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 MILE SQUARE SURGERY CENTER, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF ORANGE – CENTRAL JUSTICE CENTER**

LINDA LE, on behalf of herself and all others
 similarly situated,

Plaintiffs,

vs.

MILE SQUARE SURGERY CENTER, INC.;
 and DOES 1 to 10,

Defendants.

Case No.: 30-2020-01140872-CU-OE-CXC

CLASS ACTION

**JOINT STIPULATION OF CLASS
 ACTION SETTLEMENT AND
 RELEASE OF CLAIMS**

*[Assigned for All Purposes to the Hon.
 James J. Di Cesare, Dept. C16]*

Complaint Filed: May 26, 2020
 FAC Filed: July 13, 2020
 Trial Date: Not Yet Set

This Joint Stipulation of Class Action Settlement and Release of Claims ("Settlement" or
 "Agreement") is made and entered into by and between Plaintiff LINDA LE ("Plaintiff" or "Class

Representative”), individually and on behalf of all putative class members, and Defendant MILE SQUARE SURGERY CENTER, INC. (“Defendant”). Plaintiff and Defendant are collectively referred to herein as “the Parties.”

I. DEFINITIONS

The following definitions are applicable to this Settlement, in addition to other terms defined elsewhere in this Settlement:

1. “Superior Court” shall mean the Superior Court of California for the County of Orange.

2. The “Action” shall mean the operative Complaint of the civil action commenced on May 26, 2020, filed and maintained by Plaintiff against Defendant in the Superior Court of California, County of Orange, Case No. 30-2020-01140872-CU-OE-CXC.

3. The “Class Period” shall mean the period of time from May 26, 2016, through the earlier of the date of Preliminary Approval or through July 12, 2021 (i.e., 90 days from the Parties’ mediation on April 13, 2021).

4. “Class” shall mean all persons who, during the Class Period, have previously been or currently are employed in California by Defendant, as an hourly-paid, non-exempt employee. “Class Member” shall mean an individual who is a member of the Class (or if any such person is incompetent, deceased, or unavailable due to military service, the person’s legal representative or successor in interest evidenced by reasonable verification).

5. “Class Counsel” shall mean the attorneys representing Plaintiff in the Action, Thomas Rist, Esq. of Rist Law Office, LC and Brad Nakase, Esq. of Nakase Law Firm, Inc.

6. “Defense Counsel” shall mean the attorneys representing Defendant in the Action, Matthew C. Sgnilek, Esq. and Andrea Rosenkranz, Esq. of O’Hagan Meyer.

7. “Non-Participating Class Member” shall mean a Class Member who submits a complete, valid, and timely request to be excluded from the Settlement pursuant to the instructions provided in the Class Notice.

8. The “PAGA Period” shall mean the period of time from May 26, 2019, through July 12, 2021 (i.e., 90 days from the Parties’ mediation on April 13, 2021).

1 9. The “PAGA Group” shall mean all persons who, during the PAGA Period, have
2 previously been or currently are employed in California by Defendant, as an hourly-paid, non-
3 exempt employee. “PAGA Group Member” shall mean an individual who is a member of the
4 PAGA Group (or if any such person is incompetent, deceased, or unavailable due to military
5 service, the person’s legal representative or successor in interest evidenced by reasonable
6 verification).

7 10. “Participating Class Member” shall mean all Class Members who have not submitted
8 a complete, valid, and timely request to be excluded from the Settlement pursuant to the instructions
9 provided in the Class Notice.

10 11. “Preliminary Approval” shall mean the Superior Court’s preliminary approval of the
11 Settlement without material change that the Parties anticipate will be made following submission of
12 this Agreement to the Court.

13 12. “Settlement Administrator” shall mean Phoenix Settlement Administrators proposed
14 by the Parties and appointed by the Superior Court to administer the Settlement.

15 13. “Class Counsel Fees Payment” shall mean Fifty Thousand Dollars and Zero Cents
16 (\$50,000.00) subject to approval by the Superior Court as Class Counsel’s attorneys’ fees incurred
17 in connection with the Action, including fees incurred in pre-filing investigation, filing of the
18 Action, and all related litigation activities, this Settlement, and all post-Settlement compliance
19 procedures.

20 14. “Class Counsel Litigation Expenses Payment” shall mean the actual litigation
21 expenses and/or costs expended by Class Counsel subject to approval by the Superior Court
22 incurred in connection with the Action, including pre-filing investigation, filing of the Action, and
23 all related litigation activities, this Settlement, and all post-Settlement compliance procedures. Class
24 Counsel’s expenses are not to exceed Fourteen Thousand Dollars and Zero Cents (\$14,000.00).

25 15. “Class Representative Payment” shall mean the special payment made to Plaintiff in
26 her capacity as Class Representative to compensate her for prosecuting the Action, and performing
27 work in support of the Action, in the amount of Five Thousand Dollars and Zero Cents (\$5,000.00),
28 subject to approval by the Superior Court.

1 16. “LWDA Payment” shall mean the payment to the California Labor and Workforce
2 Development Agency (“LWDA”) constituting seventy-five percent (75%) of the value assigned to
3 the claim for penalties under the California Labor Code Private Attorneys General Act, California
4 Labor Code Section 2698, *et seq.* (“PAGA”). Specifically, Three Thousand, Seven Hundred and
5 Fifty Dollars and Zero Cents (\$3,750.00), which shall constitute the LWDA’s seventy-five percent
6 (75%) share of Five Thousand Dollars and Zero Cents (\$5,000.00) in civil penalties paid under this
7 Settlement. The remaining One Thousand, Two Hundred and Fifty Dollars and Zero Cents
8 (\$1,250.00) in civil penalties shall be distributed on a *pro rata* basis based upon the number of pay
9 periods worked by each PAGA Group Member (“PAGA Payment”).

10 17. “Settlement Administrator Payment” shall mean the payment to the Settlement
11 Administrator for its fees and expenses in administering this Settlement.

12 18. “Workweek” shall mean any week in which a Class Member actually performed paid
13 work for Defendant during the Class Period as an hourly-paid, non-exempt employee.

14 19. “Individual Workweeks” shall mean the number of Workweeks for an individual
15 Class Member.

16 20. “Pay Period” shall mean any pay period in which a Class Member actually received
17 payment from Defendant as an hourly-paid, non-exempt employee.

18 21. “Individual Pay Periods” shall mean the number of Pay Periods for an individual
19 PAGA Group Member.

20 22. “Settlement Share” shall mean the value of each Participating Class Member’s share
21 of the Net Settlement Amount as provided by this Agreement.

22 23. “PAGA Payment Share” shall mean the value of each PAGA Group Member’s share
23 of the PAGA Payment as provided by this Agreement.

24 24. “Maximum Settlement Amount” shall mean the maximum settlement amount of One
25 Hundred and Fifty Thousand Dollars and Zero Cents (\$150,000.00) payable by Defendant as
26 provided by this Agreement.

27 25. Defendant represent that as of April 12, 2021, the number of Workweeks in the
28 Class Period is approximately 1,924. Should the number of Workweeks as of the earlier of the

1 date of Preliminary Approval or July 12, 2021 (i.e., 90 days from the Parties' mediation on April
2 13, 2021) increase by 10% or more (i.e., to more than 2,117 Workweeks), the Net Settlement
3 Amount shall increase by the same number of percentage points above 10% as the actual number of
4 Workweeks above 1,924. For example, if as of the earlier of the date of Preliminary Approval or
5 July 12, 2021 (i.e., 90 days from the Parties' mediation on April 13, 2021) the number of
6 Workweeks during the Class Period is 2,155 (i.e., 12% above 1,924), then the Net Settlement
7 Amount shall increase by 2% (i.e., to approximately \$73,440.00).

8 26. "Net Settlement Amount" shall mean the Maximum Settlement Amount, less (i) the
9 Class Representative Payment approved by the Superior Court; (ii) the Class Counsel Fees Payment
10 approved by the Superior Court; (iii) the Class Counsel Litigation Expenses Payment approved by
11 the Superior Court; (iv) the LWDA Payment approved by the Superior Court; (v) the PAGA
12 Payment approved by the Superior Court; (vi) the Settlement Administrator Payment approved by
13 the Superior Court; and (vii) any other fees or expenses (other than Class Counsel Fees Payment
14 and Class Counsel Litigation Expenses Payment) incurred in implementing the terms and conditions
15 of this Agreement as approved by the Superior Court.

16 27. "Class Notice" shall mean the Notice of Proposed Settlement, Preliminary Approval
17 of Settlement, and Hearing Date for Final Court Approval, a sample of which is attached hereto as
18 **Exhibit A**. The Class Notice shall further contain (i) a Class Member's first and last name, (ii) last
19 known address, (iii) last four digits of their social security number, (iv) employee identification
20 number, if applicable, (v) the Class Member's Individual Workweeks, (vi) the PAGA Group
21 Member's Individual Pay Periods, if applicable; (vi) the Class Member's estimated amount of the
22 Settlement Share; and (vii) the PAGA Group Member's estimated PAGA Payment Share, if
23 applicable. The Class Notice shall also provide the Class Members with instructions on how to opt-
24 out of and/or object to the Settlement.

25 28. "Effective Date" shall mean the date by which this Settlement is approved by the
26 Superior Court by entry of the Judgment and the Judgment becomes Final. The Judgment becomes
27 "Final" when the later of the following events occurs: (i) If Stipulated Class Members have not filed
28 objections, or if they have filed objections and said objections have been withdrawn, entry of the

1 Final Judgment in this Action after the Court has granted Final Approval of the Settlement, and a
2 file stamped copy of the Final Judgment with a proof of service has been served on all Parties by
3 Class Counsel; or (ii) if Stipulated Class Members have filed objections that have not been
4 withdrawn, either (a) the time to appeal, object or attack the Court's entry of Final Judgment has
5 expired and there has been no appeal, objection or attack or (b) The court of last resort to which any
6 appeal is taken has affirmed its entry of Final Judgment in its entirety or the Stipulated Class
7 Members has presented a petition for review and the affirmance is no longer subject to further
8 appeal or review, and no further challenge to the entry of Final Judgment is possible. The
9 occurrence of the Effective Date is a prerequisite to any obligation of Defendant to pay any funds
10 into the Settlement Account.

11 29. "Final Approval Hearing" shall mean the hearing to be conducted by the Superior
12 Court to determine whether to finally approve and implement the terms of this Settlement.

13 30. "Judgment" shall mean the Order of Final Judgment entered by the Superior Court
14 that the Parties anticipate will be entered following a Final Approval Hearing on the Settlement in
15 this Action.

16 **II. RECITALS**

17 31. On May 26, 2020, Plaintiff commenced the Action against Defendant by filing a
18 Complaint in the Superior Court. In the Complaint, Plaintiff, on behalf of herself and all others
19 similarly situated alleged causes of action for: (1) Failure to Provide Meal Periods or Compensation
20 in Lieu Thereof; (2) Failure to Provide Rest Periods or Compensation in Lieu Thereof; (3) Failure to
21 Timely Pay Final Wages; (4) Failure to Provide Accurate Itemized Wage Statements; and (5)
22 Violation of Business and Professions Code § 17200, *et seq.* On July 13, 2020, Plaintiff amended
23 her Complaint to add a cause of action Civil Penalties pursuant to Labor Code § 2699, *et seq.*
24 Based on these allegations, Plaintiff alleged that she and all others similarly situated were entitled to
25 statutory penalties, civil penalties, attorneys' fees, and costs of litigation, among other remedies.

26 32. Defendant denies and continues to deny all of Plaintiff's material allegations.
27 Specifically, Defendant contends (1) it provided the Class with all meal periods according to law;
28 (2) it provided the Class with all rest periods according to law; (3) it did not fail to timely pay the

1 Class wages due and owing upon separation; (4) it provided the Class with accurate itemized wage
2 statements, consistent with Labor Code Section 226; (5) it properly maintained all payroll records;
3 (6) it did not violate Business & Professions Code Section 17200, *et seq.*; (7) the PAGA Group is
4 not entitled to penalties under PAGA; and (8) Defendant are not liable for damages, including
5 statutory penalties, attorneys' fees, or costs of litigation to the Class.

6 33. In connection with the Action, and in order to work toward a mediated resolution
7 without the time and expense of formal discovery, the Parties produced voluminous documents and
8 data (including, by Defendant, human resources documents and policies, time records, and payroll
9 data during the Class Period) which were reviewed, investigated, and analyzed by Class Counsel.

10 34. On April 13, 2021, the Parties to the Action participated in a full day of mediation
11 before an experienced employment and class action mediator, Steve Rottman, Esq., which resulted
12 in a settlement of the Action (the "Mediation").

13 35. The Settlement described in this Agreement represents a compromise and settlement
14 of highly disputed claims. Nothing in this Settlement is intended or will be construed as an
15 admission by Defendant that Plaintiff's claims in the Action have any merit or that it has any
16 liability to Plaintiff, the Class, the PAGA Group or the State on those claims, or as an admission by
17 Plaintiff that Defendant's defenses in the Action have any merit. This Settlement is intended to
18 fully, finally, and forever compromise, release, resolve, discharge, and settle the released claims
19 subject to the terms and conditions set forth in this Settlement.

20 36. Based on its own thorough, independent investigation and evaluation of this case,
21 Class Counsel is of the opinion that the Settlement of this Action with Defendant for the
22 consideration and on the terms set forth in this Settlement is fair, reasonable, adequate, and in the
23 best interest of the Class in light of all known facts and circumstances, including the risk of
24 significant costs and delay, the risk of non-certification of the Class, the defenses asserted by
25 Defendant including the risks of adverse determinations on the merits and numerous potential
26 appellate issues. Although Defendant contends that it has no liability in the Action, Defense
27 Counsel shares Class Counsel's belief that the Settlement represents a fair and adequate settlement
28 given the respective risks associated with the case.

37. Based on the foregoing Recitals, the Parties agree as follows:

III. PROCEDURE FOR APPROVING SETTLEMENT

38. **Motion for Preliminary Approval of Settlement by the Superior Court.** Plaintiff will move the Superior Court for an order granting Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing no earlier than 120 days from the date of the order granting Preliminary Approval of the Settlement, and approving the Class Notice (attached as **Exhibit A** to this Stipulation) ("Motion for Preliminary Approval"). Defendant will not oppose the motion, provided it is consistent with this Agreement. Any unresolved disagreement among the Parties concerning the Class Notice or other documents necessary to implement the Settlement will be referred first to Steve Rottman, Esq., and if no resolution is reached, then to the Superior Court.

39. At the hearing on the Motion for Preliminary Approval, the Parties anticipate that they will jointly appear, support the granting of the Motion for Preliminary Approval, and obtain an order granting Preliminary Approval, granting approval of the Class Notice, and set a date for the Final Approval Hearing no earlier than 120 days from the date of the order granting Preliminary Approval.

40. Should the Superior Court require any amendments to this Agreement or the Motion for Preliminary Approval, the Parties agree to work jointly to resolve any issues in order to secure the Superior Court's Preliminary Approval.

41. Should the Superior Court decline to preliminarily approve any material aspects of the Settlement, the Settlement will be null and void and the Parties will have no further obligations under it. In such event, the Parties shall be returned to their respective positions as of the date and time immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement had not been executed.

42. **Class Notice.** After the Superior Court enters its order granting Preliminary Approval, every Class Member will be provided with the Class Notice (in English and Spanish) which will include the Class Notice completed to reflect the order granting Preliminary Approval of the Settlement and the Class Member's information as follows:

(a) Within fourteen (14) days after the Motion for Preliminary Approval is

1 granted, Defendant will provide to the Settlement Administrator the “Class Members’ Data,” which
2 shall consist of an electronic database containing (i) each Class Member’s first and last name, (ii)
3 each Class Member’s last known mailing address, (ii) the Class Member’s Social Security number
4 or Tax ID, (iii) the Class Member’s employee identification number, if applicable, based on
5 Defendant’s payroll records, (iv) the Class Member’s total number of Individual Workweeks, and
6 (v) the PAGA Group Members’ total number of Individual Pay Periods. If any or all of the Class
7 Members’ Data are unavailable to Defendant, Defendant will so inform Class Counsel prior to the
8 date on which Defendant are required to submit the Class Members’ Data to the Settlement
9 Administrator and the Parties will make their best efforts to reconstruct or otherwise agree upon the
10 Class Members’ Data prior to when it must be submitted to the Settlement Administrator. If the
11 Parties are unable to agree, the dispute will be resolved by the Settlement Administrator as provided
12 in Paragraph 45. This information will otherwise remain confidential and will not be disclosed to
13 anyone, except as required to applicable taxing authorities, as required to carry out the reasonable
14 efforts to identify Class Member information as described in this Paragraph 43(c), pursuant to
15 Defendant’s express written authorization, or by order of the Superior Court.

16 (b) Within seven (7) days after receiving the Class Members’ Data, or as soon
17 thereafter as it is able to do so, the Settlement Administrator will mail the Class Notice to all
18 identified Class Members via first-class U.S. Mail using the mailing address information provided
19 by Defendant, unless modified by any updated address information that the Settlement
20 Administrator obtains in the course of administration of the Settlement.

21 (c) If a Class Notice is returned by the U.S. Postal Service because of an
22 incorrect address, the Settlement Administrator will promptly, and not later than five (5) days from
23 receipt of the returned packet, search for a more current address for the Class Member and re-mail
24 the Class Notice to the Class Member. The Settlement Administrator will use the Class Members’
25 Data and otherwise work with Defense Counsel or utilize its own resources such as skip traces to
26 find a more current address. The Settlement Administrator will be responsible for taking reasonable
27 steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing
28 address of any Class Member for whom a Class Notice is returned by the U.S. Postal Service.

1 These reasonable steps shall include the tracking of all undelivered mail; performing address
2 searches for all mail returned without a forwarding address; and promptly re-mailing to Class
3 Members for whom new addresses are found. Any such Class Members who failed to receive a
4 Class Notice, or who were subject to a re-mailing of the Class Notice as described herein shall be
5 given an additional fourteen (14) days to opt out or object to the Settlement.

6 (d) The Settlement Administrator will inform Class Counsel and Defense
7 Counsel of the number of returned Class Notices it receives and Class Notices re-mailed in a
8 weekly status report.

9 (e) Not later than ten (10) court days prior to the Final Approval Hearing, the
10 Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its
11 compliance with its obligations under this Settlement. The declaration will be filed with the papers
12 submitted with the Motion for Final Approval. Prior to the Final Approval Hearing, the Settlement
13 Administrator will supplement its declaration of due diligence if any material changes occur from
14 the date of the filing of its prior declaration.

15 43. **Participating Class Members; Requests for Exclusion from Class Settlement;**
16 **and Objections to Settlement.** Class Members may submit requests to be excluded from the effect
17 of the Settlement; or objections to the Settlement, pursuant to the following procedures:

18 (a) **Participating Class Members.** Each Class Member shall be deemed to be a
19 Participating Class Member unless they submit a complete, timely, and valid request to be excluded
20 from the effect of the Settlement as provided below. All Participating Class Members shall be
21 bound by the provisions and releases contained in this Settlement.

22 (b) **Request for Exclusion from Settlement.** Class Members who wish to
23 exclude themselves from the Settlement (“opt out” of the Settlement) must submit to the Settlement
24 Administrator, not later than forty-five (45) days after the date that the Settlement Administrator
25 first mails the Class Notices, an Exclusion Request (“the Exclusion Period”). Exclusion Requests
26 may be submitted to the Settlement Administrator via U.S. Mail only. Class Members must
27 complete, sign, date, and timely return an Exclusion Request to the Settlement Administrator to
28 exclude themselves from the Settlement, setting forth their (i) name, (ii) address, (iii) last four digits

1 of their Social Security number, and (iv) the following statement or a similar statement: “I wish to
2 exclude myself from the settlement reached in the matter of *Le v. Mile Square Surgery Center, Inc.*
3 I understand that by excluding myself, I will not receive any money from the Class settlement
4 reached in this matter.” A Class Member who does not complete and submit a valid and timely
5 Exclusion Request in the manner and by the deadline specified above will remain a Participating
6 Class Member and, if the Court approves the Settlement, will be bound by all terms and conditions
7 of the Settlement and by the Judgment. A Class Member who timely submits a valid Exclusion
8 Request will not participate in, or be bound by, the Settlement of the Judgment and will not receive
9 any payment pursuant to the Settlement except for a payment from the portion of the PAGA
10 Payment to the PAGA Group if the Class Member is a PAGA Group Member, and will not be
11 bound by the terms of the Settlement, except for the release of the PAGA Group Released Claims if
12 the Class Member is a PAGA Group Member, and will not have any right to object, appeal, or
13 comment thereon. To be valid, Exclusion Requests must be completed in full, signed, and returned
14 to the Settlement Administrator before the expiration of the Exclusion Period. Non-Participating
15 Class Members will not be permitted to file objections to the Settlement and/or appear at the Final
16 Approval Hearing to voice any objections to the Settlement. Members of the PAGA Group cannot
17 seek to exclude themselves from the Settlement of the PAGA claim, but retain all rights to exclude
18 themselves from the Class Settlement as delineated herein. The Settlement Administrator will
19 provide Class Counsel, Defense Counsel, and the Superior Court with the names of the Non-
20 Participating Class Members.

21 (c) **Objections to Settlement.** The Class Notice will provide that any Class
22 Member who does not request exclusion from the Settlement and who wishes to object to the
23 Settlement must serve on the Settlement Administrator, not later than forty-five (45) days after the
24 Settlement Administrator initially mails the Class Notice, a written objection to the Settlement
25 which sets forth the grounds for the objection and the other information required by Paragraph
26 43(d). The objection must be served as follows:

27
28 *Le v. Mile Square Surgery Center, Inc.*

1 c/o _____

2 _____

3 _____

4

5 (d) The written objection must state the Class Member's (i) name, (ii) address,

6 (iii) last four digits of their Social Security number, and (iv) the dates of the Class Member's

7 employment with Defendant. The written objection must state the basis for each objection in clear

8 and concise terms. The written objection shall also state whether the Class Member intends to

9 appear and object at the Final Approval Hearing. A Class Member who does not serve a written

10 objection in the manner and by the deadline specified may appear at the Final Approval Hearing to

11 state their objection to the Settlement. If a Class Member fails to submit a written objection or to

12 appear at the Final Approval hearing to make an oral objection, the Class Member will be deemed

13 to have waived all objections and will be foreclosed from making any objections – whether by

14 appeal or otherwise – to the Settlement.

15 (e) If the Superior Court rejects the Class Member's objection, or if the Superior

16 Court approves the settlement despite any objections, the Class Member will be deemed to be a

17 Participating Class Member and will be bound by the terms of this Settlement.

18 (f) A Class Member who timely submits a valid Exclusion Request will not

19 participate in, or be bound by, the Settlement of the Judgment and will not receive any payment

20 pursuant to the Settlement except for a payment from the portion of the PAGA Payment to the

21 PAGA Group if the Class Member is a PAGA Group Member, and will not be bound by the terms

22 of the Settlement and Judgment, except for the release of the PAGA Group Released Claims if the

23 Class Member is a PAGA Group Member, and will not have any right to object, appeal, or

24 comment thereon.

25 (g) If a Class Member submits both an Exclusion Request and objects, the

26 Exclusion Request will control, and the objection will be disregarded.

27 44. **Report.** Not later than seven (7) days after the deadline for submission of requests

28 to be excluded and/or objections, the Settlement Administrator will provide Defendant, through

1 Defense Counsel, with a complete and accurate list of names for all Participating Class Members,
2 all Non-Participating Class Members, all PAGA Group members, and all Class Members who
3 objected to the settlement. The report shall also be accompanied by an itemized calculation of the
4 Settlement Shares for each Participating Class Member. The Settlement Administrator shall also
5 provide both Parties with a report identifying the number of Participating Class Members, the
6 number of Non-Participating Class Members, the number of PAGA Group members, and the
7 number of Class Members who submitted a valid, timely, and complete objection. Class Counsel
8 shall also receive a list of Class Members who object to the Settlement.

9 **45. Resolution of Class Member and PAGA Group Member Disputes.** If a Class
10 Member and/or PAGA Group Member disputes the number of her or her Individual Workweeks
11 and/or Individual Pay Periods stated in their Class Notice, the Class Member and/or PAGA Group
12 Member must, within forty-five (45) days after the Settlement Administrator initially mails the
13 Class Notice, ask the Settlement Administrator to resolve the matter by returning the Class Notice
14 with a statement of the number of Workweeks and/or Pay Periods that she or she contends were
15 worked and include any documentation the Class Member and/or PAGA Group Member has to
16 support their contention. The Settlement Administrator shall notify Defendant of the dispute and
17 provide them with a copy of the Class Notice and any documentation received in support of the
18 dispute within three (3) court days of receipt thereof. Defendant shall review their payroll and
19 personnel records and verify the correct number of Workweeks and/or Pay Periods within five (5)
20 court days of the Settlement Administrator's notification. Defendant's records will have a
21 rebuttable presumption of accuracy. After consultation with Class Counsel, Defense Counsel, and
22 the applicable Class Member and/or PAGA Group Member, the Settlement Administrator will,
23 within three (3) court days of Defendant's verification, make a determination of the Class Member's
24 and/or PAGA Group Member's number of Workweeks and/or Pay Periods and that determination
25 will be final, binding on the Parties and the Class Member and/or PAGA Group Member, and is not
26 appealable.

27 **46. No Solicitation of Objection; Right to Void.** Neither the Parties, nor their
28 respective counsel, will directly or indirectly solicit or otherwise encourage any Class Member to

1 exclude her or herself from the Settlement, object to the Settlement, and/or appeal from the
2 Judgment. If ten percent (10%) or more of the Class Members submit a complete, valid, and timely
3 request to be excluded from the Settlement and are deemed to be Non-Participating Class Members,
4 then Defendant shall have the unilateral right to void this Settlement. Defendant may do so by
5 giving notice to Plaintiff and the Court of its election to void the Settlement not later than fourteen
6 (14) days after the Settlement Administrator issues its report identifying the number of Participating
7 Class Members, the number of Non-Participating Class Members, and the number of Class
8 Members who objected to the settlement as described in Paragraph 43(c). Notwithstanding any
9 other provisions in this Settlement, no sums shall be payable by Defendant in the event that this
10 Settlement is voided as provided for herein.

11 **47. Additional Briefing and Final Approval.**

12 (a) Not later than sixteen (16) court days before the Final Approval Hearing, the
13 Plaintiff will prepare and file with the Superior Court a Motion for Final Approval of the Settlement
14 (“Motion for Final Approval”). The Motion for Final Approval will include a request for awards of
15 the Class Representative Payment, Class Counsel Fees Payment, and Class Counsel Litigation
16 Expenses Payment. Plaintiff will seek fees pursuant to *Laffitte v. Robert Half Intern., Inc.* (2016) 1
17 Cal. 5th 480, 503. Plaintiff will not seek additional fees from Defendant or an increase in the
18 Maximum Settlement Amount as part of the Motion for Final Approval for awards of the Class
19 Representative Payment, Class Counsel Fees Payment, and the Class Counsel Litigation Expenses
20 Payment. Defendant will not oppose the motion, provided it is consistent with this Agreement.

21 (b) Not later than five (5) court days before the Final Approval Hearing, the
22 Parties shall be entitled to file and serve a response to any Class Member’s objection to the
23 Settlement and/or reply in support of their Motion for Final Approval, to the extent that any
24 opposition to said Motion is filed. Plaintiff and Class Counsel may file a reply in support of their
25 Motion for Awards of the Class Representative Payment, Class Counsel Fees Payment, and the
26 Class Counsel Litigation Expenses Payment, to the extent that any opposition to said Motion is
27 filed.

28 (c) If the Superior Court ultimately does not grant final approval of the

1 Settlement or grants final approval conditioned on any material change to the Settlement that is not
2 agreed to by one of the Parties, then either Party will have the right to void the Settlement. If the
3 Settlement is voided in this manner, the Parties will have no further obligations under the
4 Settlement, including any obligation by Defendant to pay any amounts that otherwise would have
5 been payable under this Settlement, except that the voiding Party will pay the Settlement
6 Administrator's reasonable fees and expenses incurred as of the date that the Party exercises the
7 right to void the Settlement under this paragraph. For the purposes of this paragraph, a "material
8 change" is a change to the terms outlined in the accepted Memorandum of Understanding, a copy of
9 which is attached hereto as **Exhibit B**. However, an award by the Superior Court of a lesser amount
10 than that sought by Plaintiff and Class Counsel for the Class Representative Payment, the Class
11 Counsel Fees Payment, and/or the Class Counsel Litigation Expenses Payment, will not constitute a
12 material change to the Settlement within the meaning of this paragraph.

13 (d) Upon final approval of the Settlement by the Superior Court at or after the
14 Final Approval Hearing, Plaintiff will present for the Superior Court's approval and entry a
15 Proposed Final Order and Judgment. The entry of the Final Order and Judgment shall permanently
16 bar all Participating Class Members from prosecuting against Defendant any claims or causes of
17 action of any kind up through the date of Final Approval, which were or could have been brought in
18 this Action, whether known or unknown, as well as all claims as set forth in the Release contained
19 in Section V of this Agreement.

20 (e) After entry of the Judgment, the Superior Court will have continuing
21 jurisdiction over the Action and the Settlement solely for purposes of (i) enforcing this Settlement,
22 (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as
23 may be appropriate under court rules or applicable law.

24 48. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms
25 and conditions of this Settlement, Plaintiff, Participating Class Members, Defendant, and their
26 respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights
27 to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a
28 motion for new trial, a motion under Code of Civil Procedure Section 473, and any extraordinary

1 writ, and the Judgment therefore will become non-appealable by them at the time it is entered. The
2 waiver of appeal does not include any waiver of the right to oppose any appeal, appellate
3 proceedings, or post-judgment proceedings. If an appeal is taken from the Judgment, the time for
4 consummation of the Settlement (including making payments under the Settlement) will be
5 suspended until such time as the appeal is finally resolved and the Judgment, consistent with the
6 terms of this Settlement, becomes Final.

7 **49. Vacating, Reversal, or Material Modification of Judgment on Appeal or**
8 **Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other
9 motion, petition, writ, or application, the reviewing court vacates, reverses, or modifies the
10 Judgment such that there is a material modification to the Settlement, and that court's decision is
11 not completely reversed and the Judgment is not fully affirmed on review by a higher court, then
12 either Party will have the right to void the Settlement, which the Party must do by giving written
13 notice to the other Parties, the reviewing court, and the Superior Court, not later than fourteen (14)
14 days after the reviewing court's decision vacating, reversing, or materially modifying the Judgment
15 becomes final. For the purposes of this paragraph, a "material change" is a change to the terms
16 outlined in the accepted Memorandum of Understanding, a copy of which is attached hereto as
17 **Exhibit B.** A vacation, reversal, or modification of the Superior Court's award of the Class
18 Representative Payment, the Class Counsel Fees Payment, and/or Class Counsel Litigation
19 Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment
20 within the meaning of this paragraph.

21 **50. Establishment of Settlement Account.** The Settlement Administrator shall
22 establish a Settlement Account within ten (10) days of the Effective Date and notify the Parties
23 when the Settlement Account has been established. The Settlement Administrator shall also
24 provide Defendant with an itemized statement for the total amount to be deposited into the
25 Settlement Account, which shall equal the Maximum Settlement Amount ("Settlement Account
26 Deposit"). Within ten (10) days after receiving notification of the Settlement Account and
27 statement for the Settlement Account Deposit, Defendant shall pay into the Settlement Account an
28 amount equal to the Settlement Account Deposit. Defendant shall have no obligation to pay any

1 additional funds into the Settlement Account.

2 **51. Disbursement of the Maximum Settlement Amount.** Within 15 days from
3 Defendant's remittance to the Settlement Administrator of the Settlement Account Deposit, the
4 Settlement Administrator shall disburse (a) the Fee and Expense Award to Plaintiff's Counsel, (b)
5 the Settlement Award checks to each Settlement Class Member, and (c) the Settlement Award
6 checks and Service Awards to the Named Plaintiff. Within 15 days Defendant's remittance to the
7 Settlement Administrator of the Settlement Account Deposit the Settlement Administrator shall pay
8 to each Participating Class Member her or her Settlement Share and to each PAGA Group Member
9 her or her PAGA Payment Share from the Settlement Account. The Settlement Administrator shall
10 pay each Settlement Share by sending, via U.S. Mail, a check in the appropriate amount after
11 withholdings to the Participating Class Member at the address indicated in the Class Member's
12 Data. The Settlement Administrator shall pay each PAGA Payment Share by sending, via U.S.
13 Mail, a check in the appropriate amount to the PAGA Group Member at the address indicated in the
14 PAGA Group Member's Data.

15 **52. Uncashed Settlement Share and PAGA Payment Share Checks.** Any checks
16 paid to Participating Class Members and/or PAGA Group Members shall be negotiable for one
17 hundred and eighty (180) calendar days from the date of their issuance. A Participating Class
18 Member must cash her or her Settlement Share check within one hundred and eighty (180) calendar
19 days after it is mailed to her or her. A PAGA Group Member must cash her or her PAGA Payment
20 Share check within one hundred and eighty (180) calendar days after it is mailed to her or her. If a
21 check remains uncashed after one hundred and eighty (180) calendar days from the initial mailing,
22 or if a check is returned to the Settlement Administrator as undeliverable during the one hundred
23 eighty-day period, the Settlement Administrator shall take all reasonable efforts to identify the
24 Participating Class Member's and/or PAGA Group Member's correct address, including the
25 performance of a "skip-trace." If an updated address can be identified, the Settlement
26 Administrator shall issue another check to the Participating Class Member and/or PAGA Group
27 Member and mail it to the Participating Class Member and/or PAGA Group Member at her or her
28 updated address. If an updated address for the Participating Class Member and/or PAGA Group

Member cannot be identified, if a reissued check is once again returned to the Settlement Administrator as undeliverable, or if the reissued check remains uncashed after one hundred eighty (180) calendar days, the Settlement Administrator will keep an accounting of such funds and shall give notice to the Parties of the total balance of uncashed Settlement Shares and/or PAGA Payment Shares. A Participating Class Member who fails to negotiate or receive their Settlement Share check despite the procedures described above shall nevertheless remain bound by the Settlement and the releases contained herein. A PAGA Group Member who fails to negotiate or receive their PAGA Payment Share check despite the procedures described above shall nevertheless remain bound by the Settlement and the releases contained herein.

53. The funds represented by Settlement Share and/or PAGA Payment Share checks remaining uncashed for more than one hundred and eighty (180) calendar days after issuance shall be voided and then shall be transmitted to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Code of Civil Procedure § 1500, *et seq.* in the names of those Participating Class Members and/or PAGA Group Members who did not cash their checks until such time they claim their property. The Parties agree that this disposition results in no “unpaid residue” under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to Participating Class Members, whether or not they all cash their settlement checks.

54. **Final Report by Settlement Administrator to Superior Court.** Within ten (10) days after final disbursement of all funds from the Settlement Account, the Settlement Administrator will serve on the Parties and file with the Superior Court a declaration providing a final summary report on the disbursements of all funds from the Settlement Account. Within ten (10) days after transmission of any remaining unclaimed funds to Legal Aid at Work, the Settlement Administrator will serve on the Parties and file with the Superior Court a declaration providing a final summary report on the transmission of any remaining unclaimed funds to Legal Aid at Work, as outlined Paragraph 54.

IV. SETTLEMENT TERMS AND CONDITIONS

55. **Conditional Certification for Settlement Purposes.** Solely for the purposes of

1 effectuating this Settlement, and subject to Court approval, the Parties hereby stipulate to the
2 conditional certification of the following Settlement Class: “all persons who, during the Class
3 Period, have previously been or currently are employed in California by Defendant as an hourly-
4 paid non-exempt employee.” The Parties agree that if for any reason the Settlement is not
5 preliminarily and/or finally approved, the conditional certification of the Settlement Class will be of
6 no force or effect, does not constitute an admission by Defendant that class certification is proper,
7 and will not be deemed admissible in this or any other proceeding, and that the Parties will litigate
8 the issue of class certification.

9 **56. Settlement Shares.** Subject to the terms and conditions of this Settlement, the
10 Settlement Administrator will calculate the Settlement Shares for each Class Member within ten
11 (10) days after Defendant provide the Settlement Administrator with the Class Members’ Data. The
12 Settlement Share for each Class Member will be calculated as follows, understanding that the
13 formulas below do not constitute an admission by either Party, and are intended only to provide a
14 practical means to simplify and administer the claims process:

15 **(a) Number of Class Members and Workweeks.** At the time the Parties signed
16 the Memorandum of Understanding on April 15, 2021, Defendant represented there were 43 Class
17 Members. Defendant shall determine the total number of Class Members and the aggregate number
18 of Workweeks for those Class Members as of the time of Preliminary Approval. This information
19 shall be provided to the Settlement Administrator along with the Class Members’ Data as described
20 in Paragraph 43(a) above.

21 **(b) Calculation of the Workweek Value.** The Settlement Administrator shall
22 determine the value of a Workweek (“Workweek Value”) by taking the Net Settlement Amount and
23 dividing it by the sum of all Class Members’ Workweeks who do not opt out of the Settlement.

24 **(c) Calculation of Settlement Shares.** The Settlement Administrator shall
25 assign to each Participating Class Member a Settlement Share which shall be equal to the
26 Workweek Value multiplied by each Participating Class Member’s Individual Workweeks. Upon
27 calculation of the Participating Class Members’ Settlement Shares, the Settlement Administrator
28 shall furnish to Class Counsel and Defense Counsel a worksheet containing a list of employee

1 identification numbers for the Class Members with their corresponding Individual Workweeks and
2 Settlement Shares.

3 **57. PAGA Payment Shares.** Subject to the terms and conditions of this Settlement, the
4 Settlement Administrator will calculate the PAGA Payment Shares for each PAGA Group Member
5 within ten (10) days after Defendant provide the Settlement Administrator with the PAGA Group
6 Members' Data. The PAGA Payment Share for each PAGA Group Member will be calculated as
7 follows, understanding that the formulas below do not constitute an admission by either Party, and
8 are intended only to provide a practical means to simplify and administer the claims process:

9 **(a) Number of PAGA Group Members and Pay Periods.** At the time the
10 Parties signed the Memorandum of Understanding on April 15, 2021, Defendant represented there
11 were 11 PAGA Group Members. Defendant shall determine the total number of PAGA Group
12 Members and the aggregate number of Pay Periods for those PAGA Group Members as of the time
13 of Preliminary Approval. This information shall be provided to the Settlement Administrator along
14 with the Class Members' Data as described in Paragraph 43(a) above.

15 **(b) Calculation of the Pay Period Value.** The Settlement Administrator shall
16 determine the value of a Pay Period ("Pay Period Value") by taking the PAGA Payment amount
17 and dividing it by the sum of all PAGA Group Members' Pay Periods.

18 **(c) Calculation of PAGA Payment Shares.** The Settlement Administrator shall
19 assign to each PAGA Group Member a PAGA Payment Share which shall be equal to the Pay
20 Period Value multiplied by each PAGA Group Member's Individual Pay Periods. Upon calculation
21 of the PAGA Group Members' PAGA Payment Shares, the Settlement Administrator shall furnish
22 to Class Counsel and Defense Counsel a worksheet containing a list of employee identification
23 numbers for the PAGA Group Members with their corresponding Individual Pay Periods and
24 PAGA Payment Shares.

25 **58. Taxes and Withholdings.** Each Settlement Share is intended to settle the Class
26 Members' claims for penalties. Accordingly, one hundred percent (100%) of each Settlement Share
27 shall represent penalties and interest. A Participating Class Member's Settlement Share shall be
28 paid to her or her in full without deductions or withholdings, and the Settlement Administrator shall

1 issue an IRS Form 1099 to each Participating Class Member for that amount, to the extent the
2 Participating Class Member's Settlement Share is Six Hundred Dollars and Zero Cents (\$600.00) or
3 more. Each Participating Class Member shall be individually responsible for their own share of
4 applicable income tax withholdings and deductions from the Settlement Share attributable to the
5 portion of the settlement for which an IRS Form 1099 will be issued. The Parties agree and
6 understand that Defendant has not made any representations regarding the tax obligations or
7 consequences, if any, related to this Settlement. The Parties agree that Defendant and each
8 Participating Class Member are solely responsible for determining the tax consequences of
9 payments made pursuant to this Settlement and for paying taxes, if any, which are determined to be
10 owed by each of them on such payments (including penalties and interest related thereto) by any
11 taxing authority, whether state, local, or federal.

12 59. Each PAGA Payment Share is intended to settle the PAGA Group Members' claims
13 for civil penalties. Accordingly, one hundred percent (100%) of each PAGA Payment Share shall
14 represent civil penalties. The PAGA Payment Share shall be paid to the PAGA Group Member in
15 full without deductions or withholdings, and the Settlement Administrator shall issue an IRS Form
16 1099 to each PAGA Group Member for that amount, to the extent the PAGA Group Member's
17 PAGA Payment Share is Six Hundred Dollars and Zero Cents (\$600.00) or more. Each PAGA
18 Group Member shall be individually responsible for their own share of applicable income tax
19 withholdings and deductions for her or her PAGA Payment Share.

20 60. **Total Payment Amount.** In no event will Defendant be required to pay more than
21 the Maximum Settlement Amount for distribution to the Plaintiff, Class Counsel, Participating
22 Class Members, PAGA Group Members, LWDA, Settlement Administrator, or for any other costs
23 or expenses not otherwise enumerated.

24 61. **Payments to Plaintiff and Class Counsel and Others.** Subject to the terms and
25 conditions of this Settlement, the Settlement Administrator will make the following payments out of
26 the Maximum Settlement Amount as follows:

27 (a) **To Plaintiff:** In addition to her Settlement Share, Plaintiff will apply to the
28 Superior Court for a Class Representative Payment in an amount not to exceed Five Thousand

1 Dollars and Zero Cents (\$5,000.00). Defendant will not oppose this Class Representative Payment.
2 The Settlement Administrator will pay the Class Representative Payment approved by the Superior
3 Court out of the Maximum Settlement Amount. Payroll tax withholding and deductions will not be
4 taken from the Class Representative Payment and an IRS Form 1099 will be issued to Plaintiff for
5 this payment.

6 (b) **To Class Counsel:** Class Counsel will apply to the Superior Court for the
7 Class Counsel Fees Payment in an amount not to exceed Fifty Thousand Dollars and Zero Cents
8 (\$50,000.00), or one-third (1/3) of the Maximum Settlement Amount. Class Counsel will also
9 submit to the Superior Court a memorandum of costs for the Class Counsel Litigation Expenses
10 Payment in an amount not to Fourteen Thousand Dollars and Zero Cents (\$14,000.00) as request
11 reasonable costs of suit to be paid from the Maximum Settlement Amount. Defendant will not
12 oppose these requests. The Settlement Administrator will pay the amounts approved by the
13 Superior Court out of the Maximum Settlement Amount. Withholding and deductions will not be
14 taken from the Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment and one
15 or more IRS Forms 1099 will be issued to Class Counsel with respect to those payments.

16 (c) **To the LWDA:** As part of their Motions for Preliminary and Final
17 Approval, the Parties will jointly apply to the Superior Court for approval of the LWDA Payment in
18 the amount of Three Thousand, Seven Hundred and Fifty Dollars and Zero Cents (\$3,750.00),
19 which shall constitute the LWDA's seventy-five percent (75%) share of Five Thousand Dollars and
20 Zero Cents (\$5,000.00) in civil penalties paid under this Settlement. The remaining One Thousand,
21 Two Hundred and Fifty Dollars and Zero Cents (\$1,250.00) in civil penalties shall be distributed on
22 a *pro rata* basis based upon the number of pay periods worked by each PAGA Group Member
23 ("PAGA Payment").

24 (d) **To the Settlement Administrator:** The Settlement Administrator will be
25 paid from the Maximum Settlement Amount its reasonable fees and expenses as approved by the
26 Superior Court, which are estimated to be Four Thousand Dollars and Zero Cents (\$4,000.00).

27 (e) **Appointment of Settlement Administrator.** The Parties will ask the
28 Superior Court to appoint Phoenix Class Action Administrators, a qualified and experienced

1 administrator based in California where the Action is venued, to serve as the Settlement
2 Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with
3 respect to the performance of its duties and its compensation. The Settlement Administrator's
4 duties will include (i) calculating Settlement and PAGA Payment Shares; (ii) preparing, printing,
5 and mailing the Class Notice to all Class Members; (iii) using reasonable measures to contact all
6 Class Members, including conducting a National Change of Address search on all Class Members
7 before mailing the Class Notice to each Class Member's address; (iv) re-mailing the Class Notice to
8 the Class Member's new address for those Class Members whose address had changed; (v) setting
9 up a toll-free telephone number to receive calls from Class Members; (vi) receiving requests for
10 exclusion and objections to the Settlement; (vii) providing the Parties with weekly status reports
11 about the delivery of Class Notices and any requests for exclusion and objections; (viii) issuing the
12 checks to effectuate the payments due under the Settlement; (ix) using reasonable measures to
13 deliver issued checks to Participating Class Members, including use of a "skip-trace" for
14 undeliverable checks; and (x) otherwise administering the Settlement pursuant to this Agreement.
15 The Settlement Administrator will have the final authority to resolve all disputes concerning the
16 calculation of a Participating Class Member's Settlement Share and/or PAGA Group Member's
17 PAGA Payment Share, subject to the terms set forth in this Agreement. The Settlement
18 Administrator's reasonable fees and expenses are estimated to be Four Thousand Dollars and Zero
19 Cents (\$4,000.00) and will be paid out of the Maximum Settlement Amount, as set forth herein,
20 subject to Court approval.

21 **V. RELEASE OF CLAIMS**

22 62. **Participating Class Members Released Claims.** As of the date of the Judgment,
23 each Participating Class Member, and without the need to manually sign a release document, in
24 exchange for the consideration recited in this Agreement, on behalf of himself or herself and on
25 behalf of her/her current, former, and future heirs, executors, administrators, attorneys, agents, and
26 assigns, shall and does hereby fully and finally release Defendant and Defendant's parents,
27 predecessors, successors, subsidiaries, affiliates, partners, owners, assigns, franchisors, and trusts,
28 and all of its employees, officers, agents, attorneys, stockholders, fiduciaries, and other service

1 providers including, but not limited to, O'Hagan Meyer (collectively hereinafter the "Releasees"),
2 from any and all claims, demands, rights, liabilities, and causes of action that were or could have
3 been brought against the Releasees in the Action based on the facts, allegations or issues set forth in
4 the Action (the "Released Claims"). Released Claims for Class Members who worked for
5 Defendant in California during the Class Period shall have their claims released during the Class
6 Period. The Released Claims release all causes of action and claims that were alleged in the Action
7 or reasonably could have been alleged based on the facts and legal theories contained in the
8 operative complaint, including, but not limited to, all of the following claims for relief: (a) failure
9 to provide meal periods or compensation in lieu thereof; (b) failure to provide rest periods or
10 compensation in lieu thereof; (c) failure to pay wages timely at time of termination or resignation;
11 (d) failure to provide complete, accurate wage statements; (e) unfair business practices that could
12 have been premised on the claims, causes of action or legal theories of relief described above or any
13 of the claims, causes of action or legal theories of relief pleaded in the operative complaint; and (f)
14 all claims under PAGA that could have been premised on the claims, causes of action or legal
15 theories described above or any of the claims, causes of action or legal theories of relief pleaded in
16 Plaintiff's Complaint; any claim for costs and attorneys' fees and expenses, and any claim arising
17 from the claims described above under applicable federal, state, local or territorial law as well as
18 applicable regulations and Wage Orders. Participating Class Members who cash their checks are
19 deemed to have waived all claims under the settlement inclusive of claims under the Fair Labor
20 Standards Act. Participating Class Members who do not cash their checks shall be deemed to waive
21 all claims under the Settlement that were or could have been pled in Plaintiff's Complaint based on
22 the allegations in the Plaintiff's Complaint except for a claim under the Fair Labor Standards Act.

23 **63. PAGA Group Released Claims.** As of the date of the Judgment, each PAGA Group
24 Member, and without the need to manually sign a release document, in exchange for the
25 consideration recited in this Agreement, on behalf of himself or herself and on behalf of her/her
26 current, former, and future heirs, executors, administrators, attorneys, agents, and assigns, shall and
27 does hereby fully and finally release Defendant and Defendant's parents, predecessors, successors,
28 subsidiaries, affiliates, partners, owners, assigns, franchisors, and trusts, and all of its employees,

1 officers, agents, attorneys, stockholders, fiduciaries, and other service providers including, but not
2 limited to, O'Hagan Meyer (collectively hereinafter the "Releasees"), from any and all claims,
3 demands, rights, liabilities, and causes of action that were or could have been brought against the
4 Releasees in the Action for civil penalties pursuant to the PAGA that were alleged or could have
5 been alleged under the Labor Code, state or local wage and hour laws and Wage Orders, whether
6 known or unknown, based on the facts and legal theories contained in the Action, including but not
7 limited to (a) failure to provide meal periods or compensation in lieu thereof; (b) failure to provide
8 rest periods or compensation in lieu thereof; (c) failure to pay wages timely at time of termination or
9 resignation; (d) failure to provide complete, accurate wage statements; (e) unfair business practices
10 that could have been premised on the claims, causes of action or legal theories of relief described
11 above or any of the claims, causes of action or legal theories of relief pleaded in the operative
12 complaint (the "PAGA Released Claims"). Following the Effective Date and Defendant funding the
13 settlement, all PAGA Group Members will release the Releasees from the PAGA Released Claims
14 that accrued during the PAGA Period. PAGA Group Members cannot opt out of or object to the
15 foregoing PAGA Release.

16 64. The Released Claims and PAGA Released Claims described in Paragraphs 62 & 63
17 expressly exclude all claims made by a Participating Class Member and/or PAGA Group Member
18 for vested benefits, wrongful termination, unemployment insurance, disability, social security,
19 workers' compensation, claims while classified as exempt, and claims outside of the Class Period
20 and/or PAGA Period.

21 65. **Class Counsel.** As of the Effective Date, and except as otherwise provided by this
22 Settlement, Class Counsel and any counsel associated with Class Counsel waive any further claims
23 to costs and attorneys' fees and expenses against Defendant or the Releasees arising from or related
24 to the Action, including but not limited to claims based on the Labor Code, the Code of Civil
25 Procedure, PAGA, the Fair Labor and Standards Act, the Business and Professions Code, or any
26 other contract, statute or law ("Class Counsel Released Claims").

27 66. **No Effect on Other Benefits.** The payment of Settlement Shares and/or PAGA
28 Payment Shares will not result in any additional employee benefit payments (such as 401(k),

vacation, or bonus) and shall not have any effect on the eligibility for, or calculation of, any employee benefit.

VI. MISCELLANEOUS TERMS

67. **No Admission of Liability.** Defendant deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, or have any liability to anyone under the claims asserted in the Action. This Settlement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Settlement is intended or will be construed as an admission of liability or wrongdoing by Defendant, an admission by Plaintiff that any of her claims were non-meritorious, or any defense asserted by Defendant was meritorious. This Settlement and the fact that Plaintiff and Defendant were willing to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with the Settlement).

68. The Parties also agree that this release constitutes a resolution of a good faith dispute concerning wages and complies with Labor Code Section 206.5, which reads in part:

“Execution of release of claim or right on account of wages due.
No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made, or made as an advance on wages to be earned, unless payment of those wages has been made.”

69. Whether or not the Judgment becomes Final, neither the Settlement, any document, statement, proceeding or conduct related to the Settlement, nor any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any other beneficiary of the releases granted under this Settlement (the “Released Parties”), including, but not limited to, evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in

1 evidence against any of the Released Parties, or any other civil, criminal or administrative action or
2 proceeding except for purposes of effectuating this Settlement.

3 70. Notwithstanding Paragraph 69 of this Settlement, any and all provisions of this
4 Settlement may be admitted in evidence and otherwise used in any and all proceedings to enforce
5 any or all terms of this Settlement, or in defense of any claims released or barred by this Settlement.

6 71. **Non-Disparagement.** Plaintiff agrees not to make any untruthful, malicious,
7 disparaging or defamatory statements, allegations, comments or communications, regardless of
8 form (whether written, oral, electronic, including but not limited to Glassdoor, Yelp, or otherwise),
9 regarding the Released Parties. Plaintiff further agrees not to encourage authorize or permit any
10 such statements, allegations, comments or communications to be made by others on their behalf. To
11 the extent Plaintiff has posted any negative comments about the Released Parties on Glassdoor,
12 Yelp, or other websites, Plaintiff agrees to request that these comments be removed and to provide a
13 copy of such request to Defense Counsel within 30 days of the execution of this Agreement.

14 72. **Waiver of Reemployment.** Plaintiff acknowledges that she has no intent to apply
15 for re-apply for employment at Defendant. Plaintiff further acknowledges that Defendant or any
16 related, successor, parent, or subsidiary companies has the right to refuse rehire Plaintiff for non-
17 discriminatory and non-retaliatory reasons and Plaintiff acknowledges that Defendant's position is
18 that such legitimate non-discriminatory and non-retaliatory reasons exist.

19 73. **Integrated Agreement.** After this Settlement is signed and delivered by all Parties
20 and their counsel, this Settlement and its exhibits will constitute the entire agreement between the
21 Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties,
22 covenants, or inducements have been made to any Party concerning this Settlement or its exhibits
23 other than the representations, warranties, covenants, and inducements expressly stated in this
24 Settlement and its exhibits.

25 74. **Attorney Authorization.** Class Counsel and Defense Counsel warrant and represent
26 that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action
27 required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms,
28 and to execute any other documents required to effectuate the terms of this Settlement. The Parties

1 and their counsel will cooperate with each other and use their best efforts to affect the
2 implementation of the Settlement. In the event the Parties are unable to reach agreement on the
3 form or content of any document needed to implement the Settlement, or on any supplemental
4 provisions that may become necessary to effectuate the terms of this Settlement, the Parties will
5 seek the assistance of mediator Steve Rottman, Esq., and if no resolution is reached the Superior
6 Court, and in all cases all such documents, supplemental provisions and assistance of the court will
7 be consistent with this Settlement.

8 75. **Modification of Agreement.** This Agreement, and any and all parts of it, may be
9 amended, modified, changed, or waived only by an express written instrument signed by all Parties,
10 their successors-in-interest, and/or the Parties' respective counsel, as authorized.

11 76. **Settlement Binding on Successors.** This Settlement Agreement will be binding
12 upon, and inure to the benefit of, the successors of each of the Parties.

13 77. **Applicable Law.** All terms and conditions of this Settlement and its exhibits will be
14 governed by and interpreted according to the laws of the State of California, without giving effect to
15 any conflict of law principles or choice of law principles.

16 78. **Cooperation in Drafting.** The Parties have cooperated in the drafting and
17 preparation of this Settlement. This Settlement will not be construed against any Party on the basis
18 that the Party was the drafter or participated in the drafting.

19 79. **Fair Settlement.** The Parties and their respective counsel believe and warrant that
20 this Settlement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at
21 this Settlement through arms-length negotiations, taking into account all relevant factors, current
22 and potential.

23 80. **Headings.** The descriptive heading of any section or paragraph of this Settlement is
24 inserted for convenience of reference only and does not constitute a part of this Settlement.

25 81. **Notice.** All notices, demands or other communications given under this Settlement
26 will be in writing and deemed to have been duly given as of the third business day after mailing by
27 U.S. Mail, addressed as follows:

28 *To Class Counsel:* Thomas A. Rist, Esq.

RIST LAW OFFICE, LC
2221 Camino Del Rio S, Suite 300
San Diego, CA 92108

Brad Nakase, Esq.
NAKASE LAW FIRM, INC.
2221 Camino Del Rio S, Suite 300
San Diego, CA 92108

To Defense Counsel:

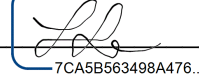
Matthew C. Sgnilek, Esq.
Andrea Rosenkranz, Esq.
O'HAGAN MEYER
4695 MacArthur Court, Suite 210
Newport Beach, CA 92660

82. **Execution in Counterpart.** This Settlement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures, scanned PDF signatures, and electronic signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. Any executed counterpart will be admissible to prove the existence and contents of this Settlement.

DATED: 8/3/2021

LINDA LE

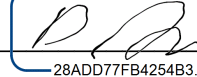
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DATED: 7/28/2021

MILE SQUARE SURGERY CENTER, INC.

DocuSigned by:


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By:

Its:

President

1 DATED: 8/7/2021

RIST LAW OFFICE, LC
NAKASE LAW FIRM, INC.

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3 By:

DocuSigned by:



4 Thomas A. Rist, Esq.
Brad Nakase, Esq.

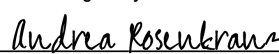
5 Attorney for Plaintiff
6 LINDA LE

7 DATED: 7/28/2021

O'HAGAN MEYER

8
9 By:

DocuSigned by:



10 Matthew C. Spivey, Esq.
11 Andrea Rosenkranz, Esq.

12 Attorneys for Defendant
13 MILE SQUARE SURGERY CENTER, INC.
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Exhibit “A”

Linda Le v. Mile Square Surgery Center, Inc.
Orange County Superior Court Case No. 30-2020-01140872-CU-OE-CXC



<<PSA ID>>

<<First Last>>

<<Address>>

<<City, State, Zip, Country>>

Name/Address Changes (if any):

NOTICE OF CLASS ACTION SETTLEMENT

If you are or were a non-exempt, hourly employee of Mile Square Surgery Center, Inc. at any time between May 26, 2016, and [the earlier of the date of Preliminary Approval or through July 12, 2021], you may be able entitled to receive money from a Class Action Settlement.

A court approved this notice. This is not a solicitation from a lawyer. You are not being sued.

PLEASE READ THIS NOTICE.

Your legal rights are affected whether you act or don't act. Your legal rights and options—and the deadlines to use them—are explained in this notice.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE SETTLEMENT PAYMENT	You are not required to take action to receive a payment. If you do nothing, you will automatically receive a payment from the Settlement if the Court finally approves the Settlement. In exchange, you will be bound by the Settlement including the release of all claims covered by the Settlement.
REQUEST EXCLUSION	Request to be excluded and receive no benefits from the Settlement. If you submit a Request for Exclusion, you will not receive a settlement payment.
OBJECT	If you wish to object to the Settlement, you may submit a written objection and supporting papers to the Settlement Administrator. Any written objections will be provided to the Court. You may also offer your oral comments at the Final Approval Hearing. In order to object, you must not have excluded yourself from the Settlement.

1. Why should you read this notice?

A proposed settlement (the "Settlement") has been reached in a class action lawsuit entitled *Linda Le v. Mile Square Surgery Center, Inc., et al.*, Orange County Superior Court Case No. 30-2020-01140872-CU-OE-CXC (the "Action" or "Lawsuit"). The Defendant in the Action is Mile Square Surgery Center, Inc. ("Defendant.")

The Court has granted preliminary approval of a "Settlement Class" defined as follows:

All persons employed in the State of California as hourly, non-exempt employees by Mile Square Surgery Center, Inc. at any time between May 26, 2016, and [the earlier of the date of Preliminary

Approval or through July 12, 2021].

The Court has also granted preliminary approval of a “PAGA Group” defined as follows:

All persons employed in the State of California as hourly, non-exempt employees by Mile Square Surgery Center, Inc. at any time between May 26, 2019, and [the earlier of the date of Preliminary Approval or through July 12, 2021].

Defendant’s employment records indicate that you meet one or both of these definitions, which makes you a member of the Settlement Class (referred to in this Notice as a “Class Member”) and possibly a member of the PAGA Group (referred to in this Notice as a “PAGA Group Member”). The Court directed that this Notice be sent to all Class Members and PAGA Group Members to inform you about the case and your rights and options before the Court decides to approve the Settlement. If the Court approves the Settlement, and after any appeals are resolved, payments will be made to Class Member who have not opted out of the Settlement and all PAGA Group Members.

This Notice explains the Lawsuit, the Settlement, your legal rights and options, what benefits are available and how to get them.

2. What is this Lawsuit about?

On May 26, 2020, Plaintiff Linda Le filed the operative class action complaint against the Defendant alleging several violations of California wage and hour laws. Plaintiff filed the Action on behalf of herself and on behalf of all current and former non-exempt, hourly employees. By Plaintiff’s Complaint, Plaintiff alleges that the Defendant: (1) failed to provide meal periods; (2) failed to provide rest periods; (3) failed to provide accurate wage statements; (4) failed to timely pay wages at separation; (5) violated California’s Unfair Competition Law; and (6) owes civil penalties under California’s Private Attorneys General Act of 2004, California Labor Code §§ 2698-2699.5 (“PAGA”). Defendant vigorously denies all the claims and contentions made in the Lawsuit and maintains it has fully complied with the law, but has agreed to settle the Lawsuit to avoid the expense of litigation.

3. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Instead, both sides agreed to a Settlement. This allows the Parties to avoid the risk and uncertainty of trial and any subsequent appeal, and all affected employees who have not opted out of the Settlement will receive compensation. The Settlement is not an admission of liability by Defendant. The Class Representative and the attorneys believe the Settlement is fair, reasonable and adequate, and in the best interests of all Class Members.

4. What are the terms of the Settlement?

Defendant will pay One Hundred and Fifty Thousand Dollars and Zero Cents (\$150,000.00) to settle the Action (the “Maximum Settlement Amount”). The Maximum Settlement Amount includes: (a) all Settlement Payments to Participating Class Members; (b) the Service Award to the Class Representative; (c) the Class Counsel’s attorneys’ fees and costs; (d) a payment to the California Labor and Workforce Development Agency for civil penalties brought under PAGA; (e) all PAGA Payments to the PAGA Group Members; and (f) the reasonable fees and costs of the Settlement Administrator.

The Court has preliminarily approved the following payments from the Maximum Settlement Amount. Class

Counsel will request that the Court award Class Counsel up to one-third (1/3) of the Maximum Settlement Amount or up to Fifty Thousand Dollars and Zero Cents (\$50,000.00) in attorneys' fees and up to Fourteen Thousand Dollars and Zero Cents (\$14,000.00) in out-of-pocket litigation costs, up to Four Thousand Dollars and Zero Cents (\$4,000.00) for Settlement Administration Costs for the third-party Settlement Administrator, and up to Five Thousand Dollars and Zero Cents (\$5,000.00) for the Service Award for the Class Representative in recognition of her time and service to the Class in pursuing the Action and in fulfilling her obligations as the Class Representative. Additionally, the Settlement provides for a payment of Five Thousand Dollars and Zero Cents (\$5,000.00) (the "LWDA Payment") to resolve class member' claims under PAGA, of which One Thousand, Two Hundred and Fifty Dollars and Zero Cents (\$1,250.00) will be distributed to the PAGA Group Members and Three Thousand, Seven Hundred and Fifty Dollars and Zero Cents (\$3,750.00) will be paid to the California Labor and Workforce Development Agency ("LWDA"). This allocation of the PAGA Payment is required by PAGA. The final amounts of these various payments are all subject to Court approval.

After deductions of the preceding Court-approved payments, the remaining amount—the "Net Settlement Amount"—will be distributed to those Class Members who have not opted out of the Settlement (the "Participating Class Members"). No portion of the Maximum Settlement Amount will be returned to Defendant.

5. How much can I expect to receive?

Each Participating Class Member will receive a *pro rata* share of the Net Settlement Amount based on the number of workweeks the person worked for Defendant as a non-exempt, hourly employee during the Class Period, defined as the period of time from May 26, 2016, and [the earlier of the date of Preliminary Approval or through July 12, 2021]. Any workweek in which a Class Member worked at least one day shall be counted as a workweek.

To calculate a Class Member's Individual Settlement Payment, the Net Settlement Amount will be divided by the aggregate total number of workweeks of all Participating Class Members, resulting in the "Workweek Value." Each Participating Class Member's Individual Settlement Payment will be calculated by multiplying each individual Participating Class Member's total number of workweeks by the Workweek Value.

Your Compensable Workweeks are: <<Workweeks>>

Your Estimated Individual Settlement Payment is: \$<<Est.SettlementAmt>>

All settlement payments are subject to taxation. Each Individual Settlement Payment will be allocated as follows: 100% as penalties and interest that will not be subject to deductions and withholdings. Each Participating Class Member will receive an IRS Form-1099 with respect to the portion of the Settlement Payment allocated to penalties and interest, unless said payment is less than or equal to Six Hundred Dollars and Zero Cents (\$600.00).

Please note that each Participating Class Members will be responsible for his/her share of taxes attributable to the receipt of an Individual Settlement Payment. The Parties and their attorneys cannot provide and will not provide any advice regarding tax obligations. Class Members should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

Each PAGA Group Member will receive a *pro rata* share of the PAGA Payment based on the number of pay periods the person worked for Defendant as a non-exempt, hourly employee during the PAGA Period, defined as the period of time from May 26, 2019, and [the earlier of the date of Preliminary Approval or through July 12, 2021]. Any pay period in which a Class Member worked at least one day shall be counted as a pay period.

To calculate a PAGA Group Member's Individual PAGA Payment, the PAGA Payment will be divided by the

aggregate total number of pay periods of all PAGA Group Members, resulting in the “Pay Period Value.” Each PAGA Group Member’s Individual Settlement Payment will be calculated by multiplying each individual PAGA Group Member’s total number of pay periods by the Pay Period Value.

Your Compensable Pay Periods are: <<PayPeriods>>

Your Estimated Individual PAGA Payment is: \$<<Est.PAGAPaymentAmt>>

All settlement payments are subject to taxation. Each Individual PAGA Payment will be allocated as follows: 100% as penalties that will not be subject to deductions and withholdings. Each PAGA Group Member will receive an IRS Form-1099 for her or her Individual PAGA Payment, unless said payment is less than or equal to Six Hundred Dollars and Zero Cents (\$600.00).

Please note that each PAGA Group Member will be responsible for his/her share of taxes attributable to the receipt of an Individual PAGA Payment. The Parties and their attorneys cannot provide and will not provide any advice regarding tax obligations. Class Members should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

6. What if I disagree with the number of workweeks and/or pay periods credited to me in this Notice?

The information concerning the number of workweeks and/or pay periods you worked as an hourly, non-exempt employee during the Class Period and/or PAGA Period is based on Defendant’s records. To dispute this number of workweeks and/or pay periods credited to you, you must send written notice to the Settlement Administrator. To be valid, your written dispute of weeks worked must: (1) include your full name, address, telephone number, and last four digits of the Social Security number; and (2) be accompanied by satisfactory evidence of the actual weeks worked as an hourly, non-exempt employee for Defendant during the Class Period and/or PAGA Period, including any supporting documentation, e.g., copies of your pay stubs. To be timely, your written dispute of weeks and/or pay periods worked must be mailed by first-class U.S. Mail, or the equivalent, to the Settlement Administrator *at the address provided below*, and be postmarked on or before _____, 2021.

The Parties and the Settlement Administrator will promptly evaluate the evidence submitted and discuss in good faith how many workweeks and/or pay periods should be credited to the Class Member and/or PAGA Group Member. The Settlement Administrator will make the final decision as to how many workweeks and/or pay periods should be credited to the Class Member and/or PAGA Group Member and report the outcome to the Class Member and/or PAGA Group Member.

7. How and when will I get a payment? How do I update my address?

How do I receive money from the Settlement? You do not need to do anything to receive your Individual Settlement Payment. Just watch your mail for a check and cash it when you get it. If you do not exclude yourself from the Settlement, you will automatically receive money from the Settlement. You do not need to make a claim or take any other action to receive your share of the Settlement.

When will I receive my Settlement payment? Class Members who do not opt out of the Settlement will receive their payments only after the Court grants final approval to the Settlement and after any appeals are resolved. PAGA Group Members will receive their payments only after the Court grants final approval to the Settlement and after any appeals are resolved. If there are appeals, resolving them can take time. Please be patient.

Settlement payment checks must be cashed soon after receipt. The Settlement checks will be able to be cashed for 180 days after they are issued. After 180 days, the Settlement checks will no longer be able to be cashed. Any funds represented by Settlement checks remaining uncashed for more than 180 days after issuance shall be transmitted to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Code of Civil Procedure Section 1500, *et seq.* in the names of those Participating Class Members and/or PAGA Group Members who did not cash their Settlement checks until such time they claim their property.

Change of address. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure that you receive your Settlement payment. If you change your address, or if this notice was not mailed to your correct address, you should immediately provide your current address to the Settlement Administrator. The Settlement Administrator can be reached at (800) ###-####, or at the address provided below.

8. What claims are being released by the Settlement?

If the Settlement is approved by the Court, a Judgment will be entered by the Court. Upon the Effective Date of the Judgment, all Participating Class Members shall release the Released Parties from the Released Claims for the Class Period, which is defined as the period of time between May 26, 2016, and [the earlier of the date of Preliminary Approval or through July 12, 2021].

The Released Claims are defined as all causes of action and claims that were alleged or could have been alleged under the Labor Code, state or local wage and hour laws and Wage Orders, whether known or unknown, based on the facts and legal theories contained in the Complaint, including but not limited to: (i) claims for non-compliant meal periods and/or associated premiums (Lab. Code §§ 226.7, 512(a)); (ii) claims for non-compliant rest periods and/or associated premiums (Lab. Code § 226.7); (iii) claims for wage statement violations (Lab. Code § 226(a)); (iv) claims for failure to timely pay wages upon termination of employment and associated waiting time penalties (Cal. Lab. Code §§ 201-203); (v) claims for violations of California Business & Professions Code, §§ 17200, *et seq.* arising out of the aforementioned claims; (vi) claims for civil penalties arising under the Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698-2699.5) (“PAGA”) arising out of the aforementioned claims; (vii) claims that the Class Member is an “aggrieved employee” under PAGA with respect to any of the aforementioned claims released herein; and (viii) claims for attorneys’ fees, costs and expenses for all causes of action and claims that were alleged in the Action or reasonably could have been alleged based on the facts and legal theories contained in the Complaint. The Participating Class Members who cash their Settlement checks further acknowledge that they are releasing any claims they have against Defendant under the Fair Labor Standards Act (“FLSA”) (collectively, the “Released Claims”). Other than for Plaintiff, claims of Participating Class Members, if any, for vested benefits, wrongful termination, unemployment insurance, disability benefits, social security, workers’ compensation, claims while classified as exempt, and claims outside of the Class Period are not encompassed within the definition of “Released Claims.”

The Released Parties are defined as Defendant and its parents, predecessors, successors, subsidiaries, affiliates, partners, owners, assigns, trusts, employees, officers, agents, attorneys, and stockholders.

Any Class Member who does not request exclusion by the applicable deadline will be considered to have accepted the release and to have waived any and all of the Released Claims against the Released Parties.

If the Settlement is approved by the Court, a Judgment will be entered by the Court. Upon the Effective Date of the Judgment, all PAGA Members shall release the Released Parties from the PAGA Released Claims for the PAGA Period, which is defined as the period of time between May 26, 2019, and [the earlier of the date of Preliminary Approval or through July 12, 2021].

The PAGA Released Claims are defined as all claims for civil penalties pursuant to PAGA that were alleged or could have been alleged under the Labor Code, state or local wage and hour laws and Wage Orders, whether known or unknown, based on the facts and legal theories contained in the Complaint, including but not limited to: (i) claims for non-compliant meal periods and/or associated premiums (Lab. Code §§ 226.7, 512(a)); (ii) claims for non-compliant rest periods and/or associated premiums (Lab. Code § 226.7); (iii) claims for wage statement violations (Lab. Code § 226(a)); (iv) claims for failure to timely pay wages upon termination of employment and associated waiting time penalties (Cal. Lab. Code §§ 201-203); (v) claims for violations of California Business & Professions Code, §§ 17200, *et seq.* arising out of the aforementioned claims; (vi) claims that the Class Member is an “aggrieved employee” under PAGA with respect to any of the aforementioned claims released herein; and (vii) claims for attorneys’ fees, costs and expenses for all causes of action and claims that were alleged in the Action or reasonably could have been alleged based on the facts and legal theories contained in the Complaint. Other than for Plaintiff, claims of PAGA Group Members, if any, for vested benefits, wrongful termination, unemployment insurance, disability benefits, social security, workers’ compensation, claims while classified as exempt, and claims outside of the PAGA Period are not encompassed within the definition of “PAGA Released Claims.” PAGA Group Members cannot opt out of or object to the foregoing PAGA Release.

The Released Parties are defined as Defendant and its parents, predecessors, successors, subsidiaries, affiliates, partners, owners, assigns, trusts, employees, officers, agents, attorneys, and stockholders.

9. What are my options?

a. **Participate in the Settlement and Receive a Settlement Payment.** If you want to participate in the Settlement, you do not have to do anything. You will receive your Individual Settlement Payment automatically if the Settlement is finally approved by the Court. If applicable, you will receive your Individual PAGA Payment automatically if the Settlement is finally approved by the Court.

b. **Exclude yourself from the Settlement.** If you do not want to be part of the Settlement, you can request to be excluded from the Settlement by mailing a written Request for Exclusion to the Settlement Administrator. If you exclude yourself, you will not receive your Individual Settlement Payment, you will not be subject to the terms of the Settlement, and you will retain whatever rights you may currently have. To be valid, your Request for Exclusion must include: (1) include your full name, address, and last four digits of the Social Security number; (2) a clear statement that you wish to opt out of, or be excluded from, the Settlement in *Le v. Mile Square Surgery Center, Inc.*, Orange County Superior Court Case No. 30-2020-01140872-CU-OE-CXC; (3) a clear statement that you understand that by opting out, you will not receive any monies from the settlement; and (4) your signature. To be timely, a Request for Exclusion must be mailed by first-class U.S. Mail, or the equivalent, to the Settlement Administrator at the address provided below and be postmarked on or before [REDACTED], 2021.

If applicable, you may not exclude yourself from the PAGA Group and will be bound by the PAGA Released Claims.

b. **Object to the Settlement.** If you’re a Class Member, you can object to the Settlement if you don’t like any part of it. You can give reasons why you think the Court should not approve the Settlement. The Court will consider your views. If the Court rejects your objection and finally approves the Settlement, you will still be bound by the terms of the Settlement, but you will also receive a monetary award.

To object, you may submit a written objection stating why you object to the Settlement, or you may simply appear at the Final Approval Hearing set for [REDACTED], 2021 at [REDACTED] a.m. in the Orange County Superior Court and discuss your objection with the Court and the Parties at your own expense. Written objections must

include: (i) your full name, current address, and last four digits of the Social Security number; (ii) the approximate dates of your employment at Defendant; (iii) the case name and number (e.g, *Le v. Mile Square Surgery Center, Inc.*, Orange County Superior Court Case No. 30-2020-01140872-CU-OE-CXC); (iv) a written statement of all grounds for the objection accompanied by any legal support for such objection; (iv) copies of any papers, briefs, or other documents on which the objection is based, if any; (v) your signature; and (vi) a statement of whether you intend to appear at the Final Approval Hearing, either in person or by counsel. To be timely, a written objection must be mailed by first-class U.S. Mail to the Settlement Administrator at the address provided below and be postmarked on or before [REDACTED], 2021.

Please note that you cannot both exclude yourself and object to the Settlement. In order for you to object to this Settlement, or any term of it, you may not submit a Request for Exclusion.

10. Who are the attorneys representing the Plaintiff and the Settlement Class and the PAGA Group?

The Court has appointed the following lawyers as “Class Counsel” to represent all Class Members and PAGA Group Members:

Thomas A. Rist, Esq.
RIST LAW OFFICE, LC
2221 Camino Del Rio S, Suite 300
San Diego, CA 92108
Telephone: 619-377-4660

Brad Nakase, Esq.
NAKASE LAW FIRM, INC.
2221 Camino Del Rio S, Suite 300
San Diego, CA 92108
Telephone: 888-600-8654

You will not be charged for these lawyers.

11. How will the attorneys for the Settlement Class and the PAGA Group be paid?

All payments for Class Counsel’s attorneys’ fees and costs will be made from the Maximum Settlement Amount. Class Counsel intends to request an award of attorneys’ fees up to one-third (1/3) of the Maximum Settlement Amount, or up to Fifty Thousand Dollars and Zero Cents (\$50,000.00), plus reimbursement of reasonable, actual out-of-pocket costs incurred in the litigation, up to Fourteen Thousand Dollars and Zero Cents (\$14,000.00). Class Counsel has been prosecuting this Action on behalf of Plaintiff, the Settlement Class, and PAGA Group on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs. The Court will decide the amount of fees and expenses to award at the Final Approval Hearing.

12. When and where will the Court decide to approve the Settlement?

The Court has preliminarily approved the settlement and will hold a hearing, called a Final Approval Hearing, to decide whether to give final approval to the Settlement. The Court will hold the Final Approval Hearing on [REDACTED], 2021, at [REDACTED] a.m., in Department C16 of the Orange County Superior Court located at 700 Civic Center Drive West, Santa Ana, CA 92701, before the Honorable James J. Di Cesare. At the Final Approval Hearing, the Court will rule on Class Counsel’s request for attorneys’ fees and litigation costs, the Class Representative Service Award and the Settlement Administration Costs.

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing. If you did not submit a Request for Exclusion, you or your attorney may appear at the hearing at your own expense and request to be heard. The Final Approval Hearing may be postponed without further notice.

13. Will I be subject to discipline if I participate in the Settlement?

No. Defendant approve the Settlement and will not retaliate in any way against any Class Member for participating in the Settlement. Your decision to participate, not participate, or object to this Settlement will not affect your employment with Defendant or Defendant's treatment of you as a former employee.

14. What is the Settlement Administrator's address?

Any Request for Exclusion, Notice of Objection, address change request, and all other correspondence intended for the Settlement Administrator must be mailed to the Settlement Administrator at the following address:

Le v. Mile Square Surgery Center, Inc.

c/o

Telephone: _____

15. How Can I Get Additional Information?

If you have questions, you can call the Settlement Administrator at _____.

PLEASE DO NOT TELEPHONE THE COURT OR DEFENDANT'S MANAGERS, SUPERVISORS,
OR ATTORNEYS ABOUT THIS SETTLEMENT
They will not be able to assist you.

Exhibit “B”

MILE SQUARE SURGERY CENTER, INC. CLASS ACTION
MEMORANDUM OF UNDERSTANDING

Defendant Mile Square Surgery Center, Inc. (“Defendant”) and Plaintiff Linda Le (“Plaintiff”) hereby set forth the terms of a Memorandum of Understanding (“MOU”) designed to bind the Parties to the terms of a class action settlement. Defendant and Plaintiff are referred to in this Agreement individually as a “Party” and collectively as the “Parties.” The Parties hereby agree as follows:

1. This MOU confirms the essential terms of the settlement and will assist the Parties in preparing a comprehensive “long form” settlement agreement. This MOU is admissible and enforceable by, binding on, and subject to disclosure by all Parties.

2. The term “Action” means the action entitled *Le v. Mile Square Surgery Center, Inc.*, Orange County Superior Court Case No. 30-2020-01140872-CU-OE-CXC.

3. The term “Defendant” means the Defendant named by Plaintiff in her Complaint in the Action, and their past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

4. While the Parties intend this MOU to be a precursor to a long form agreement, should that not occur, the Parties agree that this MOU constitutes a written settlement within the provisions of Code of Civil Procedure § 664.6, agree that this MOU shall be admissible pursuant to Evidence Code §§ 1122(a)(1) and 1123(b), and agree and intend that the Los Angeles County Superior Court may enforce this MOU pursuant to Code of Civil Procedure § 664.6.

5. The term “Settlement Class Members” means all current and former non-exempt employees who worked for Defendant in California during the Class Period (or if any such person is incompetent, deceased, or unavailable due to military service, the person’s legal representative or successor in interest evidenced by reasonable verification). The term “Settlement Class Members” shall not include any person who submits a timely and valid request for exclusion.

6. The Class Period shall be defined as the time from May 26, 2016, through the earlier of granting of preliminary approval or 90 days from the mediation (i.e., July 12, 2021).

7. The PAGA Period shall be defined as the time from May 26, 2019, through the earlier of granting of preliminary approval or 90 days from the mediation (i.e., July 12, 2021).

8. The Parties and their counsel agree that the consideration described in the subparagraphs below constitutes their good faith compromise of the Action based upon their

assessment of the value of the case, and the mutual risks and costs of further litigation. Specifically, the consideration provided by Defendant consists of the following:

- a. Defendant shall pay a maximum amount ("Maximum Settlement Amount") of \$150,000.00 in full and complete settlement of this matter, which sum includes all payments to Settlement Class Members, Class Counsel's attorneys' fees and litigation costs, third-party administration costs, payment to the Labor Workforce Development Agency ("LWDA"), and the enhancement award to Plaintiff.
- b. Defendant will not oppose a request by Plaintiff to be appointed Class Representative and for an enhancement payment of up to \$5,000.00, to be deducted from the Maximum Settlement Amount, in exchange for her service as a Class Representative and a General Release of all claims against Defendant. This enhancement payment is in addition to the payment to which he is entitled as a Settlement Class Member.
- c. The Parties designate that \$5,000.00 of the Maximum Settlement Amount will be allocated for violations of PAGA ("PAGA Payment"). 75% of this amount (or \$3,750.00) will be payable to the Labor Workforce Development Agency ("LWDA") and the remaining 25% (\$1,250.00) will be payable to the Settlement Class.
- d. Defendant will not oppose an application for an award to Class Counsel, from the Maximum Settlement Amount, of up to one-third of the Maximum Settlement Amount, or \$50,000.00, in attorneys' fees, plus reasonable costs and expenses not to exceed \$14,000.00.
- e. The balance after deduction of Class Counsel's attorneys' fees and litigation costs, third-party administration costs, the LWDA's portion of the PAGA Payment, and the enhancement award to Plaintiff will be the "Net Settlement Amount."
- f. The Net Settlement Amount shall be distributed on a *pro rata* basis to Settlement Class Members, subject to the distribution formula agreed upon by the Parties.
- g. Defendant represents that as of April 12, 2021, the number of workweeks in the Class Period is 1,924. If it is determined that the workweeks through the earlier of Preliminary Approval or 90 days after mediation, exceeds 2,117 (1924, plus 10% of 1924), the Net Settlement Amount will be increased by the same number of percentage points above 10% by which the actual number of workweeks exceeds 1,924. For instance, if the actual number of workweeks is determined to be 12% higher than 1,924, the Net Settlement Amount will be increased by 2%.

h. All funds represented by uncashed checks remaining in the Net Settlement Amount shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500, *et seq.*, for the benefit of those Settlement Class Members who did not cash their checks until such time that they claim their property. The Parties agree that this disposition results in no “unpaid residue” under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to Settlement Class Members, whether or not they all cash their Settlement Checks. Therefore, Defendant will not be required to pay any interest on such amounts.

9. The Settlement Administrator will be Phoenix Settlement Administrators, or as otherwise mutually agreed to by the Parties. The Settlement Administrator will be selected on the basis of cost and competence, with the best interests of the Settlement Class Members in mind. Fees of the Settlement Administrator shall be paid out of the Maximum Settlement Amount.

10. The settlement payment for each individual claimant shall be allocated 100% as penalties. The Settlement Administrator will be responsible for issuing to claimants an IRS Form 1099 for the portions allocated to penalties.

11. The Parties agree that Defendant’s payment of the consideration described in Paragraph 8, above, is entirely dependent upon the Court’s approval of the Parties’ settlement of the Action.

12. The Parties agree that the consideration described in Paragraph 8, above, constitutes adequate consideration for the settlement and releases described immediately below.

a. *Release by Settlement Class Members:* All Settlement Class Members who do not timely opt out of the Settlement will release all causes of action and claims that were alleged in the Action or reasonably could have been alleged based on the facts and legal theories contained in the operative complaint, including all of the following claims for relief: (i) failure to provide compliant meal periods and/or pay meal period premiums; (ii) failure to provide compliant rest breaks and/or pay rest breaks premiums; (iii) failure to provide complete, accurate wage statements; (iv) failure to pay wages timely at time of termination or resignation; (v) unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaint; and (vii) all claims under the California Labor Code Private Attorneys General Act of 2004 that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaint. The Settlement Class members who cash their Settlement Checks further acknowledge they are

releasing any claims they have against Defendant under the Fair Labor Standards Act (“FLSA”) (collectively, the “Released Claims”).

b. The definition of “Released Claims” for the Settlement Class Members shall expressly exclude all claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers’ compensation, claims while classified as exempt, and claims outside of the Class Period.

c. In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Sup. Ct. (Angelo Dairy)* (2009) 46 Cal.4th 969 and *Cardenas v. McLane Foodservice, Inc.* (2011) 796 F.Supp.2d 1246, individuals otherwise meeting the definition of a Settlement Class Member who exclude themselves from the Settlement shall nonetheless receive a payment for the amount of each such individual’s estimated share of the PAGA Payment that was included by the Settlement Administrator in calculating the Net Settlement Amount and shall have released PAGA claims.

13. The Class Notice will contain an estimated individual settlement payment, dates of employment (or total number of work weeks), how to opt-out of the settlement, and how to object to the settlement.

a. Settlement Class Members who submit timely requests to opt out of the settlement will not participate in the settlement and will not be bound by the terms of the proposed settlement or the final judgment.

b. The Net Settlement Amount shall be distributed on a *pro rata* basis to Settlement Class Members, subject to the distribution formula agreed upon by the Parties.

c. The recipients of payments pursuant to this Agreement shall be exclusively responsible for all tax obligations.

14. Defendant maintains the right, in its sole discretion, to revoke the settlement and its stipulation to class certification prior to the final fairness hearing in the event that ten percent (10%) or more of Settlement Class Members opt out of the settlement.

15. All Settlement Class Members who have not validly opted out by the stated time period will be subject to the Release.

16. The Parties and their counsel agree not to take any action to encourage any Settlement Class Members to opt out of and/or object to the Settlement.

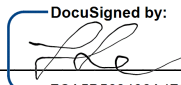
17. Parties and attorneys will keep the settlement confidential through preliminary approval. Thereafter, the Parties will agree to make no comments to the media

or otherwise publicize the terms of the settlement.

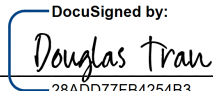
18. Defendant expressly denies any liability. Neither this MOU nor the “long form” Stipulation of Settlement shall constitute an admission of liability or of the accuracy of any allegation made by Plaintiff or his counsel.

ACCEPTED AND AGREED:

Plaintiff Linda Le:

Signature:  DocuSigned by:
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Date: 4/24/2021

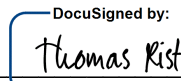
Defendant Mile Square Surgery Center, Inc.:

Signature:  DocuSigned by:
28ADD77FB4254B3...
Name: Douglas Tran
Date: 4/15/2021

APPROVED AS TO FORM:

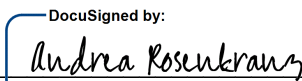
Attorneys for Plaintiff and the Putative Classes:

**RIST LAW OFFICE, LC
NAKASE LAW FIRM, INC.**

Signature:  DocuSigned by:
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Name: Thomas Rist
Date: 4/15/2021

Attorneys for Defendant:

O'HAGAN MEYER

Signature:  DocuSigned by:
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Name: Andrea Rosenkranz
Date: 4/15/2021

Certificate Of Completion

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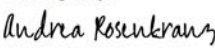
Signer Events

Andrea Rosenkranz

arosenkranz@ohaganmeyer.com

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Signature

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Douglas Tran

dougmscc@yahoo.com

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Linda Le

lindale513@gmail.com

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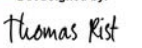
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Thomas Rist

tom@sdvictimlaw.com

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