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6 Attorneys for Plaintiff and the Aggrieved Employees

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ORANGE**
10

11 AMANDA BAILEY, an individual, on behalf
12 of the State of California as a private attorney
13 general, and on behalf of all others similarly
situated,

14 Plaintiff,

15 v.

16 NATIONAL THERAPEUTIC SERVICES,
17 INC., doing business as NORTHBOUND
TREATMENT SERVICES, a Nevada
18 corporation; JOSHUA HOUSE, LLC, a
California limited liability company; and
19 DOES 1 through 50, inclusive,

20 Defendants.
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Case No.: 30-2020-01161466-CU-OE-CXC

Assigned for all purposes to:
Hon, Glenda Sanders
Dept. CX101

**DECLARATION OF JENNIFER L.
CONNOR IN SUPPORT OF MOTION
FOR APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT
SETTLEMENT**

PAGA Approval Hearing

Date: March 11, 2022

Time: 1:30 p.m.

Dept: CX101

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I, Jennifer L. Connor, declare as follows:

1. I am attorney licensed to practice before all courts of the State of California. I have personal knowledge of the facts herein and, if called as a witness, I could and would competently testify to them.

2. I am an attorney at the law firm of CounselOne, P.C., who is counsel of record for Plaintiff Amanda Bailey in the above-captioned litigation (“Plaintiff’s Counsel”). I am submitting this Declaration in support of a PAGA settlement entered into between Plaintiff Amanda Bailey (“Plaintiff” or “Bailey”), individually, in her capacity to act on behalf of the State of California’s Labor & Workforce Development Agency (“LWDA”), and on behalf of similarly situated non-exempt employees who are or were employed by National Therapeutic Services, Inc. d/b/a Northbound Treatment Services (“NTS”) and Joshua House, LLC (“JH”) (collectively, “Defendants”) in the State of California during the PAGA Period (May 21, 2019 until the date of approval of the settlement) (hereafter, “Aggrieved Employees”). Plaintiff and Defendants are collectively referred herein as the “Parties.”

3. Plaintiff's Counsel have been responsible for the pursuit of claims for civil penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* ("PAGA"). Plaintiff claims that Defendants owe PAGA penalties as a result of their alleged violations of various Labor Code sections and applicable Industrial Welfare Commission Wage Order(s). Plaintiff's operative PAGA representative action complaint seeks these penalties on behalf of the State of California and Aggrieved Employees, as authorized by the PAGA.

4. The Parties have reached a settlement and signed the Joint Stipulation of Representative PAGA Action Settlement (“Settlement Agreement”), and Plaintiff as an “aggrieved employee” under the PAGA respectfully now moves this Court for an Order granting approval of the Settlement Agreement. A true and correct copy of the Settlement Agreement, entered into by the Parties, along with the accompanying Notice of Settlement of PAGA Representative Action (“PAGA Payment Letter”), are attached as **Exhibit “1”** and **Exhibit “2”** hereto.

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1 **EXPERIENCE AND VIEWS OF COUNSEL**

2 5. CounselOne, P.C. (“CounselOne”) and its attorneys possess considerable expertise
3 in litigating complex class- and representative- action matters. CounselOne and its attorneys have
4 represented millions of employees and consumers and in numerous class actions asserting violations
5 of the California Labor Code, California’s consumer protection statutes, and have litigated
6 employment and unfair business practice cases throughout the nation. A substantial percentage of
7 CounselOne’s practice is devoted to class action litigation, particularly in the areas of wage and
8 hour, labor, and employment rights, along with consumer protection, invasion of privacy, and false
9 advertising. To the extent areas of employment law are implicated, several of these cases involve
10 PAGA claims. Plaintiff’s Counsel are well qualified because of because of their experience,
11 knowledge, and resources to act as counsel and represent Plaintiff and similarly Aggrieved
12 Employees in this Action.

13 6. Anthony J. Orshansky, a shareholder attorney of CounselOne, was responsible for
14 ultimate oversight of this matter on behalf of the firm. Mr. Orshansky graduated from the University
15 of California, Los Angeles in 1994 with a degree in Economics and from Loyola Law School of Los
16 Angeles in 1998. Mr. Orshansky has extensive experience in the field of wage and hour litigation.
17 Over the past 20 years, Mr. Orshansky has represented employees in numerous class action lawsuits
18 involving wage-and-hour violations and has obtained favorable settlements against a range of
19 defendants, including Fortune 1000 companies.

20 7. Since joining CounselOne in March 2020, I was the attorney responsible for the day-
21 to-day litigation of this matter on behalf of the firm. I have approximately 14 years of experience
22 litigating dozens of wage-and-hour and consumer class actions. I have been appointed as Class
23 Counsel in both contested motions for certification and preliminary/final approval stages of class
24 action settlements. I served as second chair in a wage-and-hour arbitration trial of employees’
25 misclassification case. I also authored the merit briefs on behalf of plaintiff-appellant in *Aryeh v.*
26 *Canon Business Solutions, Inc.*, California Supreme Court Case No. S184929, opinion published
27 January 24, 2013. The *Aryeh* case was a unanimous opinion where the Supreme Court held that
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continuing accrual applies to calculating the statute of limitations in Unfair Competition Law claims.
I have also been invited as a lecturer for CLE courses on employment law issues.

8. CounselOne is currently class counsel for numerous pending class and representative action lawsuits throughout the State of California and the United States. CounselOne and its attorneys have obtained favorable settlements against a range of defendants, including many Fortune 1000 companies. There follows a list of some of CounselOne's class action settlements that have received final approval:

- a. *Hoffman v. Bank of America*, CASD Case No. 3:12-cv-539 JAH (DHB);
- b. *Byanooni v. Merrill Lynch Pierce Fenner & Smith*, CAND Case No. 3:12-cv-05270-RS;
- c. *Knell v. FIA Card Services, Inc.*, CASD Case No. 3:12-cv-00426-AJB-WVG;
- d. *Lewert v. Vendini, Inc.*, Santa Clara Super. Ct. Case No. 1-14-CV-259897;
- e. *Klacko v. Diamond Foods, Inc.*, S.D. Fla. Case No. 9:14-cv-80005-BB;
- f. *Romero v. Loacker*, Santa Clara Super. Ct. Case No. 1-14-CV-274434;
- g. *Zadeh v. Ikon*, LASC Case No. BC470371;
- h. *Fast v. Hilton Hotel Corporation*, LASC Case No. BC409467;
- i. *Sink-Crilly v. Centex Homes*, CACD Case No. CV09-2476;
- j. *Alexander v. DS Waters of America*, CACD Case No. CV09-03384;
- k. *Collins v. Live Nation Worldwide, Inc.*, LASC Case No. BC436141;
- l. *Cressall v. Galpin Motors, Inc.*, San Bernardino Super. Ct. Case No. CIVDS1809319;
- m. *Milford v. ADT Security Services, Inc.*, CACD Case No. CV08-2236;
- n. *Beal v. Activision, Inc.*, LASC Case No. BC348560;
- o. *Vasquez v. The Hollywood Pig n Whistle LP*, LASC Case No. BC335075;
- p. *Galavis v. Patina Restaurant Group, LLC*, LASC Case No. BC375225;
- q. *Flores v. Loomis Armored*, LASC Case No. BC409899;
- r. *Dupont v. Innovative Dining Group*, LASC Case No. BC391240;
- s. *Morris v. Gymboree, Inc.*, LASC Case No. BC393270;

- 1 t. *Healy v. Siemens IT Solutions and Services, Inc.*, Santa Clara Super. Ct. Case No.
2 108CV113479;
- 3 u. *Fluke v. RFG Oil, Inc.*, LASC Case No. BC403354;
- 4 v. *Callela v. Dolce Group*, LASC Case No. BC364711;
- 5 w. *Smith v. Rio Rancho Pontiac GMC Buick Inc.*, LASC Case No. BC391187;
- 6 x. *Urena v. Camachos Restaurant*, LASC Case No. BC365913;
- 7 y. *Gonzalez v. Calstar Motors, Inc.*, LASC Case No. BC479756;
- 8 z. *Garcia v. California Credits Group*, LASC Case No. BC353213;
- 9 aa. *Cass v. Exel Inc. dba DHL Supply Chain (USA)*, San Bernardino Super. Ct. Case No.
10 CIVDS1621933
- 11 bb. *Rylko v. The Griddle Café, Inc.*, LASC No. BC386126;
- 12 cc. *Afanasyev v. Miller Infiniti, Inc.*, LASC Case No. BC350788;
- 13 dd. *Ortega v. AJC Sandblasting, Inc.*, LASC Case No. BC378806;
- 14 ee. *Goldman v. Aorta Restaurant Operating LP*, LASC Case No. BC379688;
- 15 ff. *In Re Walgreen Co. Wage and Hour Litigation*, CACD Case No. 11-cv-07664-PSG
16 (FFMx);
- 17 gg. *Lulejyan v. Jim Falk Motors of Beverly Hills, Inc.*, LASC Case No. BC398459;
- 18 hh. *White v. RBD Staffing, Inc., Sprint Communications Company*, CACD Case No.
19 2:15-cv-08519-GHK-KS;
- 20 ii. *Carreon v. Wolfgang Puck Catering and Events, LLC*, LASC Case No. BC398569;
- 21 jj. *Fikara v. Niemann Foods Inc.*, Case No. 3:16-cv-03285-TSH (Cent. Dist. Ill.);
- 22 kk. *Bradley v. Mercedes-Benz*, LASC Case No. BC499494;
- 23 ll. *Davies v. Godiva Chocolatier, Inc.*, LASC Case No. BC429547;
- 24 mm. *Edery v. Citibank*, San Francisco Super. Ct. Case No. CGC-14-538436; and
- 25 nn. *Huebner v. ManTech International Corporation*, CACD Case No. 2:15-cv-09889-
26 PA-SS.
- 27 9. CounselOne has litigated, and successfully settled, a number of wage-and-hour class
28 and representative actions against large and small employers. This experience has given us

familiarity with California's wage and hour protections (including minimum wage, overtime premiums, wage statement itemizations, meal and rest breaks, reimbursement of business expenses, PAGA, etc.) and the various ways employment policies and practices can violate employee rights. This experience is helpful in assessing the reasonableness of settlements such as the one at issue here; and from this experience Plaintiff's Counsel have concluded the present settlement is fair, reasonable, and should be approved. In sum, Plaintiff's Counsel are experienced in employment class and PAGA representative litigation, and are adequate to represent the interests of Plaintiff, the LWDA, and Aggrieved Employees in the instant action.

CASE HISTORY

10. **Factual History.** Defendant NTS is a private, residential and outpatient alcohol and drug treatment center for adults in Orange County, California. NTS offers a wide-range of treatment services including, but not limited to: gender-specific residential treatment programs, dual-diagnosis treatment, outpatient services, intensive outpatient programs, dorm-style sober living homes, interdisciplinary treatment teams of physicians/psychiatrists, psychologists, nurses, therapists, case managers, family counselors, and client advocates, along with spiritual interventions such as 12-Step models. In 1995, NTS also opened Defendant JH as a residential bed facility in Costa Mesa, California and, after a move and renovation in 2017, is an approximately 87-bed property located in Newport Beach, California. Most recently, NTS opened a drug rehab and alcohol treatment facility in Garden Grove, California.

11. Plaintiff worked as a non-exempt employee from April 2015 through April 2020 in various job capacities such as driver, client advocate, and account specialist at the Costa Mesa, Newport Beach, and Garden Grove locations.

12. During the relevant time period, Plaintiff alleges that Defendants engaged in a series of unlawful wage and hour practices, including, but not limited to: (1) failure to pay minimum wages for all hours worked; (2) failure to pay all overtime wages for all hours worked; (3) failure to provide timely and compliant duty-free meal periods and pay premiums owed thereon; (4) failure to authorize and permit timely and compliant duty free rest breaks and pay premiums owed thereon; (5) failure to maintain accurate itemized wage statements; (6) failure to furnish accurate itemized

1 wage statements; (7) failure to reimburse all necessary business expenses incurred; and (8) failure
2 to timely pay wages during and upon termination of employment.

3 13. **Procedural History.** On May 21, 2020, Plaintiff gave written notice on behalf of
4 herself and other Aggrieved Employees, via certified mail to the LWDA and Defendants, outlining
5 the facts and legal theories to support the claims of Defendants' alleged violation of wage-and-hour
6 laws. This notice is required under Labor Code § 2699.3(a)(1) as a prerequisite to bringing a PAGA
7 representative claim against an employer. The LWDA did not respond to this notice of its intent to
8 investigate within the allotted 65-calendar day time period, thus allowing Plaintiff to file the instant
9 lawsuit against Defendants.

10 14. Plaintiff's Counsel began their investigation into the at-issue allegations prior to
11 filing the original complaint. Early in the case, among the information and documents produced
12 related to Plaintiff's employee and personnel file, Defendants provided a copy of an arbitration
13 agreement signed by Plaintiff. While Plaintiff does not concede the enforceability of the arbitration
14 agreement, the decision was made to pursue a claim solely under the PAGA rather than to pursue
15 putative class claims.

16 15. On September 22, 2020, Plaintiff filed a representative action complaint entitled
17 *Bailey v. National Therapeutic Services, Inc., et al.* in this Superior Court of California for the
18 County of Orange (the "Action"). Through her PAGA claim, Plaintiff seeks penalties for
19 Defendants' violation of California Labor Code sections 201, 202, 203, 204, 210, 212, 221, 226,
20 226.3, 226.7, 450, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 1199, 2800, and 2802, along with the
21 applicable IWC Wage Order(s).

22 16. On December 29, 2020, Defendants filed their Answer with a general denial and
23 asserting twenty-one affirmative defenses.

24 17. Plaintiff propounded and served multiple sets of formal written discovery (i.e., form
25 interrogatories, requests for production, and special interrogatories).

26 18. Although Defendants denied the allegations and vowed to vigorously defend against
27 them, the Parties agreed to participate in mediation.

1 19. In preparation for mediation, the Parties exchanged documents and information that
2 allowed both sides to evaluate the potential exposure and potential risk, such as a 20 percent random
3 sampling of time and payroll records for Plaintiff and Aggrieved Employees, Defendants' employee
4 handbooks, timekeeping and overtime policies, relevant meal and rest break procedures, along with
5 purported waiver agreements, wage statements, the total number of putative aggrieved employees
6 during the PAGA period, along with counts of former employees, pay periods, and average hourly
7 pay rate. The Parties met and conferred regarding the discovery.

8 20. Furthermore, Plaintiff's Counsel analyzed, researched, and investigated the law as
9 applied to the facts and potential defenses to the claims, engaged in the calculation of potential
10 damages, interviewed Plaintiff and witnesses, consulted with an expert, and obtained supporting
11 facts and documents, assessed trial management, appellate issues, and litigation risks.

12 21. On June 30, 2021, the Parties attended mediation with the Honorable Leo S. Papas
13 (Ret.), a well-respected mediator with considerable experience mediating wage and hour class
14 actions and PAGA representative actions. During the mediation, the Parties exchanged further
15 information and discussed all aspects of the case, including the risks and delays of litigation, the risk
16 associated with proceeding in a representative capacity, liability under the claims asserted, and the
17 ability to recover and measure penalties. The settlement negotiations were at all times at arm's-
18 length and although conducted in a professional matter, were adversarial. At the conclusion of the
19 mediation, the Parties reached an agreement to resolve the Action pursuant to the terms set forth in
20 a Memorandum of Understanding.

21 22. From this case's inception, Defendants have denied and continue to deny any liability
22 or wrongdoing as to all of the claims alleged, and the settlement is not an admission by Defendants
23 of any fault, wrongdoing, or liability. (Settlement Agreement ¶ 59.) Defendants further denied, and
24 continue to deny, that the lawsuit is appropriate for representative treatment for any purpose other
25 than the settlement. (Ibid.) There has been no determination by this court or any court as to the merits
26 of the claims asserted by Plaintiff against Defendants. Defendants state that they concluded that
27 given the risks and costs of litigation, it is desirable that the Action be fully and finally settled in the
28 manner and upon the terms and conditions set forth in the Settlement Agreement.

23. The settlement was the culmination of protracted discussions between the Parties following a thorough analysis of the pertinent facts and law at issue. The Parties now present the Settlement Agreement to this Court for approval.

SUMMARY OF PAGA SETTLEMENT TERMS

24. **Aggrieved Employees.** Aggrieved Employees are defined as all non-exempt individuals who are or were employed by Defendants in the State of California during the PAGA period (May 21, 2019 until the earlier of (i) date of approval of the settlement or (ii) December 30, 2021). (Settlement Agreement ¶ 2.) If any Aggrieved Employee is incompetent or deceased, then that person's legal guardian, executor, heir or successor-in-interest is an Aggrieved Employee for purposes of this settlement. (Ibid.) Defendants have estimated that there are approximately 174 Aggrieved Employees. (Ibid.)

25. **Settlement Amount.** The settlement provides that Defendants will pay a *non-reversionary maximum settlement amount of Two Hundred And Fifty Thousand Dollars (\$250,000.00)* (the "Gross PAGA Settlement Amount"), inclusive of payments to the LWDA and Aggrieved Employees, payment of Plaintiff's Counsel's Attorneys' Fees and Costs,¹ PAGA Representative Enhancement Award payment to Plaintiff,² as well as payment of Settlement Administration Costs.³ (Id. at ¶ 10.) After payment of the attorneys' fees and costs, Plaintiff's enhancement payment, and administration costs, approximately \$139,192 will remain as the estimated net proceeds for distribution to the LWDA and Aggrieved Employees (the "Net Settlement Amount"). (Id. at ¶ 13.)

¹ Plaintiff's Counsel seek a fee of 33 ⅓ percent (or \$83,333.00) of the Gross PAGA Settlement Amount. (Settlement Agreement ¶¶ 4, 34(a).) Notwithstanding that the Settlement Agreement allocated up to \$15,000, Plaintiff's Counsel's total costs as of today are \$8,725.07 (see, infra, ¶ 65). (Settlement Agreement ¶¶ 4, 34(a).) Note: this amount does not include costs to be incurred in connection with filing and serving approval papers and appearing at the approval hearing estimated at \$250.00, thus \$8,975.00.

² Plaintiff will receive a PAGA Representative Enhancement Award of \$6,500 from the Gross PAGA Settlement Amount in recognition of her time and service to the Aggrieved Employees and the State of California in pursuing the Action and in fulfilling her obligations as the lead Aggrieved Employee, and in exchange for her individual general release of claims. (Settlement Agreement ¶¶ 17, 34(b), 43, 44.)

³ The Parties selected CPT Group, Inc. as the Settlement Administrator, and its costs of \$12,000 will be deducted from the Gross PAGA Settlement Amount. (Settlement Agreement ¶¶ 25, 34(c).)

1 26. **Settlement Allocation.** Pursuant to the Settlement Agreement, the entire Net
2 Settlement Amount shall be designated as PAGA civil penalties to be allocated as follows: 75 percent
3 (\$104,394.00) shall be distributed to the LWDA and 25 percent (\$34,798.00) to Aggrieved
4 Employees (divided *pro rata* based on each employee’s proportionate number of pay periods during
5 the PAGA Period). (See Labor Code § 2699(i) [“Except as provided in subdivision (j), civil penalties
6 recovered by aggrieved employees shall be distributed as follows: 75 percent to the [LWDA]
7 enforcement of labor laws and education of employers and employees about their rights and
8 responsibilities under this code...and 25 percent to the aggrieved employees.”].) (Settlement
9 Agreement ¶¶ 36-37.)

10 27. Assuming *arguendo* that distribution was *pro rata* across the approximately 174
11 Aggrieved Employees (in reality, it is *pro rata* based on proportionate pay periods worked), the
12 average payment to each Aggrieved Employee is estimated to be \$200.00.

13 28. **Settlement Payments and the Notice.** The settlement is non-reversionary and does
14 not require Aggrieved Employees to submit a claim form to reap financial benefit from the
15 settlement. (Settlement Agreement ¶ 10.) Within ten (10) calendar days after the Effective Date,
16 Defendants will tender to the Settlement Administrator the Gross PAGA Settlement Amount and the
17 Aggrieved Employee List (which is an Excel spreadsheet containing each Aggrieved Employee’s:
18 (a) full name, (b) last known address, (c) last known telephone number, (d) Social Security number,
19 (e) dates of employment, and (f) the respective number of pay periods that each Aggrieved Employee
20 worked as a non-exempt employee for Defendants in California during the PAGA Period). (Id. at ¶¶
21 3, 33, 46.)

22 29. Within fifteen (15) calendar days after the Effective Date, the Settlement
23 Administrator will distribute payments to Aggrieved Employees along with the PAGA Payment
24 Letter (*i.e.*, notice) – *see* Exhibit “A” to the Settlement Agreement – via First-Class U.S. Mail.
25 (Settlement Agreement ¶ 48.) Before mailing, Settlement Administrator will perform a National
26 Change of Address database search for information to update and locate the most current addresses
27 for Aggrieved Employees. (Id. at ¶ 49.) If any PAGA Payment Letters are returned without a
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1 forwarding address, Settlement Administrator shall attempt to locate a current address by performing
2 an additional skip-trace. (*Ibid.*)

3 30. **Uncashed Checks.** The Aggrieved Employees will have 180 days to cash their
4 checks. (*Id.* at ¶¶ 51-52.) Any settlement checks remaining uncashed after 180 days shall be
5 cancelled and the funds associated with such cancelled checks will be transmitted to the Controller
6 of the State of California to be held pursuant to the Unclaimed Property Law. (*Id.* at ¶ 52.) In the
7 event that an Aggrieved Employee does not negotiate his or her check, the terms of the final
8 judgment including the PAGA Released Claims will nevertheless be binding upon that Aggrieved
9 Employee. (*Id.* at ¶ 51.)

10 31. **Settlement Administrator’s Costs.** The Parties have allocated up to \$12,000 for
11 payment to the Settlement Administrator for administration costs. (*Id.* at ¶¶ 25, 34(c).)

12 32. **The PAGA Released Claims.** The release is narrowly tailored to release from
13 liability from “any and all claims for the recovery of civil penalties under PAGA only, that could
14 have been asserted in the Action based on the facts alleged,” which “includes a full release of the
15 PAGA claim for underlying violations of Labor Code §§ 201, 202, 203, 204, 210, 212, 221, 226,
16 226.3, 226.7, 450, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 1199, 2800, and 2802, along with
17 relevant IWC Wage Order(s), including Wage Order 4-2001 Sections 11 and 12, and for any other
18 PAGA violations based on the facts alleged or that could have been alleged in the Complaint during
19 the PAGA Period.” (“PAGA Released Claims”). (*Settlement Agreement* ¶¶ 16, 41.) The Parties are
20 not aware of any potentially overlapping lawsuits other than Plaintiff’s individual pending lawsuit
21 described *infra*.

22 33. **PAGA Representative Enhancement Award and Plaintiff’s Individual and**
23 **General Release.** Under the terms of the settlement, Plaintiff will receive a PAGA Representative
24 Enhancement Award, to be paid in recognition of her time and service to Aggrieved Employees and
25 the State of California in pursuing the Action and in fulfilling her obligations as the lead Aggrieved
26 Employee, and in exchange for her individual general release of claims and except for the carve-out
27 of her wrongful termination action pending against Defendant National Therapeutic Services, Inc.
28 (Orange Co. Sup. Ct. Case No. 30-2021-01192045-CU-WT-NJC) (“Wrongful Termination

1 Action”), in addition to the PAGA Released Claims, in the amount of \$6,500. (Settlement Agreement
2 ¶¶ 17, 23, 34(b).)

3 34. **Attorneys’ Fees and Costs.** Plaintiff’s Counsel request 33 ⅓ percent of the Gross
4 PAGA Settlement Amount in attorneys’ fees and \$8,975.00 in reimbursement of litigation costs.⁴
5 (Id. at ¶¶ 4, 34(a).)

6 **THE PAGA SETTLEMENT SHOULD BE APPROVED**

7 35. **Notice to LWDA.** In 2016, PAGA was amended to require the Court to “review and
8 approve any settlement of any civil action filed pursuant to this part.” Labor Code § 2699(1)(2). The
9 amendment to Labor Code section 2699(1)(2) also requires that the “proposed settlement shall be
10 submitted to the agency at the same time that it is submitted to the court.” As such, on the day of
11 filing of this Motion, the settlement is also being concurrently submitted to the LWDA in accordance
12 with this section. (Settlement Agreement ¶ 54.)

13 **The Penalties Are Appropriate Under the Circumstances**

14 36. Here, Plaintiff contends that a *non-reversionary* Gross PAGA Settlement Amount of
15 \$250,000.00 represents an excellent recovery and is large enough to punish or deter Defendants. It
16 is particularly poignant to garner any penalty given that Defendants are financially cash strapped
17 with liens on their account receivables. Additionally, Defendants have a facially compliant meal
18 period policy, and time records and wage statements show Defendants often, but not always, paid
19 meal period premiums and overtime pay. Moreover, in addition to asserting that any claims on a
20 class basis would fail due to arbitration agreements signed by Defendants’ workforce (including
21 Plaintiff), Defendants also relied on meal period waivers to assert a reduction in liability. Further,
22 Defendants’ rounding policy/practice ceased in early 2021. Finally, although Defendants’ rest break
23 policy as stated in the 2017 Employee Handbook is facially unlawful because, contrary to *Augustus*
24 *v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, it explicitly forbids employees to leave the
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26 ⁴ Notwithstanding that the Settlement Agreement allocated up to \$15,000, Plaintiff’s Counsel’s total
27 costs as of today are \$8,725.07 (see, infra, ¶ 65). (Settlement Agreement ¶¶ 4, 34(a).) Note: this
28 amount does not include costs to be incurred in connection with filing and serving approval papers
and appearing at the approval hearing estimated at \$250.00, thus \$8,975.00.

1 premises, the offensive language was changed in the June 2019 Employee Handbook; however, the
2 June 2019 Employee Handbook was not immediately circulated throughout Defendants' workforce.
3 Thus, the settlement provides a fair and reasonable monetary recovery for the LWDA and Aggrieved
4 Employees in the face of hotly disputed claims.

5 37. **First**, although PAGA and its legislative history do not seem to require a comparison
6 with the "maximum" value of the claims to the actual settlement amount, the penalties are reasonable
7 when considered in this context as well. As of July 1, 2021, the number of Aggrieved Employees in
8 the PAGA Period is approximately 174 and the number of PAGA-eligible pay periods totals 2,742.
9 (Settlement Agreement ¶ 2.) The value of the PAGA claim, unstacked using the default "initial"
10 \$100 and "subsequent" \$200 per pay period rates, is \$531,000.

11 38. In order for Plaintiff to prevail on the PAGA claims, Plaintiff's Counsel would have
12 to prove the underlying California Labor Code violations, demonstrate that Aggrieved Employees
13 suffered, and demonstrate that Defendants' conduct gives rise to penalties. (*See, e.g., Elliot v.*
14 *Spherion Pac. Work, LLC* (C.D. Cal. 2008) 572 F.Supp.2d 1169, 1181-82 ["Plaintiff's claim under
15 [PAGA] is wholly dependent upon her other claims. Because all of plaintiff's other claims fail as a
16 matter of law, so does her PAGA claim."].)

17 39. Although wage-and-hour actions are amenable to resolution as to a group of
18 employees some courts have also found that, for various reasons, the issues raised by Plaintiff raise
19 individualized issues and/or are unmanageable and thus not suitable for adjudication as to a group
20 of employees. Defendants contended that courts have required, and that due process requires, that
21 the adjudication of PAGA claims meet a "manageability" requirement. (*See, e.g., Liu v. Merrill*
22 *Lynch & Co.* (C.D. Cal. Nov. 10, 2014) No. CV-14-0425-PA, 2014 WL 5904904, at **3-4 [Court
23 dismissed the PAGA claim because a multitude of individualized assessments would be necessary,
24 making the PAGA claim unmanageable].)

25 40. Defendants maintained several defenses to Plaintiff's theory of liability, which, if
26 successfully argued and proven, had the potential to eliminate or substantially reduce recovery.
27 Defendants maintained, and continue to maintain, that they had legally compliant employment
28 policies and practices throughout the time period at issue. Defendants denied, and continue to deny,

1 that they violated any provision of the California Labor Code, including, but not limited to, those
2 sections for which Plaintiff seeks penalties under the PAGA. Defendants further denied, and
3 continue to deny, that the Plaintiff's lawsuit is appropriate for representative treatment for any
4 purpose other than the settlement.

5 41. Defendants contended that the work experiences of Aggrieved Employees varied
6 because they have different job positions with widely varying responsibilities across different
7 locations, and that these factors would pose a challenge to proving injuries to all Aggrieved
8 Employees and to the manageability and viability of representative adjudication of the PAGA
9 claims.

10 42. Defendants also argued that an important feature of the PAGA is that the Court retains
11 discretion to lower the penalties if, based on the facts and circumstances of the particular case, to do
12 otherwise would result in an award that is "unjust, arbitrary and oppressive, or confiscatory." (*See*
13 *Labor Code § 2699(e)(2)*; *see also Thurman v. Bayshore Transit Management, Inc.* (2012) 203
14 Cal.App.4th 1112, 1136 [holding that a court may reduce the amount of PAGA penalties awarded
15 to an employee based upon discretionary factors].) Again, Defendants deny that they ever violated
16 any provision of the California Labor Code. Even if, *arguendo*, such violations occurred, which
17 Defendants deny, Defendants contended that said violations would only be considered "initial
18 violations" and thus heightened "subsequent violation" penalties were not warranted. (*See Labor*
19 *Code § 2699(f)(2)*; *see also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1208-09
20 ["Until the employer has been notified that it is violating a Labor Code provision [...], the employer
21 cannot be presumed to be aware that its continuing underpayment of employees is a 'violation'
22 subject to penalties."].)

23 43. Moreover, Defendants contended that the Court was unlikely to assess cumulative
24 PAGA penalties for the maximum number of possible, separate California Labor Code violations,
25 because it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where certain
26 conduct may be regulated by multiple provisions of the California Labor Code that are interrelated
27 and work in tandem. As such, Defendants contended that cumulative penalties and heightened
28

1 penalties would be unjust, arbitrary, oppressive, and confiscatory. Finally, many of the claims were
2 derivative of each other, which tended to undermine any stacking of penalties.

3 44. While Plaintiff disagrees with Defendants' contentions and maintains that her PAGA
4 claim has merit, in reaching the settlement, Plaintiff and her counsel took into account the strengths
5 and weaknesses of each side's position and the uncertainty of how the case might have concluded
6 as litigation continued, at trial, and/or appeals. The PAGA settlement amount is reasonable in light
7 of significant risks and uncertainties associated with the PAGA claims in this case.

8 45. **Second**, the scope of the release is necessarily strictly confined to those PAGA civil
9 penalties that are or could have been alleged based on the facts in the operative complaint. The
10 PAGA Released Claims do not release any Aggrieved Employee's non-PAGA claims for alleged
11 violations of the Labor Code. The settlement also requires that each Aggrieved Employee receive a
12 notice, *i.e.*, the PAGA Payment Letter, which describes this litigation and the settlement. Plaintiff
13 contends that this notice will educate Aggrieved Employees as to the requirements of the Labor
14 Code, something that is in the public interest and consistent with the PAGA's purposes. (*See* Labor
15 Code § 2699(j) [stating that civil penalties recovered under PAGA shall be distributed to the LWDA
16 for [among other things] "education of employers and employees about their rights and
17 responsibilities under this code."].)

18 46. **Third**, the settlement, even with deductions, provides a substantial sum of
19 \$104,394.00 to the State and \$34,798.00 to Aggrieved Employees. The settlement is a compromise
20 of highly disputed claims. Plaintiff and her counsel recognize the expense and length of continued
21 proceedings necessary to litigate the matter through trial and any possible appeals. They have also
22 considered the uncertainty and risk of the outcome of further litigation, and the difficulties and delays
23 inherent in such litigation. Plaintiff and her counsel have also taken into account Defendants'
24 agreement to enter into a settlement that confers significant relief upon Aggrieved Employees and
25 the State of California.

26 47. Considering all of the facts in this case, Plaintiff and her counsel have determined
27 that the settlement represents a fair, adequate, and reasonable resolution of the PAGA claims, and
28 that it is in the best interests of Aggrieved Employees and the State of California.

1 48. The settlement secured by Plaintiff here is greater than other PAGA penalty awards
2 approved by California state courts, which often range between \$7,500.00 and \$15,000.00 for PAGA
3 claims impacting hundreds or thousands of individuals, resulting in much lower PAGA penalty
4 payments on a per capita basis. (*See, e.g., Penaloza v. PPG Industries Inc.* (Super. Ct. L.A. County,
5 May 20, 2013) Case No. BC471369, 2013 WL 2917624, at *2 [approving PAGA penalties of
6 \$5,000.00 to class of 667 members]; *Cabrera v. Advantage Sale & Marketing, LLC* (Super. Ct. L.A.
7 County, March 12, 2013) Case No. BC485259, 2013 WL 1182822 [approving PAGA penalties of
8 \$10,000.00 for class of approximately 3,000 members].) The result achieved in this case, and the
9 monetary recovery provided by this settlement, are well-within the range of an acceptable settlement
10 under the circumstances, especially when compared to the settlement of PAGA claims in other
11 cases.⁵

12 49. **Fourth**, public policy strongly favors the settlement of litigation. (*Consumer*
13 *Advocacy Group v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 63.) Because the
14 proposed settlement is neither unjust nor ignores the public interest, it should be approved.

15 **The Attorneys' Fees and Costs Are Reasonable**

16 50. Here, Plaintiff moves for approval of attorneys' fees of 33 ⅓ percent, or \$83,333, of
17 the common fund. (Settlement Agreement ¶¶ 4, 34(a).) Pursuant to Labor Code section 2699(g)(1),
18 the prevailing party in a PAGA action is entitled to reasonable attorney's fees and costs. Plaintiff is
19 not claiming that she is the prevailing party, but nevertheless the settlement of a PAGA action must
20

21
22 ⁵ *See, e.g., DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833
23 (May 2017) (approving the amount of \$15,000 out of \$4 million toward settlement of PAGA
24 claims); *Garcia v. Gordon Trucking, Inc.*, 2012 WL 5364575, at *3 (approving the amount of
25 \$10,000 out of \$3.7 million toward settlement of PAGA claims); *Schiller v. David's Bridal, Inc.*,
26 2012 WL 2117001, at *14 (approving the amount of \$10,000 out of \$518,245 toward settlement of
27 PAGA claims); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (approving the
28 amount of \$10,000 out of \$6.9 million toward settlement of PAGA claims); *Franco v. Ruiz Food*
Products, Inc., 2012 WL 5941801, at *14 (approving the amount of \$10,000 out of \$2.5 million
toward settlement of PAGA claims); *Nordstrom Commission Cases* (Cal. Ct. App. Jul. 7, 2010),
G042772 No. JCCP4419 (finding no abuse of discretion by the trial court in approving a settlement
that allocates \$0 toward the settlement of PAGA claims that were at issue in the lawsuit). Here, the
value obtained for settlement of the PAGA claims is significant, and it will be distributed in
accordance with and in fulfillment of the objectives of the PAGA statute.

1 consider the fees that have been incurred as an element of the liability analysis and ultimate
2 settlement.

3 51. This request for attorneys' fees is supported by California law under the common
4 fund doctrine. The main advantage of the settlement here is that it creates a significant fund to benefit
5 the LWDA and Aggrieved Employees. As noted by the trial court in *Harrington v. Payroll*
6 *Entertainment Services, Inc.* (2008) 160 Cal.App.4th 589, plaintiff's attorneys should share in this
7 recovery. These circumstances are analogous to cases, like wage and hour class actions, where the
8 common fund doctrine is applied. The common fund doctrine has been applied "consistently in
9 California when an action brought by one party creates a fund in which other persons are entitled to
10 share." (*City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110.)

11 52. An award of fees from the gross settlement amount under the common fund doctrine
12 prevents unjust enrichment of those who benefit from the common fund through the successful
13 efforts of plaintiff's counsel and furthers the important goal of attracting competent counsel to handle
14 representative actions enforcing minimum labor standards. (*Laffitte v. Robert Half Int'l, Inc.* (2016)
15 1 Cal.5th 480, 503; *see also Lealao v. Beneficial Cal. Ins.* (2000) 82 Cal.App.4th 19, 48.)

16 53. The attorney fee award requested is also consistent with what courts have awarded in
17 other representative action cases. The following list shows PAGA actions and PAGA/class action
18 cases where attorney's fees were awarded on a common fund basis in a range between 33.33% and
19 40%:

- 20 • *Banda v. Verizon California, Inc.*, Los Angeles Superior Court Case No.
21 BC434587 (**35% fee awarded** on \$15,000,000 settlement of mixed PAGA/class claims);
- 22 • *Padilla v. Staffmark Investment, Inc.*, San Bernardino County Superior Court
23 Case No. CIVDS1408641 (**33.33% fee awarded** on \$2,000,000 settlement of a PAGA only case);
- 24 • *Birch v. Office Depot*, United States District Court for the Southern District
25 of California, Case No. 06cv1690 DMS (**40% fee awarded** on \$16,000,000 settlement of mixed
26 PAGA/class claims);
- 27 • *Zelada v. Majestic Terminal Services*, San Bernardino Superior Court Case
28 No. CIVDS1916968 (**38% fee awarded** on \$1,800,000 settlement of a PAGA only case); and

1 • *Garcia v. The Pep Boys*, Orange County Superior Court Case No. 30-20014-
2 007205740-CU-OE-CJC (**33.33% fee awarded** on \$1,030,000 settlement of a PAGA only case).

3 54. Plaintiff's Counsel's application for attorneys' fees in light of the facts and
4 circumstances surrounding the case is well-within the range of reasonableness. In fact, historically,
5 courts have awarded fees as high as fifty percent (50%) of the settlement in complex actions. (*See*
6 *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F. Supp. 494 [**awarding attorneys' fees in the**
7 **amount of 45%** of the \$7.3 million total settlement amount]; *Beech Cinema, Inc. v. Twentieth-*
8 *Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F. Supp. 1195 [awarding approximately **53% of the**
9 **settlement as attorneys' fees**].) California courts routinely approve attorneys' fees awards
10 "average[ing] around one-third of the recovery." (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43,
11 66 n.11 [lower court found the range of contingency fees in marketplace to be up to 40 percent and
12 determined such a percentage fee was appropriate].)

13 55. Based on the foregoing, awarding attorneys' fees based on a percentage of the gross
14 settlement amount is favored by California Courts when a fund established for the common benefit
15 of other is involved, such as here. (*See Laffitte, supra*, 1 Cal.5th at p. 503 [finding trial court did not
16 abuse its discretion in approving fee award of 1/3 of the common fund].)

17 56. Plaintiff's Counsel represented Plaintiff (and the State of California) in this matter on
18 a strictly contingency basis and, as such, had to forego other financial opportunities to litigate other
19 cases (contingency and hourly), incurred the risk of non-recovery after investment of time, money,
20 and resources, and have done so since the inception of this case without payment or compensation.

21 57. This is not an easy burden for Plaintiff's Counsel and, if the best that could be hoped
22 for is merely to be paid the customary hourly rate, such would not sufficiently incentivize future
23 similar private attorney general/qui tam cases with contingency risks. Given that the request for
24 attorneys' fees here falls well within the norms accepted in comparable California court cases,
25 Plaintiff's request for \$83,333 in attorneys' fees is fair and reasonable.

26 58. **Lodestar Cross-Check.** Significantly, *Laffitte* also held that trial courts have
27 discretion to assess reasonableness of fee awards with tools such as the lodestar cross-check, though
28 they need not do so. (*Laffitte, supra*, 1 Cal.5th at p. 506.) This Court can and should award attorneys'

1 fees and costs based on the percentage fee alone in light of the excellent results achieved and for the
2 reasons stated. Nevertheless, the lodestar “cross-check” here also supports the requested
3 contingency-fee percentage. (*Serrano v. Priest* (1975) 20 Cal.3d 25, 48.)

4 59. Plaintiff’s Counsel’s rates are commensurate with the prevailing market rates in
5 California for attorneys of comparable experience and skill handling complex litigation. Plaintiff’s
6 Counsel’s rates are based on prevailing fees in this geographical area and have been approved in the
7 California and Ninth Circuit courts.

8 60. Plaintiff’s Counsel charge rates commensurate with experience and the prevailing
9 rates among defense and plaintiffs’ firms that regularly litigate class actions as follows:

Attorneys - CounselOne P.C.	Year	Hours	Rate	Total
Anthony J. Orshansky	1998	35.2	\$725	\$25,520.00
Anthony J. Orshansky (est.)	1998	2.5	\$725	\$ 1,812.50
Jennifer L. Connor	2006	56.1	\$595	\$33,379.50
Jennifer L. Connor (est.)	2006	4.5	\$595	\$ 2,677.50
			Total:	\$63,389.50

14
15 61. As shown in the table above, attorneys at CounselOne have spent a substantial
16 number of hours working on this case. Multiplying the attorney hours by the hourly rates listed above
17 yields the total lodestar figure of \$63,389.50. This lodestar calculation includes a figure for estimated
18 (“est.”) time which reflects the best estimate of Plaintiff’s Counsel, based on experience, for the
19 amount of additional time that will be expended on activities subsequent to the filing of this Motion.
20 Such activities include, for example, appearance at the PAGA approval hearing, and post-hearing
21 correspondence and conversations with Aggrieved Employees and the Settlement Administrator.
22 This lodestar calculation also does not include the time spent on this case by CounselOne, P.C.’s
23 paralegals, administrative staff, and law clerks.

24 62. In addition, Plaintiff’s Counsel’s hourly rates are in line with the current *Laffey*
25 Matrix. See, (<http://www.laffeymatrix.com/see.html>) The *Laffey* Matrix has been recognized by
26 California courts as “a widely recognized compilation of attorney and paralegal rates based on
27 various levels of experience.” (*Theme Promotions, Inc. v. News America Mktg. FSI, Inc.* (N.D. Cal.
28 2010) 731 F.Supp.2d 937, 948; see also *Reed v. 1-800 Contacts, Inc.* (S.D. Cal. Jan. 2, 2014) No.

1 12-cv-02359 JM (BGS), 2014 WL 29011, at **8-9 [cross-checking requested hourly rates against
2 the *Laffey* Matrix and finding that “the *Laffey* matrix lends further credibility” to counsel’s requested
3 hourly rates].) Each of the hourly rates sought by Plaintiff’s Counsel is well below the relevant
4 hourly rate cited in the *Laffey* Matrix. Plaintiff’s Counsel are highly regarded members of the bar
5 who are experienced in the area of wage and hour class- and representative- actions, and complex
6 litigation, generally, along with wage and hour cases, specifically.

7 63. With a **total lodestar of \$63,389.50**, a multiplier of approximately **1.31** is necessary
8 to yield the requested fees. The requested multiplier in this case is within even the modest multipliers
9 that are approved by California courts. (*See Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d
10 1043, 1050-1051 [looking to multipliers awarded in comparable cases as evidence of
11 reasonableness; affirming 3.65 multiplier].) Multipliers routinely range from 3 to 5, and it is not
12 uncommon that multipliers of between 5 and 10, or higher, are applied. (*See, e.g., Wilson v. Bank of*
13 *Am. Natl. Trust & Savs. Assn.* (Cal. Sup. Ct., Aug. 16, 1982) Case No. 643872 [multiplier of 10];
14 *Glendora Comm. Redev. Agency v. Demeter* (1984) 155 Cal.App.3d 456, 465 [affirming multiplier
15 of 12, and expressly rejecting argument that fee was either exorbitant or unconscionable]; *Wershba*
16 *v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 [noting that “[m]ultipliers can range from
17 2 to 4 or even higher”]; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294,
18 298 [3-4 are in the “range [of] common” multipliers for class actions]; *Laffitte, supra*, 1 Cal. 5th at
19 pp. 487-88 [multiplier of 2.03 to 2.13]; *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d
20 78 [affirming a 2.34 multiplier without remand]; *Sutter Health Uninsured Pricing Cases* (2009) 171
21 Cal.App.4th 495, 512 [applying a 2.52 multiplier]; *Chavez, supra*, 162 Cal.App.4th at p. 66
22 [applying a 2.5 multiplier]; *Chau, et al v. CVS RX Services, Inc.*, Los Angeles County Superior Court
23 No. BC349224, Order Granting Final Approval of Class Action Settlement, Reasonable Attorneys’
24 Fees and Costs and Service Payments to the Class Representatives [a 3.8 multiplier was applied
25 based primarily on contingent risk and the “excellent results [] obtained [] with relative efficiency”].)
26 Recently, on October 23, 2020, the California Court of Appeal issued its ruling in *Santana v. FCA*
27 *US, LLC*, Case No. G057244, G058020, affirming the trial court’s award of fees to plaintiff’s
28 attorneys in a contingency case utilizing a 2.0 multiplier explaining:

Under our precedents, the unadorned lodestar reflects the general local hourly rate for a fee-bearing case; it does not include any compensation for contingent risk, extraordinary skill, or any other factors a trial court may consider under *Serrano III*. The adjustment to the lodestar figure, *e.g.*, to provide a fee enhancement reflecting the risk that the attorney will not receive payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is neither unexpected nor fortuitous. Rather, it is intended to approximate market-level compensation for such services, which typically includes a premium for the risk of nonpayment or delay in payment of attorney fees. *Id.* at 20 (citing *Ketchum v. Moss* (2001) 24 Cal.4th 1122, 1138).

The *Santana* court concluded a multiplier was appropriate to account for the contingency factor.

64. Accordingly, the lodestar cross-check affirms that the fee award requested does in fact fall within the range of reasonableness.

65. **Litigation Costs.** Plaintiff's Counsel have incurred an aggregated \$8,725.07 in litigation costs, which, under the terms of the settlement, are allowed up to \$15,000. This amount does not include costs to incurred in connection with filing and serving PAGA approval papers and appearing at the approval hearing estimated at \$250.00, thus, Plaintiff's Counsel are seeking a rounded \$8,975.00. Please see CounselOne's cost breakdown below.

Date	Vendor / Category	Description	Cost	Subtotal
05/21/20	LWDA	Filing fee	\$ 75.00	\$ (75.00)
09/22/20	One Legal	Filing, service, and messenger fees (Order # 15227708)	\$ 1,494.56	\$ (1,569.56)
11/17/20	One Legal	Filing, service, and messenger fees (Order # 15488800)	\$ 12.20	\$ (1,581.76)
11/24/20	One Legal	Filing, service, and messenger fees (Order # 15521928)	\$ 14.20	\$ (1,595.96)
02/16/21	One Legal	Filing, service, and messenger fees (Order # 15883353)	\$ 14.00	\$ (1,609.96)
02/19/21	One Legal	Filing, service, and messenger fees (Order # 15883355)	\$ 38.75	\$ (1,648.71)
04/06/21	One Legal	Filing, service, and messenger fees (Order # 16117480)	\$ 14.41	\$ (1,663.12)
04/08/21	One Legal	Filing, service, and messenger fees (Order # 16117482)	\$ 39.38	\$ (1,702.50)
06/17/21	Judicate West	Mediation with Hon. Leo S. Papas (Ret.)	\$4,650.00	\$ (6,352.50)

06/30/21	Berger Consulting Group, LLC	Data analytics; damages and valuation expert	\$2,150.00	\$ (8,502.50)
07/14/21	One Legal	Filing, service, and messenger fees (Order # 16603107)	\$ 20.85	\$ (8,523.35)
07/15/21	One Legal	Filing, service, and messenger fees (Order # 16603109)	\$ 39.64	\$ (8,562.99)
10/21/21	One Legal	Filing, service, and messenger fees (Order # 17108319)	\$ 21.88	\$ (8,584.87)
10/28/21	CourtCall	Telephonic Hearing on 12/01/21	\$ 94.00	\$ (8,678.87)
Misc.	USPS	Postage	\$ 46.20	\$ (8,725.07)
		TOTAL	\$ 8,725.07	

66. The cost breakdown above does not include Westlaw fees and copy charges.

67. The costs incurred by CounselOne in this matter benefited Aggrieved Employees and are of the type routinely billed by attorneys in such litigation and are reasonable. There was never a guarantee that Plaintiff's Counsel would recoup those expenditures and, because the expense reimbursements requested were reasonably incurred, the Court should grant the request for costs.

The PAGA Representative Enhancement Award to Plaintiff is Reasonable

68. As part of the settlement, the Parties seek a PAGA Representative Enhancement Award to be paid to Plaintiff in recognition of her time and service to Aggrieved Employees and the State of California in pursuing this Action, and in fulfilling her obligations as the lead Aggrieved Employee, in the amount of \$6,500. (Settlement Agreement ¶¶ 17, 34(b).)

69. The Parties acknowledge that Plaintiff took significant risks in bringing this litigation and actively supported its prosecution. Numerous other state courts have previously approved service awards and/or individual settlement payments to PAGA representatives in amounts that demonstrate the reasonableness of Plaintiff's request. (*See, e.g. Garrett v. Bank of America* (Oct. 28, 2016) Alameda County Superior Court Case No. RG13699027 [awarding three PAGA plaintiffs \$25,000.00 each as service awards]; *Brewer v. Connell Chevrolet*, Orange County Superior Court Case No. 30-2016-00852123 [approving a PAGA representative awarded as an individual settlement payment of \$15,000.00]; *Jones v. J.C. Penny Corp.*, Los Angeles Superior Court Case No. BC451823 [awarding PAGA representative a service award of \$10,000.00]; and *Garcia v. Macy's*

1 *West Stores*, San Bernardino Superior Court Case No. CIVDS1516007 [approving a PAGA
2 settlement and service award of \$10,000.00].)

3 70. Here, Plaintiff spent a significant amount of time helping Plaintiff's Counsel with the
4 prosecution of this action and performing the following tasks: (1) regularly speaking with her
5 attorneys; (2) providing relevant legal and factual information; (3) evaluating and producing relevant
6 documents; (4) identifying potential witnesses; (5) discussing discovery, damages, and penalties
7 issues; (6) participating and being available during the mediation process; (7) reviewing, discussing,
8 evaluating the terms of and signing the Settlement Agreement; and (8) regularly requesting updates
9 on the status of the case. (See Declaration of Amanda Bailey ("Bailey Decl.") filed concurrently
10 herewith.)

11 71. Plaintiff will not 'benefit financially' from this settlement in any meaningful sense,
12 yet she has obtained a substantial payment for the State of California and for other Aggrieved
13 Employees. Thus, Plaintiff's PAGA Representative Enhancement Award in the amount of \$6,500 is
14 modest, reasonable, and should be approved.

15 72. For all of the reasons discussed above and in the accompanying Motion, Plaintiff and
16 Plaintiff's Counsel respectfully request that the Court approve the proposed PAGA settlement.

17
18 I declare under penalty of perjury that the foregoing is true and correct.

19 Executed this 01 day of December, 2021, at San Diego, California.

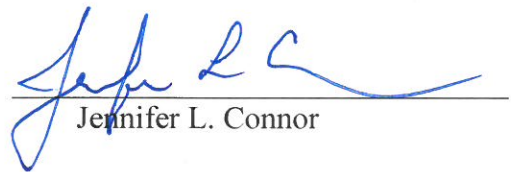
20
21 
22 Jennifer L. Connor
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25
26
27
28

Exhibit 1

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12 *Attorneys for Defendants National Therapeutic*
13 *Services, Inc. and Joshua House, LLC*

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF ORANGE**

16 AMANDA BAILEY, an individual, on
17 behalf of the State of California as a private
attorney general, and on behalf of all others
18 similarly situated,

19 Plaintiff,

20 vs.

21 NATIONAL THERAPEUTIC SERVICES,
INC., doing business as NORTHBOUND
22 TREATMENT SERVICES, a Nevada
corporation; JOSHUA HOUSE, LLC, a
23 California limited liability company; and
DOES 1 through 50, inclusive,

24 Defendants.
25
26
27
28

Case No. 30-2020-01161466-CU-OE-CXC

**JOINT STIPULATION OF
REPRESENTATIVE PAGA ACTION
SETTLEMENT**

[Assigned for all purposes to the
Honorable Glenda Sanders]

Complaint: September 22, 2020
None Set

1 This Joint Stipulation of PAGA Representative Action Settlement (“Stipulation”) is made
2 and entered into by and between plaintiff Amanda Bailey (“Plaintiff”), as an individual and as a
3 representative of other individuals and the State of California, and defendants National
4 Therapeutic Services, Inc. doing business as Northbound Treatment Services and Joshua House,
5 LLC (“Defendants”) (collectively, Plaintiff and Defendants are referred to as the “Parties”), by
6 and through their attorneys of record, as follows:

7 **I. DEFINITIONS**

8 The following definitions are applicable to this Stipulation. Definitions contained
9 elsewhere in this Stipulation will also be effective.

10 1. “Action” means the action entitled *Amanda Bailey v. National Therapeutic*
11 *Services, Inc. dba Northbound Treatment Services, Joshua House, et al.*, Orange County Superior
12 Court Case No. 30-2020-01161466-CU-OE-CXC

13 2. “Aggrieved Employees” means all non-exempt individuals who are or were
14 employed by Defendants National Therapeutic Services, Inc. doing business as Northbound
15 Treatment Services and/or Joshua House, LLC in the State of California during the PAGA Period.
16 If an Aggrieved Employee is incompetent or deceased, then that person’s legal guardian, executor,
17 heir or successor-in-interest is an “Aggrieved Employee” for purposes of the Settlement.
18 Defendants have estimated that there are approximately 174 Aggrieved Employees (51 current
19 Aggrieved Employees; 123 former Aggrieved Employees).

20 3. “Aggrieved Employee List” means a complete list of all Aggrieved Employees that
21 Defendants will diligently and in good faith compile from their records and provide to the
22 Settlement Administrator within ten (10) business days after the date that the Court approves the
23 Settlement. The Aggrieved Employee List will be formatted as a Microsoft Office Excel
24 spreadsheet and will include each Aggrieved Employee’s: (a) full name, (b) last known address,
25 (c) last known telephone number, (d) Social Security number, (e) dates of employment; and (f)
26 the respective number of Pay Periods that each Aggrieved Employee worked as a non-exempt
27 employee for Defendants in California during the PAGA Period.

28 4. “Attorneys’ Fees and Costs” means attorneys’ fees agreed upon by the Parties and

1 approved by the Court for Plaintiff's Counsel's litigation and resolution of the Action, and all
2 costs incurred and to be incurred by Plaintiff's Counsel in the Action, including, but not limited
3 to, fees and costs associated with court filings, documenting the Settlement, securing the Court's
4 approval of the Settlement, and obtaining entry of the Judgment terminating the Action. Plaintiff's
5 Counsel will request attorneys' fees from the Court in an amount not to exceed 33-1/3% of the
6 Gross PAGA Settlement Amount, or Eighty-Three Thousand Three Hundred Thirty-Three Dollars
7 (\$83,333.00), subject to the Court's approval. Plaintiff's Counsel will also request reimbursement
8 of costs incurred by Plaintiff's Counsel's litigation and resolution of the Action in an amount up
9 to Fifteen Thousand Dollars (\$15,000.00), subject to the Court's approval.

10 5. "Court" means the Superior Court of the State of California for the County of
11 Orange or any other court taking jurisdiction of the Action.

12 6. "Defendants" means National Therapeutic Services, Inc. doing business as
13 Northbound Treatment Services and Joshua House, LLC.

14 7. "Defendants' Counsel" means Walraven & Westerfeld LLP and its attorneys Brian
15 Selvan and Tianyao (Calvin) Zhou.

16 8. "Effective Date" means the later of: (i) the date the Court enters an order granting
17 approval of the Settlement, provided no appeal or motion for reconsideration or other efforts to
18 obtain review has been filed; or (ii) if an appeal, review, or writ is sought, the date on which the
19 highest reviewing court renders its decision denying any petition (where the immediately lower
20 court affirmed the final judgment) or affirming the final judgment.

21 9. "Individual Settlement Payment" means the *pro rata* amount payable to each
22 Aggrieved Employee from the 25% portion of the Net Settlement Amount allocated to payments
23 to the Aggrieved Employees.

24 10. "Gross PAGA Settlement Amount" means the non-reversionary settlement amount
25 of Two Hundred and Fifty Thousand Dollars (\$250,000.00) that Defendants shall pay to settle this
26 Action. The Gross PAGA Settlement Amount includes: (a) Plaintiff's Counsel's Attorneys' Fees
27 and Costs; (b) Plaintiff's PAGA Representative Enhancement Award; (c) Settlement
28 Administration Costs; (d) the 75% PAGA Penalties Payment allocated to the LWDA; and (e) the

25% Individual Settlement Payments from the PAGA Penalties Payment allocated to the Aggrieved Employees.

11. “Judgment” means the Court’s Judgment approving the Settlement, substantially in the form attached hereto as **Exhibit 1**, including any revisions required by the Court.

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

13. “Net Settlement Amount” means the total amount that will be paid to the LWDA and the Aggrieved Employees pursuant to Paragraphs 35. The Net Settlement Amount is equivalent to the Gross PAGA Settlement Amount less deductions for the Court-approved Plaintiff’s Counsel Attorneys’ Fees and Costs, Plaintiff’s PAGA Representative Enhancement, and Settlement Administration Costs.

14. “PAGA Period” means the period beginning on May 21, 2019, and ending on the date of approval of the Settlement.

15. “PAGA” means the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.*

16. “PAGA Released Claims” means a full release of the civil penalties recoverable under the PAGA claim for underlying violations of California Labor Code §§ 201, 202, 203, 204, 210, 212, 221, 226, 226.3, 226.7, 450, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 1199, 2800, and 2802, along with relevant IWC Wage Order(s), including Wage Order 4-2001 Sections 11 and 12, and for any other PAGA violations based on the facts alleged or that could have been alleged in the Complaint during the PAGA Period. The specific terms and details of which are set forth in Paragraph 41.

17. “PAGA Representative Enhancement Award” means the Court-approved amount to be paid to Plaintiff in recognition of her time and service to the Aggrieved Employees and the State of California in pursuing the Action and in fulfilling her obligations as the lead Aggrieved Employee. Plaintiff’s Counsel will request that the Court approve a PAGA Representative Enhancement Award in an amount not to exceed Six Thousand Five Hundred Dollars (\$6,500.00).

18. “PAGA Payment Letter” means a letter that the Settlement Administrator will send to each Aggrieved Employee with his or her Individual Settlement Payment, in a format that will

1 be proposed by Parties and provided to the Court for approval, including any revisions required
2 by the Court.

3 19. “Parties” means the Plaintiff and Defendants collectively.

4 20. “Pay Period” means a pay period that an Aggrieved Employee worked for
5 Defendants in the State of California during the PAGA Period.

6 21. “Plaintiff” means Plaintiff Amanda Bailey.

7 22. “Plaintiff’s Counsel” means lead counsel for Plaintiff in this Action, CounselOne,
8 PC, and its attorneys Anthony Orshansky and/or Jennifer Connor.

9 23. “Plaintiff’s Individual Release of Claims” means in her capacity as a private
10 attorney general or “aggrieved employee” acting on behalf of herself and on behalf of Aggrieved
11 Employees, and in consideration of the enhancement payment for an individual general release,
12 Plaintiff hereby releases Defendants and Released Parties from any and all PAGA Released
13 Claims that arose during the PAGA Period. Plaintiff further agrees to release, in addition to the
14 PAGA Released Claims, all claims, whether known or unknown, under federal law or state law
15 (including her individual wage and hour claims) against the Released Parties, but excluding any
16 and all claims alleged or that could have been alleged based on the facts set forth in Plaintiff’s
17 pending lawsuit against Defendant National Therapeutic Services, Inc. (Orange Co. Sup. Ct. Case
18 No. 30-2021-01192045-CU-WT-NJC) (“Wrongful Termination Action”). The specific facts and
19 details of which are set forth in Paragraphs 43 and 44.

20 24. “Released Parties” means Defendants and their past or present parents, subsidiaries,
21 and affiliated corporations, officers, directors, employees, partners, agents, insurers, and/or any
22 other individual or entity that could be liable for the acts or omissions of the Defendants.

23 25. “Settlement Administration Costs” means the costs payable from the Gross PAGA
24 Settlement Amount to the Settlement Administrator for administering this Settlement. The
25 Settlement Administration Costs are currently estimated to be no more than Twelve Thousand
26 Dollars (\$12,000.00).

27 26. “Settlement Administrator” means CPT Group, Inc. or any other settlement
28 administrator agreed to by the Parties and approved by the Court.

27. “Settlement” shall mean the settlement between the Parties that is memorialized in this Stipulation and subject to Court approval.

28. “Stipulation” means this Joint Stipulation of PAGA Representative Action Settlement, and its Exhibits, attached hereto and incorporated herein, including all subsequent amendments agreed to in writing by the Parties and any exhibits to such amendments.

RECITALS

29. PAGA Notice Letters to LWDA. On May 21, 2020, Plaintiff filed a “PAGA Notice” letter with the LWDA, advising the LWDA that the Plaintiff intended to seek civil penalties pursuant to PAGA for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 210, 212, 221, 226, 226.3, 226.7, 450, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 1199, 2800, and 2802.

30. Complaint Filed In Orange County Superior Court. On September 22, 2020, Plaintiff filed a lawsuit under PAGA seeking civil penalties for alleged violations of the California Labor Code. Specifically, her Complaint alleged the following causes of action: (1) Failure to Pay Minimum Wages for All Hours Worked; (2) Failure to Pay All Overtime Wages; (3) Failure to Provide Timely and Compliant Meal Periods; (4) Failure to Provide Timely and Compliant Rest Periods; (5) Failure to Maintain Accurate Itemized Wage Statements; (6) Failure to Furnish Accurate Itemized Wage Statements; (7) Failure to Reimburse Necessary Business-Related Expenses Incurred; and (8) Failure to Timely Pay Wages During And Upon Termination of Employment. In the Action, Plaintiff sought civil penalties on behalf of all hourly-paid or non-exempt employees of Defendants who worked in the State of California.

31. Mediation And Settlement. On June 30, 2021, the Parties and their counsel participated in a full-day mediation with the Honorable Leo Papas (Ret.), a well-respected mediator with considerable experience mediating wage and hour class actions and PAGA representative actions. At the conclusion of the June 30, 2021 mediation, the Parties reached an agreement to resolve the Action pursuant to terms set forth in a Memorandum of Understanding. This Stipulation formalizes the agreement reached by the Parties.

TERMS OF SETTLEMENT

A. Conditional Nature of the Settlement

32. All Terms Subject to Court Approval. California Labor Code § 2699(l)(2) requires that the Court review and approve any penalties sought as part of a proposed settlement agreement pursuant to PAGA. All amounts and procedures described in this Stipulation are subject to the Court's approval. Should the Court not approve the Settlement, the Parties shall request leave to, and jointly attempt in good faith to, modify this Settlement in order to obtain the Court's approval, while remaining consistent with the underlying principles agreed to at the mediation.

B. Settlement Consideration and Distributions

33. Gross PAGA Settlement Amount. Within ten (10) calendar days after the Effective Date, Defendants shall pay the Maximum Settlement Amount of Two Hundred and Fifty Thousand Dollars and No Cents (\$250,000.00) to settle this Action. The Gross PAGA Settlement Amount will be used to satisfy all of Defendants' liabilities arising from the Settlement. No portion of the Gross PAGA Settlement Amount shall revert to Defendants or result in an unpaid residue.

34. Deductions from the Gross PAGA Settlement Amount. Deductions from the Gross PAGA Settlement Amount, all subject to Court Approval, shall be made for the following:

(a) Plaintiff's Counsel's Attorneys' Fees and Costs. Plaintiff's Counsel may apply for an award of attorneys' fees and costs, with the fee portion not to exceed 33-1/3% of the Gross PAGA Settlement Amount (*i.e.*, up to Eighty-Three Thousand Three Hundred and Thirty-Three Dollars (\$83,333.00), and the costs portion not to exceed Fifteen Thousand Dollars (\$15,000.00). The Attorneys' Fees and Costs will be paid from the Gross PAGA Settlement Amount. Defendants agree not to oppose any motion that is consistent with this Paragraph. The amount of Attorneys' Fees and Costs shall include all past and future attorneys' fees and costs to Plaintiff's Counsel—including, without limitations, all time and costs expended by Plaintiff's Counsel in defending the Settlement and securing approval of the Settlement (including any appeals). Any amounts not awarded by the Court under this provision shall be included in the Net Settlement Amount.

(b) Plaintiff's Representative Enhancement Award. Plaintiff's Counsel may apply for

a Plaintiff's Representative Enhancement Award in an amount up to Six Thousand Five Hundred Dollars (\$6,500.00) for Plaintiff for her service to the State of California and the other Aggrieved Employees. Plaintiff's Representative Enhancement Award will be paid from the Gross PAGA Settlement Amount, and will be paid in addition to any Individual Settlement Payment to which the Plaintiff may otherwise be entitled as an Aggrieved Employee. Defendants agree not to oppose any motion that is consistent with this Paragraph. Any amounts not awarded by the Court under this provision shall be included in the Net Settlement Amount.

(c) Settlement Administration Costs. All Settlement Administration Costs shall be paid from the Gross PAGA Settlement Amount. The Settlement Administration Costs include but are not limited to the required tax reporting on the Individual Settlement Payments, the issuing of appropriate tax forms, as needed, confirming/auditing claims for payments for compliance with the Settlement, calculating and distributing all payments to be made pursuant to the Settlement, and providing reports and declarations. The amount of Settlement Administration Costs is estimated not to exceed Twelve Thousand Dollars (\$12,000.00). Defendants agree not to oppose any motion that is consistent with this Paragraph. If the actual Settlement Administration Costs are less than Twelve Thousand Dollars (\$12,000.00), those amounts shall be included in the Net Settlement Amount.

35. Net Settlement Amount. The Parties estimate the Net Settlement Amount as follows:

Gross PAGA Settlement Amount:	\$250,000
Plaintiff Counsel's Attorneys' Fees (estimated)	-\$83,333
Plaintiff Counsel's Litigation Costs (estimated)	-\$15,000
Plaintiff's Service Award (estimated)	-\$6,500
Settlement Administration Costs	-\$12,000
Net Settlement Amount (estimated)	<u>\$133,167</u>

36. LWDA Payment. Subject to Court approval, the Parties agree that an amount equal

1 to seventy-five (75) percent of the Net Settlement Amount will be paid to the LWDA in settlement
2 of all representative claims alleged by or on behalf of Plaintiff and Aggrieved Employees.

3 37. Individual Settlement Payments. Subject to Court approval, the Parties agree that
4 an amount equal to twenty-five (25) percent of the Net Settlement Amount (“Aggrieved Employee
5 Portion”) will be paid to the Aggrieved Employees in settlement of the Released Claims.
6 Individual Settlement Payments will be calculated and apportioned from the Aggrieved Employee
7 Portion based on the number of Pay Periods an Aggrieved Employee worked during the PAGA
8 Period. The Settlement Administrator will calculate the total number of Pay Periods worked by
9 each Aggrieved Employee during the PAGA Period and the aggregate number of Pay Periods
10 worked by all Aggrieved Employees during the PAGA Period. To determine each Aggrieved
11 Employee’s Individual Settlement Payment, the Settlement Administrator will use the following
12 formula: The Aggrieved Employee Portion will be divided by the aggregate number of Pay
13 Periods, resulting in the “Pay Period Value.” Each Aggrieved Employee’s Individual Settlement
14 Payment will be calculated by multiplying each individual Aggrieved Employee’s total number
15 of Pay Periods by the Pay Period Value. The Parties agree that the formula described herein is
16 reasonable and that the payments are designed to provide a fair settlement to each Aggrieved
17 Employee in light of the uncertainties regarding the penalties alleged to be owed and the
18 calculation of such amounts.

19 38. Tax Treatment of Settlement Payments. All Individual Settlement Payments will
20 be allocated to alleged civil penalties, and IRS Forms 1099-MISC will be issued as necessary. The
21 payment of the Plaintiff’s Representative Enhancement Award and Plaintiff’s Counsel’s
22 Attorneys’ Fees and Costs will also be reported on IRS Forms 1099-MISC. The Settlement
23 Administrator will issue all such forms.

24 39. Tax Liability. Other than the reporting requirements set forth in Paragraph 54,
25 Aggrieved Employees, including Plaintiff, shall be responsible for the reporting and payment of
26 any federal, state and/ or local income or other tax or any other withholdings, if any, on any of the
27 payments made pursuant to this Stipulation. Defendants make no representations, and it is
28 understood and agreed that Defendants have made no representations, as to the taxability of any

portions of the settlement payments to any Aggrieved Employee, the payment of any costs or an award of attorney fees, or any payments to the Plaintiff. The PAGA Payment Letter will inform Aggrieved Employees of the opportunity to seek their own tax advice in connection with their receipt of Individual PAGA Payments, and the Plaintiff and her counsel agree that this is sufficient to alert Aggrieved Employees of their option to seek tax advice.

40. No Credit Towards Benefit Plans. The Individual Settlement Payments made to Aggrieved Employees under this Settlement will not be utilized to calculate any additional benefits under any benefit plans for which any Aggrieved Employees may be eligible, including, but not limited to: (i) profit-sharing plans, (ii) bonus plans, (iii) 401(k) plans, (iv) stock purchase plans, (v) vacation plans, (vi) sick leave plans, (vii) PTO plans, and (viii) any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Aggrieved Employees may be entitled under any benefit plans.

C. Waiver And Releases

41. The PAGA Release. Upon the Effective Date, each Aggrieved Employee (including Plaintiff) and the California Labor and Workforce Development Agency shall, for the PAGA Period, fully release and forever discharge Defendants and the Released Parties from any and all claims for the recovery of civil penalties under PAGA only, that could have been asserted in the Action based on the facts alleged. It is expressly understood and agreed that this Settlement only includes a full release of the PAGA claim for underlying violations of Labor Code §§ 201, 202, 203, 204, 210, 212, 221, 226, 226.3, 226.7, 450, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 1199, 2800, and 2802, along with relevant IWC Wage Order(s), including Wage Order 4-2001 Sections 11 and 12, and for any other PAGA violations based on the facts alleged or that could have been alleged in the Complaint during the PAGA Period.

42. Aggrieved Employees Are Bound By the Settlement. Because this is a PAGA action, the Parties agree that no Aggrieved Employee has the right to exclude himself or herself from the Settlement or object to the terms of this Settlement Agreement. All Aggrieved Employees will be bound by this Settlement Agreement, upon its approval by the Court, regardless of whether he or she negotiates his or her settlement check.

1 43. Plaintiff's Individual and General Release. As of the Effective Date, in exchange
2 for the consideration set forth in this Agreement, Plaintiff does hereby waive, release, acquit and
3 forever discharge Defendants and Released Parties, from any and all any and all PAGA Released
4 Claims that arose during the PAGA Period. Plaintiff further agrees to release, in addition to the
5 PAGA Released Claims, all claims, whether known or unknown, under federal law or state law
6 (including her individual wage and hour claims) against the Released Parties, but excluding any
7 and all claims alleged or that could have been alleged based on the facts set forth in Plaintiff's
8 pending Wrongful Termination Action lawsuit against Defendant National Therapeutic Services,
9 Inc.

10 44. Plaintiff's Waiver of California Civil Code § 1542. As of the Effective Date, and
11 except for the explicit Wrongful Termination Action carve-out set forth in Paragraph 43, in
12 exchange for the consideration set forth in this Agreement, Plaintiff agrees to expressly waive the
13 provisions of California Civil Code § 1542, which provides as follows:

14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
15 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
16 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
17 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
18 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
19 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
20 OR RELEASED PARTY.

21 The Plaintiff's general release and waiver of California Civil Code § 1542 shall cover the time
22 period from the start of her employment with Defendants up to the Effective Date.

23 **D. Settlement Administration**

24 45. Settlement Administrator's Duties in General. The Settlement Administrator shall be
25 responsible for (a) processing the data provided by Defendants to be used in calculating Individual
26 Settlement Payments; (b) preparing, printing, and mailing to Aggrieved Employees the PAGA
27 Payment Letter, as well as following up with reasonable skip tracing; (c) calculating and mailing
28 Individual Settlement Payments to Aggrieved Employees; (d) filing any required federal and state
tax forms and related agency reporting; (e) filing any required reports with the Court; and (g) all
other tasks described in this Stipulation, as to which the Parties mutually agree, and/or which the

1 Court orders the Settlement Administrator to perform.

2 46. Delivery of the Aggrieved Employees List. Within ten (10) business days after the
3 Effective Date, Defendants will provide the Aggrieved Employees List to the Settlement
4 Administrator; Plaintiff's Counsel will not receive a copy of the list. The Settlement Administrator
5 shall not use the Aggrieved Employees List or any information contained therein for any purpose
6 other than to administer the Settlement in accordance with this Settlement Agreement. Upon
7 completion of the administration of the Settlement, the Settlement Administrator shall destroy the
8 Aggrieved Employees List and any information contained therein or return it and all copies to
9 Defendants' Counsel.

10 47. Funding of the Gross PAGA Settlement Amount. No later than 10 business days
11 after the Effective Date, Defendants will deposit the Gross PAGA Settlement Amount into a
12 settlement fund established by the Settlement Administrator by check, Automated Clearing House
13 (ACH) transfer, or wire transfer.

14 48. Distribution of Settlement Payments. Within fifteen (15) business days after the
15 Effective Date, the Settlement Administrator will issue payments to: (a) Aggrieved Employees;
16 (b) the LWDA; (c) Plaintiff; and (d) Plaintiff's Counsel. The Settlement Administrator will mail
17 Individual Settlement Payments to Aggrieved Employees, along with the PAGA Payment Letter
18 explaining the reason for the payment, via regular First-Class U.S. Mail, using the most current,
19 known mailing addresses identified in the Aggrieved Employees List. The Settlement
20 Administrator shall provide Defendants' Counsel and Plaintiff's Counsel the report described in
21 Paragraph 50 and obtain approval from all counsel before mailing Individual Settlement
22 Payments. The Settlement Administrator will also issue a payment to itself for Court-approved
23 services performed in connection with the Settlement on the fortieth (40) day after the Effective
24 Date or upon providing the Declaration of Payment, described in Paragraph 56, whichever is later.

25 49. Confirmation of Contact Information. Prior to mailing, the Settlement
26 Administrator will perform a search based on the National Change of Address Database for
27 information to update and correct for any known or identifiable address changes. Any Individual
28 Settlement Payments returned to the Settlement Administrator as non-deliverable will be sent,

1 along with the PAGA Payment Letter explaining the reason for the payment, promptly via regular
2 First-Class U.S. Mail, to the forwarding address affixed thereto. If no forwarding address is
3 provided, the Settlement Administrator will promptly attempt to determine the correct address by
4 lawful use of skip-tracing, or other search methods using the name, address and/or Social Security
5 number of the Aggrieved Employee involved, and shall then perform a re-mailing if another
6 mailing address is identified. With regard to any Aggrieved Employee whose Individual
7 Settlement Payment is returned as non-deliverable, and for whom the Settlement Administrator is
8 unable to determine a reliable address using reasonable and customary methods, his or her
9 Individual Settlement Payment will escheat to the State of California, in the name of and for the
10 benefit of such Aggrieved Employee.

11 50. Reports Regarding Settlement Administration. The Settlement Administrator will
12 provide Defendants' Counsel and Plaintiff's Counsel reports regarding the administration of the
13 Settlement Agreement as needed or requested. At a minimum, the Settlement Administrator shall
14 provide to Defendants' Counsel and Plaintiff's Counsel, at least two (2) calendar days before the
15 distribution required in Paragraph 48, an anonymized report confirming the total number of
16 Aggrieved Employees on the Aggrieved Employees List, the aggregate total number of pay
17 periods on the Aggrieved Employees List, and the highest, lowest, and average estimated
18 Individual Settlement Payments.

19 51. Procedures For Uncashed Checks. Checks for Individual Settlement Payments shall
20 be negotiable for one hundred eighty (180) calendar days from the date of their issuance. If a check
21 is returned to the Settlement Administrator as undeliverable during the 180-day period, the
22 Settlement Administrator shall take all reasonable efforts to identify the Aggrieved Employee's
23 correct address, including the performance of a "skip-trace." If an updated address can be
24 identified, the Settlement Administrator shall issue another check to the Aggrieved Employee and
25 mail it to the Aggrieved Employee at his or her updated address. An Aggrieved Employee who
26 fails to negotiate or receive their Individual Settlement Payment check despite the procedures
27 described herein shall nevertheless remain bound by the Settlement and the release of the Released
28 Claims contained herein.

1 52. The funds represented by Individual Settlement Payment checks remaining
2 uncashed for more than one hundred eighty (180) days after issuance (collectively, “Uncashed
3 Settlement Checks”) shall be voided and then shall be transmitted to the Controller of the State of
4 California to be held pursuant to the Unclaimed Property Law, California Code of Civil Procedure
5 § 1500, *et seq.* in the names of those Aggrieved Employees who did not cash their settlement
6 check until such time they claim their property. After the expiration of the 180-calendar day check
7 cashing period, as outlined above, the Settlement Administrator shall begin the process of
8 transferring the funds in accordance with California Code of Civil Procedure §§ 1500-1582 and
9 the timing requirements set forth by the Office of the State Controller.

10 53. Administration of Taxes by the Settlement Administrator. The Settlement
11 Administrator will be responsible for issuing to Plaintiff, Aggrieved Employees, and Plaintiff’s
12 Counsel any 1099, and/or other tax forms as may be required by law for all amounts paid pursuant
13 to this Settlement.

14 54. Sending Settlement Agreement and Judgment to LWDA. Before or concurrent with
15 Plaintiff’s filing of a motion for approval of the Settlement, Plaintiff’s Counsel will send this
16 Settlement Agreement to the LWDA pursuant to Section 2699(1)(2) of the Labor Code. Within ten
17 (10) days after entry of a judgment or order approving, denying, or modifying the award of civil
18 penalties contemplated by this Settlement Agreement, Plaintiff’s Counsel will submit a copy of
19 the judgment or order to the LWDA pursuant to Section 2699(1)(3) of the Labor Code.

20 55. Declaration of Payment. Within sixty (60) calendar days after the Effective Date,
21 the Settlement Administrator shall prepare a declaration of payment stating that all payments
22 required under the Settlement have been made. If requested, Plaintiff’s Counsel shall file the
23 Settlement Administrator’s declaration with the Court.

24 56. Declaration Regarding Uncashed Settlement Check Funds. Within ten (10)
25 calendar days after the date the Settlement Administrator transfers the total amount of funds
26 represented by the Uncashed Settlement Checks consistent with the State’s Unclaimed Property
27 Law, the Settlement Administrator will prepare a declaration stating the total amount of funds
28 represented by Uncashed Settlement Checks and confirming that the procedures for the treatment

of Uncashed Settlement Checks established by this Stipulation have been followed. If requested, Plaintiff's Counsel shall file the Settlement Administrator's declaration with the Court.

E. Miscellaneous Provisions

57. Acknowledgement that the Settlement is Fair, Adequate and Reasonable. The Parties and their respective counsel believe that this Settlement is a fair, adequate, and reasonable settlement of the Action, and they have arrived at this Settlement through arm's length negotiations, taking into account all relevant factors, present and potential.

58. Mutual Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms of this Settlement. The Parties shall use their best efforts, including all efforts contemplated by this Stipulation and any other efforts that may become necessary by Court Order, or otherwise, to effectuate this Stipulation and the terms set forth herein.

59. No Admissions By The Parties. Plaintiff has claimed and continues to claim that the Released Claims have merit and give rise to liability on the part of Defendants. Defendants claim that the Released Claims have no merit and do not give rise to liability. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and no documents referred to herein and no action taken to carry out this Agreement may be construed or used as an admission by or against the Defendants or Defendants' Counsel or Plaintiff or Plaintiff's Counsel as to the merits or lack thereof of the claims asserted.

60. Amendment Or Modification. This Settlement may not be amended or modified except in a writing signed by the Parties or their successors-in-interest.

61. Mutual Drafting of Agreement. The Parties agree that the terms of this Stipulation and the accompanying exhibits are the result of lengthy, arm's length negotiations, and that this Stipulation shall not be construed in favor of or against any of the Parties by reason of the extent to which any of the Parties or their respective counsel participated in the drafting of this Stipulation.

1 62. Attorney Authorization. Plaintiff's Counsel and Defendants' Counsel warrant and
2 represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate
3 action required or permitted to be taken by such Parties pursuant to this Settlement to effectuate
4 its terms, and to execute any other documents required to effectuate the terms of this Settlement.

5 63. Modification of Agreement. This Agreement, and any and all parts of it, may be
6 amended, modified, changed, or waived only by an express written instrument signed by all Parties
7 or their successors-in-interest.

8 64. Binding on Successors and Assigns. This Stipulation is binding upon, and inures to
9 the benefit of, the Parties' successors and assigns.

10 65. Governing Law. This Stipulation shall be governed by and interpreted according to
11 the laws of the State of California.

12 66. Exhibits Incorporated By Reference. The terms of this Stipulation include the terms
13 set forth in any attached Exhibit, which are incorporated by this reference as though fully set forth
14 herein. Any Exhibit to this Stipulation is an integral part of the Settlement.

15 67. Invalidity Of Any Provision. Before declaring any provision of this Stipulation
16 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible
17 consistent with applicable precedents so as to define all provisions of this Settlement valid and
18 enforceable.

19 68. Unalleged Claims. Plaintiff and Plaintiff's Counsel are not currently aware of any:
20 (a) unalleged PAGA claims in addition to, or different from, those which are finally and forever
21 settled and released against the Released Parties by this Settlement; and (b) unalleged facts or
22 legal theories upon which any PAGA claims could be brought against Defendants, except such
23 facts and theories specifically alleged in the operative complaint in this Action. Plaintiff and
24 Plaintiff's Counsel further represent that, other than the instant Action, they have no current
25 intention of asserting any other claims against Defendants in any judicial or administrative forum.
26 Plaintiff and Plaintiff's Counsel further represent that they do not currently know of or represent
27 any persons who have expressed interest in pursuing litigation or seeking any recovery against
28 Defendants.

1 69. No Publicity. Plaintiff and Plaintiff's Counsel agree not to publicize the Settlement,
2 including the fact of the Settlement, its terms or contents, and the negotiations underlying the
3 Settlement, in any manner or form, directly or indirectly, to any person or entity, except Aggrieved
4 Employees and as shall be contractually required to effectuate the terms of the Settlement. Plaintiff
5 and Plaintiff's Counsel agree not to issue press releases, communicate with, or respond to any
6 media or publication entities, publish information in manner or form, whether printed or
7 electronic, on any medium or otherwise communicate, whether by print, video, recording or any
8 other medium, with any person or entity concerning the Settlement, including the fact of the
9 Settlement, its terms or contents and the negotiations underlying the Settlement, except as shall
10 be contractually required to effectuate the terms of the Settlement. This Paragraph does not
11 prohibit Plaintiff's Counsel from discussing this case or any aspect of this Settlement with
12 Plaintiff, or any court or opposing counsel. This Paragraph also does not prohibit Plaintiff's
13 Counsel from disclosing their status as counsel in this case, making objective and truthful
14 reference to the Settlement and any attorney fee award in any future pleading in another litigation,
15 or disclosing on their law firm website their role as counsel in the Action.

16 70. Notices. Whenever this Stipulation requires or contemplates that one of the Parties
17 shall or may give notice to the other, notice shall be provided by e-mail and/or next-day (excluding
18 Saturdays, Sundays and Legal Holidays) express delivery service addressed to the address of the
19 Party's counsel appearing in this Stipulation.

20 71. Attorneys' Fees and Costs. The Parties shall bear their own respective attorneys'
21 fees and costs incurred in and/or arising out of the Action, except as otherwise provided for in this
22 Stipulation and as later approved by the Court.

23 72. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction
24 with respect to the interpretation, implementation and enforcement of the terms of this Agreement
25 and all orders and judgments entered in connection therewith, and the Parties and their counsel
26 hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and
27 enforcing the settlement embodied in this Agreement and all orders and judgments entered in
28 connection therewith.

1 73. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however,
2 that either party may appeal any court order that materially alters the Settlement Agreement's
3 terms.

4 74. Binding Agreement. The Parties intend that this Settlement shall be fully
5 enforceable and binding on all Parties, and that it shall be admissible and subject to disclosure in
6 any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that
7 otherwise might apply under federal or state law. This Stipulation is also binding upon, and inures
8 to the benefit of, the Parties' successors and assigns.

9 75. Entire Agreement. This Stipulation and any attached Exhibits constitute the entirety
10 of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements
11 may be deemed binding on the Parties.

12 76. Counterparts. This Stipulation may be executed in one or more counterparts. All
13 executed counterparts and each of them, including facsimile and scanned copies of the signature
14 page, will be deemed to be one and the same instrument provided that counsel for the Parties to
15 this Agreement exchange among themselves copies or originals of the signed counterparts.

16 77. Parties' Authority. The signatories to this Stipulation, including any person
17 executing this Stipulation on behalf of a corporate signatory, warrant and represent that they are
18 fully authorized to enter into this Stipulation and to bind the Parties hereto to the terms and
19 conditions of the Stipulation.

20 **IN WITNESS WHEREOF**, the Parties and their counsel have executed this Stipulation
21 on the date below their signatures or the signature of their representatives. The date of the
22 Stipulation shall be the date of the latest signature.

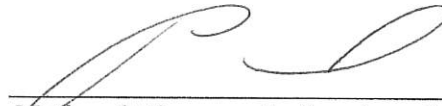
23 12 / 01 / 2021
24 Dated: _____, 2021

PLAINTIFF AMANDA BAILEY

25 
26 _____
27 Amanda Bailey
28

1 Dated: 12/01, 2021

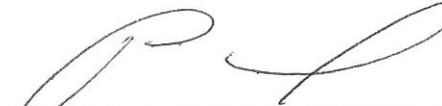
**DEFENDANT NATIONAL
THERAPUETIC SERVICES, INC.**


National Therapeutic Services, Inc.

By: Paul Alexander
Its: CEO & President

2
3
4
5
6 Dated: 12/01, 2021

DEFENDANT JOSHUA HOUSE, LLC


Joshua House, LLC

By: Paul Alexander
Its: CEO & President

7
8
9
10
11
12 *Approved as to form only*

13
14 Dated: December 1, 2021

COUNSELONE, PC

15
16
17 By: Jennifer L Connor
Jennifer L. Connor, Esq.
Anthony J. Orshansky, Esq.
Attorneys for Plaintiff

18
19
20 Dated: December 1, 2021

WALRAVEN & WESTERFELD LLP

21
22
23 By: Brian A. Selvan
Brian A. Selvan, Esq.
Attorneys for Defendants National
Therapeutic Services, Inc. and Joshua
House, LLC

Exhibit 1

1 ANTHONY J. ORSHANSKY (SBN 199364)
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2 JENNIFER L. CONNOR (SBN 241480)
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3 **COUNSELONE, PC**
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6 Attorneys for Plaintiff and the Aggrieved Employees

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ORANGE**

10 AMANDA BAILEY, an individual, on behalf of
11 the State of California as a private attorney
12 general, and on behalf of all others similarly
situated,

13 Plaintiff,

14 v.

15 NATIONAL THERAPEUTIC SERVICES,
16 INC., doing business as NORTHBOUND
17 TREATMENT SERVICES, a Nevada
corporation; JOSHUA HOUSE, LLC, a
18 California limited liability company; and DOES
19 1 through 50, inclusive,

20 Defendants.
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Case No.: 30-2020-01161466-CU-OE-CXC

Assigned for all purposes to:
Hon. Glenda Sanders
Dept. CX101

**[PROPOSED] ORDER GRANTING
MOTION FOR APPROVAL OF PAGA
ACTION SETTLEMENT**

PAGA Approval Hearing

Date:
Time:
Dept: CX101

1 **ORDER**

2 Having considered plaintiff Amanda Bailey's Motion for Approval of PAGA Action
3 Settlement ("PAGA Approval Motion"), the parties' Joint Stipulation of Representative PAGA
4 Action Settlement, the arguments of counsel, and other matters before the Court in this action, and
5 finding good cause,

6 **IT IS HEREBY ORDERED THAT:**

7 1. This Order incorporates by reference the definitions of the parties' Joint Stipulation
8 of Representative PAGA Action Settlement ("PAGA Settlement Agreement") as though fully set
9 forth herein, and all capitalized terms used herein shall have the same meaning as set forth in the
10 PAGA Settlement Agreement.

11 2. The parties' PAGA Settlement Agreement represents a reasonable and adequate
12 settlement of highly disputed claims, satisfies the purposes of the California Private Attorneys
13 General Act of 2004 to benefit the public, and is hereby approved.

14 3. The allocation of the settlement funds among the Aggrieved Employees, the State of
15 California, and Plaintiff's counsel is fair, just, reasonable, adequate, and equitable to all concerned,
16 and is approved to the extent required under Labor Code § 2699(1).

17 4. The Court appoints CPT Group, Inc. as the Settlement Administrator.

18 5. The Court approves as to form and content the Notice of Settlement of PAGA
19 Representative Action, attached as an exhibit to the Declaration of Jennifer L. Connor in support of
20 the PAGA Approval Motion.

21 6. The Court approves the PAGA Representative Award of \$6,500.00 to Plaintiff
22 Amanda Bailey.

23 7. The Court finds Plaintiff's Counsel's attorneys' fees and cost request to be
24 reasonable under the circumstances, and approves the award of \$83,333.00 in attorneys' fees and
25 \$8,975.00 in costs.

1 8. The Parties are ordered to carry out the Settlement according to the terms of the
2 PAGA Settlement Agreement.

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4 **IT IS SO ORDERED:**

5 Dated: _____

6 _____
7 Hon. Glenda Sanders
8 Judge of the Superior Court
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Exhibit 2

NOTICE OF SETTLEMENT OF PAGA REPRESENTATIVE ACTION

Bailey v. National Therapeutic Services, Inc., et al.

Superior Court for the State of California, County of Orange, Case No. 30-2020-01161466-CU-OE-CXC

Aggrieved Employee

Address

Address

You are receiving this notice in connection with a Court-approved settlement in a lawsuit (“the Action”) brought on a representative basis under the Private Attorneys General Act, Labor Code § 2698 *et seq.* (“PAGA”). The plaintiff in the lawsuit is Amanda Bailey (“Plaintiff”) and the defendants are National Therapeutic Services, Inc. d/b/a Northbound Treatment Services and Joshua House, LLC (collectively, “Defendants”). The Action seeks civil penalties for purported violations of the California Labor Code on behalf of all persons who worked in California for Defendants as non-exempt employees during the PAGA Period (May 21, 2019 through the date of approval of the settlement) (“Aggrieved Employees”). The PAGA statute provides that 75% of any recovery be paid to the State of California and 25% of any recovery be paid to the “aggrieved employee” group, which in this case is the group of Aggrieved Employees of Defendants.

Civil penalties under the PAGA in this Action are predicated on Defendants alleged failure to: (1) pay wages, including minimum and overtime wages, for all hours worked; (2) provide timely and compliant meal and rest breaks and pay premiums owed thereon; (3) maintain and provide accurate itemized wage statements; (4) reimburse all necessary business expenses incurred; and (5) timely pay wages during and upon termination of employment. Defendants deny all claims and allegations in the Action, deny that they owe any penalties, and assert that they have fully complied with all applicable Labor Code provisions. Nevertheless, to avoid further costs and time in defending the Action, Defendants have settled the Action. By settling the Action, Defendants are not admitting that they have done anything wrong.

Pursuant to the settlement, each Aggrieved Employee shall, for the PAGA Period, fully release and forever discharge Defendants and their past or present parents, subsidiaries, and affiliated corporations, officers, directors, employees, partners, agents, insurers, and/or any other individual or entity that could be liable for the acts or omissions of the Defendants (collectively, “Released Parties”) from any and all claims for the recovery of civil penalties under the PAGA only, that could have been asserted in the Action based on the facts alleged in the operative complaint. It is expressly understood and agreed that this settlement only includes a full release of the PAGA claim for underlying violations of Labor Code §§ 201, 202, 203, 204, 210, 212, 221, 226, 226.3, 226.7, 450, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 1199, 2800, and 2802, along with the relevant Industrial Welfare Commission (“IWC”) wage order(s), including Wage Order 4-2001 Sections 11 and 12, and for any other PAGA violations based on the facts alleged or that could have been alleged in the operative complaint during the PAGA Period (the “PAGA Released Claims”). This settlement excludes all other legal claims.

By an Order dated [Approval Date], the Superior Court approved the settlement of the PAGA Action. By approving the settlement, the Court did not decide in favor of either Plaintiff or Defendants.

According to Defendants’ records, you are an Aggrieved Employee and therefore entitled to a share of the settlement (“Individual PAGA Payment”) based upon the Court approved allocation. Enclosed with this Notice is your check representing your Individual PAGA Payment. The settlement check shall remain valid for 180 days.

Please Note: One hundred percent (100%) of your Individual PAGA Payment under this settlement will be considered penalties and may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors as to the tax consequences of your Individual PAGA Payment. Neither Plaintiff nor Defendants have made any representations or warranties regarding the taxation of your Individual PAGA Payment. Nothing in this notice or any other communication shall constitute or be construed or relied upon as tax advice.

PLEASE DO NOT CALL OR WRITE THE COURT OR OFFICE OF THE CLERK TO ASK QUESTIONS ABOUT THE SETTLEMENT. IF YOU HAVE ANY QUESTIONS, YOU MAY CONTACT THE SETTLEMENT ADMINISTRATOR AT:

[SETTLEMENT ADMINISTRATOR]

[ADDRESS]