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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF LOS ANGELES

11 GABRIEL CUEVA, an individual,

12 Plaintiff,

13 vs.

14 STRAIN BALBOA CAREGIVERS, INC., a
15 corporation; CU UP! LLC, a limited liability
16 company; and DOES 1-100, inclusive,

17 Defendants.

Case No.: 20STCV27189

NOTICE OF ENTRY OF ORDER

18 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

19 PLEASE TAKE NOTICE that, on October 5, 2022, the Court in this matter entered an
20 Order Granting the Stipulation of Settlement Under Private Attorneys General Act of 2004, a
21 true and correct copy of which is attached hereto as **Exhibit A**.

22 **DATED:** October 6, 2022

MAYALL HURLEY P.C.

23 By



24 JOHN P. BRISCOE
25 Attorney for Plaintiff,
26 GABRIEL CUEVA
27
28

EXHIBIT A

Electronically Received 09/07/2022 04:03 PM

FILED
Superior Court of California
County of Los Angeles

10/05/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: R. Duarte Deputy

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17 Attorneys for Defendants:
18 STRAIN BALBOA CAREGIVERS, INC. and
19 CU UP! LLC

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA

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28 Defendants.

Case No.: 20STCV27189

STIPULATION OF SETTLEMENT UNDER
PRIVATE ATTORNEYS GENERAL ACT OF
2004; [PROPOSED] ORDER

29 The Parties hereto, Plaintiff Gabriel Cueva ("Plaintiff") as a proxy for the Labor and
30 Workforce Development Agency ("LWDA"), and Defendant Strain Balboa Caregivers, Inc.
31 ("Defendant"), by and through their respective counsel of record, hereby stipulate and agree as

32 Stipulation of Settlement Under Private Attorneys General Act of 2004; [Proposed] Order
Page 1 of 9

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1 follows:

2 1. WHEREAS, on May 13, 2020, counsel for Plaintiff sent a letter to the LWDA and
3 Defendant alleging violations of Labor Code 226, alleged to have occurred during Plaintiff's
4 employment with Defendant, on behalf of Plaintiff and other purportedly aggrieved employees
5 ("LWDA Letter").

6 2. WHEREAS, on July 20, 2020, Plaintiff filed this action alleging both individual
7 causes of action under the Labor Code, and also a claim under the Private Attorneys General Act
8 ("PAGA", Lab. Code, § 2698, *et seq.*).

9 3. WHEREAS, subsequent to the filing of the Complaint, the Parties engaged in
10 formal discovery through which Defendant provided information regarding the number of
11 California employees believed to have been affected by the alleged violations during the relevant
12 time period. The total number of aggrieved employees potentially affected by the PAGA Claims as
13 of the date of this order is believed to be fifty (50).

14 4. WHEREAS, Defendant denies all of Plaintiff's allegations, both on factual and legal
15 bases.

16 5. WHEREAS, the Parties engaged in settlement negotiations primarily through their
17 respective attorneys: John P. Briscoe, a shareholder of Mayall Hurley P.C. and a member of that
18 firm's employment litigation group; and Jeff Katofsky of Katofsky Law, both experienced
19 litigators with knowledge of employment law and the PAGA.

20 6. WHEREAS, the Parties have reached agreement on the terms of settlement
21 regarding the PAGA claims. Plaintiff's individual claims shall be resolved by way of a separate,
22 confidential settlement agreement.

23 7. WHEREAS, Labor Code section 2699(l) requires that the court review and approve
24 any proposed settlement agreement pursuant to PAGA.

25 8. WHEREAS, Plaintiff and Plaintiff's counsel concluded—after taking into account
26 the sharply disputed factual and legal issues involved in the Action, the risks attending further
27 prosecution, the discovery and investigation conducted to date, and the substantial benefits

1 received and to be received pursuant to the compromise and settlement of the Action, the nature of
2 the claimed violations and the wide discretion of the Court to reduce civil penalties imposed—that
3 settlement on the terms herein set forth is in the best interest of all interested parties, including the
4 Labor and Workforce Development Agency (the “LWDA”), and that the settlement adequately
5 serves the deterrent purposes of the PAGA.

6 9. WHEREAS, Plaintiff and Plaintiff’s counsel have balanced their evaluation of the
7 validity and strength of the asserted claims against the problems of proof and the legal standards
8 governing the claims alleged. Plaintiff’s counsel believes the evidence demonstrates 745 violations
9 of Labor Code section 226, subdivision (a). Assuming that the Court imposed the “default” civil
10 penalty of \$100 per violation,¹ as set forth under Labor Code section 2699, subdivision (f), the
11 maximum civil penalties that could be recovered in this matter is \$74,500 (745 x 100 violations). A
12 trial court, per the PAGA, has discretion to reduce the assessed amount of civil penalties if to do
13 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory. (See
14 Lab. Code, § 2699, subd. (e)(2).) The settlement reached represents a recovery that is nearly one-
15 third of the maximum recoverable civil penalties. Based on this evaluation, Plaintiff’s counsel
16 believes that the settlement reached satisfies the public policies of PAGA to punish past violations
17 and deter future violations of the Labor Code.

18 10. WHEREAS, similarly, Defendant and Defendant’s counsel concluded there were
19 benefits associated with settling. Although Defendant denies the various allegations and
20 challenges the validity of each of the causes of action in the Action, Defendant took into account
21 the sharply disputed factual and legal issues involved in the Action, the risk attending further
22 defense, the expense, time, and burden of protracted litigation and potential appeal following a
23 judgment, and the desire to put the controversy to rest. Based on these factors, Defendant and
24 Defendant’s counsel agreed to this settlement without any admission of fault or liability. Nothing
25

26
27 ¹ See, e.g., *Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 355.

1 in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions
2 or communications, nor any materials prepared, exchanged, issued, or used during the course of the
3 negotiations leading to this Agreement, is intended by the Parties to constitute, nor will any of the
4 foregoing constitute, be introduced, be used or be admissible in any way in this case or any
5 judicial, arbitral, administrative, investigative, or other forum or proceeding as evidence of any
6 violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order,
7 or any obligation or duty at law or in equity, against Defendant or any other Released Party (as
8 defined in paragraph 13, *infra*).

9 11. WHEREAS, the parties hereby agree to settle the PAGA claims at issue in the
10 Action ("the PAGA Settlement") for a total payment of **\$22,500.00** and dismiss with prejudice the
11 First Cause of Action under the PAGA.

12 12. WHEREAS, the persons covered by the PAGA Settlement will be Plaintiff and all
13 other persons who were employed by Defendant in California at any time from May 16, 2019 to
14 the date of approval of this PAGA Settlement. The time period covered by the PAGA Settlement
15 will be from May 16, 2019 through the date of this order ("the PAGA Timeframe"). The Released
16 Parties include Defendant, its parents, predecessors, successors, related companies, subsidiaries,
17 affiliates, partners, officers, directors, managers, servants, agents, employees, former employees,
18 future employees, future entities, trusts, employment agencies and professional employer
19 organizations, and their employees, officers, agents, representatives, attorneys, past or present,
20 insurers, stockholders, fiduciaries, and other service providers, and their successors and assigns,
21 and all persons acting under, by, through, or in concert with any of them (hereinafter collectively
22 referred to as the "Released Parties").

23 13. Upon the Effective Date (the date of this stipulated order), the LWDA and each of
24 the Other Aggrieved Employees, including Plaintiff, hereby voluntarily and knowingly release and
25 forever discharge any and all claims against the Released Parties that could have been premised or
26 predicated on any claims, causes of action, or legal theories of relief described or pleaded in the
27 operative complaint filed in this action and the written notice of any such claims submitted to the

LWDA by Plaintiff under PAGA, specifically for violations of Labor Code section 226, arising from May 16, 2019 through the date of this order ("PAGA Released Claims").

14. Neither the Settlement Administrator's distribution of Individual Settlement Payment checks to, nor the use or enjoyment of any Individual Settlement Payment checks by Other Aggrieved Employees shall constitute consideration offered or exchanged for the release of any Other Aggrieved Employees or private rights of action against any person. The release shall also exclude claims for wrongful termination, unemployment insurance, social security, disability, and workers' compensation.

15. This Stipulation of Settlement shall not operate as a waiver of any of Plaintiff's individual (i.e., non-PAGA) claims, which have been resolved by a separate agreement.

16. WHEREAS, the sum of \$22,500 (the "Gross PAGA Settlement Sum") shall be allocated as follows:

- a. \$7,500, representing approximately 33 1/3% of the Gross PAGA Settlement Sum as attorneys' fees incurred for prosecution of the PAGA Claim; and
- b. \$3,362.63 for costs of suit; and
- c. \$2,000 as professional fees and costs of the Settlement Administrator, Phoenix Settlement Administrators.

The Net PAGA Settlement Amount of \$9,637.37 will be further allocated as follows:

- e. \$2,409.34, or 25 percent (25%) of the Net PAGA Settlement Sum will be distributed by Defendant to Plaintiff and the Other Aggrieved Employees who worked during the PAGA Timeframe. Each employee will receive a proportional share of the net PAGA Settlement Sum based on the number of pay periods he/she was employed during the PAGA Timeframe. Any such employees still employed with or on behalf of Defendant will receive the appropriate credit apart from their regular pay. Defendant will send each Other Aggrieved Employee their portion of the settlement by mail to the last known address. Settlement checks issued to the Other Aggrieved Employees pursuant to this Agreement shall expire 180 days from the date they are issued. Any unclaimed funds after the 180 days shall be remitted to the LWDA.
- f. \$7,228.03 or 75 percent (75%) of the Net PAGA Settlement Sum shall be paid to the LWDA in accordance with Section 2699(i) of the California Labor Code.

17. WHEREAS, on the condition that the Court approves this Stipulation and enters the

1 attached Order: the PAGA Settlement Sum will be paid as follows:

- 2
- 3 a. Within fifteen (15) calendar days after the Effective Date, Defendant shall pay
- 4 the Gross PAGA Settlement Sum to the Settlement Administrator and shall
- 5 provide the Settlement Administrator with a list of the names and last-known
- 6 addresses of the Other Aggrieved Employees. Within ten (10) calendar days of
- 7 receipt of the Gross PAGA Settlement Sum, the Settlement Administrator shall
- 8 (1) pay attorney's fees to Mayall Hurley P.C. in the amount of \$7,500 and costs
- 9 in the amount of \$3,362.63; (2) pay \$7,228.03 to the LWDA; (3) pay the
- 10 Individual Settlement Payments to the Other Aggrieved Employees; and (4)
- 11 retain \$2,000 for its fees and costs.
- 12
- 13 b. With regard to the Other Aggrieved Employees with the exception of Plaintiff,
- 14 their Individual Settlement Payments shall be sent to each Other Aggrieved
- 15 Employee by U.S. First Class mail to the Other Aggrieved Employee's last
- 16 known address. A letter explaining this Settlement Agreement will be included
- 17 in the mailing of each Other Aggrieved Employee's check. Plaintiff's payment
- 18 will be sent with the other consideration provided for resolution of his individual
- 19 claims. It will be conclusively presumed that any Other Aggrieved Employee's
- 20 check was received if the payment check has not been returned within thirty (30)
- 21 days of the original mailing of the payment check.
- 22
- 23 c. Settlement checks shall remain valid and negotiable for one hundred twenty
- 24 (120) calendar days from the date of their issuance. If there are uncashed checks
- 25 following this period, Defendant will ensure that uncashed funds shall be
- 26 forwarded to the LWDA in the name of the Other Aggrieved Employee who did
- 27 not cash his or her Individual Settlement Payment, if practicable.
- 28
- 29 d. The settlement payments set forth above will be reported on IRS Form 1099s.
- 30 The Parties acknowledge and agree that all settlement payments set forth under
- 31 this Agreement are attributable as penalties. None are attributable as wages.
- 32 Accordingly, the parties acknowledge and agree that Defendant is not
- 33 responsible for any employer-side taxes in connection with any PAGA
- 34 settlement payments under this Agreement. Plaintiff, Mayall Hurley P.C., and
- 35 the Other Aggrieved Employees shall be solely responsible for the reporting and
- 36 payment of their share of any federal, state and/or municipal income or other
- 37 taxes on payments made pursuant to this Agreement, and shall hold Defendant
- 38 and Defendant's counsel free and harmless from any claims resulting from
- 39 treatment of such payments as non-taxable, including the treatment of such
- 40 payments as not subject to withholding or deduction for payroll and employment
- 41 taxes. No party has made any representation to any of the other Parties as to the
- 42 taxability of any payments pursuant to this agreement, including the payments to
- 43 Plaintiff and the Other Aggrieved Employees, the payments to Plaintiff's
- 44 counsel, or otherwise as to the tax implications of any provision of this
- 45 Agreement.

1
2 18. The Parties jointly request that the Court approve the penalties sought as part of the
3 PAGA Settlement and approve the dismissal of the PAGA claims in the Complaint attendant
4 therewith.

5 19. This Stipulation is made for the sole purpose of settling this Action. This
6 Stipulation and the settlement it evidences are made in compromise of disputed claims. Because
7 this action was pleaded as a PAGA action, this Stipulation must receive approval by the Court.
8 Accordingly, the Parties enter into this Stipulation and associated settlement on a conditional basis.
9 If the Court does not enter an order granting approval of this Stipulation, this Stipulation shall be
10 deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or
11 utilized for any purpose whatsoever; and the negotiation, terms and entry of the Stipulation shall
12 remain subject to the provisions of California Evidence Code sections 1119 and 1152, Federal Rule
13 of Evidence 408, and any other analogous rules of evidence that may be applicable. If the Court
14 does enter an order granting approval of this Stipulation, the Parties shall file a Request for
15 Dismissal which includes a dismissal of the PAGA claims in the Complaint.

16 20. The Parties and their counsel agree that they will not issue any press releases,
17 initiate any contact with the press, respond to any press inquiry or have any communication with
18 the press about the fact, amount or terms of this Stipulation. In addition, the Parties and their
19 counsel agree that they will not engage in any advertising or distribute any marketing materials
20 relating to this Stipulation or this action in any manner that identifies Defendant, including but not
21 limited to any postings on any websites maintained by Plaintiff's counsel. Neither Plaintiff nor
22 Plaintiff's Counsel will discuss the terms or the fact of this Agreement with third parties other than
23 (1) their immediate family members, or (2) their respective accountants or lawyers as necessary for
24 tax purposes. Plaintiff and Plaintiff's Counsel agree not to publish any of the terms or conditions
25 of this Stipulation in any manner that identifies Defendant.

26 21. Plaintiff's attorney has calculated the attorneys' fees included in paragraph 16. The
27 Parties agree that if the Court approves an amount of attorneys' fees less than the amount set forth

1 in Paragraph 16, the unapproved portion shall revert to the Net PAGA Settlement Amount to be
2 distributed between the Plaintiff, the Other Aggrieved Employees and the LWDA in the same
3 percentages as set forth in Paragraph 16.

4 IT IS SO STIPULATED.

5 PLAINTIFF AND PLAINTIFF'S COUNSEL

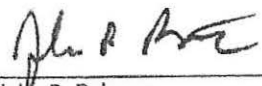
6
7 DATED: 8/3/2022

DocuSigned by:

620230925611484
Plaintiff Gabriel Cueva

9
10 DATED: 8/3/2022

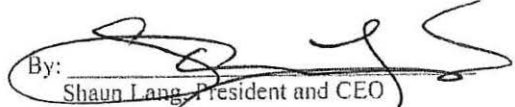
MAYALL HURLEY P.C.

11
12 By: 
13 John P. Briscoe
14 Attorneys for Plaintiff

15 DEFENDANT AND DEFENDANT'S COUNSEL

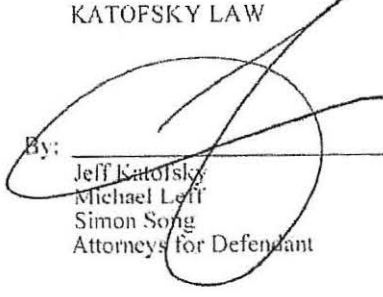
16 Strain Balboa Caregivers, Inc.

17
18 DATED: 8/5/22

19 By: 
Shaun Lang, President and CEO

20
21 DATED: 4 Aug 22

KATOFSKY LAW

22
23 By: 
24 Jeff Katofsky
25 Michael Leff
26 Simon Song
Attorneys for Defendant

Case No. 20STCV27189

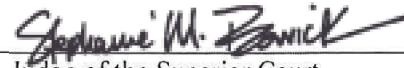
ORDER

Upon review of the foregoing stipulation entered into by and between the parties in the above-referenced action, and good cause appearing therefor,

IT IS HEREBY ORDERED that the foregoing stipulation is hereby approved and the Court approves the Parties' PAGA Settlement pursuant to Labor Code § 2699(l). The parties are ordered to perform their respective duties as stipulated thereto.

A hearing on Order to Show Cause Re: Dismissal of the action is set for January 5, 2023, at 8:30 a.m. Counsel for Plaintiff to give notice.

DATED: 10/05/2022



Judge of the Superior Court
Stephanie M. Bowick

PROOF OF SERVICE

I, the undersigned, certify and declare as follows:

I am over the age of eighteen years and not a party to this action. My business address is 2453 Grand Canal Boulevard, Stockton, California 95207 that is located in the county where the mailing and/or delivery below took place.

On October 6, 2022, I served the following document:

NOTICE OF ENTRY OF ORDER

addressed to:

Jeff Katofsky
Michael Leff
Simon Song
LAW OFFICE OF JEFF KATOFSKY
4558 Sherman Oaks Avenue
Sherman Oaks, CA 91403
jeff@katofskylaw.com
michael@katofskylaw.com
simon@katofskylaw.com

Department of Industrial Relations
Private Attorneys General Act (PAGA) Filing

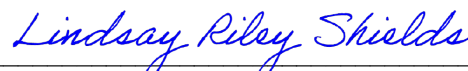
Filed online via:
<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

☐ **BUSINESS PRACTICE TO ENTRUST DEPOSIT TO OTHERS:** I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On the date specified below, at my place of business at Stockton, California a copy of the document described above was placed for deposit in the United States Postal Service in a sealed envelope, with postage fully prepaid addressed to the individuals and/or entities mentioned above; and that envelope was placed for collection and mailing on that date following ordinary business practice.

☒ **BY EMAIL:** In accordance with Code of Civil Procedure, Section 1010.6, on the date specified below, I caused a copy of the document(s) described above to be sent to the person(s) at the e-mail address(es) listed above. My business e-mail address is lriley@mayallaw.com. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on October 6, 2022, at Lodi, California.


LINDSAY RILEY SHIELDS