreement to arbitrate.” (142 S.Ct. at p. 1924, brackets added.) The Court concluded that, based on the parties’ arbitration agreement, the defendant-employer “was entitled to enforce the agreement insofar as it mandated arbitration of [the plaintiff’s] individual PAGA claim.” (*Id.* at pp. 1924–1925, emphasis added.) With respect to the plaintiff’s non-individual claims brought on behalf of other employees, the Court confirmed that “PAGA provides no mechanism to enable a court to adjudicate nonindividual PAGA claims once an individual claim has been committed to a separate proceeding,” and that, “a plaintiff can maintain non-individual PAGA claims in an action only by virtue of also maintaining an individual claim in that action,” under PAGA’s standing requirement. (142 S.Ct. at p. 1925, citing Lab. Code, § 2699, subds. (a), (c).) Relying on *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 90, the Court further explained that, “When an employee’s own dispute is pared away from a PAGA action, the employee is no different from a member of the general public, and PAGA does not allow such persons to maintain suit.” (142 S.Ct. at p.1925.) Consequently, the U.S. Supreme Court held that the plaintiff “lacks statutory standing to continue to maintain her non-individual claims in court, and the correct course is to dismiss her remaining claims.” (*Ibid.*)

I. The *Viking River* case ended up being another risk factor in this case. Since there was an arbitration agreement executed by the parties in this case that included a representative action waiver, not effectuating a PAGA settlement on a representative basis would have opened the door to the defense filing a motion to compel Plaintiff’s individual PAGA claims to arbitration and asking the Court to dismiss the representative PAGA claims. As such, it ended up being in the best interest of the Plaintiff and the State to move forward with settlement of the PAGA claims on a representative basis.

J. Plaintiff further recognizes that the issues presented in the Representative PAGA Claim are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the maximum potential benefits to the Aggrieved Employees and Plaintiff that may be received in connection with continued litigation of the Representative PAGA claim, especially in light of the *Viking River* decision as discussed above, and in light of the pandemic era where further and extensive litigation may cause businesses to shut down,

1 resulting in no monetary compensation to Plaintiff, Plaintiff's attorneys, other Aggrieved
2 Employees, and the State of California.

3 K. The settlement of the Representative PAGA Claim involves monetary
4 relief to all Aggrieved Employees, Plaintiff, her attorneys, and the State of California.

5 L. Furthermore, Plaintiff recognizes that continued litigation presents
6 significant risks that support a downward departure from Plaintiff's estimated civil penalties
7 amount. In view of the risks, the Settlement represents a fair, adequate, and reasonable
8 compromise amount for these claims and is in the best interest of Plaintiff and Aggrieved
9 Employees and thus, warrants approval. See *Laguna v. Coverall N. Am., Inc.*, Case No. 12-
10 55479
11 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3. The PAGA settlement and its terms are fair,
12 just,
13 reasonable, adequate, and equitable to Defendant, Plaintiff, and the State, especially in light of
14 the current economic climate and legal landscape with *Viking River*, and are the product of
15 good
16 faith, and informed arms-length negotiations between the Parties consistent with public policy
17 and fully comply with applicable provisions of law. See Declaration of Harout Messrelian,
18 Plaintiff's counsel, at paragraph 21, filed concurrently.

19 **IV. TERMS AND PROCEDURES OF THE SETTLEMENT**

20 A. The Settlement covers any and all civil penalties claims arising from Plaintiff's
21 allegations in her Complaint, including, but not limited to, Defendant's alleged failure to
22 compensate for all hours worked, including minimum wages, failure to pay all overtime, failure
23 to provide meal and rest breaks, failure to provide accurate itemized wage statements, failure to
24 pay wages owed every pay period and at the end of employment, failure to maintain accurate
25 records, and failure to provide business expense reimbursement.

26 B. Defendant agrees to pay \$50,000.00 toward the Settlement (the "Gross
27 Settlement Amount" or "GSA") which will be distributed by Defendant as follows:

28 1. \$16,650.00 (approximately 33 1/3% of the GSA) in attorneys' fees to
Harout Messrelian, Esq. of Messrelian Law Inc.

2. \$7,070.92 in attorney litigation costs to Harout Messrelian, Esq. of

Messrelian Law Inc.

3. \$3,150.00 in PAGA Settlement Administrator costs to Phoenix Class Action Administration Solutions.

4. \$23,129.08 (the “Net Settlement Amount” or “NSA”) will be divided as follows:

a. \$17,346.81 (75% of “NSA”) to the LWDA, which represents civil penalties payable to the LWDA under the Labor Code Private Attorneys General Act (“PAGA”), Labor Code section 2698, *et seq.*; and

b. \$5,782.27 (25% of NSA) (the “Aggrieved Employee Amount”) to the Aggrieved Employees which represents civil penalties payable to the Aggrieved Employees as compensation for civil penalties that are allegedly owed on the Representative PAGA Claim for the period from April 18, 2019 to January 25, 2022.

C. Plaintiff and each Aggrieved Employee shall receive a portion of the Aggrieved Employee Amount on a pro-rata basis by multiplying the Aggrieved Employee Amount by the ratio of (i) the number of pay periods worked by the Aggrieved Employee during the release period and (ii) the total number of pay periods worked by all Aggrieved Employees during the release period.

D. For purposes of computing taxes, one-hundred percent (100%) of the Aggrieved Employee Settlement Award shall be considered to be a civil penalty and shall not be subject to withholding, unless otherwise required by law. The Claims Administrator shall file proof of payment.

V. NO ADMISSION OF LIABILITY OR WRONGDOING

The payment of consideration or any other obligation are not and shall not be construed in any way as an admission of wrongdoing or liability on the part of Defendant, or any other person or business entity. Defendant adamantly denies all allegations of wrongdoing arising out of the employment relationship between the Parties, including the Aggrieved Employees. The Parties intend merely to avoid the expense, delay, uncertainty and burden of continued litigation.

VI. PAGA SETTLEMENT ADMINISTRATION

A. Settlement Administration.

1 For the purposes of this Settlement, the Parties stipulate and agree that Phoenix Class
2 Action Administration Solutions shall be retained to serve as Settlement Administrator and
3 shall

4 administer the Settlement Sum under this Agreement pursuant to the terms outlined below.

5 B. Notice to Aggrieved Employees.

6 Notice shall be provided to the Aggrieved Employees in the following manner:

- 7 1. No later than ten (10) calendar days after the Effective Date, Defendant shall
8 confidentially provide the settlement administrator with a list of all Aggrieved
9 Employees ("Aggrieved Employees List"). The Aggrieved Employees List shall state
10 the first name and last name for each Aggrieved Employee, the last known address for
11 each Aggrieved Employee, each Aggrieved Employee's social security number, and
12 the number of pay periods worked by each Aggrieved Employee during the Release
13 Period. The Settlement Administrator shall run all the addresses provided by
14 Defendant through the United States Postal Service NCOA database (which provides
15 updated addresses for any individual who has moved in the previous four years who
16 has notified the U.S. Postal Service of a forwarding address) to verify and/or obtain
17 current address information.
- 18 2. No later than thirty (30) calendar days after the Effective Date, the settlement
19 administrator shall mail the Notice of PAGA Settlement (attached hereto as **Exhibit**
20 "**B**") to all Aggrieved Employees, together with their settlement checks, by first-class
21 United States mail, postage prepaid, to the last known address of each recipient with
22 directions to the Postmaster to forward the Notice of PAGA Settlement and return all
23 undeliverable Notices to the settlement administrator. For each Notice of PAGA
24 Settlement that is returned as undeliverable, the settlement administrator shall
25 promptly attempt to locate the Aggrieved Employee by using an address refresher
26 database. If no forwarding address is provided, the Settlement Administrator will
27 promptly attempt to determine the correct address using a skip-trace, or other search
28 using the name, address and/or Social Security number of the Aggrieved Employee
involved and will then perform a single re-mailing.
3. All costs incurred by the settlement administrator in connection with the
administration of this settlement, including mailing of the Notice of PAGA Settlement
described herein, whether foreseen or not, shall be paid out of the Settlement Sum.
These costs shall not exceed \$3,150.00; to the extent they fall below this amount, they
shall be added to the amount distributable to the Aggrieved Employees and the
LWDA.

26 C. Settlement Payment Procedures.

27 i. Deposit of Settlement Sum with Settlement Administrator

1 Defendant shall pay as the Settlement Sum the total gross amount of Fifty Thousand
2 Dollars and zero cents (\$50,000.00) in full and final Settlement of this matter. Defendant shall
3 pay the Settlement Sum to the Settlement Administrator, Phoenix Class Action Administration
4 Solutions, within thirty (30) days of the Effective Date.

5 The Settlement Sum shall be deposited into a Qualified Settlement Fund ("QSF") within
6 the meaning of Section 468B-1 of the United States Treasury Regulations. The Settlement
7 Administrator shall be responsible for arranging for the establishment of a QSF in order to
8 effectuate the disbursement of the Settlement Sum to the State of California Labor and
9 Workforce Development Agency, to Aggrieved Employees, and to Plaintiff's Counsel in the
10 manner and within the times periods described herein. No disbursements shall be made from
11 the QSF unless and until the Effective Date first occurs.

12
13 ii. Payment of PAGA Penalties.

14 The total sum available for payment of PAGA penalties shall be calculated by
15 deducting Plaintiff's Counsel's fees and actual litigation costs and the costs of administration
16 referenced in Section 3.04(a)(3) above (no more than \$3,150.00 from the Settlement Sum (this
17 will yield the "Net Settlement Amount").

18 Seventy-five percent (75%) of the Net Settlement Amount shall be paid to the LWDA;
19 the remaining twenty-five percent (25%) of the Net Settlement Amount (the "Employee Net
20 Settlement Amount") shall be paid to Aggrieved Employees pro rata based on the number of
21 pay periods worked during the Release Period. There are 260 Aggrieved Employees and
22 6,842.21 total pay periods covered by the Release Period. Each Aggrieved Employee's share of
23 the Employee Net Settlement Amount shall be calculated by dividing the number of pay
24 periods that employee worked during the Release Period by 6,842.12 and multiplying the result
25 by the Employee Net Settlement Amount. 100% of the PAGA payments are considered
26 penalties and will not be subject to local, state, or federal tax withholdings. All Aggrieved
27 Employees who cash their settlement check may receive an IRS Form 1099 for their portion of
28 the settlement, if deemed required by the settlement administrator (in compliance with IRS
guidelines).

The settlement checks issued to Aggrieved Employees shall remain valid for one
hundred eighty (180) days after issuance. Thereafter, all uncashed checks shall be transmitted
to the State of California Controller's Office – Unclaimed Property Fund, to be held in the
names of the respective Aggrieved Employees.

iii. Tax Treatment of Settlement Sum.

The Settlement Administrator shall be responsible for preparing and issuing all
necessary IRS Form 1099s, including to Plaintiff's Counsel, who shall assume full
responsibility and liability for the payment of taxes due on the payments to Plaintiff's Counsel.
Aggrieved Employees are solely responsible for all appropriate taxes due and any penalties
assessed on any and all amounts paid to them under this Agreement. Aggrieved Employees
assume full responsibility and liability for the payment of taxes due on their individual shares
of the Settlement Sum. Nothing in this Settlement is intended to constitute legal or tax advice

1 regarding local, state, or federal tax obligations and the parties make no representations or
2 warranties with respect to the tax consequences of any payment under this Agreement.

3 **D. Attorneys' Fees and Costs, Settlement Administration Expenses, and LWDA Payment**

4 Within ten (10) calendar days of receipt of the payment of the Settlement Sum, the
5 Settlement Administrator shall pay to Plaintiff's Counsel its awarded attorney's fees and costs,
6 to itself the administration fees incurred, not to exceed \$3,150.00, and to the LWDA its full
7 share of the Net Settlement Amount.

8 **E. Settlement Administrator Declaration of Compliance.**

9 The Settlement Administrator will send a declaration to Plaintiff's Counsel attesting to
10 the disbursement of the Settlement Sum no later than 240 days after the Effective Date, after
11 the check cashing deadline has passed. If the Court so requires, Plaintiff's Counsel shall file the
12 declaration with the Court within ten (10) calendar days of its receipt from the Settlement
13 Administrator.

14 **VII. TAXES**

15 Plaintiff and each Aggrieved Employee bear full responsibility for the payment of any
16 taxes or withholdings arising from the Aggrieved Employee Settlement Awards paid to them.

17 **VIII. RELEASED CLAIMS**

18 Upon the approval by the Court of this Settlement, Plaintiff, the State of California and
19 each Aggrieved Employee shall fully release and forever discharge Defendant and the Released
20 Parties from any and all claims, rights, demands, liabilities for violation of PAGA (Labor Code
21 § 2699, et seq.) that arose during the Release Period as it relates to Labor Code section 2698, et
22 seq. for alleged violations of the California Labor Code, including unpaid minimum and
23 overtime wages, failure to provide meal periods, failure to provide rest periods, failure to issue
24 accurate and complete wage statements, failure to reimburse reasonably necessary business
25 expenses, and failure to timely pay wages during employment and at separation, in violation of
26 Labor Code sections 201, 202, 203, 204, 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174,
27 1174.5, 1194, 1197, 1197.1, 1198, and 2802 and the applicable Industrial Welfare Commission
28 Orders including, but not limit to, Order No. 5-2001.

IX. CONCLUSION

Plaintiff respectfully requests the Court grant this Motion.

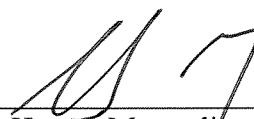
Respectfully Submitted,

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MESSRELIAN LAW INC.

DATED: August 9, 2022

By



Harout Messreljan, Esq.

Attorneys for Plaintiff

MARICEL BELONIO WATERS

EXHIBIT

“A”

PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)
SETTLEMENT AGREEMENT

Maricel Belonio Waters v. College Vista, LLC dba College Vista Post-Acute, et al.
Los Angeles Superior Court Case No. 20STCV23520

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties, subject to the approval of the Court, that the settlement of the above action shall be effectuated upon and subject to the following terms and conditions. Capitalized terms shall have the meanings set forth in Article I or elsewhere in this Private Attorneys General Act (Labor Code § 2698 *et seq.*) Settlement Agreement (“**Agreement**”).

This Agreement is made by and between Defendant College Vista, LLC dba College Vista Post-Acute (“**Defendant**”) and Plaintiff Maricel Belonio Waters (“**Plaintiff**”), for herself, individually, and on behalf of the State of California and other allegedly aggrieved employees (Defendant, Plaintiff, and Aggrieved Employees, as defined in this Agreement, are sometimes collectively referred to as the “**Parties**”).

The Parties agree that the Litigation shall be, and hereby is, ended, settled, resolved, and concluded by agreement of Defendant to pay the total gross sum of Fifty Thousand U.S. Dollars and no cents (\$50,000.00) (hereinafter referred to as the “**Settlement Sum**”) for settlement of Plaintiff’s Private Attorneys General Act (“**PAGA**”) claims for civil penalties, which shall be inclusive of Plaintiff’s Counsel’s attorneys’ fees and costs and the settlement administrator’s fees and costs.

Article I.

Definitions.

Section 1.01 Definitions.

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- (a) “**Aggrieved Employees**” means all non-exempt employees of College Vista, LLC dba College Vista Post-Acute employed in California at any time between April 18, 2019 and January 25, 2022.
- (b) “**Complaint**” means the operative complaint filed on or about June 22, 2020 in Los Angeles Superior Court, Case No. 20STCV23520.
- (c) “**Court**” means the Superior Court for the State of California, County of Los Angeles.

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(d) **“Defense Counsel”** is:

Melissa T. Daugherty, Esq.
Andrew J. Sokolowski, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP
633 West 5th Street, Suite 4000
Los Angeles, C 90071
melissa.daugherty@lewisbrisbois.com
andrew.sokolowski@lewisbrisbois.com

(e) **“Effective Date”** means the date the Court enters a/an order(s): (1) approving the settlement of the PAGA penalties as described in this Agreement, and (2) dismissing the pending action with prejudice.

(f) **“Plaintiff’s Counsel”** is:

MESSRELIAN LAW INC.
Harout Messrelian, Esq.
500 N. Central Ave., Suite 840
Glendale, California 91203
hmessrelianlaw@gmail.com

(g) **“Release Period”** means the time period between April 18, 2019 and January 25, 2022.

(h) **“Released Claims”** means all claims for PAGA civil penalties that are alleged in the Complaint (including but not limited to unpaid minimum and overtime wages, failure to provide meal periods, failure to provide rest periods, failure to issue accurate and complete wage statements, failure to reimburse reasonably necessary business expenses, and failure to timely pay wages during employment and at separation) and all claims for PAGA penalties that could have been alleged in the Complaint based on the facts alleged therein, that arose during the Release Period.

(i) **“Released Parties”** means Defendant and its past, present, and future representatives, directors, officers, employees, agents, attorneys, affiliates, members and shareholders, as well as all parent companies, affiliated companies, subsidiary companies, affiliates, insurers, and/or assigns and/or any other individual or entity which could be liable for the claims raised in the Complaint. The term Released Parties specifically includes, but is not limited to, named co-defendants Sun-Mar Health Care, Inc. and Sun Mar Nursing Centers.

(j) **“Litigation” or “Action”** means the lawsuit brought by Plaintiff via the Complaint.

(k) **“Settlement Administrator”** means the third-party administrator agreed upon by Parties to administer this Settlement, Phoenix Class Action Administration Solutions.

Article II.

Background.

Section 2.01 Background.

- (a) On or about March 27, 2020, Plaintiff transmitted a letter to the Labor & Workforce Development Agency and Defendant in compliance with the exhaustion requirements of PAGA, articulating claims related to unpaid wages, unpaid overtime, meal and rest period violations, deficient wage statements, unreimbursed expenses, and late payment of final wages at separation of employment.
- (b) On June 22, 2020, Plaintiff filed the Complaint in the Superior Court of the State of California for the County of Los Angeles, entitled *Maricel Belonio Waters v. College Vista, LLC dba College Vista Post-Acute, et al.*, case number 20STCV23520. The Complaint asserted claims on behalf of the State of California and other aggrieved employees, as a PAGA action based on violations of Labor Code including §§ 201, 202, 203, 204, 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, and 2802.
- (c) During the course of the Litigation, the Parties engaged in formal and informal discovery and fully shared the information necessary for all sides to conduct a legitimate investigation into the allegations of the Litigation and potential defenses to Plaintiff's claims. The Parties have reached this Settlement only after discovery and investigation was performed.
- (d) Defendant disputes and denies any liability or wrongdoing of any kind associated with the claims alleged in the Complaint and/or the Litigation. Defendant contends, among other things, that it complied at all times with the local, state, and federal laws, and that the claims alleged in this matter are without merit. Further, Defendant denies that Plaintiff, individually and as a representative of the Aggrieved Employees, is owed any wages or penalties, as alleged, but does recognize that the Litigation will be protracted and expensive. As a result, Defendant has agreed to pay a reasonable amount in order to resolve this matter.
- (e) The Parties believe and agree that this Agreement provides a fair, adequate, and reasonable resolution of Plaintiff's PAGA claims after doing their own independent investigations and evaluations of the claims alleged in this matter. The Parties have taken into account the risk and uncertainty of the outcome inherent in any litigation.
- (f) This Settlement Agreement contemplates the entry of an order (a) approving the settlement of the PAGA penalties as described in this Agreement, and (b) dismissing the pending action with prejudice. The Parties agree that this Agreement shall be binding on Plaintiff individually, and all Aggrieved Employees once the Effective Date occurs, and that all Parties shall bear their own fees and costs, except as expressly stated herein.

Article III.

Approval and Implementation of Settlement.

Section 3.01 Cooperation.

The Parties will cooperate in obtaining through an unopposed motion an Order from the Court approving the payment of PAGA penalties as described in this Agreement at the earliest possible date. Plaintiff's Counsel shall request and be paid up to 33 1/3% of the Settlement Sum for attorneys' fees (i.e. \$16,650.00 based on a Settlement Sum of \$50,000.00) and a reasonable request for reimbursement of actual litigation costs (including filing fees and the cost of mediation) from the Settlement Sum, and Defendant will not oppose these requests. If Plaintiff's Counsel's requests for fees and costs are approved for lesser amounts than contemplated in this Agreement, the difference shall be added to the Employee Net Settlement Amount. The Parties agree to use their best efforts to expedite the preparation and submission of the settlement documents. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to, the approval and implementation of the payment of PAGA penalties as described in this Agreement.

Section 3.02 Court Approval.

The Parties will seek to obtain the Court's approval of the payment of PAGA penalties as described in this Agreement by way of a stipulation or motion to be filed by Plaintiff's counsel as soon as practicable following the execution date of this Agreement but no later than twenty (20) calendar days thereafter. Plaintiff's Counsel will jointly lodge this Agreement with the Court for its approval. The Court's approval of the payment of PAGA penalties as described in this Agreement shall be embodied in a written order. Should the Court not grant approval of the payment of PAGA penalties as described in this Agreement, or should the Effective Date not occur for any reason, then the entirety of this Agreement shall be null and void.

Section 3.03 Settlement Administration.

For the purposes of this Settlement, the Parties stipulate and agree that Phoenix Class Action Administration Solutions shall be retained to serve as Settlement Administrator and shall administer the Settlement Sum under this Agreement pursuant to the terms outlined below.

Section 3.04 Notice to Aggrieved Employees.

(a) Notice to Aggrieved Employees.

Notice shall be provided to the Aggrieved Employees in the following manner:

- (1) No later than ten (10) calendar days after the Effective Date, Defendant shall confidentially provide the settlement administrator with a list of all Aggrieved Employees ("Aggrieved Employees List"). The Aggrieved Employees List shall state the first name

and last name for each Aggrieved Employee, the last known address for each Aggrieved Employee, each Aggrieved Employee's social security number, and the number of pay periods worked by each Aggrieved Employee during the Release Period. The Settlement Administrator shall run all the addresses provided by Defendant through the United States Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to verify and/or obtain current address information.

- (2) No later than thirty (30) calendar days after the Effective Date, the settlement administrator shall mail the Notice of PAGA Settlement (attached hereto as Exhibit "A") to all Aggrieved Employees, together with their settlement checks, by first-class United States mail, postage prepaid, to the last known address of each recipient with directions to the Postmaster to forward the Notice of PAGA Settlement and return all undeliverable Notices to the settlement administrator. For each Notice of PAGA Settlement that is returned as undeliverable, the settlement administrator shall promptly attempt to locate the Aggrieved Employee by using an address refresher database. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Aggrieved Employee involved and will then perform a single re-mailing.
- (3) All costs incurred by the settlement administrator in connection with the administration of this settlement, including mailing of the Notice of PAGA Settlement described herein, whether foreseen or not, shall be paid out of the Settlement Sum. These costs shall not exceed \$3,150.00; to the extent they fall below this amount, they shall be added to the amount distributable to the Aggrieved Employees and the LWDA.

Section 3.05 Settlement Payment Procedures.

(a) Deposit of Settlement Sum with Settlement Administrator

Defendant shall pay as the Settlement Sum the total gross amount of Fifty Thousand Dollars and zero cents (\$50,000.00) in full and final Settlement of this matter. Defendant shall pay the Settlement Sum to the Settlement Administrator, Phoenix Class Action Administration Solutions, within thirty (30) days of the Effective Date.

The Settlement Sum shall be deposited into a Qualified Settlement Fund ("QSF") within the meaning of Section 468B-1 of the United States Treasury Regulations. The Settlement Administrator shall be responsible for arranging for the establishment of a QSF in order to effectuate the disbursement of the Settlement Sum to the State of California Labor and Workforce Development Agency, to Aggrieved Employees, and to Plaintiff's Counsel in the manner and within the times periods described herein. No disbursements shall be made from the QSF unless and until the Effective Date first occurs.

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(b) Payment of PAGA Penalties.

The total sum available for payment of PAGA penalties shall be calculated by deducting Plaintiff's Counsel's fees and actual litigation costs and the costs of administration referenced in Section 3.04(a)(3) above (no more than \$3,150.00 from the Settlement Sum (this will yield the "Net Settlement Amount").

Seventy-five percent (75%) of the Net Settlement Amount shall be paid to the LWDA; the remaining twenty-five percent (25%) of the Net Settlement Amount (the "Employee Net Settlement Amount") shall be paid to Aggrieved Employees pro rata based on the number of pay periods worked during the Release Period. There are 260 Aggrieved Employees and 6,842.21 total pay periods covered by the Release Period. Each Aggrieved Employee's share of the Employee Net Settlement Amount shall be calculated by dividing the number of pay periods that employee worked during the Release Period by 6,842.12 and multiplying the result by the Employee Net Settlement Amount. 100% of the PAGA payments are considered penalties and will not be subject to local, state, or federal tax withholdings. All Aggrieved Employees who cash their settlement check may receive an IRS Form 1099 for their portion of the settlement, if deemed required by the settlement administrator (in compliance with IRS guidelines).

The settlement checks issued to Aggrieved Employees shall remain valid for one hundred eighty (180) days after issuance. Thereafter, all uncashed checks shall be transmitted to the State of California Controller's Office – Unclaimed Property Fund, to be held in the names of the respective Aggrieved Employees.

(c) Tax Treatment of Settlement Sum.

The Settlement Administrator shall be responsible for preparing and issuing all necessary IRS Form 1099s, including to Plaintiff's Counsel, who shall assume full responsibility and liability for the payment of taxes due on the payments to Plaintiff's Counsel. Aggrieved Employees are solely responsible for all appropriate taxes due and any penalties assessed on any and all amounts paid to them under this Agreement. Aggrieved Employees assume full responsibility and liability for the payment of taxes due on their individual shares of the Settlement Sum. Nothing in this Settlement is intended to constitute legal or tax advice regarding local, state, or federal tax obligations and the parties make no representations or warranties with respect to the tax consequences of any payment under this Agreement.

(d) Attorneys' Fees and Costs, Settlement Administration Expenses, and LWDA Payment

Within ten (10) calendar days of receipt of the payment of the Settlement Sum, the Settlement Administrator shall pay to Plaintiff's Counsel its awarded attorney's fees and costs, to itself the administration fees incurred, not to exceed \$3,150.00, and to the LWDA its full share of the Net Settlement Amount.

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(e) Settlement Administrator Declaration of Compliance.

The Settlement Administrator will send a declaration to Plaintiff's Counsel attesting to the disbursement of the Settlement Sum no later than 240 days after the Effective Date, after the check cashing deadline has passed. If the Court so requires, Plaintiff's Counsel shall file the declaration with the Court within ten (10) calendar days of its receipt from the Settlement Administrator.

Article IV.

Limitations On Use Of This Settlement.

Section 4.01 No Admission.

This Agreement and compliance with this Agreement shall not be construed as an admission by Defendant of any liability whatsoever, or as admission by Defendant of any violations of Plaintiff's or the Aggrieved Employees' rights, violation of any order, law, statute, duty or contract whatsoever. Defendant specifically disclaims any liability to Plaintiff, the Aggrieved Employees, or any other allegedly aggrieved employee for any alleged violation of his/her rights, or for any alleged violation of any order, law, statute, duty or contract.

Section 4.02 Non-Evidentiary Use.

Neither this Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, or their counsel in the Litigation, or in any other action or proceeding; provided, however, this shall not prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement, or to establish that the Released Claims are extinguished.

Section 4.03 Nullification.

Payment of the Settlement Sum is conditioned on the Court's approval of this Agreement. To comply with the requirements of Lab. Code Section 2699(1), Plaintiff shall prepare and submit, after Defendant's approval, a Stipulation or Motion to Approve Settlement Pursuant to the Private Attorneys General Act, together with a supporting declaration, within the time frames required by this Agreement. However:

- (a) If the Court should for any reason fail to approve the payment of PAGA penalties as described in this Agreement, or refuse to dismiss the Action with prejudice, then the Parties shall request leave and work jointly to attempt to revise the Agreement consistent with the Court's expressed concerns, if any, in order to obtain the Court's approval. In the event that the Court does not finally approve the settlement and dismiss the Action with prejudice: (a) this Agreement shall be considered null and void, (b) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect, and (c) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court.

- (b) Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

Article V.

Release and Waiver of Claims.

Section 5.01 Release by Aggrieved Employees.

Upon the Effective Date, and subject to Defendant's full payment of the Settlement Sum, Plaintiff, all Aggrieved Employees, and the State of California shall be deemed to have fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from the Released Claims.

The Released Claims do not include any underlying individual claims or causes of action that aggrieved employees may have, and relief that they may seek, against Released Parties with respect to violations of the California Labor Code.

Article VI.

Miscellaneous Provisions.

Section 6.01 Notice, Default, Cure, and Enforcement.

If Defendant fails to pay the Settlement Sum on the date due as set forth in the Agreement, it shall be in default of its obligations under this Agreement. Plaintiff shall e-mail notice of the default to Defense Counsel at the e-mail addresses listed in paragraph 1.01(d) above. Defendant will then have ten (10) days from the date notice is e-mailed to cure the default. If payment is not made within that time, Plaintiff may thereafter move the Court to enforce the judgment contemplated herein, pursuant to Code of Civil Procedure section 664.6 and all other applicable law.

Section 6.02 Voluntariness.

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity. All Parties acknowledge that they had the opportunity to consult with legal counsel prior to entering into this Agreement.

Section 6.03 No Other Actions.

Other than the Complaint pending in this Litigation and the related notices filed with the LWDA as well as Plaintiff's individual claims in Arbitration, Plaintiff represents that she has not filed any complaints, claims, or actions against Defendant or the other co-defendants named in the Complaint with any court or administrative agency. If any agency or court has or assumes jurisdiction of any complaint, claim, or action against Defendant or any named co-defendants on

behalf of Plaintiff, the Plaintiff will request that agency or court to withdraw from or dismiss the matter.

Section 6.04 Amendments.

The terms and provisions of this Agreement may be amended only by a written agreement that is both (a) signed by the Plaintiff and Defendant and (b) approved by the Court if necessary. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise.

Section 6.05 Assignment.

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, Plaintiff's Counsel, or Defense Counsel without the express written consent of each other Party and their respective counsel. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person. Plaintiff expressly warrants that she has not transferred to any person or entity any right or cause of action, or claim released by this Agreement.

Section 6.06 Governing Law.

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California.

Section 6.07 Entire Agreement.

This Agreement contains the entire understanding of the Parties with respect of the subject matter of the Agreement. This Agreement supersedes all prior agreements and understandings among the Parties with respect to the settlement of the Litigation.

Section 6.08 Counterparts.

This Agreement, and any amendments, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

Section 6.10 Necessary Acts.

The Parties agree to perform any further acts and execute and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

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Section 6.11 Electronic Imaging and Signature.

The Parties intend to allow for the electronic imaging and storage of this Agreement, and the admissibility into evidence of such an image in lieu of the original paper version of this Agreement. The Parties stipulate that any computer printout of any such image of this Agreement shall be considered to be an "original" under the applicable court or arbitral rules of evidence when maintained in the normal course of business and shall be admissible as between the Parties to the same extent and under the same conditions as other business records maintained in paper or hard copy form. The Parties further warrant that all DocuSign and/or SignRequest signatures were authorized by the Parties to this Agreement and carry the same weight and legal effect as any wet ink signatures. Any party using DocuSign and/or SignRequest waives any claim that the signature affixed to their name is not authentic for purposes of approval and authorization in the understanding or execution of this Agreement. The Parties agree not to contest, in any proceeding involving the parties in any judicial or other forum, the admissibility, validity, or enforceability of any image of this Agreement because of the fact that such image was stored or handled in electronic form. The Parties agree to allow the use of DocuSign and/or SignRequest, an electronic signature technology, to expedite the execution of this Agreement pursuant to California Civil Code Section 1633.7. Electronic signatures shall be deemed originals.

Section 6.12 Attorneys' Fees and Costs.

Except as expressly provided herein, Defendant and Plaintiff shall all bear their own attorney's fees and costs in connection with the Litigation and the negotiation and execution of this Agreement (other than those included in the Settlement Sum or as otherwise provided in this Agreement).

Section 6.13. Ambiguity.

In the event of an ambiguity under this Agreement, such ambiguity shall not be construed against either Party, as this Agreement has been negotiated at arm's length between the Parties and the Parties have sought and been advised by counsel.

Section 6.14 Dispute(s).

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, the Parties agree to submit any such dispute(s) to the Court. To the extent any Party seeks to enforce any of the terms of this Agreement in Court or before the Court, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

Section 6.15 Binding.

This Agreement shall bind and inure to the benefit of the Parties hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

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Section 6.16 Continuing Jurisdiction.

The Parties agree that upon the occurrence of the entry of judgment in this case pursuant to the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code of Civil Procedure Section 664.6 and all other applicable law, and the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties and Aggrieved Employees to interpret and enforce the terms, conditions and obligation of the Agreement.

Section 6.17 Successors and Assigns.

The provisions of this Agreement shall be binding upon and inure to the benefit of the respective Parties and their heirs, executors, administrators, agents, representatives, successors, and assigns.

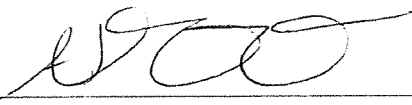
Section 6.18 Waiver of Right to Appeal.

Provided that the Court's approval of this Settlement is consistent with the material terms of this Agreement, Plaintiff, Defendant, and their respective counsel hereby waive any and all rights to appeal the approval of the settlement, and the Order therefore will become non-appealable at the time it is entered.

IN WITNESS WHEREOF, the Parties have executed this Private Attorneys General Act Settlement Agreement on the date set forth.

APPROVED AND ACCEPTED.

Dated: 08/01, 2022

By 
College Vista, LLC

Dated: Jul 20, 2022, 2022

By 
Maricel Belonio Waters

Waters -- PAGA Settlement Agreement (2022 07 08)

Final Audit Report

2022-07-20

Created:	2022-07-20
By:	Harout Messrelian (hm@messrelianlaw.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA_c2k9uO1MRfjeSFy6xjgC8va0PUYh4DU

"Waters -- PAGA Settlement Agreement (2022 07 08)" History

-  Document created by Harout Messrelian (hm@messrelianlaw.com)
2022-07-20 - 7:42:40 PM GMT - IP address: 104.62.31.253
-  Document emailed to maricelsbel@gmail.com for signature
2022-07-20 - 7:43:07 PM GMT
-  Email viewed by maricelsbel@gmail.com
2022-07-20 - 7:57:56 PM GMT - IP address: 172.226.184.127
-  Document e-signed by Maricel Waters (maricelsbel@gmail.com)
Signature Date: 2022-07-20 - 7:59:02 PM GMT - Time Source: server- IP address: 174.193.198.173
-  Agreement completed.
2022-07-20 - 7:59:02 PM GMT

EXHIBIT

“B”

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

**NOTICE OF SETTLEMENT OF LABOR CODE PRIVATE ATTORNEYS GENERAL
ACTION CLAIM (CALIFORNIA LABOR CODE § 2698, *et seq.*)**

You have been identified as a person employed by College Vista, LLC dba College Vista Post-Acute (“College Vista”) in California between April 18, 2019 and January 25, 2022 (“Aggrieved Employee”).

On June 22, 2020, Maricel Belonio Waters commenced a lawsuit in the Los Angeles County Superior Court, Case No. 20STCV23520 (the “Lawsuit”) to recover civil penalties against College Vista. The Lawsuit asserts claims against College Vista for unpaid wages, unpaid overtime, meal period violations, rest period violations, failure to reimburse business expenses, and failure to timely pay wages during employment and at separation of employment as to non-exempt Aggrieved Employees. For these alleged violations, they seek penalties pursuant to the California Labor Code’s Private Attorneys General Act of 2004, codified at Labor Code § 2698 *et seq.* (“PAGA”). Plaintiff is solely seeking civil penalties on behalf of the California Labor and Workforce Development Agency (“LWDA”) and other aggrieved employees under the Private Attorneys General Act (“PAGA”), such that 75% of the penalties collected will be paid to the LWDA.

College Vista denied and continues to deny Plaintiff’s allegations and disputes all of Plaintiff’s claims and maintains it was in compliance with the California Labor Code at all times. The Lawsuit was litigated and following an investigation and a mediation before a third-party mediator, the Parties reached a settlement which takes into account the uncertainties, challenges and risks of proceeding with litigation.

The Los Angeles County Superior Court approved the settlement on _____ and has determined that the settlement is fair and reasonable. The Court has not made a determination about the merits of Plaintiff’s allegations. Accordingly, this Notice is not to be understood as an expression of any opinion by the Court as to the merits of the Plaintiff’s claims. The payment which accompanies this notice is being made to you pursuant to the terms of the Settlement. You are receiving a pro rata share of the settlement, calculated by taking the number of pay periods you worked during the time period from April 18, 2019 and January 25, 2022, and dividing that by the total number of pay periods worked by all Aggrieved Employees during the time period from April 18, 2019 through January 25, 2022.

The Court-approved settlement contains the following release of claims, to which you are bound:

Upon the Effective Date, and subject to Defendant's full payment of the Settlement Sum, Plaintiff, all Aggrieved Employees, and the State of California shall be deemed to have fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties (defined as College Vista and its past, present, and future representatives, directors, officers, employees, agents, attorneys, affiliates, members and shareholders, as well as all parent companies, affiliated companies, subsidiary companies, affiliates, insurers, and/or assigns and/or any other individual or entity which could be liable for the claims raised in the Complaint; the term Released Parties specifically includes, but is not limited to, named co-defendants Sun-Mar Health Care, Inc. and Sun Mar Nursing Centers) from the Released Claims (means all claims for PAGA civil penalties that are alleged in the Complaint [including but not limited to unpaid minimum and overtime wages, failure to provide meal periods, failure to provide rest periods, failure to issue accurate and complete wage statements, failure to reimburse reasonably necessary business expenses, and failure to timely pay wages during employment and at separation] and all claims for PAGA penalties that could have been alleged in the Complaint based on the facts alleged therein, that arose during the Release Period [April 18, 2019 through January 25, 2022]).

Regardless of what you do with the settlement check, you will have released claims for penalties arising under PAGA as asserted in the Lawsuit. However, no claims for any unpaid or underpaid wages have been settled, and this settlement is without prejudice to any pursuit of such claims that you may have.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

Phoenix Class Action Administration Solutions has been chosen as the Settlement Administrator in this matter. A Settlement Administrator is a third-party entity appointed by the Court to handle the settlement claim process. As Settlement Administrator, Phoenix Class Action Administration Solutions is responsible for distributing this Notice and paying out your settlement payment pursuant to the Settlement. You may call Phoenix Class Action Administration Solutions toll free at [INSERT NUMBER] with any questions.

Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct all unclaimed funds to the State of California Controller's Office – Unclaimed Property Fund, where it will be held in your name and may be claimed. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.