

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Sean M. Blakely (SBN 264384)
sblakely@haineslawgroup.com
Neil M. Larsen (SBN 276490)
nlarsen@haineslawgroup.com
Bianca V. Perez (SBN 327590)
bperez@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
and Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHRISTINE MARKLEY, as an individual and
on behalf of all other aggrieved employees,

Plaintiff,

vs.

EASTER SEALS, INC., an Ohio corporation;
EASTER SEALS SOUTHERN CALIFORNIA,
INC., a California corporation; EASTER SEALS
CENTRAL CALIFORNIA, a California
corporation; and DOES 1 through 100,

Defendants.

Case No. 20STCV18866

*[Assigned for all purposes to the Hon.
Steven J. Kleinfeld, Dept. 57]*

**DECLARATION OF PAUL K. HAINES
IN SUPPORT OF PLAINTIFF'S
MOTION FOR APPROVAL OF
SETTLEMENT OF CLAIMS
BROUGHT UNDER THE PRIVATE
ATTORNEYS' GENERAL ACT AND
REASONABLE ATTORNEYS' FEES,
COSTS, AND ENHANCEMENT
PAYMENT**

Date: November 5, 2021
Time: 8:30 a.m.
Dept.: 57

Reservation No.: 470378340928

Action Filed: May 18, 2020
Trial Date: None Set

1 **DECLARATION OF PAUL K. HAINES**

2 I, PAUL K. HAINES, declare as follows:

3 1. I am a shareholder and principal of Haines Law Group, APC, and counsel for the
4 named Plaintiff Christine Markley (“Plaintiff”) and the Aggrieved Employees¹ in the above-
5 captioned matter. I am a member in good standing of the bar of the State of California and am
6 admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration
7 and could testify competently to them if called upon to do so.

8 2. I am a 2006 graduate of Pepperdine University School of Law, where I graduated
9 *cum laude*. During law school, I worked as a law clerk for the appellate firm of Horvitz & Levy,
10 located in Encino, California. I also spent a semester in law school working as an extern for the
11 Honorable Edward Rafeedie, District Judge for the United States District Court for the Central
12 District of California.

13 3. Since graduating from law school, my practice has focused almost exclusively on
14 employment litigation. In September 2007, I began working as an associate attorney at the
15 international law firm of Littler Mendelson P.C., at its Los Angeles office, which according to
16 its website is the “largest U.S.-based law firm exclusively devoted to representing management
17 in every aspect of labor and employment law.” While at Littler Mendelson, I was primarily
18 staffed on wage and hour class actions venued in both state and federal courts, and I also worked
19 on a number of single and multi-plaintiff wage and hour matters as well.

20 4. During my employment at Littler Mendelson, I played a significant role in the
21 class actions that I was staffed on, as I was often the only associate staffed on such cases. In
22 particular, I received a wide-array of wage and hour class action experience performing the
23 following types of tasks: drafting demurrers, motions to strike and/or dismiss; removing actions
24 from state court to federal court; drafting and responding to written discovery; drafting and
25 opposing discovery related motions; arguing discovery related motions; drafting motions to
26 consolidate related matters; interviewing putative class members and obtaining declarations in
27

28 ¹ Referred to herein as “PAGA Settlement Employees.”

1 connection with class certification; drafting oppositions to motions for class certification;
2 drafting motions for decertification following class certification; conducting exposure analyses
3 to assess the strengths and weaknesses of asserted claims, the likelihood of prevailing at class
4 certification and potential damages resulting from such claims; drafting mediation briefs; serving
5 as the primary contact to in-house counsel; deposing named plaintiffs and putative class
6 members; deposing retained expert witnesses; and defending the depositions of corporate
7 witnesses. In short, I played an integral role in all aspects of litigation from the inception of a
8 matter through and beyond class certification. I also supervised the work of several junior
9 attorneys who were staffed on the same wage and hour class actions.

10 5. In June 2011, I voluntarily resigned from Littler Mendelson in order to accept an
11 associate attorney position with the international law firm of Morgan, Lewis & Bockius LLP, at
12 its Los Angeles office, where I began working in July 2011. During my employment at Morgan,
13 Lewis & Bockius LLP, I worked exclusively on the defense of wage and hour class and collective
14 actions. For the vast majority of these cases, I was the only associate staffed on the matter, and I
15 performed the same job duties as described in the immediately preceding paragraph. In addition
16 to working on wage and hour class actions, at Morgan, Lewis & Bockius I also worked on a
17 number of “hybrid” actions asserting nationwide wage and hour claims under the Fair Labor
18 Standards Act (“FLSA”), as well as California-specific claims under Rule 23 of the Rules of
19 Civil Procedure.

20 6. In July 2012, I transitioned into litigating wage and hour class actions from the
21 Plaintiff’s side, first as a Partner with the law firm of Boren, Osher & Luftman, LLP, and since
22 February 2016, as a Shareholder of the Haines Law Group, APC. Currently, over ninety percent
23 (90%) of my practice is dedicated exclusively to the prosecution of wage and hour class actions,
24 and my law firm is currently responsible for prosecuting over fifty (50) wage and hour class
25 actions filed in both State and Federal courts throughout California. I have been appointed as
26 Class Counsel in over seventy-five (75) wage and hour class action settlements in state and
27 federal courts within California. A few examples of the matters in which I have been appointed
28 as Class Counsel, all of which have been granted final approval, include the following: *Sanchez*

1 v. *Res-Care, Inc.*, Case No. BC526175, California Superior Court, County of Los Angeles,
2 Honorable John S. Wiley, presiding; *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-
3 3170 JFW (Ex), United States District Court, Central District of California, Honorable Judge
4 John F. Walter, presiding; *Tesla Motors Wage and Hour Litigation*, JCCP 4792, California
5 Superior Court, Santa Clara County, Judge Peter H. Kirwan presiding; *Bower v. Cycle Gear, Inc.*,
6 Case No. CV14-2712 HSG, United States District Court, Northern District of California,
7 Honorable Judge Haywood S. Gilliam, Jr. presiding; *Longstreth v. PAQ, Inc., dba Food 4 Less*,
8 Case No. 15CV-0206, California Superior Court, County of San Luis Obispo, Honorable Judge
9 Charles S. Crandall, presiding; *Nunez v. CompuCom Systems, Inc.*, Case No. BC618385,
10 California Superior Court, County of Los Angeles, Honorable Judge John Shepard Wiley, Jr.
11 presiding; *Mansilla v. Haeco Americas Line Services, LLC, et al*, Case No. BC615310, Superior
12 Court of California, County of Los Angeles, Honorable Judge Elihu M. Berle presiding. *Morales*
13 *v. Caremeridian, LLC, et al.*, Case No. BC593191, California Superior Court, County of Los
14 Angeles, Judge William F. Highberger presiding; *Rodrigues v. CP Kelco U.S., Inc.*, Case No. 37-
15 2017-00004339-CU-OE-CTL, California Superior Court, County of San Diego, Honorable
16 Judge Joel R. Wohlfeil, presiding; *Sandoval v. Rotational Molding, Inc.*, Case No. BC640678,
17 Superior Court of California, County of Los Angeles, Honorable Judge William F. Highberger
18 presiding; *Gooding v. Vita-Mix Corp., et al*, Case No. 2:16-cv-03898-ODW (JEMx), United
19 States District Court for the Central District of California, Honorable Judge Otis D. Wright II
20 presiding.

21 7. I have also moved to certify and have received an order certifying a class action
22 and/or conditionally certifying a collective action, in the following cases: *Medeiros v. Vortex*
23 *Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-CXC, California Superior
24 Court, County of Orange, Honorable Judge Gail A. Andler, presiding (certifying a class of
25 employees who were misclassified as independent contractors); *Javine v. San Luis Ambulance*
26 *Service, Inc.*, Case No. CV13-07480 BRO (SSx), United States District Court, Central District
27 of California, Honorable Judge Beverly Reid O'Connell, presiding (conditionally certifying an
28 unpaid FLSA overtime wage class); *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-

3170 JFW (Ex), United States District Court, Central District of California, Honorable Judge John F. Walter, presiding (certifying a rest period violation class and conditionally certifying an FLSA unpaid overtime wage class); *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court, Northern District of California, Honorable Judge Haywood S. Gilliam, Jr., presiding (conditionally certifying an unpaid FLSA overtime wage class); *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United States District Court, Eastern District of California, Honorable Jennifer L. Thurston, presiding (conditionally certifying an unpaid FLSA overtime wage class); *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge William Claster, presiding (certifying unpaid overtime wage class and waiting time penalty class); *Camacho v. Residential Fire Systems, Inc.*, Case No. 30-2015-775372-CU-OE-CXC, California Superior Court, County of Orange, Honorable Glenda Sanders, presiding (certifying piece rate pay plan classes, expense reimbursement class, wage statement class, and waiting time penalties class); *Ontiveros v. Safelite Fulfillment, Inc.*, et al, Case No. CV 15-7118-DMG (RAOx), United States District Court, Central District of California, Honorable Dolly M. Gee presiding (certifying six classes of employees for rest period violations, wage statement violations, meal period violations, and overtime and double-time violations); *Vazquez, et al v. Kraft Heinz Foods Company*, Case No. 16-cv-2749-WQH-BLM, United States District Court, Southern District of California, Honorable William Q. Hayes presiding (certifying six classes of employees for unpaid wages, meal period violations, wage statement violations, and waiting time penalties); *Caudle, et al. v. Sprint/United Management Company, et al.* Case No. C 17-06874-WHA, United States District Court, Northern District of California, Honorable William H. Alsup presiding (certifying three classes of employees for unlawful wage deductions, wage statement violations, and waiting time violations); *Perez v. Sunbelt Rentals, Inc.* Case No. 37-2018-00026405-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Eddie C. Sturgeon presiding (certifying class of employees for wage statement violations); *Staublein v. Wells Fargo Bank, N.A.*, Case No. CIV DS1712267, San Bernardino Superior Court, Hon. David S. Cohn presiding (certifying wage statement class); and *Bowlin-Burdick, et al v. Life Care*

1 *Centers of America, Inc.*, Case No. BC657139, Los Angeles County Superior Court, Honorable
2 Maren E. Nelson presiding (certifying four classes for meal period violations, rest period
3 violations, wage statement violations, and waiting time penalties).

4 8. Of particular relevance to this case, I served as lead or co-lead counsel for the
5 plaintiff and aggrieved employees in several PAGA-only settlements, including but not limited
6 to:

- 7 • *Pentinio v. Southern Wine and Spirits of America, Inc.*, Case No. BC570234,
8 California Superior Court, County of Los Angeles, Honorable Judge Maureen
9 Duffy-Lewis, presiding, approved by the Court on January 19, 2016;
- 10 • *Resendez v. Bridgestone Retail Operations, LLC*, Case No. BC596892, California
11 Superior Court, County of Los Angeles, Honorable Judge Marc Marmaro
12 presiding, approved by the Court on June 13, 2016;
- 13 • *Canul v. Basmat, Inc.*, Case No. BC674940, California Superior Court, County of
14 Los Angeles, Honorable Judge Teresa A. Beaudet presiding, approved by the
15 Court on August 22, 2018;
- 16 • *Silva v. CitiStaff Solutions, Inc.*, Case No. BC620115, California Superior Court,
17 County of Los Angeles, Honorable Judge David S. Cunningham III presiding,
18 approved by the Court on November 19, 2018;
- 19 • *Cruz v. Fleetwash, Inc.*, Case No. 19STCV03033, California Superior Court,
20 County of Los Angeles, Honorable Judge Stuart M. Rice presiding, approved by
21 the Court on October 7, 2019; and
- 22 • *Ibarra v. Baker Commodities, Inc.*, Case No. 19STCV06148, California Superior
23 Court, County of Los Angeles, Honorable Yolanda Orozco presiding, approved
24 by the Court on September 30, 2020.

25 9. In 2015, 2016, and 2017, Thomson Reuters recognized me as a Top Young
26 Attorney in Southern California in the annual Rising Star Edition of Super Lawyer. This is an
27 honor awarded to no more than two and a half percent of attorneys under the age of forty in
28 Southern California each year. In 2018, 2019, and 2020, Thomson Reuters recognized me as a

1 “Super Lawyer,” an honor awarded to no more than five percent of attorneys in Southern
2 California each year.

3 10. As counsel for Plaintiff and PAGA Settlement Employees in this case, I have been
4 intimately involved in every aspect of this case from its inception through the present and I
5 believe the proposed Settlement is a favorable result for the PAGA Settlement Employees and
6 the State of California.

7 11. Defendant Easter Seals Southern California, Inc. (“Easter Seals”) is a non-profit
8 health care organization that serves individuals throughout Southern California with special
9 needs related to autism spectrum disorders, learning disabilities, developmental disabilities, and
10 various mental and emotional health issues. Plaintiff worked for Easter Seals as a non-exempt
11 “Direct Service Associate” from approximately July 2014 to approximately May 2019.

12 12. On March 11, 2020, Plaintiff sent a letter by certified mail to Easter Seals, Inc.,
13 Easter Seals Southern California, and Easter Seals Central California, and online to the LWDA,
14 describing Easter Seals’ alleged Labor Code violations, as required by Labor Code § 2699.3. A
15 true and correct copy of that letter is attached hereto as **Exhibit 2**.

16 13. On May 18, 2020, after the prescribed 65-day waiting period under Labor Code §
17 2699.3(a)(2)(A), Plaintiff filed a representative action complaint titled *Christine Markley v.*
18 *Easter Seals, Inc., et al.*, Los Angeles Superior Court Case No. 20STCV18866 (the “Action”),
19 asserting a claim against Easter Seals for civil penalties pursuant to PAGA stemming from
20 various purported violations of the Labor Code.

21 14. After confirming that Plaintiff was not an employee of Easter Seals, Inc. or Easter
22 Seals Central California, Plaintiff filed a Request for Dismissal without prejudice as to those
23 Defendants on July 21, 2020, and on July 24, 2020, the Court dismissed those two entities,
24 leaving Easter Seals Southern California as the only named Defendant.

25 15. After the Action was filed, the Parties ultimately agreed to participate in an early
26 mediation before experienced wage and hour mediator Steve Pearl, Esq. In connection with
27 mediation, Easter Seals provided Plaintiff with information and documents pertaining to Plaintiff
28 and PAGA Settlement Employees, including a list of PAGA Settlement Employees with hire and

1 termination dates, Easter Seal’s written wage and hour policies, employee handbooks, and other
2 information and documents in effect during the PAGA Period. This discovery allowed the Parties
3 to assess the merits and value of Plaintiff’s PAGA claim, and Easter Seals’ potential defenses.

4 16. The Parties attended mediation with mediator Steve Pearl, Esq. on May 17, 2021.
5 During mediation, the Parties vigorously debated Plaintiff’s ability to proceed on a representative
6 basis, the legal basis for Plaintiff’s claims and Easter Seals’ defenses, the potential amount of
7 PAGA civil penalties, and the Parties’ data analyses and conclusions based thereon. With the
8 assistance of Mr. Pearl, the Parties agreed to fully and finally resolve the PAGA Released Claims
9 as to Plaintiff and other PAGA Settlement Employees. Over the following months, the Parties
10 negotiated and finalized the Settlement Agreement.

11 17. A true and correct copy of the fully-executed Settlement Agreement is attached
12 hereto as **Exhibit 1**. The proposed Explanatory Letter to be mailed to PAGA Settlement
13 Employees with their settlement payments is attached as **Exhibit A** to the Settlement Agreement.
14 The Settlement provides for Easter Seals to pay a Gross Settlement Amount (“GSA”) of
15 \$175,000.00. After deducting amounts for requested attorneys’ fees, attorneys’ costs, Plaintiff’s
16 enhancement payment, and settlement administration costs, the Settlement provides for the Net
17 Settlement Amount (“NSA”) to be distributed 75% to the LWDA and 25% to PAGA Settlement
18 Employees, pursuant to Lab. Code § 2699(i). All portions distributed to PAGA Settlement
19 Employees shall be distributed pro rata based on the number of pay periods each PAGA
20 Settlement Employee worked for Easter Seals during the PAGA Period. This settlement is non-
21 reversionary, and does not require PAGA Settlement Employees to submit claim forms to reap
22 financial benefit from the Settlement. Based on a GSA of \$175,000, the total amount paid to
23 PAGA Settlement Employees is estimated at \$25,174.65, with approximately \$75,523.65 paid to
24 the LWDA. According to information provided by Easter Seals, the number of PAGA Settlement
25 Employees is approximately 289. Thus, the average payment to Aggrieved Employees is
26 estimated at approximately \$87.11.

27 18. Although Plaintiff steadfastly maintains her claims are meritorious, she
28 acknowledges her position included real risks and uncertainty. For example, with respect to

1 Plaintiff's meal period claim, Plaintiff alleged that Easter Seals did not maintain a lawful meal
2 period policy and failed to provide compliant meal periods to PAGA Settlement Employees. In
3 response, Easter Seals contends that Plaintiff and other PAGA Settlement Employees entered
4 into lawful on-duty meal period agreements. Easter Seals also argues, and Plaintiff does not
5 dispute, that the nature of Easter Seals' employees' work prevents them from being relieved of
6 all duties during their work shift. Easter Seals also maintains that Plaintiff's meal claim would
7 not be manageable on a representative basis, as individual inquiries would be required to establish
8 which PAGA Settlement Employees experienced non-compliant meal periods, how many non-
9 compliant meal periods each PAGA Settlement Employee experienced, and why a particular
10 PAGA Settlement Employees had a non-compliant meal period during a particular shift.

11 19. With respect to Plaintiff's rest period claim, Plaintiff alleged that Easter Seals
12 failed to authorize and permit Plaintiff and PAGA Settlement Employees from taking all
13 statutorily permitted off-duty rest periods during their shifts. Easter Seals contends that it has
14 always maintained lawful written rest period policies, including the number, duration, and
15 frequency of rest periods, and that it has always authorized and permitted rest periods in
16 accordance with those policies. Easter Seals contends that in light of the nature of its employees'
17 work, Wage Order 5, § 12(c) authorizes the employees to take on-duty rest periods without
18 resulting in any penalties. Notwithstanding its defense under Wage Order 5, § 12(c), Easter Seals
19 further contends that Plaintiff and other PAGA Settlement Employees often worked on their own
20 without direct supervision, and thus Easter Seals contends that they had complete discretion
21 regarding when and how to take their rest breaks.

22 20. As for Plaintiff's derivative claims that Easter Seals violated its wage statement
23 and final payment obligations in violation of Labor Code §§ 226 and 203, respectively, Easter
24 Seals asserts it has strong, good-faith defenses to Plaintiff's underlying claims, precluding a
25 finding of a failure to pay all final wages that would otherwise result in waiting time penalties.
26 Easter Seals further contends Plaintiff's meal and rest period claims cannot support a claim for
27 violations of Labor Code §§ 226 or 203. Easter Seals further contends that wage statements
28 always accurately reflected amounts paid to employees, and thus Easter Seals cannot be found

liable for wage statement violations under *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336 (2018).

21. Easter Seals further maintains that even if the Court awarded PAGA penalties for any of the alleged violations, the Court would substantially reduce the penalties based on the discretionary factors in Labor Code § 2699(e)(2). Indeed, Easter Seals argues that many courts have reduced PAGA penalties drastically where, as here, the employer presented good-faith defenses and attempted to comply with the law.

22. Plaintiff asserts that she would be able to seek PAGA civil penalties for each PAGA Settlement Employee for each pay period in the PAGA limitations period. Based on data provided by Easter Seals, there were approximately 11,589 pay periods during the PAGA limitations period. Assuming an initial violation rate of \$100 per pay period under Labor Code § 2699(f), Plaintiff estimated a total potential PAGA exposure of \$1,158,900.00. However, because the Court maintains discretion to reduce these penalties, and in light of Easter Seals' arguments and defenses described above, Plaintiff discounted that figure by 50% for a risk of losing on the merits, and by an additional 65% for risk of the Court reducing penalties, to arrive at a realistic exposure of \$202,807. The proposed \$175,000.00 GSA therefore represents approximately 86.3% of Plaintiff's reasonably forecasted total recovery, while avoiding the risks of proceeding through trial.

23. My office is requesting attorneys' fees of one-third of the Gross Settlement Amount ("GSA") (i.e., \$58,333.33). Based on my experience in similar wage and hour class and representative actions in California state courts, fee awards in matters such as this one generally equal about one-third of the gross recovery. In addition, and as explained below and in the accompanying Motion, the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent basis. This case also involved nuanced legal issues, including Easter Seals' obligations to "provide" meal periods and "authorize and permit" rest periods, as well as the availability and amount of PAGA civil penalties for the alleged Labor Code violations. Easter Seals was also represented by experienced wage-and-hour litigation counsel. Thus, the requested fee award is fair, reasonable and adequate

1 and should be approved.

2 24. My office has expended significant time and effort in this case, including but not
3 limited to: conducting extensive research regarding the merits of Plaintiff's claims, her ability to
4 recover PAGA civil penalties, and Easter Seals' potential defenses; conducting significant
5 analysis of data and information produced by Easter Seals, and using this data and analysis to
6 draft a comprehensive mediation brief and exposure analysis; attending a full-day mediation; and
7 preparing and negotiating the Settlement, this Motion and supporting declarations. My office will
8 also oversee the settlement administration process and work with the administrator to prepare a
9 post-disbursement declaration. Given the considerable potential for adverse outcomes in this
10 case, the contingent risk borne by Plaintiff's counsel was great.

11 25. Since undertaking representation of Plaintiff, my firm has dedicated substantial
12 resources to this litigation without receiving any compensation to date. My office is requesting
13 reimbursement of \$6,968.47 in total costs. A summary of the costs incurred by my office in
14 connection with this case is attached hereto as **Exhibit 3**. These costs include filing fees, copying
15 costs, mediation fees, service fees and other expenses that were all reasonably incurred in the
16 prosecution of this litigation on behalf of Plaintiff and the PAGA Settlement Employees.

17 26. I believe the requested \$5,000 enhancement payment to Plaintiff is reasonable
18 given Plaintiff's efforts in this case and the risks she undertook on behalf of PAGA Settlement
19 Employees. Plaintiff provided substantial factual information and documents to my office,
20 assisted in identifying potential witnesses, and otherwise assisted in the prosecution of this case,
21 and also undertook significant risk in the event this case were lost as well as the reputational risk
22 inherent in suing a former employer on a representative basis. Accordingly, I believe Plaintiff's
23 requested enhancement payment is reasonable.

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct. Executed on October 14, 2021, at El Segundo, California.

26
27
28


Paul K. Haines

EXHIBIT 1

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement” or “Settlement”) is made and entered into between Plaintiff Christine Markley (“Plaintiff”), for herself and on behalf of the State of California acting in a private attorney general capacity, and Defendant Easter Seals Southern California, Inc. (“Defendant” or “Easter Seals”) (collectively, the “Parties”). Plaintiff and Defendant are collectively referred to herein as the “Parties” and may be individually referred to as a “Party.”

I. DEFINITIONS

The following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “Action” means the matter titled *Christine Markley v. Easter Seals, Inc., et al.*, Los Angeles Superior Court, Case No. 20STCV18866, and as set forth in Plaintiff’s correspondence to the California Labor and Workforce Development Agency (“LWDA Letter”) dated March 11, 2020.
2. “PAGA Settlement Employees” consist of all current and former non-exempt Direct Service Associates who worked for Easter Seals in California at any time during the PAGA Period, including Plaintiff. The number of PAGA Settlement Employees, including Plaintiff, is estimated to be 289 individuals.
3. “Easter Seals” or “Defendant” means Easter Seals Southern California, Inc., and its past, present, and future officers, directors, employees, board members, attorneys, insurers, reinsurers, representatives, predecessors, successors, agents, principals, heirs, estates, executors, administrators, servants, insurers, attorneys, assigns, and all of their heirs.
4. “Settlement Administrator” means Phoenix Settlement Administrators.
5. “Complaint” means the operative complaint in the Action.
6. “Court” means the Superior Court of California for the County of Los Angeles.
7. “Individual PAGA Payment” means the amount to be paid to each PAGA Settlement Employee based on the formula described herein.
8. “LWDA” means the California Labor and Workforce Development Agency.
9. “Gross Settlement Amount” is the non-reversionary sum of One Hundred Seventy-Five Thousand Dollars and Zero Cents (\$175,000.00), which represents the total amount payable under this Settlement Agreement by Easter Seals (subject to the Escalator Clause described below), including, without limitation, payments to all PAGA Settlement Employees, payment to the LWDA, payment of Plaintiff’s attorneys’ fees and costs, payment of Plaintiff’s enhancement payment, and payment to the Settlement Administrator for administration costs.
10. “Net Settlement Amount” is the amount remaining to distribute to the LWDA and PAGA Settlement Employees after the following amounts, if approved by the Court, are subtracted

from the Gross Settlement Amount: (a) Plaintiff's attorneys' fees up to one third of the Gross Settlement Amount (i.e. \$58,333.33); (b) Plaintiff's costs up to \$20,000.00; (c) Plaintiff's enhancement payment up to \$5,000.00; and (d) administration costs up to \$7,500.00.

11. "PAGA" means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

12. "PAGA Period" means the time period from March 11, 2019 through the date of the Court Order granting approval of the PAGA Settlement.

13. "PAGA Released Claims" mean all claims, rights, demands, liabilities and causes of action that arose during the PAGA Period for civil penalties under the PAGA, that were alleged in the Action or that could have been alleged based on the facts alleged in the Action. The PAGA Released Claims include, but are not limited to, claims under the PAGA for civil penalties alleged under Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 512, 516, 558, 1174, 1198; and claims for attorneys' fees, costs, or interest resulting therefrom (e.g., as provided by Labor Code § 2699(g) and Code of Civil Procedure § 1021.5). The release of the PAGA Released Claims shall extend for the duration of the PAGA Period.

14. "Plaintiff's Counsel" means Paul K. Haines, Sean M. Blakely, and Neil M. Larsen of Haines Law Group, APC.

15. "Released Parties" means Easter Seals and its former, present and future owners, shareholders, parents, and subsidiaries, and all of their current, former and future officers, directors, members, managers, partners, shareholders, joint venturers, successors, assigns, accountants, insurers, or legal representatives.

II. RECITALS

1. Plaintiff performed work for Easter Seals as a non-exempt Direct Service Associate in California during the PAGA Period and therefore falls under the definition of a PAGA Settlement Employee.

2. On March 11, 2020 Plaintiff provided written notice to the LWDA and Easter Seals asserting claims for civil penalties pursuant to PAGA stemming from alleged violations of various Labor Code sections and her intent to file a civil lawsuit under the PAGA.

3. On May 18, 2020, Plaintiff filed a complaint titled *Christine Markley v. Easter Seals, Inc. et al.*, Los Angeles Superior Court, Case No. 20STCV18866, asserting a claim against Easter Seals for civil penalties pursuant to PAGA stemming from various purported violations of the Labor Code.

4. After the Action was filed, the Parties ultimately agreed to participate in an early mediation before mediator Steve Pearl, Esq. In response to Plaintiff's Counsel's informal discovery requests, Easter Seals provided Plaintiff's Counsel with information and documents pertaining to Plaintiff and other PAGA Settlement Employees in order for Plaintiff's Counsel to investigate Plaintiff's allegations and value the claims prior to mediation.

5. On May 17, 2021, the Parties participated in mediation on a representative basis before mediator Steve Pearl, Esq. With the assistance of Mr. Pearl, the Parties agreed to fully and finally resolve the PAGA Released Claims as to Plaintiff and other PAGA Settlement Employees.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission.** Nothing in this Settlement Agreement shall be construed to be an admission by Plaintiff that her claims do not have merit or by Easter Seals of any liability or wrongdoing as to Plaintiff, other PAGA Settlement Employees or any other person, and Easter Seals specifically disclaims and denies any such liability or wrongdoing. The Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and risks. This Settlement Agreement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.

2. **Gross Settlement Amount.** Easter Seals shall pay One Hundred Seventy-Five Thousand Dollars and Zero Cents (\$175,000.00) as the non-reversionary Gross Settlement Amount, subject to the Escalator Clause below. Easter Seals shall send the lump sum Gross Settlement Amount to the Settlement Administrator within thirty (30) days of the Court's Order approving the PAGA settlement. The Settlement Administrator will then deposit the Gross Settlement Amount into an FDIC insured interest-bearing qualified settlement account pursuant to Internal Revenue Code section 1.468B-1 ("QSA").

The Settlement Administrator shall use the Gross Settlement Amount deposited in the QSA to pay: (1) Amounts distributable to the LWDA and PAGA Settlement Employees; (2) Plaintiff's attorneys fees and costs; (3) Plaintiff's enhancement payment; and (4) Settlement administration costs.

3. **Escalator Clause.** Easter Seals represents that there are approximately 11,589 pay periods worked by PAGA Settlement Employees in California during the PAGA Period ("Affected Pay Periods"). If the actual number of Affected Pay Periods is more than 15% greater than this number (i.e., if there are more than 13,328 Affected Pay Periods), Easter Seals shall increase the Gross Settlement Amount in proportion to the increase in Affected Pay Periods (e.g., if the number of Affected Pay Periods is 18% greater than 11,589, Easter Seals will increase the Gross Settlement Amount by 18%).

4. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Gross Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to distribute to the LWDA and PAGA Settlement Employees:

a. **Plaintiff's Attorneys' Fees and Costs.** Easter Seals will not oppose Plaintiff's request for attorneys' fees in the amount up to one third of the Gross Settlement Amount (currently estimated to be \$58,333.33) and costs up to \$20,000.00 incurred in prosecuting this Action. In the event the Court approves less than these amounts, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for attorneys' fees and costs). Easter Seals, via the Settlement Administrator, will report these payments on IRS Form 1099 issued to Plaintiff's Counsel.

b. Plaintiff's Enhancement Payment. Easter Seals will not oppose Plaintiff's request for an enhancement payment of up to \$5,000.00 for serving as the representative plaintiff in this Action. In the event the Court approves a payment of less than the requested amount, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for Plaintiff's enhancement payment). Easter Seals, via the Settlement Administrator, will report this payment on IRS Form 1099 issued to Plaintiff.

c. Administration Costs. Easter Seals will not oppose the Settlement Administrator's costs in the amount up to \$7,500.00 for administering the settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the Net Settlement Amount. Easter Seals, via the Settlement Administrator, will report this payment on IRS Form 1099 issued to the Settlement Administrator.

5. Allocation of Net Settlement Amount. One hundred percent (100%) of the Net Settlement Amount shall be designated as "civil penalties" and shall be distributed 75% to the LWDA and 25% to PAGA Settlement Employees, pursuant to Labor Code § 2699(i). The 25% portion to be paid to PAGA Settlement Employees shall be paid to all PAGA Settlement Employees pro rata, based on the number of pay periods worked by each PAGA Settlement Employee during the PAGA Period. The Net Settlement Amount shall be paid exclusively from the QSA, pursuant to the settlement formula set forth herein.

The Parties agree that should the Court deny approval of the Settlement based on the allocation of the Gross Settlement Amount or the Net Settlement Amount, the Parties agree to renegotiate in good faith in an effort to obtain approval of the Settlement.

6. PAGA Released Claims. Plaintiff agrees that upon entry of an Order approving the Settlement and judgment entered thereon, and upon the Settlement being fully funded, Plaintiff and all other PAGA Settlement Employees will release the PAGA Released Claims against Easter Seals and all Released Parties that arose during the PAGA Period. Upon entry of the Order approving the settlement and judgment entered thereon and the Settlement being fully funded, Plaintiff and all other PAGA Settlement Employees will be forever barred from pursuing any and all of the PAGA Released Claims that arose during the PAGA Period against Easter Seals and the Released Parties.

7. Covenants and Representations by Plaintiff and Plaintiff's Counsel.

a. Plaintiff represents and warrants that she has not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement Agreement.

b. Plaintiff acknowledges that she has read this Settlement Agreement, that she fully understands her rights, privileges and duties under the Settlement Agreement, and enters into this Settlement Agreement freely and voluntarily. Plaintiff further acknowledges that she has had the opportunity to consult with her attorneys to explain the terms of this Settlement Agreement and the consequences of signing this Settlement Agreement.

8. Confidentiality. Except as provided below or to the extent necessary to effectuate the settlement or as required by court or legal process, Plaintiff and Plaintiff's Counsel will keep

the terms of this Settlement Agreement confidential. Neither Plaintiff nor Plaintiff's Counsel shall issue a press release, hold a press conference, publish information about the settlement on any website or through any social media, or otherwise publicize the settlement or communicate its terms in public or in private, unless ordered by the Court. However, for the limited purpose of establishing adequacy of counsel in future actions, Plaintiff's counsel may reference the Action by name and case number in a declaration establishing adequacy as class or representative counsel.

To permit judicial review and approval of the Settlement, as required by Labor Code section 2698, *et seq.*, Plaintiff's Counsel will file the Settlement Agreement with the Court and submit the Settlement to the LWDA as part of the Parties' seeking Court approval of the Settlement, per Labor Code § 2699(1)(2).

9. **Motion for Approval of PAGA Settlement by Plaintiff's Counsel.** Plaintiff's Counsel shall be responsible for promptly preparing and filing the Motion for Approval of the PAGA Settlement ("Motion"). Plaintiff's Counsel shall provide Defendant's counsel a draft of the Motion at least two calendar days before the filing deadline to review and comment upon so that Defendant may propose revisions, if any.

10. **Termination of Settlement Agreement.** If the Court does not approve the settlement, if the Court does not enter judgment as provided for in this Settlement Agreement, or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or if one or more of the material terms of the Settlement Agreement is not approved or is materially modified or reversed or found to be invalid, then either Party shall have the right within ten (10) days of written notice thereof to elect to terminate the Settlement Agreement, in which case the Settlement Agreement shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement Agreement.

11. **Judgment.** As part of the Motion to approve the Settlement, Plaintiff shall submit a proposed judgment which enters judgment in the Action in accordance with the terms of the Settlement, retains jurisdiction over the Action under Cal. Code Civ. Proc. § 664.6 for the purpose of enforcing the terms of the Settlement following approval of the Settlement, and enjoins the prosecution of any of the PAGA Released Claims against any of the Released Parties upon the judgment being entered and the Settlement being fully funded. This Settlement Agreement is expressly conditioned upon the Court entering judgment as set forth herein. The judgment will not release or bar any claims other than the PAGA Released Claims as to Plaintiff and the Aggrieved Employees.

IV. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator.** The Parties agree to engage Phoenix Settlement Administrators to handle the administration of this settlement.

2. **Provision of Information for PAGA Settlement Employees.** Within five (5) business days after entry of an order approving the settlement, Easter Seals shall provide the Settlement Administrator with information for PAGA Settlement Employees. Easter Seals will in good faith compile from its records a list of PAGA Settlement Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and shall include each PAGA

Settlement Employee's full name, last known mailing address, last known telephone number, number of pay periods worked during the PAGA Period, and Social Security numbers to the extent available from Easter Seals' records. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement. Within seven (7) calendar days of receiving the PAGA Settlement Employees' information from Easter Seals, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the Individual PAGA Payments to each PAGA Settlement Employee and the data used to calculate said payments. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual PAGA Payments.

3. **Explanatory Letter and Individual PAGA Payments.** Upon receipt of the information for PAGA Settlement Employees, the Settlement Administrator will perform a search on the National Change of Address database to update the PAGA Settlement Employees' addresses. Within twenty-one (21) calendar days after the Settlement has been fully funded and after receiving approval from Plaintiff's Counsel and Defendant's counsel of the payment calculations as provided above, the Settlement Administrator shall mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as **Exhibit A**, in English and Spanish, along with Individual PAGA Payments to all PAGA Settlement Employees via regular First-Class U.S. Mail.

The Settlement Administrator will calculate the amount to be received by each PAGA Settlement Employee, which will be based on the formula set forth in Section III.5., *supra*. The Settlement Administrator will send each PAGA Settlement Employee a check for his or her Individual PAGA Payment along with the explanatory letter. Checks will remain negotiable for 180 days. Each Individual PAGA Payment shall be deemed penalties and reported using IRS Form 1099, with no withholdings taken.

4. **Undeliverable Notices.** The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each PAGA Settlement Employee. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each PAGA Settlement Employee.

Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace or other reputable search method using the name, address or Social Security number of the PAGA Settlement Employee involved, and will perform up to a single re-mailing if a new address is located.

Funds represented by checks returned as undeliverable after a re-mailing, checks for whom the Settlement Administrator could not locate an updated address after performing a skip trace, and funds represented by checks remaining un-cashed more than 180 days after issuance (collectively, "Uncashed Checks"), shall escheat to the California State Controller's Office for deposit in the Unclaimed Property Fund, in the name of the PAGA Settlement Employee.

5. **Distribution of Payments.** Within twenty-one (21) calendar days of the Settlement being fully funded, the Settlement Administrator shall issue payments to (1) PAGA Settlement

Employees; (2) the LWDA; (3) Plaintiff's Counsel for Plaintiff's Counsel's Court-approved attorneys' fees and litigation costs and expenses; (4) Plaintiff for the Court-approved enhancement payment and (5) the Settlement Administrator for Court-approved Settlement administration costs incurred in connection with the Settlement. Payments made by Easter Seals pursuant to this Settlement shall be held by the Settlement Administrator in an interest-bearing QSA until they are disbursed, with any accrued interest inuring to the benefit of the PAGA Settlement Employees in the form of pro rata increases to PAGA Settlement Employees' Individual PAGA Payments.

6. **Accounting.** Within 45 days after all payments have been made under the Settlement, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the settlement.

7. **Tax Consequences.** Neither Plaintiff nor Easter Seals, nor counsel for either of the Parties, make any representations or warranties with respect to tax consequences of any payment under this Settlement Agreement.

V. MISCELLANEOUS PROVISIONS

1. **Drafting.** The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party.

2. **Successors.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors.

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

4. **Governing Law.** This Settlement Agreement shall be construed under and governed by the laws of the State of California. This Settlement Agreement shall be deemed to have been entered into in Los Angeles, California, and all questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Settlement Agreement shall be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Settlement Agreement, it shall be brought in the State of California, County of Los Angeles.

5. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement Agreement has been made to them with respect to the subject matter of this Settlement Agreement, and acknowledge and represent that this Settlement Agreement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA claim in the Action.

6. **Nullification of Settlement Agreement.** In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement Agreement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their respective positions before the

Settlement was executed.

7. **Dismissal and Continued Jurisdiction.** As noted above, after approval of this settlement, the Court will have continuing jurisdiction under Cal. Code Civ. Proc. § 664.6 for purposes of addressing: (i) the interpretation and enforcement of the terms of the settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

8. **Amendment or Modification.** This Settlement Agreement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest, or by counsel for all Parties.

9. **Authorization to Enter into Settlement Agreement.** Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the mediator (i.e., Steve Pearl, Esq.) or the Court to resolve such disagreement.

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

11. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement Agreement is a fair, adequate and reasonable settlement of the Action, and have arrived at this settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this settlement.

12. **Invalidity of Any Provision.** Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Settlement Agreement valid and enforceable.

13. **Severability.** If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

14. **Waiver.** No waiver of any condition or covenant contained in this Settlement

Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

15. **Enforcement Action.** In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

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

17. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

18. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

19. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

20. **Denial of Liability.** The Parties expressly recognize that the making of this Settlement Agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant. Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this agreement may be used in any proceeding in the Court that has as its purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.

IN WITNESS THEREOF, the Parties each acknowledge that she/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement and hereby executes it voluntarily and with full understanding of its consequences.

Dated: Oct 13, 2021



Christine Markley (Oct 13, 2021 12:38 PDT)

Christine Markley, Plaintiff

**EASTER SEALS SOUTHERN CALIFORNIA
INC.**

Dated: _____, 2021

By: _____

Its:

APPROVED AS TO FORM:

Dated: October 14, 2021

HAINES LAW GROUP, APC

By: 

Paul K. Haines

Attorneys for Plaintiff, Christine Markley

Dated: _____, 2021

NOSSAMAN LLP

By: _____

E. George Joseph

Pavneet Singh Mac

Attorneys for Defendant, Easter Seals Southern
California, Inc.

IN WITNESS THEREOF, the Parties each acknowledge that she/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement and hereby executes it voluntarily and with full understanding of its consequences.

Dated: _____, 2021

Christine Markley, Plaintiff

**EASTER SEALS SOUTHERN CALIFORNIA
INC.**

Dated: October 13, 2021

Roslan R. Monday, SPHR
By:
Its:

APPROVED AS TO FORM:

Dated: _____, 2021

HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Attorneys for Plaintiff, Christine Markley

Dated: October 13, 2021

NOSSAMAN LLP

By: Pavneet Singh Mac
E. George Joseph
Pavneet Singh Mac
Attorneys for Defendant, Easter Seals Southern
California, Inc.

EXHIBIT A

Re: Payment from Christine Markley v. Easter Seals Southern California, Inc.
Superior Court of California Los Angeles County; Case No. 20STCV18866

Date: [REDACTED]/[REDACTED]/2021

SIMID
Name
Address

Dear **Name:**

Enclosed, please find a check made payable to you. This is your payment from the settlement of a lawsuit titled *Christine Markley v. Easter Seals Southern California, Inc.*, Los Angeles Superior Court, Case No. 20STCV18866, filed in the Superior Court of the State of California for the County of Los Angeles (the “Action”).

The Action was filed against Defendant Easter Seals Southern California, Inc. (“Easter Seals”) and includes a claim pursuant to the California Labor Code Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”). The Action was brought by Plaintiff Christine Markley (“Plaintiff”), a former non-exempt employee of Easter Seals, on behalf of the State of California and other alleged aggrieved employees. You have been identified as one of the employees on whose behalf the case was brought.

Plaintiff alleged that Easter Seals owed civil penalties under PAGA for alleged violations of the California Labor Code. Easter Seals categorically denies Plaintiff’s allegations. The parties have reached a settlement of Plaintiff’s representative PAGA claims, and on [DATE], the Court approved the settlement, including the amount of civil penalties to be paid under the settlement. A portion of the civil penalty settlement amount goes to the State of California’s Labor and Workforce Development Agency. Another portion of the civil penalty settlement amount goes to employees of Easter Seals who were allegedly affected by the alleged violations of the Labor Code. In agreeing to enter into this settlement, Easter Seals does not admit that it is liable in any way to current or former employees for any violations of the California Labor Code or any penalties. The Court has not decided the merits of Plaintiff’s claims.

Pursuant to the settlement, enclosed is a check for your share of a portion of the civil penalties. This check will remain valid for 180 days from the date of issuance. Please note that no deductions/withholdings have been made from your settlement payment, and you will be responsible for any tax consequences arising from your receipt of the same (for which an IRS Form 1099 will be issued). If you do not cash your check within 180 days of issuance, the funds will be deposited by the Settlement Administrator with the California State Controller to be deposited in the Unclaimed Property Fund in your name. If you are still employed by Easter Seals, your decision to cash the check will not affect your employment in any way.

While you were not a party to the Action, you and the State of California have been bound by the settlement entered in this matter and approved by the Court, including the release contained in the settlement. The release pertains to civil penalties under PAGA only. The release includes all claims under the PAGA that Plaintiff alleged in the Action, or could have alleged based on the facts therein, including claims for civil penalties, attorneys’ fees, costs, or interest under the PAGA, during the time period of March 11, 2019 through <THE DATE OF THE ORDER APPROVING THE PAGA SETTLEMENT> (the “PAGA Period”).

If you have any questions, you can contact **Phoenix Settlement Administrators**, the Settlement Administrator, at 1-[REDACTED]-[REDACTED].

Questions? Call toll-free () - -

EXHIBIT 2

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

March 11, 2020

VIA LWDA WEBSITE

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

Re: *Christine Markley v. Easter Seals, Inc., et al.*

To Whom It May Concern:

Please be advised that this law firm represents Christine Markley (“Ms. Markley”) in claims arising from her employment with Easter Seals, Inc.; Easter Seals Southern California, Inc.; Easter Seals Central California; and Does 1 through 100 (collectively “Easter Seals”). Ms. Markley is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to Easter Seals’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Section 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated.

Ms. Markley was employed by Easter Seals from approximately July 2014 to approximately May 2019 as a non-exempt employee in the position of “Direct Service Associate” out of Easter Seals’ Claremont and Covina, California locations. Ms. Markley’s job duties primarily consisted of caring for disabled patients in Easter Seals’ homes. The “aggrieved employees” whom Ms. Markley seeks to represent are all current and former non-exempt employees of Easter Seals who performed work for Easter Seals in the State of California during the one year immediately preceding the date of this letter through the present.

Easter Seals failed to provide Ms. Markley and other aggrieved employees with all legally compliant meal periods because Easter Seals did not maintain a lawful meal period policy and failed to provide duty-free meal periods to Ms. Markley and other aggrieved employees. Assuming, *arguendo*, that Ms. Markley and Easter Seals entered into a lawful on-duty meal period agreement, such agreements inherently concede that the nature of Ms. Markley’s and other aggrieved employees’ work precluded lawful off-duty rest periods. On those occasions when Ms. Markley and other aggrieved employees were not provided with all the legally-compliant meal periods to which they were entitled, Easter Seals failed to compensate Ms. Markley and other aggrieved employees with the required meal period premium(s) for each workday there was a meal period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion

of the relevant time period, Easter Seals maintained no mechanism for the payment of meal period premium payments as required by Labor Code § 226.7, in the event that a legally compliant meal period was not provided to their non-exempt employees.

Easter Seals failed to authorize and permit Ms. Markley and other aggrieved employees to take all required rest periods because Easter Seals failed to authorize and permit non-exempt employees to be relieved of all work during rest periods, due to the purported on-duty nature of their work. In the event that a legally compliant rest period was not in fact authorized and permitted, Ms. Markley and other aggrieved employees were not paid a rest period premium as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant time period, Easter Seals did not maintain any payroll code or other mechanism for the payment of rest period premium payments as required by Labor Code § 226.7.

As a result of Easter Seals' failure to pay all meal and rest period premiums, Easter Seals maintained inaccurate payroll records, issued inaccurate wage statements to Ms. Markley and other aggrieved employees, and failed to pay Ms. Markley and other aggrieved employees all wages owed at the time of their separation of employment with Easter Seals.

As described above, Easter Seals committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 5 ("Wage Order 5"):

Meal Period Violations

As alleged above, Easter Seals failed to provide Ms. Markley and other aggrieved employees with all legally required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 5, § 11. As a result, Ms. Markley and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.").

Rest Period Violations

As alleged above, Easter Seals also failed to authorize and permit Ms. Markley and other aggrieved employees to take all legally required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 5, § 12. As a result, Ms. Markley and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the

employee's regular rate of compensation for each workday that the meal or rest period is not provided.").

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Easter Seals failed to timely pay Ms. Markley and other aggrieved employees all of their final wages at the time of separation of employment, which included, among other things, meal and rest period premium wages. Pursuant to Labor Code § 203, Easter Seals' failure to pay all final wages due to Ms. Markley and other aggrieved employees was willful and, consequently, entitles Ms. Markley and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Easter Seals failed to pay their final wages after their separation, up to a maximum of thirty days.

Wage Statement Violations

Easter Seals was required to furnish Ms. Markley and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, their rates of pay, corresponding number of hours worked at each rate of pay, total gross wages earned, total net wages earned. *See* Labor Code §§ 226(a) and 1174(d); Wage Order 5, § 7. As a result of Easter Seals' failure to pay all meal and rest period premiums, Easter Seals maintained inaccurate payroll records and issued inaccurate wage statements to Ms. Markley and other aggrieved employees in violation of Labor Code § 226. Easter Seals' failure to comply with its wage statement obligations was knowing and intentional, and Ms. Markley and other aggrieved employees have suffered injury as a result.

As an "aggrieved employee," Ms. Markley will initiate a civil action on behalf of herself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Ms. Markley's own investigation, and on information and belief, Easter Seals committed and continues to commit the following Labor Code violations:

- a. Easter Seals violated Labor Code §§ 226.7, 512, 558, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Ms. Markley and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- b. Easter Seals violated Labor Code §§ 226.7, 516, 558, and 1198 by failing to authorize and permit Ms. Markley and other aggrieved employees all required rest periods and failing to pay rest period premiums to Ms. Markley and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;

- c. Easter Seals violated Labor Code §§ 201, 202, and 203 by failing to timely pay all final wages due to Ms. Markley and other aggrieved employees;
- d. Easter Seals violated Labor Code § 226 by failing to furnish Ms. Markley and other aggrieved employees with accurate and compliant itemized wage statements;
- e. Easter Seals violated Labor Code § 204 by failing to pay Ms. Markley and other aggrieved employees all wages earned at least twice during each calendar month; and
- f. Easter Seals violated Labor Code §§ 558, 1174, and 1198 by failing to maintain accurate records on behalf of Ms. Markley and other aggrieved employees.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and Easter Seals if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC


Paul K. Haines

cc: Easter Seals, Inc. (via certified mail);
Easter Seals Southern California, Inc. (via certified mail);
Easter Seals Central California (via certified mail)

7019 1640 0000 8009 8160

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$

Extra Services & Fees (check box, add fee as appropriate)

- | | | |
|--|----|--|
| ☐ Return Receipt (hardcopy) | \$ | |
| ☐ Return Receipt (electronic) | \$ | |
| ☐ Certified Mail Restricted Delivery | \$ | |
| ☐ Adult Signature Required | \$ | |
| ☐ Adult Signature Restricted Delivery | \$ | |

Postmark
Here

Postage

\$

Total P.

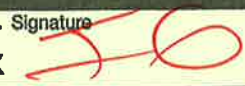
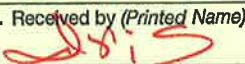
\$

Sent To

Street

City, St.

Easter Seals Central California
c/o Jeff Terpstra
3553 Chardonnay Road
Soquel, CA 95073 (AC)

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
■ Complete Items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 1. Article Addressed to: Easter Seals Southern California, Inc. c/o C T Corporation System 818 West Seventh Street, #930 Los Angeles, CA 90017  9590 9402 5710 9346 3666 37 2. Article Number (Transfer from service label) 7019 1640 0000 8009 8177	A. Signature ☐ Agent ☐ Addressee X  B. Received by (Printed Name) C. Date of Delivery  3/17 D. Is delivery address different from Item 1? ☐ Yes ☐ No If YES, enter delivery address below: 3. Service Type ☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Adult Signature ☐ Return Receipt for Merchandise ☐ Adult Signature Restricted Delivery ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery ☒ Certified Mail® ☐ Insured Mail (over \$500) ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

7019 1640 0000 8009 8177

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee \$ _____

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy)	\$ _____
☐ Return Receipt (electronic)	\$ _____
☐ Certified Mail Restricted Delivery	\$ _____
☐ Adult Signature Required	\$ _____
☐ Adult Signature Restricted Delivery	\$ _____

Postage \$ _____

Total Price \$ _____

Sent To _____

Street & _____

City, Sta. _____

Easter Seals Southern California, Inc.

c/o C T Corporation System

818 West Seventh Street, #930

Los Angeles, CA 90017 (AC)



PS Form 3800, April 2015 PSN 7530-02-000-9047
See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY												
■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature ☒ <i>Christina L.</i> ☒ Agent ☐ Addressee												
1. Article Addressed to: Easter Seals, Inc. c/o Corporate Creations Network Inc. 4640 Admiralty Way, 5th Floor Marina Del Rey, CA 90292	B. Received by (Printed Name) C. Date of Delivery <i>Christina L.</i> 3/13/12												
2. Article Number (Transfer from service label) 7019 2280 0001 9441 2370	D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No												
 9590 9402 5710 9346 3666 51	3. Service Type <table style="width: 100%;"> <tr> <td>☐ Adult Signature</td> <td>☐ Priority Mail Express®</td> </tr> <tr> <td>☐ Adult Signature Restricted Delivery</td> <td>☐ Registered Mail™</td> </tr> <tr> <td>☒ Certified Mail®</td> <td>☐ Registered Mail Restricted Delivery</td> </tr> <tr> <td>☐ Certified Mail Restricted Delivery</td> <td>☐ Return Receipt for Merchandise</td> </tr> <tr> <td>☐ Collect on Delivery</td> <td>☐ Signature Confirmation™</td> </tr> <tr> <td>☐ Collect on Delivery Restricted Delivery</td> <td>☐ Signature Confirmation Restricted Delivery</td> </tr> </table>	☐ Adult Signature	☐ Priority Mail Express®	☐ Adult Signature Restricted Delivery	☐ Registered Mail™	☒ Certified Mail®	☐ Registered Mail Restricted Delivery	☐ Certified Mail Restricted Delivery	☐ Return Receipt for Merchandise	☐ Collect on Delivery	☐ Signature Confirmation™	☐ Collect on Delivery Restricted Delivery	☐ Signature Confirmation Restricted Delivery
☐ Adult Signature	☐ Priority Mail Express®												
☐ Adult Signature Restricted Delivery	☐ Registered Mail™												
☒ Certified Mail®	☐ Registered Mail Restricted Delivery												
☐ Certified Mail Restricted Delivery	☐ Return Receipt for Merchandise												
☐ Collect on Delivery	☐ Signature Confirmation™												
☐ Collect on Delivery Restricted Delivery	☐ Signature Confirmation Restricted Delivery												

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

7019 2280 0001 9441 2370

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee	
\$	
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy)	\$
☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$
Postage	
\$	
Total Po	Easter Seals, Inc.
Sent To	c/o Corporate Creations Network Inc.
Street ad	4640 Admiralty Way, 5 th Floor
City, Sta	Marina Del Rey, CA 90292 (AC)



PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

EXHIBIT 3

Haines Law Group, APC

Expense Summary

Christine Markley v. Easter Seals Southern California, Inc.

EXPENSE	AMOUNT
Mediation Costs	\$6,000.00
Filing, Service, and Messenger Fees	\$814.34
Copying and Postage Costs	\$104.25
Westlaw Chargers	\$49.88
TOTAL:	\$6,968.47