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and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

LISA SKERL, an individual; VICTORIA
KROPP, an individual; LORI ROARK, an
individual; on behalf of themselves and all
others similarly situated and the general
public,

Plaintiffs,

v.

SUTTER BAY HOSPITALS, a California
corporation; and DOES 1 to 100, inclusive,

Defendants.

) Case No. 21-CIV-02057

)
) [Assigned For All Purposes To The Hon. Nancy
) L. Fineman, Dept. 4]

) **DECLARATION OF AARON A. BARTZ IN**
) **SUPPORT OF MOTION FOR**
) **PRELIMINARY APPROVAL OF CLASS**
) **ACTION SETTLEMENT**

) Date: January 31, 2023

) Time: 2:00 p.m.

) Dept: 4

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DECLARATION OF AARON A. BARTZ

I, Aaron A. Bartz, declare:

1. I am an attorney licensed to practice before all courts of the State of California. I am the owner of Bartz Law Group APC, and am Class Counsel for the Plaintiffs herein. I have personal knowledge of the facts herein. If called as a witness, I could and would competently testify to those facts under oath.

2. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of Class Settlement. A true and correct copy of the Joint Stipulation of Class Action and PAGA Settlement and Release is attached hereto as **Exhibit A**, and the Notice of Pendency of Class Action Settlement and Final Hearing, attached thereto as Exhibit 1.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

3. This case arises out of wage and hour violations by Defendant Sutter Bay Hospitals ("Defendant" or "SBH") against its non-exempt hourly employees. Plaintiff Lisa Skerl ("Skerl") worked for SBH as a Surgical Tech at the California Pacific Medical Center (CPMC) between 2019 and 2020. Plaintiff Victoria Kropp ("Kropp") has worked for SBH for 32 years, most recently as a Labor and Delivery nurse at CPMC. Plaintiff Lori Roark ("Roark") worked as a Lab Technician for SBH at its Mills-Peninsula Medical Center (MPMC) until March 2019.

4. On July 17, 2020, Plaintiff Lisa Skerl, on behalf of herself and all other aggrieved employees of Defendants, served a Private Attorneys General Act (PAGA) letter, alleging various Labor Code violations, including: (1) failure to pay all wages, including minimum wages, straight time wages, and overtime compensation; (2) failure to provide meal periods; (3) failure to authorize and permit rest periods or provide compensation in lieu thereof; (4) failure to timely pay all wages owed; (5) illegal rounding; and (6) failure to properly maintain and submit accurate itemized wage statements. A true and correct copy of Plaintiff's PAGA letter served on July 17, 2020 is attached hereto as **Exhibit B**.

5. Thereafter, on July 20, 2020, Plaintiff Skerl filed a class action Complaint against Defendants in the San Francisco Superior Court, alleging similar claims. Then, on December 1, 2020, Plaintiff Skerl filed a First Amended Complaint, adding PAGA claims. Plaintiff Kropp was added to the Complaint on or about October 18, 2021 in a Second Amended Complaint. Plaintiff Roark then filed her operative Complaint against MPMC in this Court on April 12,

2021, alleging similar claims as those alleged by Plaintiffs Skerl and Kropp in the related San Francisco action.

6. On September 21, 2022, the parties filed a Stipulation and Order to file a First Amended Consolidated Complaint, and later filed the operative First Amended Consolidated Complaint on October 6, 2022. A true and correct copy of Plaintiffs' First Amended Consolidated Class Action Complaint is attached hereto as **Exhibit C**.

MEDIATION AND SUMMARY OF SETTLEMENT

7. This case was extensively litigated from the start. Plaintiffs served five (5) sets of Requests for Production of Documents and four (4) sets of Special Interrogatories, deposed SBH's person most knowledgeable, sent out multiple Belaire-West notices for class members, interviewed scores of class members, reviewed more than 40,000 pages of time and payroll as well as policy documents, and exhaustively researched and investigated the potential claims in an effort to prosecute this action.

8. Plaintiffs also hired wage and hour damages expert James Toney to analyze voluminous payroll and related wage data and create a damages model for the various claims alleged in the case. Based upon the analysis of the time records and payroll data, Mr. Toney and Class Counsel were able to calculate damage estimates on a class-wide basis. A true and correct copy of Plaintiffs' and Mr. Toney's damages analysis for the class is attached hereto as **Exhibit D**.

9. The parties did not attend Mediation in this matter until more than two years into the litigation, and the above discovery had been completed. In advance of Mediation, Defendant produced detailed spreadsheets showing, among other things, the total number of putative class members, the total number of former employees, their dates of employment, their average rates of pay, the total number of workweeks year by year, time records for putative class members, all meal and rest break premiums paid to the putative class members, and the corresponding rates of pay for the premiums. Class Counsel thoroughly reviewed, investigated, and analyzed this information in collaboration with their expert Mr. Toney. Based on the volume of data, the parties agreed to a ten percent sampling of pay and time records in order to calculate classwide damages estimates. This informal discovery process occurred over a period of several months and involved extensive meet and confer efforts between counsel for the parties.

1 10. On August 15, 2022, the parties attended a full-day Mediation before the
2 prominent mediator Michael Loeb, and did not settle until late in the evening on the day of the
3 Mediation, after 14 hours of tense and hard fought negotiations. Several more months were
4 necessary to negotiate the specific long form Settlement Agreement entered into in December
5 2022.

6 11. The class members entitled to the settlement fund are grouped into three
7 categories: (1) all current and former non-exempt nurses and surgical technicians, and other
8 non-exempt patient care employees working at CPMC; (2) all current and former non-exempt
9 employees who worked at MPMC; and (3) all current and former non-exempt hourly employees
10 of SBH, excluding those already included in the CPMC and MPMC group above.¹ The Class
11 Period is between July 20, 2016 and the earlier of the date of preliminary approval, or January
12 31, 2023. There are approximately 22,000 class members according to SBH's employment
13 records.²

14 12. The settlement fund is all in (except for the employer's share of payroll taxes,
15 which SBH shall pay in addition to the \$12 million settlement), there is no claim form
16 requirement, and no residual will revert to SBH. Class members will be paid as long as they do
17 not opt out of the settlement. If a Class Member opts out, their share of the Net Settlement
18 Amount will be allocated to other members of the Settlement Class. In the event a class member
19 does not negotiate his or her settlement check, the settlement administrator will forward the
20 check to the State of California, State Controller's Office, where it will remain in the name of the
21 class member until claimed.

22 13. The payment to the Class Members will be characterized eighty percent interest
23 and penalties, and twenty percent wages. This allocation is justified because many of the claims
24

25 ¹ The latter group of SBH non-exempt employees is providing a more limited release than
26 either the CPMC or MPMC settlement classes, which is why there are three separate buckets of
27 class members.

28 ² This number will be definitively calculated after preliminary approval. As of the date of
filing this Motion, however, this is Defendant's best estimate of the number of the class
members, extrapolated through January 31, 2023.

1 alleged contain provisions for penalties, and the vast majority of the alleged violations occurred
2 years before the settlement, implicating significant alleged interest owed. The class
3 administrator will issue W-2 statements for the wage portion of the settlement, and a form 1099
4 for all amounts paid as penalties and interest.

5 14. Based upon Class Counsel's independent analysis and investigation in this matter,
6 the Settlement Class will be compensated based on each member's respective number of
7 workweeks worked during the Class Period. The parties have allocated the settlement such that
8 the CPMC Settlement Class receives 30% of the Net Settlement Amount, the MPMC receives
9 20% of the Net Settlement Amount, and the SBH Premium Calculation and Rounding Class
10 receives 50% of the Net Settlement. This allocation is justified because the MPMC includes
11 only nurses, surgical technicians, and patient care employees, who are paid more, on average,
12 than the MPMC grouping. The SBH Premium Calculation and Rounding Class includes all
13 other non-exempt employees of SBH, and so it necessarily includes damages exposure on a
14 larger scale. As such, Class Counsel believes it is fair to allocate 50% of the Net Settlement
15 amount to this group.

16 15. Based on the settlement terms, there will be an approximate net settlement fund of
17 **\$7,683,000**. Subject to Defendant's review and calculation of precise class member data after
18 preliminary approval, the class member payouts are, on average, approximately as follows: (1)
19 \$650 to each member of the CPMC class; (2) \$360 to each member of the MPMC class; and (3)
20 \$270 to each member of the SBH class. In exchange for their payment, the CPMC and MPMC
21 classes will release Defendant from any and all claims, known or unknown, contingent or
22 accrued, arising out of the operative facts alleged in the lawsuit, and the SBH class members will
23 release a narrower set of claims based on rounding and regular rate claims. The named Plaintiffs
24 will, in addition to releasing claims alleged in the lawsuit, give a general release of all claims
25 pursuant to Civil Code section 1542.

26 16. The parties further agree to appoint an experienced settlement administrator,
27 ILYM Group, Inc. ("ILYM"), to prepare and send notice to the class, receive and process
28 objections, and prepare and mail settlement checks to Settlement Class Members. The
settlement administrator will conduct skip-tracing for any Settlement Class Member whose
addresses cannot be found.

17. The all-in settlement fund will also include all of the attorneys' fees and costs allowed by this Court. The attorneys' fees shall not exceed one-third of the \$12 million settlement fund, or \$4,000,000. Defendants will also pay class counsel's costs, not to exceed \$25,000.00, as well as settlement administration costs not to exceed \$67,000, out of the common fund.

18. The PAGA allocation of the settlement is \$240,000, of which \$180,000 (75%) will be distributed to the Labor Workforce and Development Agency (LWDA), with the remaining portion - \$60,000 (25%) - going to PAGA Members (all allegedly aggrieved persons who worked for SBH as non-exempt employees in California, at any time from July 17, 2019 through the end of the Class Period).

19. The settlement also includes Plaintiffs' class representative enhancements. Based on Plaintiffs' work in connection with this case, including connecting Class Counsel with other witnesses, meeting and conferring with Class Counsel regarding legal strategies, and assisting with developing the claims and theories in this case, and attending Mediation, Plaintiffs collectively seek \$45,000.

20. In summary, the settlement fund is allocated as follows:

- (1) A net settlement fund of approximately \$7,683,000.
- (2) Attorney's fees and costs: Up to one-third of the gross settlement, i.e., \$4 million in attorneys' fees and not to exceed \$25,000 in costs.
- (3) Settlement administrator expenses of \$67,000.
- (4) PAGA payment to the LWDA: \$180,000.
- (5) Class representative enhancements of \$45,000 for the three named Plaintiffs.

NATURE OF CLAIMS

21. Plaintiffs' First Amended Consolidated Class Action Complaint alleges claims for 1) Failure to Pay All Wages and Illegal Rounding; 2) Failure to Provide Meal Periods; 3) Failure to Authorize and Permit Proper Rest Periods; 4) Failure to Pay Meal and Rest Break Premiums at the Proper Regular Rate of Pay; 5) Failure to Properly Maintain and Submit Itemized Wage Statements; 6) Waiting Time Penalties; 7) Unfair Business Practices; and 8) Violation of Labor Code § 2699 (PAGA). Plaintiffs further allege that they and the Class are entitled to damages, restitution, wages, attorneys' fees, and interest, among other remedies. The reasonable

1 exposure and the reasonable settlement value for each of the alleged claims are as follows:

2 **1. Unpaid Wages/Rounding**

3 Plaintiffs allege that SBH fail to pay employees for all time worked due to their rounding
4 mechanism that results in rounding off of the time worked which fails to pay employees for all
5 time worked. Defendant records the time worked to the minute but uses a rounding system for
6 purposes of paying wages, including deducting time from class members' wages based upon
7 Defendant's policy and practice of rounding the time on a daily basis for time spent during meal
8 periods. Plaintiffs assert that Defendant's rounding practice is uniform and has applied to all
9 putative class members during the class period. Plaintiffs believe that this was an objective
claim and would obtain certification on the claim.

10 The law on whether rounding is legal or not in California is unsettled. California
11 employers have long engaged in employee time-rounding, yet there is no California statute
12 specifically authorizing or prohibiting this practice. *See's Candy Shops, Inc. v. The Superior*
13 *Court of San Diego*, 210 Cal.App.4th 889, 901 (2012) ("*See's Candy I*"). Likewise, until the
14 decision of *See's Candy I*, there was no California case law on point. *See's Candy I* confirmed
15 that although there are no California reported decisions holding the federal standard applies
16 under California law, the agency empowered to enforce California's labor laws, the Division of
17 Labor Standards Enforcement ("DLSE") has adopted the federal regulation in its Enforced
Policies and Interpretations Manual (2002 Rev.) ("DLSE Manual"). (*Id.* at p. 902.)

18 A time-rounding policy is improper unless it is: (1) facially neutral; and (2) actually
19 compensates the employee for all hours worked. (*See's Candy I, supra*, 210 Cal.App.4th at p.
20 901.) California has adopted the federal rounding standard for claims under the California Labor
21 Code, which allows the practice "of recording the employees' starting time and stopping time to
22 the nearest 5 minutes, or to the nearest one-tenth or quarter of an hour, provided that it is used in
23 such a manner that it will not result, over a period of time, in failure to compensate the
24 employees properly for all the time they have actually worked." (*Ibid.*; 29 C.F.R. § 785.48(b).)
25 The policies underlying the federal regulation – recognizing that time rounding is a practical
26 method for calculating work time and can be a neutral calculation tool for providing full payment
27 to employees – apply equally to the employee-protective policies embodied in California Labor
28 Law. (*See's Candy I, supra*, 201 Cal.App.4th at p. 907.) Accordingly, California law "permits

1 employers to use a rounding policy for recording and compensating employee time as long as the
2 employer's rounding policy does not ‘consistently result[] in a failure to pay employees for time
3 worked’” and it is “fair and neutral on its face.” (*Id.* at p. 901, quoting *Alonzo v. Maximus, Inc.*,
4 832 F.Supp.2d 1122, 1126 (C.D. Cal. 2011). In other words, a rounding policy must not impose
5 any burden on employees. (*See's Candy I, supra*, 210 Cal.App.4th at p. 902.)

6 Recently, the California Supreme Court weighed in on the rounding of meal periods, and
7 held that such a practice was illegal. *See Donohue v. AMN Services, LLC*, 11 Cal.5th 58 (2021).
8 The Court, however, declined to rule on the “validity of the rounding standard articulated in
9 *See's Candy I.*” *Id.* at 72. Thus, whether rounding of time is appropriate in California is still an
10 open question.³

11 Defendant contends that its rounding policy is legal under California law, and that it does
12 not individually round meal periods as in *Donohue*. Defendant also hired an expert showing
13 that, if anything, Defendant's rounding policy benefited class members, and that there are no
14 damages resulting from the rounding policy.

15 Plaintiffs and their expert analyzed payroll and time records for the class members and
16 calculated that approximately 62% of the pay periods for the class members were unfavorable to
17 them. In arriving at the damages calculation, Plaintiffs' expert reviewed payroll records for the
18 class, including pay period counts per year, unfavorable rounding minutes per pay period, and a
19 weighted average rate of pay. Based on that evaluation, the total potential verdict value of the
20 failure to pay wages and rounding claim is approximately **\$48 million**. Because of the
21 uncertainty of the law, and the fact that California appellate courts have upheld other neutral
22 rounding practices in similar situations, the Plaintiffs placed a reasonable settlement value of the
23 rounding claim at ten percent of the total verdict value, or **\$4.8 million**. This valuation takes into

24 ³ After the parties reached a settlement, the Sixth District in *Camp v. Home Depot U.S.A.,*
25 *Inc.*, 84 Cal.App.5th 638, 300 Cal.Rptr.3d 548 (2022), criticized *See's Candy I* and related cases
26 upholding rounding, and reversed summary judgment in favor of the employer. The court
27 invited the California Supreme Court to “review the issue of neutral time rounding by employers
28 and to provide guidance on the propriety of time rounding by employers.” *Id.* at 565. It is
unclear at this point whether the California Supreme Court will accept the Sixth District's
invitation.

consideration Plaintiffs' counsels' analysis of the law, and evidence produced by the Defendant.

2. Meal and Rest Period Claims

a. Meal period liability and damages

Plaintiffs contend that SBH fails to provide duty-free meal periods to Plaintiffs and the class members, who suffered short, late and missed meal periods on a regular basis. Plaintiffs' expert analyzed each pay period for any meal violation (ie short, late, missed) and calculated 1.35 million shifts with at least one (1) violation.

In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012), the California Supreme Court held that "under ... Labor Code section 512, subdivision (a), an employer must relieve the employee of all duty for the designated period but need not ensure that the employee does no work" during the meal period. *Brinker*, 53 Cal. 4th at 1034. However, "...an employer may not undermine a formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks. *Cicairos v. Summit Logistics, Inc.*, 133 Cal. App. 4th 949, 962–963 (2005); *see also Jaimez v. DAIOHS USA, Inc.*, 181 Cal. App. 4th 1286, 1304–1305 (2010) [proof of common scheduling policy that made taking breaks extremely difficult would show violation]; *Dilts v. Penske Logistics, LLC*, 267 F.R.D. 625, 638 (S.D.Cal.2010) [indicating informal anti-meal-break policy "enforced through 'ridicule' or 'reprimand' " would be illegal].) The wage orders and governing statute do not countenance an employer's exerting coercion against the taking of, creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks." *Brinker*, 53 Cal. 4th at 1040.

Moreover, in *Donohue, supra*, the Court held that at both the class certification and summary judgment stage, when time records show short, missed, and late meal periods, there is a presumption that an employer violated California's meal period requirements. *See Donohue, supra*, 11 Cal.5th at 78 ("If time records show noncompliant meal periods, then a rebuttable presumption of liability arises.")

Plaintiffs allege that the failure to provide meal periods here was particularly acute, given that Plaintiffs allege that Defendant understaffed its hospitals, which Plaintiffs contend is shown on census/patient daily assignment sheets. Class Counsel's further investigation revealed that class members were required to carry communications devices during their meal periods, and they were often interrupted during their meal periods to address work issues.

1 Defendant, on the other hand, contends that it has fully compliant meal period policies,
2 and that its objective records reflect strict compliance with California's meal period
3 requirements. Defendant also produced records showing substantial meal period premium
4 payments of more than \$16 million to the class members. Further, Defendant believes that the
5 meal period claim cannot be certified because of the existence of individualized issues as to the
6 why meal periods were not taken, among other reasons.

7 Class Counsel and their expert calculated the maximum verdict value of the meal break
8 claims to be approximately **\$93 million**. This calculation is based on the assumption that each
9 late, missed or short meal period was the result of Defendant's interference with Plaintiffs' and
10 the class members abilities to take duty-free meal periods. Accordingly, Class Counsel and their
11 expert determined a total violation rate for the class members, and average rate of pay based on
12 the payroll data for the class. Based on discussions with Plaintiffs and interviews of other class
13 members, and the fact that Defendant has facially compliant meal period policies, Plaintiffs
14 believe they had a ten percent probability of recovering all of these damages. Accordingly,
15 Plaintiffs contend the reasonable exposure of the meal break claim is approximately **\$9.3
million**.

16 b. Rest period liability and damages

17 *Labor Code* § 226.7(b) provides that "[a]n employer shall not require an employee to
18 work during a meal or rest or recovery period mandated under an applicable statute, or applicable
19 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
20 Health Standards Board, or the Division of Occupational Safety and Health."

21 Section 12(A) of the IWC Wage Order(s) states: "Every employer shall authorize and
22 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
23 each work period. The authorized rest period time shall be based on the total hours worked daily
24 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However,
25 a rest period need not be authorized for employees whose total daily work time is less than three
26 and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which
27 there shall be no deduction from wages."

28 Plaintiffs' theory on the rest break claim is that Plaintiffs and the class were not able to
take duty-free rest periods, based upon hospital understaffing and carrying of communications

1 devices while they were taking their rest periods. Defendant contends, on the other hand, that
2 liability is tenuous at best because Defendant had a compliant rest period policy, and that
3 Plaintiffs would not be able to succeed on this claim because of numerous individual issues
4 regarding why rest periods were not taken. Plaintiffs acknowledge the difficulty in proving the
5 rest period violations as a result of an absence of objective evidence.

6 Based on discussions with Plaintiffs and interviews of other class members, Class
7 Counsel assumed a 50% violation rate for all shifts by class members of 3.5 hours or more.
8 Based on that assumption, Plaintiffs' expert calculated total violations across the class,
9 multiplied by an average rate of pay for the class members. As such, Class Counsel and their
10 expert calculated the maximum verdict value of the rest period claims to be **\$124 million**. Based
11 on the difficulty of proving rest period violations on a classwide basis, and the lack of objective
12 evidence proving such violations, Plaintiffs believe they had a five percent chance of recovering
13 all of the rest period damages. As such, Plaintiffs believe the reasonable exposure of the rest
14 break claim is approximately **\$6.2 million**.

15 **3. Failure to Pay Meal and Rest Period Premiums At The Regular Rate**

16 Plaintiffs contend that when Defendant pays for missed meal and missed rest periods,
17 Defendant did so at the base rate, and not the regular rate of pay. During discovery, Plaintiffs
18 determined that Defendant failed to pay meal and rest period violations at the regular rate of pay
19 between 2017 and August 2021.

20 Pursuant to Labor Code §226.7(c), “[i]f an employer fails to provide an employee a meal
21 or rest or recovery period in accordance with state law, . . . ***the employer shall pay the employee***
22 ***one additional hour of pay at the employee’s regular rate of compensation*** for each workday
23 that the meal or rest or recovery period is not provided.” (emphasis added). The California
24 Supreme Court has held that “regular rate of compensation” in section 226.7(c) “has the same
25 meaning as ‘regular rate of pay’ in section 510(a) and encompasses not only hourly wages but all
26 nondiscretionary payments for work performed by the employee.” *Ferra v. Loews Hollywood*
27 *Hotel, LLC*, 11 Cal.5th 858, 878 (2021).

28 Ferra was decided during the pendency of this case, and Defendant does not seriously
contend that it is not liable for these damages. Plaintiffs' expert concludes that the regular rate
claim has a maximum verdict value of **\$665,220**, based on tallying the total number premium

1 payments and multiplying those payments by the percentage of pay periods when the regular rate
2 was underpaid as well as the average underpayment. Plaintiffs do not discount this claim
3 whatsoever, and believe they have a 100% chance of recovering on this claim.

4 **4. Wage Statement Claim**

5 *Labor Code* §226(a) states in pertinent part: “Every employer shall, semimonthly or at
6 the time of each payment of wages, furnish each of his or her employees, either as a detachable
7 part of the check, draft, or voucher paying the employee’s wages, or separately when wages are
8 paid by personal check or cash, an accurate itemized statement in writing showing (1) gross
9 wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned
10 and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, ...
11 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
12 name of the employee and only the last four digits of his or her social security number or an
13 employee identification number other than a social security number, (8) the name and address of
14 the legal entity that is the employer..., and (9) all applicable hourly rates in effect during the pay
15 period and the corresponding number of hours worked at each hourly rate by the employee... .”

16 Plaintiffs’ theory of liability with respect to the paystub claim is that Defendant failed to
17 set forth all premium payments for meal and rest period violations, and in instances where
18 premium payments were identified on paystubs, oftentimes the incorrect rate was listed. In
19 *Naranjo v. Spectrum Security Servs., Inc.*, 13 Cal.5th 93 (2022), the California Supreme Court
20 held that an employer’s obligation to report wages includes an obligation to report premium pay
21 for meal and rest break violations. Plaintiffs therefore contend that any time Defendant failed to
22 do so here should result in paystub penalties. Defendant argues that, even assuming there are any
23 violations, which it denies, Defendant presents evidence of a good faith dispute as to any
24 violation. *Hurst v. Buczek Enters., LLC*, 870 F.Supp.2d 810, 829 (N.D. Cal. 2012) (no section
25 226 violation where the employer "makes a good faith claim" in its defense); *Harris v. Vector*
26 *Mktg. Corp.*, 656 F.Supp.2d 1128, 1146 (2009) (the "employer did not knowingly and
27 intentionally fail to provide itemized wage statements" where there was a "good faith dispute").
28

Pursuant to Labor Code section 226, subd. (e)(1), employees are entitled to \$50 for the
initial pay period in which a violation occurs, and \$100 per pay period for subsequent violations.
Nevertheless, pursuant to *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008), the

1 heightened penalty amount is not recoverable unless there is a showing of a prior citation or in
2 the absence of a good faith dispute. *See also Bernstein v. Virgin America, Inc.*, 3 F.4th 1127,
3 1144 (9th Cir. 2021). Because there is no evidence here that Defendant has previously been cited
4 with Labor Code violations, Class Counsel believes the \$50 penalty to be applicable for all
5 violations.

6 Based on the pay periods at issue here, Plaintiffs and their expert calculated wage
7 statement penalties by multiplying the total employee count during the statutory period by the
8 total number of pay periods during that period. The maximum verdict value of the paystub
9 penalties are approximately **\$14 million**. Plaintiffs believe they have a ten percent chance of
10 recovering all of those penalties, or **\$1.4 million**, based on the risks set forth above and
11 Defendant's defenses.

12 **5. Waiting Time Penalties**

13 *Labor Code* § 203 provides that if an employer willfully fails to pay, without abatement
14 or reduction, in accordance with *Labor Code* §§ 201 and 202, any wages of an employee who is
15 discharged or who quits, the wages of the employee shall continue at the same rate, for up to
16 thirty (30) days from the due date thereof, until paid or until an action therefore is commenced.

17 In *Naranjo, supra*, the Court held that failing to pay meal and rest period premium
18 payments constituted "wages" for purposes of waiting time penalties. *Naranjo, supra*, 13 Cal.5th
19 at 117. Defendant denies any violations whatsoever, and that even if such violations are proven,
20 that Defendant has a good faith dispute regarding whether such wages are owed.

21 Plaintiffs and their expert determined that the total verdict value of this claim is
22 approximately **\$46 million**, based on termination counts provided, multiplied by the average
23 daily rate per terminated employee and the maximum 30-day waiting time period. Class Counsel
24 believes the reasonable settlement value is far less than the maximum amount because of the
25 willfulness standard for proving such penalties. Plaintiffs believe they have a ten percent
26 possibility of proving all such penalties. As such, Plaintiffs believe the realistic value of the
27 waiting time penalties are **\$4.6 million**.

28 **6. PAGA**

Plaintiffs contend that PAGA penalties are owed based on the numerous alleged Labor
Code violations identified above. Once a PAGA violation is found, a court must award civil

1 penalties. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1211-1213 (2008).

2 Nevertheless, a court has discretion to reduce the award of civil penalties if it finds that “based
3 on the facts and circumstances of the particular case, to do otherwise would result in an award
4 that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(e)(2).

5 Significantly, moreover, because the law is unsettled in many areas of the law alleged by
6 Plaintiffs herein, there is a very real possibility that a court would substantially reduce the
7 penalties, even if they are proven. *See, e.g., Fleming v. Covidien, Inc.*, 2011 WL 7563047, *3-4
8 (C.D. Cal. 2011) (reducing penalties from \$2.8 million to \$500,000 based on wage statement
9 violations because to assess full penalties would be unjust and arbitrary); *Thurman v. Bayshore*
10 *Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1134 (2012) (reduction of PAGA penalties by 30%
11 affirmed on appeal).

12 Plaintiffs and their expert calculated the maximum verdict value of the PAGA penalties
13 at approximately **\$96 million**, based on assumed violations of Labor Code sections 1194, 512,
14 226.7, 226, and 256, violations for each and every pay period at issue, stacking of penalties,
15 heightened subsequent penalties, and a 100% violation rate. Plaintiffs believe recovering all of
16 these penalties is highly unlikely, and based on a Court’s discretion to reduce such penalties,
17 Plaintiffs believe they had the chance of recovering five percent of those penalties, or **\$4.8**
18 **million**.

19 **7. Total Damage Exposure⁴**

20 Plaintiffs believe that the **\$12 million** settlement achieved in this case is excellent for the
21 class members. Based upon a realistic exposure of approximately \$32 million, the settlement
22 represents approximately 38% of that total value. Given the many defenses raised, the
23 uncertainty of the certifiability of any class, and the difficulty in proving the claims, Class
24 Counsel believes this settlement is an excellent result for all of the class members.

25 ⁴ The Unfair Competition claim is subsumed into the *Kullar* analysis above. The Unfair
26 Competition claim is based upon the wage and hour violations, and adds an extra year of
27 damages, and is included within the above analysis.
28

ATTORNEY COMPETENCE IN CLASS ACTIONS

22. I am experienced class action counsel, including specializing in wage and hour and employment claims. Some of the class action litigation on which I have served as Class Counsel include:

- a. *Wilkins, et al. v. Equinox Holdings, Inc.*
Los Angeles Superior Court, No.: BC440058
- b. *TBC Retail Group Wage and Hour Cases*
Los Angeles Superior Court, No.: JCCP No. 4701
- c. *Casserly v. Randstad US, L.P., et al.*
U.S.D.C., Central District of California, No. SACV 12-1023-DOC(ANx)
- d. *Crilly v. Micro Electronics, Inc.*
Orange County Superior Court, No.: 30-2013-00662586-CU-OE-CXC
- e. *Concho, et al. v. Pipeline Carriers, Inc. et al.*
Orange County Superior Court, No.: 30:2013-00649600-DU-OE-CXC
- f. *Holsted et al. v. R.J. Noble Company et. al.*
Orange County Superior Court, No.: 30:2010-00379770-CU-OE-CXC
- g. *Piggue v. Chief Protective Services, Inc.*
Orange County Superior Court, No.: 30-2013-00688107-CU-OE-CXC
- h. *Walsh v. Pacific Bell Telephone Company*
Orange County Superior Court, No.: 30-2011-00498062-CU-OE-CXC
- i. *Woods v. JFK Memorial Hospital*
Riverside County Superior Court, No.: INC 1205209
- j. *Ramirez et. al v. Titan Insurance of New Mexico*
Riverside County Superior Court, No.: RIC1211890
- k. *DeSantos v. Jaco Oil Company, et al.*
U.S.D.C. Eastern District of California, No. 1:14-CV-00738-JLT
- l. *Duran v. Big 5 Corp.*
Los Angeles Superior Court, Case No. BC557154
- m. *Sheahan v. Celtic Leasing Corporation, Inc.*
Orange County Superior Court No.: 30-2016-00852151-CU-OE-CXC

- 1 n. *Panasis v. Control4 Corporation*
2 United States District Court, Central District of California
3 Case No. SACV-16-1179-DOC
4 o. *O&R Construction, LLC v. Dun & Bradstreet, et al.*
5 United States District Court, Western District of Washington
6 Case No. C12-2184 TSZ
7 p. *Matthews v. Whelan Security of California, Inc.*
8 Orange County Superior Court, No.: 30-2016-00833250-CU-OE-CXC
9 q. *Rodriguez v. R.J. Noble Company (Navarro/Kles),*
10 Orange County Superior Court, No.: 30-2017-00916018-CU-OE-CXC
11 r. *Wang v. Fountain Valley Regional Hospital*
12 Orange County Superior Court, No. 30-2015-00821329-CU-OE-CXC

13 23. I graduated from Vanderbilt University in 1992 with a Bachelor of Arts in
14 Economics and English, and graduated from Southwestern Law School in 1998. Since becoming
15 a lawyer in 1998, my practice has focused on complex litigation matters, and for the last decade,
16 complex employment law and wage and hour matters.

17 24. I am a member of the California State Bar, the Orange County Bar Association,
18 and Los Angeles County Bar Association. I have an AV rating from Martindale-Hubbell, the
19 highest possible rating for a lawyer. During my 24+ year career, I have handled many successful
20 employment law matters both at the trial and appellate levels. I estimate that I have represented
21 plaintiffs in over 80 different employment cases, the vast majority of which have resulted in
22 favorable settlements, awards and/or verdicts for my clients. I have successfully prosecuted and
23 obtained significant recoveries in several class action lawsuits and other lawsuits involving
24 complex legal and factual issues. In 2015, I was co-lead counsel in *Walsh v. Pacific Bell*, which
25 settled for \$16,800,000. I also served as co-class counsel in the above-referenced *Wilkins* case
26 which settled for \$5,500,000 and the above-referenced *Cassery* case which settled for
27 \$4,900,000. I also was co-class counsel in the above-described *Holsted v. RJ Noble*, which our
28 firm settled on behalf of 66 class members for \$1,900,000. I have also been involved in many
other million and multi-million dollar verdicts and settlements over the years.

1
2 **CLASS ENHANCEMENTS AND ATTORNEYS' FEES, COSTS AND EXPENSES**

3 25. Plaintiffs have assisted Class Counsel in their investigation by connecting Class
4 Counsel to other individuals who were employed by Defendant, and by corresponding with Class
5 Counsel to answer questions about their employment. Plaintiffs also spent many hours
6 conferring with Class Counsel both prior to and after initiating this litigation, assisted Class
7 Counsel with written discovery, assisted in the preparation for mediation, and have produced
8 payroll and other employment records to assist Class Counsel in pursuing the claims in this case.

9 26. In addition, Plaintiffs are releasing all claims, not just wage and hour claims, as
10 part of their releases in this case. As such, Plaintiffs' release includes a waiver of unknown
11 claims and their rights under California Civil Code § 1542.

12 27. Based on the above, and the Declarations of the Class Representatives filed
13 concurrently, the requested service payments of \$15,000 for each of the named Plaintiffs are
14 appropriate and justified.

15 28. Plaintiffs also intend to request attorneys' fees not to exceed one-third of the
16 settlement, and reimbursement of costs not to exceed \$25,000. Plaintiffs' attorneys have
17 achieved an excellent result, and believe that the percentage requested is fair and appropriate in
18 this case, and all of the costs requested assisted in the prosecution of this case. Plaintiffs will
19 submit detailed declarations and attorneys' bills and costs with their motion for final approval.

20 29. Additionally, Plaintiffs will request that the Settlement Administrator, ILYM
21 Group, Inc. ("ILYM"), be paid no more than \$67,000 to administer the settlement. Attached as
22 **Exhibit E** is a true and correct copy of ILYM's not to exceed quote to administer this case.

23 **TRANSMITTING THE NOTICE OF SETTLEMENT**

24 30. In my opinion, the best and most practicable method to notify class members is by
25 mail, as all members of the Class were at one time employed by Defendant in California. For
26 current employees of Defendant who are class members, Defendant has current addresses. I am
27 also informed and believe that Defendant maintains last known addresses for all of their former
28 employees, so mailing the notices is preferable to some other method. In the event former
employees are no longer at the addresses maintained by Defendant, ILYM will engage in skip
tracing to track down their current addresses. In the unlikely event that any member of the Class

1 does not have a verifiable address or cannot be located after skip tracing, any amounts due to go
2 to that member will go to the State of California, State Controller's Office, so that class members
3 can claim his or her settlement funds at a later time.

4 31. Concurrently with the filing of this Motion, Plaintiffs have also transmitted all
5 papers filed with this Court to the Labor Workforce and Development Agency/Department of
6 Industrial Relations, by online submission, at its website located at <https://dir.tfaforms.net/315>.

7 I declare under penalty of perjury under the laws of California that the foregoing is true
8 and correct. Executed on January 3, 2023, at Irvine, California.

9
10 //Aaron A. Bartz//

11 Aaron A. Bartz
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EXHIBIT A

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Attorneys for Defendant
 SUTTER BAY HOSPITALS dba
 MILLS-PENINSULA MEDICAL CENTER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

LISA SKERL, an individual; VICTORIA
 KROPP, an individual; LORI ROARK, an
 individual; on behalf of themselves and all
 others similarly situated and the general
 public,

Plaintiffs,

vs.

SUTTER BAY HOSPITALS, a California
 corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 21-CIV-02057

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

Judge: Hon. Nancy L. Fineman
 Dept.: 4

Complaint Filed: April 12, 2021

IT IS HEREBY STIPULATED, by and between the parties in the lawsuits entitled *Lisa Skerl, an individual; Victoria Kropp, an individual; on behalf of themselves and all others similarly situated and the general public, Plaintiffs v. Sutter Valley Hospitals; Sutter Bay Hospitals; and DOES 1-100 inclusive, Defendants*, San Francisco Superior Court No. CGC-20-585671 (the “Skerl Action”); and *Lori Roark, on behalf of herself and all others similarly situated and the general public, Plaintiffs, v. Sutter Bay Hospitals dba Mills-Peninsula Medical Center; and DOES 1 to 100, inclusive, Defendants*, San Mateo Superior Court No. 21-CIV-02057 (“the Roark Action”) (collectively “the Lawsuits”) and subject to the approval of the Court, that the Lawsuits are hereby compromised and settled pursuant to the terms and conditions set forth in this Joint Stipulation of Class Action Settlement and Release (“Agreement” or “Stipulation of Settlement”), and that the Court shall make and enter judgment, subject to the continuing jurisdiction of the Court as set forth below, and subject to the definitions, recitals, and terms set forth herein which by this reference become an integral part of this Stipulation of Settlement.

DEFINITIONS

1. In addition to the terms previously defined above, the terms below shall have the following meanings:
 - a. “Class Counsel” means Aaron A. Bartz of Bartz Law Group, APC and Ross. E. Shanberg and Shane C. Stafford of Shanberg Stafford LLP for plaintiffs Lisa Skerl, Victoria Kropp, and Lori Roark and all others similarly situated.
 - b. “Class Counsel Award” means the Court-approved attorneys’ fees for Class Counsel’s litigation and resolution of the Lawsuits (not to exceed 33.33 Percent [33.33%] of the Maximum Settlement Amount of \$12,000,000.00) (that is, not to exceed Four Million Dollars (\$4,000,000.00), and the court-approved costs incurred by Class Counsel in connection with these Lawsuits (not to exceed Twenty-Five Thousand Dollars [\$25,000.00]).
 - c. “Class Information” or “Class Lists” means information regarding Class

Members that Defendants shall in good faith compile from its records and shall be authorized by the Court to transmit in a secured manner to the Settlement Administrator. Class Information shall be transmitted in Microsoft Excel format and shall include each Class Member's: (i) full name; (ii) last known address; (iii) Social Security number; and (iv) the dates of employment and other information necessary for the Settlement Administrator to calculate the number of Workweeks worked for Defendant in California as Class Members during the Class Period.

d. "Class Members" or "Settlement Class Members," unless otherwise specified, means all members of the three settlement classes at issue: the CPMC Settlement Class, the MPMC Settlement Class, and the SBH Premium Calculation and Rounding Settlement Class (collectively "the Settlement Class" or "Settlement Classes"). These classes are defined as follows:

- i. "CPMC Settlement Class" means all current and former non-exempt nurses and surgical technicians, and other current and former non-exempt employees of Defendant performing patient care who worked at California Pacific Medical Center ("CPMC") during the Class Period. The CPMC Settlement Class will be allocated 30% of the Net Settlement Amount.
- ii. "MPMC Settlement Class" means all current and former non-exempt employees of Defendant who worked at Mills-Peninsula Medical Center ("MPMC") during the Class Period. The MPMC Settlement Class will be allocated 20% of the Net Settlement Amount.
- iii. "SBH Premium Calculation and Rounding Settlement Class" means all current and former non-exempt employees of Defendant who have been employed by SBH during the Class Period, excluding

any members of the Hurtubise Settlement Class, the CPMC Settlement Class, and the MPMC Settlement Class. The SBH Premium Calculation and Rounding Settlement Class will be allocated 50% of the Net Settlement Amount.

e. “Class Members’ Released Claims” means:

i. **CPMC Settlement Class and MPMC Settlement Class.** For the CPMC Settlement Class and MPMC Settlement Class, Class Members’ Released Claims include any and all claims, rights, demands, liabilities, and causes of action of every nature and description arising during the Class Period, including statutory, contractual, or common law claims, for wages, damages, penalties, liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or equitable relief – whether asserted under the California Labor Code, Business and Professions Code §§ 17200 *et seq.*, the applicable wage orders at California Code of Regulations, Title 8, Section 11000 *et seq.*, or otherwise – that are alleged or reasonably could have been alleged based on the facts contained in the operative complaints in the *Skerl* and *Roark* actions (including the First Amended Consolidated Complaint in the *Skerl/Roark* action), including: (a) any and all claims for failure to pay wages, including overtime wages, minimum wages, and/or regular pay due to Defendant’s maintenance and application of an allegedly-unlawful rounding policy, including its policy relating to meal period rounding; (b) any and all claims that Defendant failed to pay meal and/or rest break premiums at the correct regular rate of pay, in violation of *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858 (2021); (c) any and all claims for failure to provide meal breaks and/or pay meal premiums in lieu thereof; (d) any and all

1 claims for failure to authorize and permit rest breaks and/or pay rest
2 break premiums in lieu thereof; (e) any and all derivative claims for
3 failure to furnish accurate itemized wage statements in accordance
4 with Labor Code section 226, and including but not limited to any
5 associated claims for penalties under Labor Code section 226(e),
6 arising out of the above-alleged claims; (f) any and all derivative
7 claims for failure to provide wages when due upon separation of
8 employment under Labor Code sections 201-203; (g) any and all
9 derivative claims for violation of California Business and
10 Professions Code §§ 17200 *et seq.* arising out of the above alleged
11 claims; (h) any and all claims for violation of the Private Attorneys
12 General Act of 2004, Labor Code §§2698 *et seq.* (“PAGA”) arising
13 out of the above-alleged claims; and (i) any and all claims for
14 attorneys’ fees and costs arising out of the above-alleged claims.

15 ii. **SBH Premium Calculation and Rounding Settlement Class.** For
16 the members of the SBH Premium Calculation and Rounding
17 Settlement Class, Class Members’ Released Claims means: any
18 and all claims, rights, demands, liabilities, and causes of action of
19 every nature and description arising during the Class Period,
20 including statutory, contractual, or common law claims, for wages,
21 damages, penalties, liquidated damages, punitive damages, interest,
22 attorneys’ fees, litigation costs, restitution, or equitable relief –
23 whether asserted under the California Labor Code, Business and
24 Professions Code §§ 17200 *et seq.*, the applicable wage orders at
25 California Code of Regulations, Title 8, Section 11000 *et seq.*, or
26 otherwise – that are alleged or reasonably could have been alleged
27 based on the facts contained in the operative complaints in the *Skerl*
28 and *Roark* Actions (including the First Amended Consolidated

1 Complaint in the *Skerl/Roark* action), including: (a) any and all
2 claims for failure to pay wages, including overtime wages,
3 minimum wages, and/or regular pay, or meal premiums, due to
4 Defendant's maintenance and application of an allegedly-unlawful
5 rounding policy, including its policy relating to meal period
6 rounding; (b) any and all claims for failure to pay owed meal and/or
7 rest break premiums at the correct regular rate of pay, in violation
8 of *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858 (2021);
9 (c) any and all derivative claims for failure to furnish accurate
10 itemized wage statements arising out of the above-alleged claims;
11 (d) any all claims for failure to timely pay final wages due to
12 employees based on the above-alleged claims; (e) any and all
13 claims for violation of California Business and Professions Code §§
14 17200 *et seq.* arising out of the above alleged claims; (f) any and all
15 claims for violation of the Private Attorneys General Act of 2004,
16 Labor Code §§2698 *et seq.* arising out of the above-alleged claims;
17 and (g) any and all claims for attorneys' fees and costs arising out
18 of the above-alleged claims. The SBH Premium Calculation and
19 Rounding Settlement Class Release shall not be deemed to release
20 any claims for failure to provide meal breaks and/or pay meal
21 premiums in lieu thereof or any claims for failure to authorize and
22 permit rest breaks and/or pay rest break premiums in lieu thereof,
23 except to the extent any such claims are premised on Defendant's
24 alleged failure to calculate meal and/or rest break premiums at the
25 correct regular rate of pay and/or Defendant's alleged practice of
26 improperly rounding meal period times, both of which are
27 specifically alleged by Plaintiffs in their complaints herein and are
28 included in the Class Members' Released Claims herein.

- 1 f. "Class Period" means July 20, 2016 through the earlier of the date the
2 Court enters an order granting preliminary approval of the settlement or
3 January 31, 2023.
- 4 g. "Class Representative Service Award" means the Court-approved amounts
5 to be paid to Plaintiffs Lori Roark, Lisa Skerl and Victoria Kropp in an
6 amount not to exceed fifteen thousand dollars (\$15,000.00) each, in
7 addition to each Plaintiffs' Individual Settlement Award, in recognition of
8 Plaintiffs' efforts and risks in prosecuting the Lawsuits.
- 9 h. "Court," unless otherwise specified, means the San Mateo County Superior
10 Court presiding over the settlement approval process. The Parties have
11 stipulated to consolidate the Lawsuits before the San Mateo County
12 Superior Court for settlement approval purposes and have also stipulated to
13 stay the *Skerl* action, pending in the Superior Court for the County of San
14 Francisco, pending approval and entry of judgment by the San Mateo
15 County Superior Court. The San Mateo County Superior Court has entered
16 an order approving the filing of a First Amended Consolidated Class
17 Action Complaint, and Plaintiffs filed the First Amended Consolidated
18 Class Action Complaint on October 6, 2022.
- 19 i. "Defendant" means Sutter Bay Hospitals, and any of its former and present
20 parents, corporate members, subsidiaries, divisions, and affiliated
21 companies, and their respective officers, directors, employees, partners,
22 shareholders, agents, successors, assigns, insurers, and legal representatives
23 (the "Released Parties").
- 24 j. "Defense Counsel" means Thomas E. Geidt, Teresa W. Ghali, and Amanda
25 M. Osowski, all of GBG LLP.
- 26 k. "Effective Date" means the date when all of the following events have
27 occurred: (i) this Stipulation of Settlement has been executed by all Parties,
28 Class Counsel and Defense Counsel; (ii) the Court has consolidated the

1 *Roark* and *Skerl* actions in San Mateo County Superior Court for purposes
2 of settlement approval; (iii) the Court has granted preliminary approval to
3 the Stipulation of Settlement; (iv) the Notice of Class Action Settlement
4 has been mailed to the putative members of the Settlement Classes,
5 providing them with an opportunity to object to the terms of this
6 Stipulation of Settlement or opt out of the settlement; (v) the Court has
7 held a Final Approval Hearing and entered a Final Order and/or Judgment
8 certifying the Settlement Classes, and approving the Stipulation of
9 Settlement, and no objections or motions to intervene have been filed, or
10 they were withdrawn before the Court entered a Final Order and Judgment;
11 or, if an objection or motion to intervene has been filed and was not
12 subsequently withdrawn, the next business day after the period for filing
13 any appeal, writ or other appellate proceeding opposing the Court's Final
14 Order and Judgment has elapsed without any appeal, writ or other appellate
15 proceeding having been filed; or (vi) if a Class Member objects, intervenes
16 or files a motion to vacate the judgment approving the Settlement
17 Agreement, and if a timely appeal is filed, the date of final resolution of
18 that appeal (including any requests for rehearing and/or petitions for
19 certiorari), resulting in final judicial approval of the Settlement Agreement.

20 l. "Employer's Share of Payroll Taxes" means Defendant's portion of payroll
21 taxes, including, but not limited to Federal Insurance Contributions Act
22 ("FICA") and Federal Unemployment Tax Act ("FUTA"), as applicable, to
23 the extent required of not-for-profit public benefit corporations like
24 Defendant, on the portion of the Individual Settlement Awards that
25 constitutes wages.

26 m. "Final Approval Hearing" means the hearing to be conducted by the Court
27 after the filing by Plaintiffs of an appropriate motion and following
28 appropriate notice to Class Members giving Class Members an opportunity

1 to request exclusion from the Settlement Class and Settlement or to object
2 to the Settlement, at which time Plaintiffs shall request that the Court
3 finally approve the Settlement, enter the Final Order and Judgment, and
4 take other appropriate action.

5 n. "Final Order and Judgment" means the order and judgment to be entered by
6 the Court upon granting final approval of the Settlement and this
7 Stipulation of Settlement as binding upon the Parties and Participating
8 Class Members. A proposed Final Order and Judgment shall be mutually
9 agreed upon by the Parties and submitted to the Court concurrently with
10 Plaintiffs' Motion for Final Approval of the Settlement.

11 o. "Final Report" means the report to be prepared by the Settlement
12 Administrator (after the expiration of the 180-day period in which
13 Participating Class Members must cash/deposit their Individual Settlement
14 Award payment checks) regarding the distribution of the Maximum
15 Settlement Amount, including the total amount that was cashed/deposited
16 by Participating Class Members and the total amount of any unpaid residue
17 or unclaimed or abandoned funds pursuant to California Code of Civil
18 Procedure section 384.

19 p. "Hurtubise Settlement Class" means all members of the Settlement Class in
20 *Cristy Hurtubise v. Sutter East Bay Hospitals*, Alameda County Superior
21 Court No. RG17868819.

22 q. "Individual PAGA Payment" means the amount payable from the PAGA
23 Payment to each Participating PAGA Member.

24 r. "Individual Settlement Award" means the amount payable from the Net
25 Settlement Amount to each Participating Class Member.

26 s. "Maximum Settlement Amount" means the maximum amount Defendant
27 shall have to pay, by way of a common fund, in connection with this
28 Settlement, which shall be inclusive of all Individual Settlement Awards to

1 Participating Class Members, the Class Counsel Award of fees and costs,
2 the Class Representative Service Award, the PAGA Payments to the Labor
3 and Workforce Development Agency (“LWDA”) and the employees, and
4 the Settlement Administration Costs. Subject to Court approval and the
5 terms of this Stipulation of Settlement, the Maximum Settlement Amount
6 Defendant has agreed to pay and shall be required to pay is Twelve Million
7 Dollars (\$12,000,000.00). The Maximum Settlement Amount is exclusive
8 of Employer’s Share of Payroll Taxes.

9 t. “Net Settlement Amount” means the Maximum Settlement Amount, less
10 the Class Counsel Award, Class Representative Service Awards, the PAGA
11 Payments to the LWDA and employees, and Settlement Administration
12 Costs.

13 u. “Notice of Objection” means a Class Member’s valid and timely
14 submission of a written objection to the Settlement delivered to the
15 Settlement Administrator within the Response Deadline. An objection
16 should include: (a) the objector’s full name, signature, address, telephone
17 number, and the last four digits of his/her Social Security number, (b) a
18 written statement of all grounds for the objection accompanied by any legal
19 support for such objection, and (c) copies of any papers, briefs, or other
20 documents upon which the objection is based. Objecting Class Members
21 may appear at the Final Approval Hearing either in person, or through
22 counsel retained at Class Member’s own expense, to have their objection
23 heard, whether or not they had submitted a prior written objection as
24 specified in this section. The Court will rule on any objections to the
25 settlement at the Final Approval Hearing. An objection may be withdrawn
26 at any time. The Settlement Administrator shall provide objections, if any,
27 to Class Counsel and Defense Counsel via email within three (3) calendar
28 days of receipt, and the Settlement Administrator shall attach any

1 objections to its declaration of due diligence, which is to be filed with the
2 Court prior to the Final Approval Hearing. Any Participating Class
3 Member who files an objection remains eligible to receive monetary
4 compensation from the Settlement. At no time shall any of the Parties,
5 Class Counsel, or Defense Counsel seek to solicit or otherwise encourage
6 or discourage Class Members from submitting a Notice of Objection or
7 filing an appeal from the Final Order and Judgment.

8 v. “PAGA Notices” means (1) the July 17, 2020 letter Class Counsel sent to
9 the LWDA on behalf of Plaintiff Lisa Skerl and (2) the August 4, 2020
10 letter Class Counsel sent to the LWDA on behalf of Plaintiff Victoria
11 Kropp. Both PAGA notices were sent pursuant to Labor Code §2699.3(a)-
12 (c) to exhaust Skerl and Kropp’s administrative remedies under the Labor
13 Code Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code
14 §§2698, et seq., and specifically allege that Defendant failed to pay all
15 wages due based on several factors, including but not limited to failure to
16 properly calculate the regular rate of pay, failure to pay overtime, failing to
17 include non-discretionary remuneration when calculating the regular rate of
18 pay, and illegal rounding; failed to provide meal periods; failed to
19 authorize and permit rest periods; failed to pay meal and rest premiums at
20 the regular rate of pay; failed to provide accurate itemized wage statements
21 in violation of the Labor Code and the applicable Industrial Wage Order;
22 and willfully failed to pay all compensation due at termination, by failing
23 to pay overtime and straight time, failing to pay premiums at the regular
24 rate, and unlawfully rounding down hours; and therefore owes statutory
25 and/or civil penalties pursuant to the Labor Code.

26 w. “PAGA Payment” means the amount of Two Hundred Forty Thousand
27 Dollars and Zero Cents (\$240,000.00), subject to Court approval, to be paid
28 from the Maximum Settlement Amount for satisfaction of Plaintiffs’ and

1 LWDA's claims under PAGA. Pursuant to PAGA, seventy five percent
2 (75%), or One Hundred Eighty Thousand Dollars and Zero Cents
3 (\$180,000.00), of this sum will be paid to the LWDA and twenty five
4 percent (25%), or Sixty Thousand Dollars and Zero Cents (\$60,000.00),
5 will be distributed as the Individual PAGA Payments to the non-exempt
6 employees of Defendant in California who were employed as Class
7 Members during the PAGA Period, whether or not those individuals opted
8 out of the Class Settlement.

- 9 x. "PAGA Period" means the period from July 17, 2019 through the end of
10 the Class Period.
- 11 y. "PAGA Release" or "PAGA Released Claims" means the release by
12 Plaintiffs Skerl and Kropp on behalf of the LWDA for all claims for PAGA
13 that arise out of California Labor Code sections 201-204, 226, 226.7, 510,
14 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, and 1198, based on the
15 facts pled in the Skerl and Roark Actions during the PAGA Period. Class
16 Members employed by Defendant during the PAGA Period who exclude
17 themselves from this Settlement shall still receive an Individual PAGA
18 Payment directly from the Settlement Administrator for the amount of each
19 such individual's estimated share of the PAGA Payment as calculated by
20 the Settlement Administrator.
- 21 z. "Participating Class Members" means Plaintiffs and all other Class
22 Members who do not submit a valid and timely Request for Exclusion.
23 "Participating PAGA Members" means Plaintiffs and all other Class
24 Members, whether or not they submit a valid and timely Request for
25 Exclusion."
- 26 aa. "Parties" means Plaintiffs and Defendant.
- 27 bb. "Plaintiffs" means Plaintiffs Lisa Skerl, Victoria Kropp and Lori Roark.
- 28 cc. "Preliminary Approval Order" means the order to be issued by the Court

1 approving and authorizing the mailing of the Settlement Notice by the
2 Settlement Administrator, setting the date of the Final Approval Hearing
3 and granting preliminary approval of the Settlement set forth in this
4 Stipulation of Settlement, among other things. A proposed Preliminary
5 Approval Order shall be mutually agreed upon by the Parties and submitted
6 to the Court concurrently with Plaintiffs' Motion for Preliminary Approval
7 of the Settlement.

8 dd. "Released Parties" means Defendant, and any of its former and present
9 parents, corporate members, subsidiaries, divisions, and affiliated
10 companies, and their respective officers, directors, employees, partners,
11 shareholders, agents, insurers, successors, assigns, and legal
12 representatives.

13 ee. "Released Claims Period" for Participating Class Members means the
14 period from July 20, 2016 through the earlier of the date the Court enters
15 its order granting preliminary approval of the Settlement or January 31,
16 2023.

17 ff. "Request for Exclusion" means a written statement submitted by a Class
18 Member indicating a request to be excluded from the Settlement. The
19 Request for Exclusion must be in writing and should: (i) be signed by the
20 Class Member; (ii) contain the name, address, telephone number, and the
21 last four digits of the Social Security number of the Class Member
22 requesting exclusion; (iii) clearly state that the Class Member does not
23 wish to be included in the Settlement; (iv) be returned by fax or mail to the
24 Settlement Administrator at the specific address and/or facsimile number;
25 and (v) be postmarked or faxed on or before the Response Deadline. The
26 date of the fax or postmark on the return mailing envelope will be the
27 exclusive means to determine whether a Request for Exclusion has been
28 timely submitted. A Class Member who does not request exclusion from

1 the Settlement will be deemed a “Participating Class Member” and will be
2 bound by all terms of the Settlement, if the Settlement is granted final
3 approval by the Court. Any Class Member who validly requests to be
4 excluded from the Settlement will no longer be a member of the Settlement
5 Class and will not have any right to object, appeal, or comment on the
6 Settlement, but will remain as Participating PAGA Member(s), and will
7 receive an Individual PAGA Payment for the PAGA Released Claims. No
8 later than ten (10) calendar days after the Response Deadline, the
9 Settlement Administrator shall provide counsel for the Parties a complete list
10 of all Class Members who submitted a timely and valid Request for
11 Exclusion.

12 gg. “Response Deadline” means the deadline by which Class Members must
13 postmark or fax to the Settlement Administrator a valid Request for
14 Exclusion, or Workweek Dispute. The Settlement Administrator shall
15 continue efforts to properly locate Class Members who have had their
16 Class Notice returned as undeliverable. The Response Deadline will be
17 sixty (60) calendar days from the initial mailing of the Settlement Notices
18 by the Settlement Administrator unless the 60th day falls on a Sunday or
19 Federal holiday, in which case the Response Deadline will be extended to
20 the next day on which the U.S. Postal Service is open. Under no
21 circumstances, however, will the Administrator have the authority to
22 extend the deadline for Class Members to submit a Request for Exclusion
23 or Workweek Dispute to the Settlement without the approval of the Parties
24 and/or the Court.

25 hh. “Settlement” means the final and complete disposition of the Lawsuits
26 pursuant to this Stipulation of Settlement.

27 ii. “Settlement Administrator” or “Administrator” means ILYM Group, Inc.,
28 or any other third-party settlement administrator agreed to by the Parties

1 and approved by the Court for purposes of administering this settlement.

2 The Parties each represent that they will not have any financial interest in
3 the Settlement Administrator or otherwise have a relationship with the
4 Settlement Administrator that could create a conflict of interest.

5 jj. "Settlement Administration Costs" means the reasonable costs and fees of
6 administering the Settlement to be paid from the Maximum Settlement
7 Amount, not to exceed Sixty-Seven Thousand Dollars (\$67,000.00),
8 including, but not limited to: (i) printing, mailing and re-mailing (if
9 necessary) of Settlement Notices to Class Members; (ii) preparing and
10 submitting to Class Members and government entities all appropriate tax
11 filings and forms; (iii) computing the amount of and distributing Individual
12 Settlement Awards, the Class Representative Service Award, the Class
13 Counsel Award; and the PAGA Payments to the LWDA and Participating
14 PAGA Members; (iv) processing and validating Requests for Exclusion;
15 (v) establishing a Qualified Settlement Fund, as defined by the Internal
16 Revenue Code; (vi) calculating and remitting to the appropriate
17 government agencies all employer and employee payroll tax obligations
18 arising from the Settlement and preparing and submitting filings required
19 by law in connection with the payments required by the Settlement; and
20 (vii) transmitting uncashed Individual Settlement Award payments to the
21 State of California State Controller's Office, in the Participating Class
22 Member's name to be held as unclaimed property for the Participating
23 Class Member.

24 kk. "Settlement Notice" means the Notice of Class Action Settlement,
25 substantially in the form attached as Exhibit 1, which shall be subject to
26 Court approval and which the Settlement Administrator shall mail to each
27 Class Member containing: (i) information regarding the nature of the
28 Lawsuits; (ii) a summary of the Settlement's principal terms; (iii) the Class

1 definitions; (iv) the total number of Workweeks the respective Class
2 Member worked for Defendant (according to Defendant's records); (v) the
3 Class Member's estimated Individual Settlement Award and the formula
4 for calculating Individual Settlement Awards; (vi) the dates which
5 comprise the Class Period; (vii) instructions on how to submit disputes
6 regarding Workweeks, Requests for Exclusion, and/or Notices of
7 Objection; (viii) the Response Deadline; (ix) the claims to be released
8 pursuant to the Settlement of the Lawsuit; and (x) the date of the Final
9 Approval Hearing.

10 ll. "Workweeks" means the number of workweeks each Class Member was
11 employed by Defendant as a Settlement Class Member during the Class
12 Period. For purposes of this Settlement, Workweeks will be calculated by
13 counting the number of calendar days between each Class Member's first
14 and last days of work as Settlement Class Members during the Class Period
15 and dividing that sum by seven, without regard to any vacations, periods of
16 illness, or leaves of absence taken during the Class Period.

17 mm. "Workweek Dispute" means a written statement that a Class Member
18 disputes the number of Workweeks listed on his/her Settlement Notice.
19 Any such Workweek Dispute must be faxed or mailed to the Settlement
20 Administrator by the Response Deadline. The date of the fax or postmark
21 on the written statement will be the exclusive means to determine whether a
22 Workweek Dispute has been timely submitted. A valid Workweek Dispute
23 must be in writing and should contain: (i) the Class Member's full name,
24 signature, address, telephone number, and the last four digits of his/her Social
25 Security number; (ii) the number of Workweeks the Class Member contends
26 is correct; and (iii) any evidence supporting his/her contention. The dates of
27 employment identified for each Class Member in the applicable Class List
28 will be presumed to be correct unless a particular Class Member proves

otherwise to the Settlement Administrator by credible evidence. All Workweek Disputes will be resolved and decided by the Settlement Administrator, after consultation with counsel for the Parties, and the Settlement Administrator's decision on all Workweek Disputes will be final, subject to the ultimate final approval of the Court if necessary.

RECITALS

2. Procedural History.

a. Skerl Action.

- i. On July 20, 2020, Plaintiff Lisa Skerl filed a complaint on behalf of herself and all others similarly situated asserting claims pursuant to the California Labor Code and the Business & Professions Code.
- ii. On December 1, 2020, plaintiff Lisa Skerl filed a First Amended Complaint alleging a putative class action based on the substantive claims in the original complaint and adding PAGA claims.
- iii. On October 18, 2021, Plaintiff Lisa Skerl filed a Second Amended Complaint adding Plaintiff Victoria Kropp as a proposed class representative, which alleged the following claims: (1) violation of the Unfair Competition Law, Bus. & Prof. Code § 17200, based on various alleged Labor Code violations; (2) failure to pay regular and overtime wages due under the Labor Code; (3) failure to pay wages due at termination under the Labor Code; (4) failure to pay meal and rest break premiums at the proper regular rate of pay; (5) failure to provide accurate itemized wage statements; (6) failure to provide meal periods; (7) failure to provide rest breaks; (8) failure to pay all wages due to illegal rounding; and (9) civil penalties under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.* (PAGA).

- b. **Roark Action.** On April 12, 2021, Plaintiff Lori Roark filed a Complaint on behalf of herself and all others similarly situated, asserting claims pursuant

1 to the California Labor Code and the Business & Professions Code. The
2 claims alleged in the Roark Action were as follows: for: (1) violation of the
3 Unfair Competition Law, Bus. & Prof. Code § 17200, based on various
4 alleged Labor Code violations; (2) failure to pay regular and overtime wages
5 due under the Labor Code; (3) failure to pay wages due at termination under
6 the Labor Code; (4) failure to pay meal and rest break premiums at the
7 proper regular rate of pay; (5) failure to provide meal periods; (6) failure to
8 authorize and permit rest breaks; and (7) failure to pay all wages due to
9 illegal rounding.

10 c. On August 15, 2022, the Parties participated in a full-day mediation for the
11 Skerl Action and the Roark Action before Michael Loeb where the Parties
12 agreed upon a settlement of both actions.

13 d. Pursuant to the Settlement, the Parties have agreed to stay the Skerl Action
14 and seek leave to file a First Amended Consolidated Complaint in the
15 Roark Action, which adds all allegations, claims, and parties previously
16 alleged in the Skerl Action, for purposes of seeking approval of the
17 settlement before the San Mateo County Superior Court. Permission to file
18 such a complaint was granted by the Court, and Plaintiffs filed their First
19 Amended Consolidated Class Action Complaint on October 6, 2022.

20 3. Benefits of Settlement to Plaintiffs and the Class Members. Plaintiffs and Class
21 Counsel recognize the expense and length of continued proceedings necessary to litigate
22 Plaintiffs' disputes in the Lawsuits through trial and through any possible appeals. Plaintiffs have
23 also taken into account the uncertainty and risks of the outcome of further litigation, and the
24 difficulties and delays inherent in such litigation. Plaintiffs and Class Counsel are also aware of
25 the burdens of proof necessary to establish liability for the claims asserted in the Lawsuits, both
26 generally and in response to Defendant's defenses thereto, and the difficulties in establishing
27 damages, penalties, restitution and other relief sought in the Lawsuits. Plaintiffs and Class
28 Counsel also have taken into account Defendant's agreement to enter into a settlement that

1 confers substantial benefits upon the Class Members. Based on the foregoing, Plaintiffs and Class
2 Counsel have determined that the Settlement set forth in this Stipulation of Settlement is fair,
3 adequate, and reasonable and is in the best interests of all Class Members.

4 4. Defendant's Reasons for Settlement. Defendant has concluded that further defense
5 of the Lawsuits would be protracted and expensive. Substantial amounts of Defendant's time,
6 energy, and resources have been, and unless this Settlement is completed, shall continue to be,
7 devoted to the defense of the claims asserted by Plaintiffs. Defendant has also taken into account
8 the risks of further litigation in reaching its decision to enter into this Settlement. Even though
9 Defendant contends it is not liable for any of the claims alleged by Plaintiffs in the Lawsuits and
10 denies any liability whatsoever, Defendant, nonetheless, has agreed to settle in the manner and
11 upon the terms set forth in this Stipulation of Settlement and to fully and finally put to rest the
12 claims alleged in the Lawsuits. Defendant has asserted and continues to assert that the claims
13 alleged by Plaintiffs have no merit and do not give rise to any liability, damages, restitution,
14 penalties or other payments. This Stipulation of Settlement is a compromise of disputed claims.
15 Nothing contained in this Stipulation of Settlement, no documents referred to herein, and no
16 action taken to carry out this Stipulation of Settlement, shall be construed or used as an admission
17 by or against Defendant as to the merits or lack thereof of the claims asserted in the Lawsuits.
18 Defendant contends that it has complied with all applicable state, federal and local laws. In the
19 event this Settlement does not obtain final approval, Defendant retains all rights it has to defend
20 itself in this matter and to take any actions in defense of itself that are available to it.

21 CLASS CERTIFICATION

22 5. Solely for purposes of settling the Lawsuits, and not for purposes of class
23 certification should the Settlement not be approved or for any other reason, the Parties stipulate
24 and agree that the prerequisites for establishing class certification with respect to the Settlement
25 Classes have been met and are met. More specifically, for purposes of settlement only, the
26 Parties stipulate and agree that:

- 27 a. The Settlement Classes are ascertainable and so numerous as to make it
28 impracticable to join all Class Members;

- 1 b. There are common questions of law and fact including, but not limited to,
2 the following:
- 3 i. Whether Defendant failed to pay all wages due and owing to all
4 Settlement Class Members because of an alleged illegal rounding
5 policy;
- 6 ii. Whether Defendant failed to provide lawful meal periods to all
7 Settlement Class Members because of an alleged illegal rounding
8 policy;
- 9 iii. Whether Defendant failed to pay owed meal and rest premiums at
10 the regular rate of pay, in violation of *Ferra v. Loews Hollywood*
11 *Hotel, LLC*, 11 Cal. 5th 858 (2021) to all Settlement Class
12 Members;
- 13 iv. Whether Defendant failed to provide lawful meal periods to CPMC
14 and MPMC Settlement Class Members in violation of the Labor
15 Code and Section 11 of the IWC Wage Orders;
- 16 v. Whether Defendant failed to authorize and permit lawful rest
17 periods to CPMC and MPMC Settlement Class Members in
18 violation of the Labor Code and Section 12 of the IWC Wage
19 Orders;
- 20 vi. Whether Defendant derivatively failed to timely furnish accurate,
21 itemized and legal wage statements to all Settlement Class
22 Members;
- 23 vii. Whether Defendant is liable pursuant to Labor Code §203 to all
24 Settlement Class Members;
- 25 viii. Whether Defendant committed violations of California Business
26 and Professions Code §§17200, *et seq.* with regard to all Settlement
27 Class Members;
- 28 ix. Whether the Settlement Class Members are entitled to injunctive

1 relief; and

2 x. Whether Defendant is liable for attorneys' fees and costs.

3 xi. Whether Plaintiffs' claims are typical of the claims of the
4 Settlement Classes;

5 xii. Whether Plaintiffs and Class Counsel will fairly and adequately
6 protect the interests of the Settlement Classes;

7 xiii. Whether the prosecution of separate actions by individual members
8 of the Settlement Classes would create the risk of inconsistent or
9 varying adjudications, which would establish incompatible
10 standards of conduct; and

11 xiv. Whether questions of law and fact common to the members of the
12 Settlement Classes predominate over any questions affecting any
13 individual Settlement Class Member, and a class action is superior
14 to other available means for the fair and efficient adjudication of the
15 controversy.

16 6. Should this Settlement not be approved or be terminated, all stipulations set forth
17 in the immediately preceding Paragraph shall be null and void and shall not be admissible for any
18 purpose whatsoever.

19 **TERMS OF THE SETTLEMENT**

20 NOW THEREFORE, in consideration of the mutual covenants, promises, and agreements
21 set forth herein, the Parties agree, subject to the Court's approval, as follows:

22 7. **Binding Settlement.** This Settlement shall bind the Parties and all Participating
23 Class Members and Participating PAGA Members, subject to the terms and conditions hereof and
24 the Court's approval.

25 8. **Maximum Settlement Amount.** The claims of all members of all Settlement
26 Classes and all Participating PAGA Members, collectively, are settled for a maximum sum of
27 Twelve Million Dollars and No Cents (\$12,000,000) ("the Maximum Settlement Amount"). This
28 Maximum Settlement Amount is inclusive of the Class Counsel Award, which includes all

1 attorneys' fees and costs; the Class Representative Service Payments to Plaintiffs Skerl, Kropp,
2 and Roark; the Settlement Administration Costs; and the PAGA Payment to the LWDA and non-
3 exempt employees who worked for Defendant as Class Members during the PAGA Period, all as
4 approved by the Court. This excludes the employer's contribution of payroll taxes due on the
5 settlement payments apportioned as wages, which Defendant will pay outside of the Maximum
6 Settlement Amount.

7 9. Class Representative Service Award. For the purposes of this Settlement only, the
8 Parties agree to the designation of Plaintiffs Lisa Skerl, Victoria Kropp, and Lori Roark as the
9 Class Representatives, and Lisa Skerl and Victoria Kropp as PAGA representatives. In
10 recognition of their time and effort in bringing and presenting the Lawsuits and for releasing their
11 Released Claims, Plaintiffs shall request the Class Representative Service Award not to exceed
12 Fifteen Thousand Dollars (\$15,000.00) each. Plaintiffs' request for such Class Representative
13 Service Award shall be subject to approval from the Court. Defendant agrees not to oppose or
14 object to Plaintiffs' request for Class Representative Service Award in an amount not to exceed
15 this amount. The Class Representative Service Award will be in addition to Plaintiffs' Individual
16 Settlement Payment paid pursuant to the Settlement. The Settlement Administrator shall issue an
17 IRS Form 1099 to Plaintiffs for their Class Representative Service Award. Plaintiffs shall be
18 solely and legally responsible to pay any and all applicable taxes on their Class Representative
19 Service Award. Any amount requested by Plaintiffs for the Class Representative Service Award
20 and not awarded by the Court shall become part of the Net Settlement Amount and shall be
21 distributed to Participating Class Members as part of their Individual Settlement Awards.

22 10. Class Counsel Award. Class Counsel shall be entitled to request attorneys' fees in
23 an amount not to exceed one-third (33.33%) of the Maximum Settlement Amount, which amounts
24 to four million dollars (\$4,000,000.00). In addition, Class Counsel shall also be entitled to
25 request an award of costs associated with Class Counsel's prosecution of the Lawsuits not to
26 exceed twenty-five thousand dollars (\$25,000.00). Class Counsel's request for such attorneys'
27 fees and costs shall be subject to approval from the Court. Defendant agrees not to oppose or
28 object to Class Counsel's request for attorneys' fees or to Counsel's request for attorneys' costs

up to these amounts. In the event the Court awards Class Counsel less than the total amount of attorneys' fees and/or costs requested by Class Counsel, the difference shall become part of the Net Settlement Amount and shall be distributed to Participating Class Members as part of their Individual Settlement Awards. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the Class Counsel Award. Class Counsel shall provide the Settlement Administrator with properly completed and signed copies of IRS Form W-9 in order for the Settlement Administrator to process the Class Counsel Award approved by the Court. The Settlement Administrator shall issue an IRS Form 1099 to Class Counsel for the Class Counsel Award.

11. Settlement Administration Costs. The Settlement Administration fees and expenses, which are estimated not to exceed Sixty-Seven Thousand Dollars (\$67,000.00), shall be paid from the Maximum Settlement Amount. Prior to Plaintiffs filing a Motion for Final Approval of the Settlement, the Settlement Administrator shall provide the Parties with a statement detailing the Settlement Administration Costs to date. The Parties agree to cooperate in the Settlement Administration process and to make all reasonable efforts to control and minimize Settlement Administration Costs.

- a. The Parties each represent they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.
- b. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities required by the Settlement. The Settlement Administrator shall be authorized to establish a Qualified Settlement Fund ("QSF") pursuant to IRS rules and regulations in which the Maximum Settlement Amount shall be placed and from which payments required by the Settlement shall be made.

12. Payroll Taxes. In accordance with this Settlement and to the fullest extent possible, the Maximum Settlement Amount shall resolve, satisfy and completely extinguish all of Defendant's liability with respect to the Class Members, except that the Defendant shall be solely

1 responsible for the employer portion of the payroll taxes on the portion of the Individual
2 Settlement Awards that constitutes wages and these taxes shall be paid by the Defendant in
3 addition to the Maximum Settlement Amount. Upon the transfer of the Maximum Settlement
4 Amount and the employer portion of payroll taxes on the portion of the Individual Settlement
5 Awards that constitutes wages, Defendant shall have no further payment or defense obligation
6 whatsoever with respect to any claims covered by this Settlement made or asserted by any person
7 or entity anywhere in the world in connection with the Class Members.

8 13. Release by All Participating Class Members. All Participating Class Members,
9 including Plaintiffs, shall be deemed to have released their respective Class Members' Released
10 Claims against the Released Parties upon the Effective Date of this Agreement. Plaintiffs and
11 Class Members who do not Request Exclusion will be deemed to have fully, finally and forever
12 released, settled, compromised, relinquished, and discharged all of the Released Parties for any
13 and all Released Claims that accrued during the Released Claims Period.

14 14. PAGA Release. Plaintiffs Skerl and Kropp, on behalf of the LWDA, shall be
15 deemed to have released their respective PAGA Released Claims, premised in whole or in part on
16 any of the claims, facts, or allegations set forth in the PAGA Notices and the operative
17 Complaints, against the Released Parties, upon the date on which the payment of the Maximum
18 Settlement Amount is made by Defendant. It is understood that persons in the putative class who
19 are employed by Defendant as Class Members during the PAGA Period will not have the
20 opportunity to opt out of, or object to, the PAGA Release.

21 15. Additional Release and Waiver of Claims by Plaintiffs. In addition to the release
22 of the Class Members' Released Claims against the Released Parties made by all Participating
23 Class Members, as set forth above, Plaintiffs, in their individual capacities, agree to release the
24 Released Parties from any and all claims, known and unknown, under federal, state and/or local
25 law, statute, ordinance, regulation, common law, or other source of law, arising as of the date of
26 execution of this Agreement including but not limited to claims arising from or related to their
27 employment with Defendant, their terminations, and their compensation while in Defendant's
28 employ ("Plaintiffs' Released Claims").

1 Plaintiffs' Released Claims include all claims, whether known or unknown. Even if
2 Plaintiffs discover facts in addition to or different from those that they now know or believe to be
3 true with respect to the subject matter of Plaintiffs' Released Claims, those claims will remain
4 released and forever barred. To effect a full and complete general release as described above,
5 Plaintiffs expressly waive and relinquish all rights and benefits of section 1542 of the Civil Code
6 of the State of California, and do so understanding and acknowledging the significance and
7 consequence of specifically waiving their rights under section 1542 not to otherwise release
8 unknown claims. Section 1542 of the Civil Code of the State of California states as follows:

9 **A general release does not extend to claims that the creditor or**
10 **releasing party does not know or suspect to exist in his or her**
11 **favor at the time of executing the release and that, if known by**
12 **him or her, would have materially affected his or her settlement**
13 **with the debtor or released party.**

14 Thus, notwithstanding the provisions of section 1542, and to implement a full and
15 complete release and discharge of the Released Parties, Plaintiffs expressly acknowledge this
16 Stipulation of Settlement is intended to include in its effect, without limitation, all claims
17 Plaintiffs do not know or suspect to exist in their favor at the time of signing this Stipulation of
18 Settlement, and that this Stipulation of Settlement contemplates the extinguishment of any such
19 claims. Plaintiffs expressly assume any and all risk of any mistake in connection with the true
20 facts involved in the matters, disputes, or controversies released or described in this Stipulation of
21 Settlement or with regard to any facts now unknown to Plaintiffs relating thereto.

22 16. Preliminary Approval of Settlement. The Parties agree to work diligently and
23 cooperatively to have this Settlement presented to the Court for preliminary approval. The
24 proposed Order granting Plaintiffs' Motion for Preliminary Approval shall be mutually agreed to
25 by the Parties prior to Plaintiffs submitting the proposed Order to the Court. The Preliminary
26 Approval Order shall provide for, among other things, the Settlement Notice to be sent to Class
27 Members as specified herein.

28 17. Settlement Administration.

- 1 a. After entry of the Preliminary Approval Order, Defendant shall provide the
2 Settlement Administrator with the Class Lists for purposes of mailing the
3 Settlement Notices to Class Members, along with data enabling the
4 Settlement Administrator to determine the number of Workweeks worked
5 by each Class Member during the relevant Class Period. Defendant shall
6 have up to sixty (60) days to provide the Class data after entry of the
7 Preliminary Approval Order, if necessary, but Defendant shall use its best
8 efforts to provide the data earlier, within thirty (30) days after entry of the
9 Preliminary Approval Order. The Settlement Administrator shall not be
10 permitted to share any Class Information included in the Class Lists with
11 Plaintiffs or Class Counsel absent express approval by Defendant or
12 Defense Counsel.
- 13 b. Notice by First Class U.S. Mail. Upon receipt of the Class Lists, the
14 Settlement Administrator shall perform a search based on the National
15 Change of Address Database maintained by the United States Postal
16 Service to update and correct any known or identifiable address changes.
17 Within twenty (20) calendar days after receiving the Class Lists from
18 Defendant as provided herein, the Settlement Administrator shall mail
19 copies of the Settlement Notice to all Class Members via regular First-
20 Class U.S. Mail. The Settlement Administrator shall exercise its best
21 judgment to determine the current mailing address for each Class Member.
22 The address identified by the Settlement Administrator as the current
23 mailing address shall be presumed to be the most current mailing address
24 for each Class Member. The Parties agree that this procedure for notice
25 provides the best notice practicable to Class Members and fully complies
26 with due process.
- 27 c. Undeliverable Settlement Notices. Any Settlement Notice returned to the
28 Settlement Administrator as non-deliverable on or before the Response

1 Deadline shall be re-mailed to the forwarding address affixed thereto
2 within five (5) calendar days of receipt of the returned Settlement Notice
3 by the Settlement Administrator. If no forwarding address is provided, the
4 Settlement Administrator shall attempt to determine a correct address by
5 the use of skip-tracing, or other type of automated search, using the name,
6 address and/or Social Security number of the Class Member involved, and
7 shall then perform a re-mailing to the Class Member whose Settlement
8 Notice was returned as non-deliverable within five (5) calendar days of
9 receipt of the returned Settlement Notice by the Settlement Administrator,
10 assuming another mailing address is identified by the Settlement
11 Administrator. If these procedures are followed, notice to Class Members
12 shall be deemed to have been fully satisfied, and if the intended recipient of
13 the Settlement Notice does not receive the Settlement Notice, the intended
14 recipient shall nevertheless remain a Class Member and shall be bound by
15 all terms of the Settlement and the Final Order and Judgment.

16 d. Determination of Individual Settlement Awards and Individual PAGA
17 Payments. The Settlement Administrator shall determine the eligibility for,
18 and the amounts of, each Individual Settlement Award and Individual
19 PAGA Payment under the terms of this Stipulation of Settlement. The
20 Settlement Administrator's determination of the eligibility for and amount
21 of each Individual Settlement Award and Individual PAGA Payment shall
22 be binding upon the Participating Class Members, Participating PAGA
23 Members, and the Parties, subject to the Court's ultimate approval and
24 oversight. In the absence of fraud or gross negligence, Defendant's
25 Workweek data shall be presumed accurate.

26 e. Disputes Regarding Administration of Settlement. Any dispute not
27 resolved by the Settlement Administrator concerning the administration of
28 the Settlement shall be resolved by the Court.

- 1 f. Monitoring and Reviewing Settlement Administration. The Parties have
2 the right to monitor and review the administration of the Settlement to
3 verify that the monies allocated under the Settlement are distributed in the
4 correct amount, as provided for in this Stipulation of Settlement.
- 5 g. Certification Reports Regarding Individual Settlement Award Calculations.
6 The Settlement Administrator will provide Defense Counsel and Class
7 Counsel a weekly report which certifies: (i) the number of Class Members
8 who have submitted valid Requests for Exclusion or objections; and (ii)
9 whether any Class Member has submitted a challenge to any information
10 contained in their Settlement Notice, including but not limited to the
11 number of Class Members from the Settlement Class who have submitted a
12 dispute of Workweeks. Additionally, the Settlement Administrator will
13 provide to counsel for both Parties any updated reports regarding the
14 administration of the Settlement Agreement as needed or requested.
- 15 h. Best Efforts. The Parties agree to use their best efforts to carry out the
16 terms of this Settlement.

17 18. Funding and Allocation of Maximum Settlement Amount.

- 18 a. Within ten (10) calendar days after the Effective Date, the Settlement
19 Administrator will provide the Parties with an accounting of all anticipated
20 payments from the Settlement Fund Account as specified in this Settlement
21 Agreement and approved by the Court, including: (a) Plaintiffs' Service
22 Awards; (b) the Class Counsel Award; (d) Settlement Administration Costs;
23 (e) the PAGA Payment; and (f) Individual Settlement Awards and related
24 taxes thereon. The Settlement Administrator will provide counsel for the
25 Parties with an opportunity to review and approve the Settlement
26 Administrator's proposed payment calculations after the funding date but
27 before the Settlement Administrator sends out the Individual Settlement
28 Payments.

- b. The Maximum Settlement Amount, together with the amount the Settlement Administrator has determined or estimated to be Defendant's share of employer taxes due on the wages being paid under the Settlement, shall be paid by Defendant in one lump sum payment within thirty (30) calendar days after the Effective Date. Defendant shall provide the Maximum Settlement Amount to the Settlement Administrator in any feasible manner, including, but not limited to, by way of a wire transfer.
- c. Within twenty (20) calendar days after the Defendant has provided the Settlement Administrator with the Maximum Settlement Amount, and after the Settlement Administrator has provided the Parties with an opportunity to review and approve the Settlement Administrator's proposed payment calculations, the Settlement Administrator will distribute the payments to Plaintiffs for their awarded Class Representative Service Award, to Class Counsel for their awarded attorneys' fees and costs, to the LWDA its portion of the PAGA Payment, to the Participating Class Members their Individual Settlement Awards, and to all eligible employees their Individual PAGA Payments.
- d. If this Settlement is not finally approved by the Court in full, or is terminated, rescinded, canceled or fails to become effective for any reason, or if the Effective Date does not occur, then no portion of the Maximum Settlement Amount shall be paid.
- e. Payments to the Settlement Class. Participating Class Members shall not be required to submit a claim in order to receive a share of the Net Settlement Amount, and no portion of the Maximum Settlement Amount shall revert to Defendant or result in an unpaid residue. The Settlement Administrator shall first compute the Net Settlement Amount by deducting from the Maximum Settlement Amount approved by the Court the Class Counsel Award, Class Representative Service Awards, the PAGA Payment to the LWDA and

1 Participating PAGA Members, and Settlement Administration Costs. To the
2 extent the Court does not approve the full requested attorneys' fees, litigation
3 costs, service award or settlement administration costs, the Net Settlement
4 Amount will increase accordingly, by the difference between the request
5 amount and the amount awarded by the Court.

6 f. Individual Settlement Award: From the Net Settlement Amount, the
7 Settlement Administrator will calculate each Individual Settlement Award as
8 follows:

9 i. CPMC Settlement Class: CPMC Settlement Class Members will be
10 allocated 30% of the Net Settlement Amount. From that amount,
11 CPMC Settlement Class Members will receive an Individual
12 Settlement Award that amounts to a pro rata share of that allocated
13 Net Settlement Amount, based on number of Workweeks worked
14 during the Class Period. The amount paid to each CPMC Settlement
15 Class Member who has not opted out of the Settlement shall be
16 allocated as follows: eighty percent (80%) of the Individual
17 Settlement Payment to CPMC Settlement Class Members will be
18 treated as payment in settlement of claims for interest and penalties
19 and twenty percent (20%) as wages.

20 ii. MPMC Settlement Class: MPMC Settlement Class Members will be
21 allocated 20% of the Net Settlement Amount. From that amount,
22 MPMC Settlement Class Members will receive an Individual
23 Settlement Award that amounts to a pro rata share of the allocated
24 Net Settlement Amount, based on number of Workweeks worked
25 during the Class Period. The amount paid to each MPMC Settlement
26 Class Member who has not opted out of the Settlement shall be
27 allocated as follows: eighty percent (80%) of the Individual
28 Settlement Payment to MPMC Settlement Class Members will be

1 treated as payment in settlement of claims for interest and penalties
2 and twenty percent (20%) as wages.

3 iii. SBH Premium Calculation and Rounding Class: SBH Premium
4 Calculation and Rounding Class Members will be allocated 50% of
5 the Net Settlement Amount. From that amount, SBH Premium
6 Calculation and Rounding Class Members will receive an Individual
7 Settlement Award that amounts to a pro rata share of the allocated
8 Net Settlement Amount, based on number of Workweeks worked
9 during the Class Period. The amount paid to each SBH Premium
10 Calculation and Rounding Class Member who has not opted out of
11 the Settlement shall be allocated as follows: eighty percent (80%) of
12 the Individual Settlement Payment to SBH Premium Calculation and
13 Rounding Class Members will be treated as payment in settlement of
14 claims for interest and penalties and twenty percent (20%) as wages.

15 g. Individual PAGA Payment: The Settlement Administrator will calculate
16 each eligible employee's Individual PAGA Payment by dividing the 25% of
17 the PAGA Payment to be distributed to those individuals, i.e. sixty thousand
18 dollars (\$60,000.00) by the total number of Workweeks for the entire pool of
19 putative class members eligible to participate in the Settlement, resulting in
20 the PAGA Workweek Value; and then multiplying the PAGA Workweek
21 Value by the number of Workweeks each such eligible employee was
22 employed during the PAGA Period. All employees eligible for PAGA
23 Payments will be entitled to payment for at least one Workweek.

24 h. Defendant will provide applicable employment data sufficient to determine
25 the total number of Workweeks for each Class Member to the Settlement
26 Administrator. The Settlement Administrator will calculate the number of
27 Workweeks worked by the Class Members in each Settlement Class during
28 the Class Period, the amount to be paid per Workweek, and the Individual

1 Settlement Awards and Individual PAGA Awards to eligible Class Members
2 and employees. All Workweek Disputes will be resolved and decided by the
3 Settlement Administrator, in coordination without counsel for the Parties,
4 and the Settlement Administrator's decision on all Workweek Disputes will
5 be final and non-appealable, subject to the Court's ultimate approval and
6 oversight.

7 i. Individual Settlement Awards and Individual PAGA Payments shall be
8 mailed by the Settlement Administrator by regular First Class U.S. Mail to
9 each Participating Class Member and/or Participating PAGA Member's last
10 known mailing address. Prior to mailing the Individual Settlement Awards
11 and the Individual PAGA Payments, the Settlement Administrator shall
12 perform a search based on the National Change of Address Database
13 maintained by the United States Postal Service to update and correct any
14 known or identifiable address changes.

15 j. Should any of the following occur, the Settlement Administrator will
16 proportionately increase the estimated Individual Settlement Award of each
17 Participating Class Member to ensure that the entire Net Settlement Amount
18 is distributed to Participating Class Members: (i) any Class Members submit
19 timely and valid, or otherwise accepted, Requests for Exclusion following
20 the provision of Settlement Notices and expiration of the Response
21 Deadline; (ii) the Court approves the Class Representative Service Award in
22 amounts less than those requested by Plaintiffs, as detailed herein; (iii) the
23 Court approves a Class Counsel Award in an amount less than that requested
24 by Class Counsel, as detailed herein; and/or (iv) the Court approves
25 Settlement Administration Costs in an amount less than that requested by
26 Plaintiffs, as detailed herein.

27 k. Individual Settlement Award payments and Individual PAGA Payments
28 shall be made by check and shall be made payable to each Participating

1 Class Member and Participating PAGA Member as set forth in this
2 Stipulation of Settlement.

- 3 1. Individual Settlement Awards shall be allocated as follows: 20% as alleged
4 unpaid wages subject to all applicable tax withholdings; and 80% as alleged
5 unpaid interest and unpaid penalties. The Settlement Administrator shall
6 issue an IRS Form W-2 to each Participating Class Member for the portion
7 of each Individual Settlement Award payment allocated as alleged unpaid
8 wages and subject to all applicable tax withholdings. The Settlement
9 Administrator shall issue an IRS Form 1099 to each Participating Class
10 Member for the remaining portion of each Individual Settlement Award.
11 The Settlement Administrator shall also issue an IRS Form 1099 to each
12 eligible putative class member for the Individual PAGA Payment. The non-
13 wage portions of the Individual Settlement Awards and the entirety of the
14 Individual PAGA Payments are allocated as alleged unpaid non-wage
15 penalties and interest and not subject to payroll tax withholdings. The
16 Settlement Administrator shall calculate the amount of the Employer's Share
17 of Payroll Taxes and shall remit and report the applicable portions of the
18 payroll tax payment to the appropriate taxing authorities in a timely manner.
19 Defendant will be responsible for paying its share of the Payroll Taxes and
20 this amount will not be deducted from the Maximum or Net Settlement
21 Amount.

- 22 m. Any Individual Settlement Award Payment Check and/or Individual PAGA
23 Payment check issued by the Settlement Administrator must be cashed
24 within 180 days after issuance. After the expiration of the 180-day period,
25 the Settlement Administrator will prepare the Final Report regarding the
26 distribution of the Maximum Settlement Amount, including the total amount
27 that was cashed/deposited by Participating Class Members or Participating
28 PAGA Member and the total amount of any uncashed settlement checks

1 pursuant to California Code of Civil Procedure section 384. After the Final
2 Report is filed, the total amount of any uncashed settlement checks shall be
3 paid to the State of California State Controller's Office, in the Participating
4 Class Member's name to be held as unclaimed property for the Participating
5 Class Member.

- 6 n. In the event a Participating Class Member or Participating PAGA Member
7 fails to cash/deposit his or her Individual Settlement Award check and/or
8 Individual PAGA Payment check, for whatever reason, that person shall
9 nevertheless remain bound by the Settlement and/or the PAGA Release, as
10 the case may be.
- 11 o. All monies received by Class Members under the Settlement which are
12 attributable to wages shall constitute income to such Class Members solely in
13 the year in which such monies actually are received by the Class Members.
14 It is expressly understood and agreed that the receipt of Individual Settlement
15 Awards shall not entitle any Class Member to additional compensation or
16 benefits under any collective bargaining agreement or under any bonus,
17 contest or other compensation or benefit plan or agreement in place during
18 the period covered by the Settlement, nor shall it entitle any Class Member
19 to any increased pension and/or retirement, or other deferred compensation
20 benefits. It is the intent of the Parties that the Individual Settlement Awards
21 and Individual PAGA Payments provided for in this Stipulation of
22 Settlement are the sole payments to be made by Defendant to Class
23 Members and others in connection with this Settlement, with the exception
24 of Plaintiffs, and that they are not entitled to any new or additional
25 compensation or benefits as a result of having received the Individual
26 Settlement Awards and/or and Individual PAGA Payments. Furthermore,
27 the receipt of Individual Settlement Awards and Individual PAGA Payments
28 shall not, and does not, by itself establish any general, special, or joint

1 employment relationship between and among the Participating Class
2 Member(s) or Participating PAGA Members, on the one hand, and
3 Defendant, on the other hand.

4 19. Duties of the Parties Prior to Court Approval. The Parties shall promptly submit this
5 Settlement Agreement to the Court in support of Plaintiffs' Motion for Preliminary Approval and
6 determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon
7 execution of this Settlement Agreement, the Parties shall apply to the Court for the entry of an
8 order scheduling a fairness hearing on the question of whether the proposed settlement, including
9 payment of attorneys' fees and costs, the Class Representative's Service Award payment, and the
10 PAGA Payment, should be finally approved as fair, reasonable and adequate as to the members of
11 the Settlement Class. As part of Plaintiffs' Motion for Preliminary Approval, Plaintiffs shall also
12 apply to the Court for the entry of an Order as follows:

- 13 a. Certifying the Settlement Class for settlement purposes only;
- 14 b. Approving, as to form and content, the proposed Settlement Notice;
- 15 c. Approving the manner and method for Class Members to object or request
16 exclusion from the Settlement, as contained herein and within the Settlement
17 Notice;
- 18 d. Directing the mailing of the Settlement Notices to Class Members, by first
19 class mail;
- 20 e. Preliminarily approving the Settlement subject only to the objections of Class
21 Members and final review by the Court; and
- 22 f. Setting a Final Approval Hearing.

23 20. Final Settlement Approval Hearing and Entry of Final Order and Judgment.
24 Following expiration of the Response Deadline, a Final Approval Hearing shall be conducted by
25 the Court for the Court to determine whether to grant final approval of the Settlement, including
26 determining the amounts properly payable for: (i) the Class Counsel Award; and (ii) the Class
27 Representative Service Award. At least twenty (20) court days prior to the Final Approval
28 Hearing, the Settlement Administrator shall provide a written report or declaration to the Parties

describing the process and results of the administration of the Settlement to date, which report or declaration shall be filed by Plaintiffs with the Court prior to the Final Approval Hearing. The Parties agree to work diligently and cooperatively to have this Settlement presented to the Court for final approval.

21. Duties of the Parties Following Final Approval. Following final approval by the Court of the Settlement provided for in this Settlement Agreement, Class Counsel will submit a proposed Final Order and Judgment:

- a. Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
- b. Approving Class Counsel's application for an award of attorneys' fees and costs;
- c. Approving the Class Representative Service Award payment to Plaintiffs;
- d. Setting a date when the Parties shall submit the Final Report regarding the distribution of the Maximum Settlement Amount pursuant to California Code of Civil Procedure section 384, and, if necessary, a date for a final accounting hearing following its receipt of the Final Report;
- e. Entering judgment in these Lawsuits barring and enjoining all members of the Settlement Class from prosecuting against any of the Released Parties, any individual or class, or representative claims released herein pursuant to the Settlement Agreement, upon satisfaction of all payments and obligations hereunder.

22. Revocation of Settlement by Defendant. If five percent (5%) or more of Class Members opt-out of the Class, Defendant shall have the sole and absolute discretion to rescind/void the Settlement Agreement within fourteen (14) days after receiving from the Settlement Administrator the final list of opt-outs, which the Settlement Administrator will do within fourteen (14) days after the deadline for submission of the Requests for Exclusion. Defendant agrees to meet and confer in good faith with Class Counsel before rescinding or

1 voiding the Settlement Agreement. In the event that Defendant elects to rescind/void the
2 Settlement Agreement, it shall provide written notice of such rescission to Class Counsel. Such
3 rescission shall have the same effect as a termination of this Settlement Agreement for failure to
4 satisfy a condition of settlement, and the Settlement Agreement shall become null and void and
5 have no further force or effect, and the Settlement Class certified pursuant to this Settlement
6 Agreement will be decertified for all purposes. If Defendant chooses to terminate this Settlement
7 Agreement under this provision, it shall be responsible to pay the Settlement Administrator's fees
8 and costs incurred to that point. No party will encourage any class member to opt out of the
9 Settlement.

10 23. Nullification of Settlement. In the event: (i) the Court does not enter the
11 Preliminary Approval Order; (ii) the Court does not grant final approval of the Settlement;
12 (iii) the Court does not enter the Final Order and Judgment; or (iv) the Settlement does not
13 become final for any other reason, this Stipulation of Settlement shall be rendered null and void,
14 any order or judgment entered by the Court in furtherance of this Settlement shall be treated as
15 void from the beginning, and this Stipulation of Settlement and any documents related to it shall
16 not be used by any Class Member or Class Counsel to support any claim or request for class
17 certification in the Lawsuits, and shall not be used in any other civil, criminal or administrative
18 action against Defendant or any of the other Released Parties. Additionally, should the
19 Settlement not become final for any reason within Plaintiffs' and/or Class Counsel's control, the
20 Parties will request that the Court reopen proceedings within thirty (30) calendar days, and any
21 Settlement Administration Costs already incurred by the Settlement Administrator shall be split
22 evenly amongst the Parties. If Defendant elects to revoke the Settlement, as specified in
23 Paragraph 22, the Parties and any monies required to be paid under this Settlement shall be
24 returned to their respective statuses as of the date and time immediately prior to the execution of
25 this Stipulation of Settlement, and the Parties shall proceed in all respects as if this Stipulation of
26 Settlement had not been executed, except that any Settlement Administration Costs already
27 incurred by the Settlement Administrator shall be paid to the Settlement Administrator by
28 Defendant. In the event an appeal is filed from the Court's Final Order and Judgment, or any

1 other appellate review is sought, administration of the Settlement shall be stayed pending final
2 resolution of the appeal or other appellate review and the stay shall only be lifted if the end result
3 of the appeal or other proceeding is that the terms of this Settlement Agreement are upheld.

4 24. Plaintiffs' Waiver of Right to Be Excluded. Plaintiffs agree that by signing this
5 Settlement Agreement, they will be bound by the terms herein. Plaintiffs further agree that, upon
6 signing this Settlement Agreement, they will not request to be excluded from this Settlement and
7 that any such request for exclusion by Plaintiffs will be void and of no force or effect.

8 25. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
9 class certification for purposes of this Settlement only; and either party may appeal any court
10 order that materially alters the Settlement Agreement's terms. Nothing in this Settlement
11 Agreement shall preclude Plaintiffs from appealing from a court order denying or failing to grant
12 in full their requests for attorneys' fees, costs, or service award. Any such order reducing the
13 award of Class Counsel's fees and costs or the Class Representatives' Service Awards will not be
14 grounds on Plaintiffs' part to nullify or void this Settlement.

15 26. No Admission by Defendant. Defendant denies all claims alleged in the Lawsuits
16 and denies all wrongdoing whatsoever by Defendant. Neither this Stipulation of Settlement, nor
17 any of its terms and conditions, nor any of the negotiations connected with it, is a concession or
18 admission, and none shall be used against Defendant as an admission or indication with respect to
19 any claim of any fault, concession, or omission by Defendant or that class certification is proper
20 under the standard applied to contested certification motions. The Parties stipulate and agree to
21 the certification of the proposed class for settlement purposes only. The Parties further agree that
22 this Stipulation of Settlement will not be admissible in this or any other proceeding as evidence
23 that either (i) a class action should be certified or (ii) Defendant is liable to Plaintiffs or any Class
24 Member, other than according to the terms of this Stipulation of Settlement.

25 27. Publicity and Confidentiality.

26 a. Prior to the Filing of Plaintiffs' Motion for Preliminary Approval. Class
27 Representatives and Class Counsel will not make any public disclosures of any kind regarding the
28 Settlement, this Stipulation of Settlement, or the Parties' Confidential Memorandum of

1 Understanding, and will abstain from any communications with coworkers, acquaintances, or on
2 social media or any public forum regarding the fact, amount, and terms of the settlement, until
3 after the Motion for Preliminary Approval is filed. Class Counsel will take all steps necessary to
4 ensure the Class Representatives are aware of, and will encourage them to adhere to, the
5 restriction against any public disclosures regarding the Settlement, this Stipulation of Settlement,
6 and the Confidential Memorandum of Understanding until after the Motion for Preliminary
7 Approval is filed.

8 b. At all times, Class Counsel will not include, reference or use the Settlement
9 for any marketing or promotional purposes, either before or after the Motion for Preliminary
10 Approval is filed. At all times, even after court approval of this settlement, Plaintiffs and their
11 counsel may not initiate any press releases/media communications about the fact, amount, and/or
12 terms of this Settlement, and may only say “no comment” to any press or media inquiries.

13 c. Nothing herein will restrict Class Counsel from including publicly
14 available information regarding this settlement in future judicial submissions regarding Class
15 Counsel’s qualifications and experience.

16 d. Nothing herein will restrict Plaintiffs or Class Counsel from
17 communicating with putative members of the Settlement Class about the Settlement following the
18 Court’s Order granting Preliminary Approval.

19 e. This paragraph is a material term of this Settlement.

20 28. Tax Liability. The Parties make no representations as to the tax treatment or legal
21 effect of the payments specified herein, and Class Members are not relying on any statement or
22 representation by the Parties, Class Counsel or Defense Counsel in this regard. Participating
23 Class Members, Participating PAGA Members and Class Counsel understand and agree that they
24 shall be solely and legally responsible for the payment of all applicable taxes and penalties
25 assessed on the payments specified herein.

26 29. Circular 230 Disclaimer. The Parties acknowledge and agree that (i) no provision
27 of this Stipulation of Settlement, and no written communication or disclosure between or among
28 the Parties, Class Counsel or Defense Counsel and other advisers, is or was intended to be, nor

1 shall any such communication or disclosure constitute or be construed or be relied upon as, tax
2 advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10,
3 as amended); (ii) the acknowledging party (a) has relied exclusively upon his, her, or its own,
4 independent legal and tax counsel for advice (including tax advice) in connection with this
5 Stipulation of Settlement, (b) has not entered into this Stipulation of Settlement based upon the
6 recommendation of any other party or any attorney or advisor to any other party, and (c) is not
7 entitled to rely upon any communication or disclosure by any attorney or advisor to any other
8 party to avoid any tax penalty that may be imposed on the acknowledging party; and (iii) no
9 attorney or advisor to any other party has imposed any limitation that protects the confidentiality
10 of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally
11 binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any
12 transaction, including any transaction contemplated by this Stipulation of Settlement.

13 30. Waiver. No waiver of any condition or covenant contained in this Settlement
14 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered
15 to imply or constitute a further waiver by such party of the same or any other condition, covenant,
16 right or remedy.

17 31. Judgment and Continued Jurisdiction of the Court. Upon final approval of the
18 Settlement by the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will
19 present the Judgment to the Court for its approval, pursuant to Rule 3.770 of the California Rules
20 of Court. After entry of the Judgment, the Court will have continuing jurisdiction solely for
21 purposes of addressing: (i) the interpretation, implementation, and enforcement of the terms of the
22 Settlement, (ii) Settlement administration matters, and (iii) such post-Judgment matters as may be
23 appropriate under court rules or as set forth in this Agreement. Class Counsel and Defense
24 Counsel shall submit to the jurisdiction of the Court for these purposes.

25 32. Exhibits and Headings. The terms of this Stipulation of Settlement include the terms
26 set forth in any attached Exhibits, which are incorporated by this reference as though fully set
27 forth herein. The Exhibits to this Stipulation of Settlement are an integral part of the Settlement.
28 The descriptive headings of any paragraphs or sections of this Stipulation of Settlement are

1 inserted for convenience of reference only.

2 33. Amendment or Modification. This Stipulation of Settlement may be amended or
3 modified only by a written instrument signed by counsel for all Parties or their successors-in-
4 interest.

5 34. Entire Agreement. This Stipulation of Settlement and any attached Exhibits
6 constitute the entire agreement between the Parties, and no oral or written representations,
7 warranties, or inducements have been made to Plaintiffs or Defendant concerning this Stipulation
8 of Settlement or its Exhibit 1 other than the representations, warranties, and covenants contained
9 and memorialized in this Stipulation of Settlement and its Exhibit 1. No other prior or
10 contemporaneous written or oral agreements may be deemed binding on the Parties.

11 35. Authorization to Enter into Settlement Agreement. Class Counsel and Defense
12 Counsel warrant and represent they are expressly authorized by the Parties whom they represent
13 to negotiate this Stipulation of Settlement and to take all appropriate actions required or permitted
14 to be taken by such Parties pursuant to this Stipulation of Settlement to effectuate its terms, and to
15 execute any other documents required to effectuate the terms of this Stipulation of Settlement.
16 The Parties, Class Counsel and Defense Counsel shall cooperate with each other and use their
17 best efforts to effect the implementation of the Settlement. In the event the Parties are unable to
18 reach agreement on the form or content of any document needed to implement the Settlement, or
19 on any supplemental provisions that may become necessary to effectuate the terms of this
20 Settlement, the Parties may seek the assistance of the Court to resolve such disagreement. The
21 person signing this Stipulation of Settlement on behalf of the Defendant represents and warrants
22 that he/she is authorized to sign this Stipulation of Settlement on behalf of Defendant. Plaintiffs
23 and each of them represent and warrant that they are authorized to sign this Stipulation of
24 Settlement and that they have not assigned any claim, or part of a claim, covered by this
25 Stipulation of Settlement to a third party. The Parties have cooperated in the drafting and
26 preparation of this Stipulation of Settlement. Hence, in any construction made of this Stipulation
27 of Settlement, the same shall not be construed against any of the Parties.

28 36. Binding on Successors and Assigns. This Stipulation of Settlement shall be

1 binding upon, and inure to the benefit of, the successors and assigns of the Parties.

2 37. California Law Governs. All terms of this Stipulation of Settlement and the
3 Exhibits hereto shall be governed by and interpreted according to the laws of the State of
4 California, without giving effect to any law that would cause the laws of any jurisdiction other
5 than the State of California to be applied.

6 38. Counterparts. This Stipulation of Settlement may be executed in one or more
7 counterparts. All executed counterparts and each of them shall be deemed to be one and the same
8 instrument.

9 39. This Settlement is Fair, Adequate, and Reasonable. Plaintiffs represent that this
10 Settlement is a fair, adequate, and reasonable settlement of the Lawsuits, and that they have
11 arrived at this Settlement after extensive arm's-length negotiations, taking into account all
12 relevant factors, present and potential.

13 40. Invalidity of Any Provision. Before declaring any term or provision of this
14 Stipulation of Settlement invalid, the Parties request that the Court first attempt to construe the
15 terms or provisions valid to the fullest extent possible consistent with applicable precedents so as
16 to define all provisions of this Stipulation of Settlement as valid and enforceable. In the event the
17 Court declares any material provision of this Stipulation of Settlement invalid, the Stipulation of
18 Settlement will be void and its terms will be of no force and effect, except as otherwise agreed to
19 by the Parties in writing.

20 41. Binding Nature of Notice of Class Action Settlement. It is agreed that, because the
21 Class Members are so numerous, it is impossible or impractical to have each Class Member
22 execute the Stipulation of Settlement. The Class Notice shall advise all Class Members of the
23 binding nature of the Settlement, and the release of Released Claims shall have the same force
24 and effect as if this Stipulation of Settlement were executed by each Participating Class Member.

25 42. Notice to LWDA. Class Counsel shall submit any required notices of this
26 Agreement to the LWDA, as may be required by Labor Code sections 2699(1)(2) and (3), or other
27 provisions of PAGA.

28 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this

Joint Stipulation of Class Action and PAGA Settlement and Release between Plaintiffs, on the one hand, and Defendant, on the other hand, as of the date(s) set forth below:

Dated: 12/21/2022

DocuSigned by:

Lori Roark

Plaintiff Lori Roark

Dated:

Plaintiff Lisa Skerl

Dated:

Plaintiff Victoria Kropp

Dated:

SUTTER BAY HOSPITALS

APPROVED AS TO FORM:

Dated: 12/21/2022

SHANBERG STAFFORD LLP

DocuSigned by:

Ross E. Shanberg

Ross E. Shanberg
Shane C. Stafford
Attorneys for Plaintiffs Lisa Skerl and Lori Roark

Dated: 12/21/2022

BARTZ LAW GROUP, APC

DocuSigned by:

Aaron A. Bartz

Aaron A. Bartz
Attorneys for Plaintiff Lori Roark

Joint Stipulation of Class Action and PAGA Settlement and Release between Plaintiffs, on the one hand, and Defendant, on the other hand, as of the date(s) set forth below:

Dated: _____

Plaintiff Lori Roark

Dated: 12/21/2022

DocuSigned by:

Lisa Skerl

Plaintiff Lisa Skerl

Dated: _____

Plaintiff Victoria Kropp

Dated: _____

SUTTER BAY HOSPITALS

APPROVED AS TO FORM:

Dated: 12/21/2022

SHANBERG STAFFORD LLP

DocuSigned by:

ROSS E SHANBERG

Ross E. Shanberg
Shane C. Stafford
Attorneys for Plaintiffs Lisa Skerl and Lori Roark

Dated: 12/21/2022

BARTZ LAW GROUP, APC

DocuSigned by:

Aaron A. Bartz

Aaron A. Bartz
Attorneys for Plaintiff Lori Roark

Joint Stipulation of Class Action and PAGA Settlement and Release between Plaintiffs, on the one hand, and Defendant, on the other hand, as of the date(s) set forth below:

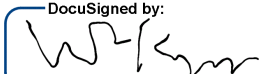
Dated: _____

Plaintiff Lori Roark

Dated: _____

Plaintiff Lisa Skerl

Dated: 12/22/2022

DocuSigned by:

 Plaintiff Victoria Kropp

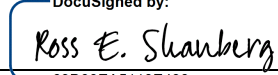
Dated: _____

SUTTER BAY HOSPITALS

APPROVED AS TO FORM:

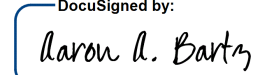
Dated: 12/22/2022

SHANBERG STAFFORD LLP

DocuSigned by:

 Ross E. Shanberg
 Shane C. Stafford
 Attorneys for Plaintiffs Lisa Skerl and Lori Roark

Dated: 12/22/2022

BARTZ LAW GROUP, APC

DocuSigned by:

 Aaron A. Bartz
 Attorneys for Plaintiff Lori Roark

1 Joint Stipulation of Class Action and PAGA Settlement and Release between Plaintiffs, on the
2 one hand, and Defendant, on the other hand, as of the date(s) set forth below:

3 Dated: _____

4 _____
Plaintiff Lori Roark

5 Dated: _____

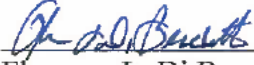
6 _____
Plaintiff Lisa Skerl

7 Dated: _____

8 _____
Plaintiff Victoria Kropp

9 Dated: 1/4/2023

10 **SUTTER BAY HOSPITALS**

11 
12 Florence L. Di Benedetto
13 Senior Vice President and General Counsel
14 Sutter Health

15 **APPROVED AS TO FORM:**

16 Dated: _____

17 **SHANBERG STAFFORD LLP**

18 _____
19 Ross E. Shanberg
Shane C. Stafford
Attorneys for Plaintiffs Lisa Skerl and Lori Roark

20 Dated: _____

21 **BARTZ LAW GROUP, APC**

22 _____
23 Aaron A. Bartz
Attorneys for Plaintiff Lori Roark

24 Dated: January 4, 2023

25 **GBG LLP**

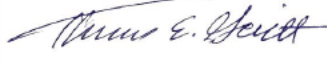
26 
27 Thomas E. Geidt
28 Teresa W. Ghali
Amanda M. Osowski
Attorneys for Defendant
SUTTER BAY HOSPITALS

Exhibit 1

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO**

LISA SKERL, an individual; VICTORIA KROPP, an individual; LORI ROARK, an individual, on behalf of themselves and all others similarly situated and the general public,

Plaintiffs,

vs.

SUTTER BAY HOSPITALS, a California Corporation; and DOES 1–100, Inclusive,

Defendant.

Case No. 21-CIV-02057

**NOTICE OF PENDENCY OF CLASS
ACTION SETTLEMENT AND FINAL
HEARING**

Judge: Hon. Nancy L. Fineman
Dept: 4

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT
ARISING FROM YOUR EMPLOYMENT BY SUTTER BAY HOSPITALS**

A California court authorized this notice. This is not a solicitation from a lawyer.

- A settlement of a lawsuit will pay money to most non-exempt employees who have been employed by Sutter Bay Hospitals (“Sutter”) from July 20, 2016 through [date of preliminary approval or Jan. 31, 2023].
- The Settlement resolves a class action lawsuit alleging various wage and hour claims brought against Sutter on behalf of most of Sutter’s non-exempt employees employed during this time period. It also resolves certain other wage and hour claims brought against Sutter on behalf of certain patient care nurses, surgical technicians and other patient care workers employed at California Pacific Medical Center (“CPMC”), and against all non-exempt employees employed at Mills-Peninsula Medical Center (“MPMC”) during the same period. The Settlement also resolves claims for penalties that have been brought on behalf of the State of California under California’s Private Attorneys General Act (“PAGA”).
- The Settlement avoids the costs and risks of continuing the lawsuit, pays money to employees, and releases Sutter from liability.
- Sutter expressly denies all of the claims in the lawsuit and denies any wrongdoing or liability. The two sides disagree on how much money – if any – could have been awarded if employees won at trial.
- **YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE READ THIS NOTICE CAREFULLY.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You need not take any action if you wish to receive your settlement payment. If the Settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator, ILYM Group, Inc. If you move, you must notify the Settlement Administrator of your new address.
Exclude Yourself	Get no payment. Send a letter to the Settlement Administrator, as explained below, making clear you wish to exclude yourself from the Settlement. This is the only option that allows you to be part of any other lawsuit against Sutter asserting the legal claims that were settled in this case.
Object	Write to the Court, as explained below, about why you don't like the Settlement.
Go to a Hearing	Ask to speak in Court about the fairness of the Settlement.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class action lawsuit and informs you of your legal rights under that proposed settlement ("the Settlement"). You are receiving this notice because you may be a member of the class on whose behalf the lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On July 20, 2020, Plaintiff Lisa Skerl filed this lawsuit against Sutter in San Francisco County Superior Court. Another plaintiff, Victoria Kropp, later joined in the lawsuit. Their lawsuit alleges violations of the California Labor Code, Industrial Welfare Commission Wage Order No. 5, and the California Business and Professions Code. They allege that members of the Settlement Class were not always properly paid for all hours worked, including overtime hours, were not always properly provided with meal and rest breaks, were not paid meal and rest break premiums at the correct rate of pay, did not receive accurate wage statements, and several other related claims. In April 2021, another former Sutter employee, Lori Roark, brought a similar lawsuit against Sutter in San Mateo County Superior Court. The Skerl and Roark lawsuits have since been combined into a single lawsuit being heard in San Mateo County Superior Court. In the lawsuit, Plaintiffs seeks to recover wages allegedly unpaid, premiums, penalties, attorneys' fees and costs. Sutter denies all of the material allegations in the lawsuit and denies that it did anything wrong.

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court has not made any ruling in favor of Plaintiffs or Sutter. It also has not determined whether this lawsuit may proceed as a class action. Plaintiffs believes they would have prevailed on their claims at a trial. Sutter does not believe that Plaintiffs would have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they each avoid the costs, risks, and uncertainties of a trial, and the employees allegedly affected will receive compensation. Plaintiffs and Plaintiffs' attorneys believe the Settlement is fair, reasonable, and adequate and in the best interests of all Settlement Class Members.

B. Who is in the Settlement Class?

The Settlement consists of three settlement classes, each covering persons employed by Sutter in non-exempt class positions from July 20, 2016 through [preliminary approval date or January 31, 2023]: (1) a CPMC Settlement Class consisting of patient care nurses, surgical technicians and other patient care employees employed by CPMC; (2) an MPMC Settlement Class consisting of all non-exempt employees employed by Mills-Peninsula Medical Center; and (3) an SBH Premium Calculation and Rounding Class consisting of all other non-exempt employees employed by Sutter, but excluding those staff nurses at Alta Bates Summit Medical Center and Sutter Delta Medical Center who participated in a settlement in another recent case, *Hurtubise v. Sutter East Bay Hospitals*, Alameda County Superior Court No. RG17868819 (collectively, “the Settlement Classes”).

Sutter’s settlement of the PAGA penalty claim in this case will cover all non-exempt employees who have been employed in any of the three above-mentioned settlement classes from July 17, 2019 through [preliminary approval date or January 31, 2023].

C. What has Sutter agreed to do?

Sutter will pay \$12,000,000.00 (the “Maximum Settlement Amount”) to settle the lawsuit. The following sums will be paid from the Maximum Settlement Amount: (1) Class Counsel’s attorneys’ fees in an amount set by the Court not to exceed one-third of the Maximum Settlement Amount (\$4,000,000.00) plus Class Counsel’s documented litigation costs in an amount set by the Court not to exceed \$25,000.00; (2) a service payment to each of the three Plaintiffs in an amount set by the Court, not to exceed \$15,000.00 each for their service in the lawsuit; and (3) a reasonable amount set by the Court to the Settlement Administrator for administering the settlement, not to exceed \$67,000.00. Sutter has also agreed to pay \$240,000 to resolve the claims for civil penalties under the PAGA. Of this amount, 75% (\$180,000.00) will be paid to the State of California and the remaining 25% (\$60,000.00) will be paid to all persons who are members of any of the Settlement Classes covered by this Settlement, whether or not they exclude themselves from the Settlement. The portion of the Maximum Settlement Amount remaining after these payments is the Net Settlement Amount, which will be paid out to those Settlement Class Members who do not opt out of the Settlement, as explained below. In addition, Sutter will pay the employer share of applicable payroll taxes due on the portion of the individual settlement payments that are designated as “wages.” This will be paid in addition to the Maximum Settlement Amount.

D. What are you giving up to get a payment and stay in the Class?

Subject to the Court’s approval of the Settlement, all members of the Settlement Classes who do not opt out of the Settlement will release Sutter, and any of its current and former parents, corporate members, subsidiaries, divisions, and affiliated companies, and their respective officers, directors, employees, partners, shareholders, agents, insurers, successors, assigns and legal representatives (“Released Parties”), as follows:

(1) Plaintiffs and all members of the CPMC and MPMC Settlement Classes will release the Released Parties from any and all claims, rights, demands, liabilities, and causes of action of every nature and description arising during the Class Period, including statutory, contractual, or common law claims, for wages, damages, penalties, liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or equitable relief – whether asserted under the California Labor Code, Business and Professions Code §§ 17200 *et seq.*, the applicable wage orders at California Code of Regulations, Title 8, Section 11000 *et seq.*, or otherwise – that are alleged or reasonably could have been alleged based on the facts contained in the operative complaints in the *Skerl* and *Roark* actions (including the First Amended Consolidated Complaint in the *Roark* action), including: (a) any and all

claims for failure to pay wages, including overtime wages, minimum wages, and/or regular pay due to Sutter's maintenance and application of an allegedly-unlawful rounding policy, including its policy relating to meal period rounding; (b) any and all claims that Sutter failed to pay meal and/or rest break premiums at the correct regular rate of pay, in violation of *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858 (2021); (c) any and all claims for failure to provide meal breaks and/or pay meal premiums in lieu thereof; (d) any and all claims for failure to authorize and permit rest breaks and/or pay rest break premiums in lieu thereof; (e) any and all derivative claims for failure to furnish accurate itemized wage statements in accordance with Labor Code section 226, and including any associated claims for penalties under Labor Code section 226(e), arising out of the above-alleged claims; (f) any and all derivative claims for failure to provide wages when due upon separation of employment under Labor Code sections 201-203; (g) any and all derivative claims for violation of California Business and Professions Code §§ 17200 *et seq.* arising out of the above alleged claims; (h) any and all claims for violation of the Private Attorneys General Act of 2004, Labor Code §§2698 *et seq.* arising out of the above-alleged claims; and (i) any and all claims for attorneys' fees and costs arising out of the above-alleged claims.

(2) All members of the SBH Premium Calculation and Rounding Settlement Class will release the Released Parties from any and all claims, rights, demands, liabilities, and causes of action of every nature and description arising during the Class Period, including statutory, contractual, or common law claims, for wages, damages, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief – whether asserted under the California Labor Code, Business and Professions Code §§ 17200 *et seq.*, the applicable wage orders at California Code of Regulations, Title 8, Section 11000 *et seq.*, or otherwise – that are alleged or reasonably could have been alleged based on the facts contained in the operative complaints in the *Skerl* and *Roark* Actions (including the First Amended Consolidated Complaint in the *Roark* action), including: (a) any and all claims for failure to pay wages, including overtime wages, minimum wages, and/or regular pay, or meal premiums, due to Sutter's maintenance and application of an allegedly-unlawful rounding policy, including its policy relating to meal period rounding; (b) any and all claims for failure to pay owed meal and/or rest break premiums at the correct regular rate of pay, in violation of *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858 (2021); (c) any and all derivative claims for failure to furnish accurate itemized wage statements arising out of the above-alleged claims; (d) any all claims for failure to timely pay final wages due to employees based on the above-alleged claims; (e) any and all claims for violation of California Business and Professions Code §§ 17200 *et seq.* arising out of the above alleged claims; (f) any and all claims for violation of the Private Attorneys General Act of 2004, Labor Code §§2698 *et seq.* arising out of the above-alleged claims; and (g) any and all claims for attorneys' fees and costs arising out of the above-alleged claims.

Additionally, upon the funding of the court-approved Settlement by Sutter, all eligible members of any of the Settlement Classes who have been employed between July 17, 2019 and [preliminary approval date or January 31, 2023], whether or not they exclude themselves from this Settlement, will be deemed to have forever released and extinguished their claims for PAGA civil penalties against the Released Parties arising during the PAGA period to the extent those claims are based on the above-referenced claims that were alleged or reasonably could have been alleged based on the facts contained in Plaintiffs' operative Complaints, as enumerated in the preceding subparagraphs D(1) and (2) above, and/or in Plaintiff's PAGA Notice to the Labor and Workforce Development Agency.

Finally, the three named Plaintiffs – Lisa Skerl, Victoria Kropp and Lori Roark – will generally release all known and unknown claims they may have against Sutter, of any nature whatsoever, not limited to the wage and hour claims alleged in this lawsuit.

The Released Claims do not include a release of *all* the rights you have as an employee or former employee of the Released Parties. The Released Claims are specifically limited to the claims set forth above.

E. How much money will I receive?

Each participating Settlement Class Member will receive an Individual Payment Amount, which is a share of the Net Settlement Amount. The Net Settlement Amount is calculated by first deducting from the Maximum Settlement Amount the court-approved (1) attorneys' fees and costs to Class Counsel; (2) settlement administration costs; (3) service payments to the three Plaintiffs; and (4) PAGA payments to the State of California and the allegedly-aggrieved members of the Settlement Classes. Thirty percent (30%) of the Net Settlement Amount will be allocated to the members of the CPMC Settlement Class, 20% to the members of the MPMC Settlement Class, and 50% to the members of the SBH Premium Calculation and Rounding Settlement Class.

Based on Sutter's records, the Settlement Administrator will determine the number of workweeks worked by each Class Member in each of the Settlement Classes. Members of the respective Settlement Classes who do not opt out of the Settlement will receive an individual settlement award that amounts to a pro rata share of their allocated Net Settlement Amount, based on the number of workweeks they worked as a Settlement Class Member during the Class Period in proportion to the total number of workweeks worked by all the eligible Settlement Class Members in their Settlement Class. For purposes of this calculation, workweeks will be calculated by counting the number of calendar days between each Settlement Class Member's first and last days of work as a Settlement Class Member during the Class Period and dividing that sum by seven.

According to Sutter's records, you were employed in the _____ Settlement Class for [_____] workweeks between July 20, 2016 and [preliminary approval date or January 31, 2023].

Based on this number, your Individual Payment Amount is estimated to be \$[_____]. The actual amount that you receive could be more or less than this amount, depending on the final settlement terms approved by the Court.

Please be advised that the number of workweeks listed above is presumed to be correct unless you submit documents proving otherwise. If you disagree with the number of workweeks listed above, please submit an explanation and evidence of your proposed workweeks to the Settlement Administrator no later than [60 days after mailing]. In the event of a dispute about the correct number of workweeks you worked, the Settlement Administrator will resolve the challenge with input from Sutter and Class Counsel, subject to final resolution by the Court if necessary.

F. Are any taxes taken out of the Individual Payment Amounts?

Twenty percent (20%) of your payment will be treated as back wages and reported on an IRS Form W-2 with all appropriate taxes withheld. The remaining eighty percent (80%) of your payment will be treated as interest and penalties and reported as non-wage income on an IRS Form 1099. W-2 and 1099 Forms will be issued to all Settlement Class Members who cash their checks.

Aside from the employer portion of payroll taxes, Settlement Class Members are responsible for the appropriate payment of any federal, state, and/or local income or payroll taxes on the Individual Payment Amounts they receive. The tax issues for each Settlement Class Member are unique to that Class Member. You are advised to obtain tax advice from your own tax advisor with respect to any payments resulting from this settlement. This Notice does not constitute legal or tax advice regarding any federal, state, or local tax issue, and nothing in this Notice is intended to or should be used by any person for the purpose of avoiding any tax liability or tax penalties.

THE FINAL APPROVAL HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the “Final Approval Hearing”) on _____, 2023, at _____ m., in Department 4 of the San Mateo County Superior Court, located at 800 North Humboldt Street, San Mateo, CA 94401. The Court will then determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the Settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the Settlement; (iv) the amount of the attorneys’ fees and costs to be awarded to Plaintiffs’ attorneys; (v) the amount that should be awarded to Plaintiffs as a service payment; and (vi) the amount that should be approved for settlement administration costs. At the Final Approval Hearing, the Court will hear all objections, as well as arguments for and against the proposed Settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, at your own expense, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU WILL NEVER BE REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move your residence, you must update your address with the Settlement Administrator. If you disagree with the number of workweeks worked as indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position. The Settlement Administrator’s address is [Settlement Administrator address].

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Approval Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator, ILYM Group, Inc., at [ILYM’s address]. Objections must be postmarked no later than [60 days after mailing]. You still may appear at the Final Approval Hearing and raise an objection to the settlement even if you did not submit written objections within this 60-day deadline.

- **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself from (“opt out” of) the Settlement, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will not be bound by a judgment in this case, and you will have the right to file your own lawsuit against Sutter and pursue your own claims in a separate suit if you wish. You can opt out of the Class by mailing or faxing a written statement to the Settlement Administrator, ILYM, at the above-stated address, so that it is postmarked no later than [60 days after mailing]. The written statement must contain your name, address, signature; the last four digits of your social security number; and the name of this case, *Skerl v. Sutter Bay Hospitals*. It also must clearly state that you do not wish to be included in the Settlement. It must be faxed or postmarked on or before the response deadline. If you do not exclude yourself from the Settlement in accordance with this procedure, you will be bound by the terms of the Settlement and the related judgment entered by the Court.

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed Settlement Agreement, which is on file with the clerk of the San Mateo County Superior Court, 400 County Center, Redwood City, CA 94063, and may also be reviewed online at [insert court website link] or Settlement Administrator’s website [insert website information].

ALL INQUIRIES REGARDING THIS LITIGATION SHOULD BE MADE TO COUNSEL FOR THE CLASS. THEY ARE:

Ross E. Shanberg, Esq.
Shane C. Stafford, Esq.
SHANBERG STAFFORD LLP
4100 Newport Place, Suite 820
Newport Beach, California 92660
Telephone: (949) 205-7515

Aaron A. Bartz, Esq.
BARTZ LAW GROUP, APC
5151 California Ave., Suite 100
Irvine, California 92617
Telephone: (949) 504-4413

DO NOT CALL THE COURT.

**BY ORDER OF THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA**

EXHIBIT B

SHANBERG, STAFFORD & BARTZ LLP

5031 BIRCH STREET
NEWPORT BEACH, CALIFORNIA 92660

TELEPHONE (949) 205-7515
FACSIMILE (949) 205-7144
www.ssfirm.com

July 17, 2020

Notice Via Online Submission

PAGA Administrator
California Labor and Workforce Development Agency

Via Certified Mail (Return Receipt Requested)

Sutter Valley Hospitals
Attn: Susan Cresswell, Agent for Service of Process
2801 Capitol Ave., Suite 202
Sacramento, CA 95816

Sutter Bay Hospitals
Attn: Kimberly Lubas, Agent for Service of Process
c/o Risk Management
1101 Van Ness Avenue
San Francisco, CA 94109

Re: California Labor Code Violations by Sutter Valley Hospitals and Sutter Bay Hospitals

Dear PAGA Administrator:

Please be advised that the law firm of Shanberg, Stafford & Bartz LLP represents Lisa Skerl and all other similarly situated aggrieved employees ("Plaintiffs") with respect to their employment with Defendants Sutter Valley Hospitals and Sutter Bay Hospitals ("Defendants").

Defendants have committed numerous violations of the California Labor Code, including, but not limited to, §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, and 1198. The facts and theories to support the alleged violations are set forth herein.

A. Failure to Pay All Wages/Overtime

Plaintiff Ms. Skerl has worked for Defendants as a Surgical Tech from February 2016 to the current date. During her employment, Defendants have failed to pay Ms. Skerl and other aggrieved employees the proper amount of minimum wages, straight time and overtime wages. Defendants have violated various sections of the Labor Code, including §§ 510 and 1194, by failing to provide Ms. Skerl and all other aggrieved employees overtime compensation for work over 8 hours in a day and/or 40 hours in a week, based on several factors, including but not limited to the Defendants' failure to properly calculate the regular rate of pay for their hourly employees and Defendants' failure to pay overtime compensation for hours 8 – 12 for employees working 10 or 12 hour shifts. Ms. Skerl alleges that Defendants fail to include all non-discretionary remuneration when calculating the regular rate of pay. As a result of failing to calculate the regular rate properly, the overtime premium rate is not calculated properly such that the defendants do not pay the full 1.5 premium for overtime hours and do not pay the full 2 times premium when calculating double time premium. Further, Defendants underpay Plaintiffs for missed meal and rest periods at the employees' base rate as opposed to the employees' regular rate.

California Labor & Workforce Development Agency

Sutter Valley Hospitals/Sutter Bay Hospitals

Re: *California Labor Code Violations by Sutter Valley Hospitals and Sutter Bay Hospitals*

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B. Meal and Rest Breaks

Defendants also failed to provide Plaintiffs with meal and rest periods under California law. Defendants failed to adopt, implement, and enforce a uniform meal period policy that complied with California law. For example, Defendants required Plaintiffs to be on call during their meal periods, and to respond to hospital inquiries and to patients during meal periods, thereby failing to provide Plaintiffs with duty-free meal periods as required by California law. Defendants also failed to provide Plaintiffs with a duty-free meal period within the first 5 hours of work, and a second duty-free meal period within 10 hours of work. Defendants also unlawfully required Plaintiffs to waive meal periods.

Moreover, as a matter of policy and/or practice, Defendants failed to pay Plaintiffs one hour of pay at their regular rate of pay for each workday that a 30 minute duty-free meal period was not provided. Instead, Defendants paid an artificially low rate of pay for each hour for which a duty-free meal period was not provided, if at all. Defendants also failed to keep accurate records of meal breaks taken by Plaintiffs in violation of Labor Code § 1174 and the applicable Industrial Welfare Commission wage order.

Defendants also failed to adopt, implement, and enforce a uniform rest period policy that complied with California law. Defendants failed to authorize and permit Plaintiffs to take duty-free rest periods of 10 minutes for every four hours worked or major fraction thereof, by requiring Plaintiffs to regularly work through their rest periods to complete their duties. Defendants further failed to pay Plaintiffs a missed rest period premium pursuant to Labor Code § 226.7 for each rest period that was not authorized or permitted, and/or failed to pay such rest period premium at Plaintiffs' regular rate of pay. As a result of Defendants' lack of any meal or rest break policy that complies with California law, Defendants have violated Labor Code § 512 and 226.7 and the applicable Industrial Welfare Commission wage order.

C. Illegal Rounding

Defendants further adopted, implemented and enforced a uniform policy and practice of rounding down hours worked by Plaintiffs, so that during the course of their employment, Plaintiffs were paid far less than they would have been had they been paid for actual recorded time. Such rounding policy also reduced the time that the Plaintiffs were able to take their duty-free meal periods. As a result, Defendants have violated Labor Code §§ 204, 218, 510, 1194, 1194.2, 1197, and 1198, as a result of the unlawful rounding policies.

D. Wage Statement Violations

Defendants willfully failed to provide properly itemized wage statements to Plaintiffs pursuant to Labor Code § 226. For instance, Defendants frequently failed to identify the correct hours and rates of pay for hours worked for Defendants, including but not limited to violations of Labor Code § 226(a)(9) by not indicating "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate." Defendants further violated Labor Code § 226 by failing to correctly state the total hours worked by Plaintiffs and the aggrieved employees in that there are discrepancies between the hours worked field of the wage statement and the body of each wage statement, failing to record accurately the gross wages earned by providing

California Labor & Workforce Development Agency

Sutter Valley Hospitals/Sutter Bay Hospitals

Re: *California Labor Code Violations by Sutter Valley Hospitals and Sutter Bay Hospitals*

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confusingly different information in the gross wages earned field from the body of the wage statement, and failing to maintain accurate payroll and itemized wage statements by not producing such wage statements and/or making them readily available to Plaintiffs.

E. Waiting Time Penalties

Defendants willfully failed and refused to timely pay all compensation due and owing to Plaintiffs whose employment was terminated during the relevant time period, by failing to pay overtime and straight time wages, failing to pay Plaintiffs for time worked during meal and rest periods, failing to pay Plaintiffs for an extra hour at the regular rate because Defendants failed to provide compliant meal and rest periods, and by unlawfully rounding down hours worked by Plaintiffs. As such, Defendants are liable for accrued wages due, and waiting time penalties owed, in accordance with Labor Code §§ 201, 202, and 203.

CONCLUSION

Pursuant to Labor Code § 2699.3, the undersigned, on behalf of Lisa Skerl and all other similarly situated aggrieved employees, is hereby providing written notice of the alleged Labor Code violations.

Please advise the undersigned if the agency intends to investigate the alleged violations. If not, these current and former employees intend to pursue their claims under PAGA in a civil class action lawsuit. Please also consider this letter as providing notice on behalf of other aggrieved employees working for Defendants that were subject to the same Labor Code violations described above.

Very truly yours,

SHANBERG, STAFFORD & BARTZ LLP



Aaron A. Bartz

EXHIBIT C

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BARTZ LAW GROUP, APC
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Irvine, CA 92617
Tel: (949) 504-4413 / Fax: (949) 656-7760

Attorneys for Plaintiffs LISA SKERL, VICTORIA KROPP, LORI ROARK,
and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO**

LISA SKERL, an individual; VICTORIA
KROPP, an individual; LORI ROARK, an
individual; on behalf of themselves and all
others similarly situated and the general public,

Plaintiffs,

v.

SUTTER BAY HOSPITALS, a California
corporation; and DOES 1 to 100, inclusive,

Defendants.

) Case No.: 21-CV-02057

) CLASS ACTION

) **FIRST AMENDED CONSOLIDATED
CLASS ACTION COMPLAINT FOR:**

-) 1. Violation of B&PC §17200, et seq.
) 2. Violation of Labor Code §§ 204, 510, 1194 and
) 1198;
) 3. Violation of Labor Code §§ 200, et seq.;
) 4. Failure to Pay Meal and Rest Break Premium at
) the Proper Regular Rate of Pay (Labor Code §
) 226.7)
) 5. Failure to Provide & Maintain Accurate Wage
) Statements Pursuant to Labor Code §226
) 6. Failure to Provide Meal Periods (Lab. Code
) §226.7);
) 7. Failure to Provide Rest Breaks (Lab. Code
) §226.7);
) 8. Unpaid Wages Due to Illegal Rounding
) (Labor Code §§ 204, 510, 1194, 1194.2,
) 1197, 1198)
) 9. Violation of California Private Attorneys
) General Act (Labor Code § 2699, et seq.)

) **DEMAND FOR JURY TRIAL**

1 Plaintiffs LISA SKERL, VICTORIA KROPP, and LORI ROARK, on behalf of
2 themselves and all other persons similarly situated, and the general public, hereby complain
3 against Defendants, SUTTER BAY HOSPITALS, a California corporation (“Sutter Bay”); and
4 DOES 1 to 100, inclusive (hereinafter Sutter Bay and Does 1-100 are collectively referred to
5 herein as “Defendants”), and on information and belief allege as follows:

6 **GENERAL ALLEGATIONS**

7 **JURISDICTION**

8 1. This is a civil action seeking recovery of unpaid wages, waiting time penalties,
9 pay stub penalties and meal and rest period premiums under California Labor Code §§ 510, 1194
10 et seq., 201 et seq., 226 and 226.7. Plaintiffs for themselves and on behalf of the general public,
11 and all others similarly situated, bring an action for monetary damages for failure to pay wages
12 as well as for restitution for Defendants’ violations of Business and Professions Code (B&PC)
13 §17200, et seq., including full restitution of all compensation retained by Defendants as a result
14 of their unlawful, fraudulent and unfair business practices. Plaintiffs seek all available relief,
15 including full restitution of all compensation retained by Defendants as a result of their unlawful
16 and unfair business practices. Further, Plaintiffs seek injunctive relief under B&PC §17200, et
17 seq.

18 **VENUE**

19 2. Venue as to each of the Defendants is proper in this judicial district pursuant to
20 California Code of Civil Procedure (CCP) §§ 395(a) and 395.5, as at least some of the acts
21 complained of herein occurred in the County of San Mateo. Each defendant either owns,
22 maintains offices, transacts business, has an agent or agents within the County of San Mateo, or
23 otherwise is found within the County of San Mateo, and each defendant is within the jurisdiction
24 of this Court for purposes of service of process.

25 **PARTIES**

26 3. Lisa Skerl (“Skerl”) is an individual over the age of eighteen (18). At all relevant
27 times herein, Plaintiff Skerl was and currently is a resident of the County of Placer, State of
28 California and a citizen of California.

1 4. Victoria Kropp (“Kropp”) is an individual over the age of eighteen (18). At all
2 relevant times herein, Plaintiff Kropp was and currently is a resident of the County of Marin,
3 State of California and a citizen of California.

4 5. Lori Roark (“Roark”) is an individual over the age of eighteen (18). At all
5 relevant times herein, Plaintiff Roark was and currently is a resident of the County of San Mateo,
6 State of California and a citizen of California.

7 6. Plaintiffs Skerl, Kropp and Roark (collectively “Plaintiffs”) are informed and
8 believe and thereon allege that at all times mentioned herein, defendant Sutter Bay, is and was a
9 California corporation.

10 7. Plaintiffs are informed and believe and thereon allege that at all times mentioned
11 herein, defendant Sutter Bay was licensed to do business in the State of California, County of
12 San Mateo, and offers hospital care services. Thus, each named defendant and DOES 1 to 100
13 are subject to B&PC §17200, et seq. (Unfair Competition Law) and the Labor Code, as
14 hereinafter alleged.

15 8. Plaintiffs are informed and believe and thereon allege that Defendants Sutter Bay
16 and DOES 1 to 100 control and operate the Sutter Bay businesses and establishments in locations
17 within the State of California, including, but not limited to, the County of San Mateo, for the
18 purposes of hospital care. Thus, each named defendant and DOES 1 to 100 are subject to B&PC
19 §17200, et. seq. (Unfair Competition Law) and the Labor Code as hereinafter alleged.

20 9. Plaintiffs do not know the true names or capacities, whether individual, partner, or
21 corporate, of defendants sued herein as DOES 1 to 100, inclusive, and for that reason, those
22 defendants are sued under such fictitious names, and Plaintiffs will seek from this Court leave to
23 amend this Complaint when such true names and capacities are discovered. Plaintiffs are
24 informed and believe and thereon allege that each of the Defendants and each fictitious
25 defendant, whether individual, partners, or corporate, was responsible in some manner for the
26 circumstances alleged herein, and proximately caused Plaintiffs and all others similarly situated
27 hereinafter alleged and the general public to be subjected to the unlawful employment practices,
28 wrongs, injuries and damages complained of herein.

1 10. At all times herein mentioned, each of the Defendants participated in the doing of
2 the acts hereinafter alleged to have been done by the named Defendants; and furthermore,
3 Defendants, and each of them, were the agents, servants, and employees of each and every one of
4 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
5 were acting within the course and scope of said agency and employment. Plaintiffs herein allege
6 that Defendants and each of them is the joint employer of Plaintiffs and the classes.

7 11. At all times mentioned herein, Defendants, and each of them, were members of
8 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
9 and scope of and in pursuance of said joint venture, partnership, and common enterprise.

10 12. At all times herein mentioned, the acts and omissions of various Defendants, and
11 each of them, concurred and contributed to the various acts and omissions of each and every one
12 of the other Defendants in proximately causing the complaints, injuries and damages alleged
13 herein.

14 13. At all times herein mentioned, Defendants, and each of them, approved of,
15 condoned, and/or otherwise ratified each and every one of the acts or omissions complained of
16 herein. At all times herein mentioned, Defendants, and each of them, aided and abetted the acts
17 and omissions of each and every one of the other Defendants, thereby proximately causing the
18 damages, as herein alleged.

19 14. The California Superior Court also has jurisdiction in this matter because both the
20 individual and aggregate monetary damages and restitution sought herein exceed the minimal
21 jurisdictional limits of the Superior Court and will be established at trial, according to proof. The
22 California Superior Court also has jurisdiction in this matter because Plaintiffs and the putative
23 classes herein were all California citizens.

24 **PLAINTIFF CLASSES**

25 15. The class representative Plaintiffs who worked in the position of hourly non-
26 exempt employees or other similar title while employed by Defendants within the State of
27 California, is as follows:
28

1 a. Lisa Skerl

2 Plaintiff Lisa Skerl was hired as a Surgical Tech at Sutter Roseville Medical Center in
3 February 2016. In 2019, Skerl was transferred to Sutter's California Pacific Medical Center.

4 b. Victoria Kropp

5 Plaintiff Victoria Kropp has been employed by Sutter Bay for the last 32 years. Plaintiff
6 Kropp is currently a Labor/Delivery nurse at Sutter's California Pacific Medical Center.

7 c. Lori Roark

8 Plaintiff Lori Roark worked as a Lab Technician at Mills-Peninsula Medical Center until
9 March 2019.

10 16. At all times mentioned herein, Plaintiffs and the entirety of the hourly Class
11 identified herein are current and former employees of Defendants who were not properly paid all
12 their wages, including but not limited to, proper premium overtime, and/or double time due to
13 Defendants' failure to properly calculate the regular rate and/or include all hours worked in a
14 week to determine hours over eight (8) in a given day, or forty (40) in a week. Further,
15 Defendants fail to properly calculate employees' regular rate of pay, thus underpaying Plaintiff
16 and the class proper premium overtime, double time, and missed meal and rest period penalties
17 in violation of California Labor Code and California Industrial Welfare Commission orders
18 applicable to Defendants' business. Plaintiffs and the putative class are citizens of the State of
19 California.

20 **PRIVATE ATTORNEYS GENERAL ACT OF 2004**

21 17. On or about July 17, 2020, Plaintiff Skerl provided written notice via certified
22 mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of the
23 specific provisions of the Labor Code alleged to have been violated, including the facts and
24 theories to support the alleged violations.

25 18. After 65 days from the service of the amended LWDA letter described above, the
26 LWDA has failed to respond to Plaintiffs' letters notifying the LWDA of the Labor Code
27 violations committed by Defendants. Plaintiffs have fully complied with the notice requirements
28 set forth in California Labor Code § 2699.3 in order to commence a civil action against an
employer pursuant to Labor Code § 2699.

1 19. Defendants' failure to pay Plaintiffs and all other class members for all hours
2 worked, minimum wages, overtime compensation, failure to authorize and permit meal and rest
3 periods, illegal rounding down of hours worked, failure to provide accurate itemized wage
4 statements, failure to reimburse for business expenses, and waiting time penalties, will subject
5 Defendants to civil penalties pursuant to, without limitation, Labor Code §§ 558, 210, 226.3,
6 256, 1174.5, 1197.1, 1198, 2699 and IWC Wage Order 5-2001.

7 **CLASS ACTION ALLEGATIONS**

8 20. Plaintiffs bring this action on behalf of themselves and all others similarly situated
9 as a class action pursuant to CCP §382. The Classes which Plaintiffs seek to represent are
10 composed of and defined as follows:

11 **Class 1:**

12 All non-exempt hourly employees from July 17, 2016 through the date of judgment, who
13 were not paid premium overtime and/or double time at the employee's regular rate of pay.

14 **Subclass 1:**

15 All non-exempt hourly employees of Defendants who were paid for a missed meal or rest
16 period at an allegedly "reduced" rate of pay from July 17, 2016 through the date of judgment
17 (Meal and Rest Reduced Rate Subclass);

18 **Class 2:**

19 All non-exempt hourly employees of Defendants who worked at some point from July
20 17, 2017 through the present, who are no longer employed with Defendants and to whom
21 Defendants willfully failed to pay all wages due upon separation from Defendants (Waiting Time
22 Penalty Class);

23 **Class 3:**

24 All non-exempt hourly employees who worked for Defendants from July 17, 2016 to the
25 present who were not provided legally compliant meal periods (Meal Break Class);

26 **Class 4:**

27 All non-exempt hourly employees who worked for Defendants from July 17, 2016
28 through the present who were not provided legally-compliant rest breaks (Rest Break Class);

Class 5:

1 All non-exempt hourly employees who worked for Defendants from July 17, 2019
2 through the present who were provided a paystub (a.k.a. wage statement) which failed to list all
3 hours actually worked and wages owed (Pay Stub Class).

4 **Class 6:**

5 All non-exempt hourly employees who worked for Defendants from July 17, 2016
6 through the present who were subject to Defendants' rounding policy and pay practice
7 (Rounding Class).

8 The members of the classes are so numerous that joinder of all members would be
9 unfeasible and not practicable. The membership of the classes are unknown to Plaintiffs at this
10 time; however, it is estimated that the classes number greater than 500 individuals. The identity
11 of such membership is readily ascertainable via inspection of Defendants' employment records.

12 21. There are common questions of law and fact as to Plaintiffs and all others
13 similarly situated which predominate over questions affecting only individual members
14 including, without limitation to:

- 15 i. Whether Defendants paid their employees proper premium overtime
16 and/or double time at the employees' regular rate for hours over eight (8)
17 in a day and/or forty (40) hours in a week, in paying their hourly non-
18 exempt employees;
- 19 ii. Whether Defendants violated the applicable Labor Code provisions
20 including §510, 1194, and 203 by requiring substantial overtime work and
21 not paying for said work according to the overtime laws of the State of
22 California;
- 23 iii. Whether Defendants failed to pay the appropriate premium overtime
24 compensation to the hourly employees;
- 25 iv. Whether Defendants improperly retained, appropriated or deprived
26 Plaintiffs and the class members of the use of monies or sums to which
27 Plaintiffs and the class were legally entitled;
- 28 v. Whether Defendants engaged in unfair business practices;

- vi. Whether Defendants, and each of them, were participants in the alleged unlawful conduct;
- vii. Whether Defendants' conduct was willful or reckless;
- viii. The effect upon and the extent of injuries suffered by Plaintiffs and all others similarly situated and the appropriate amount of compensation;
- ix. The appropriate amount of monetary penalties allowed by Labor Code §201, et. seq.;
- x. Whether Defendants pay and continue to pay for missed meal and rest period premiums at an allegedly "reduced" rate of pay in violation of Section 11 of the applicable Wage Orders;
- xi. Whether Defendants violated Labor Code §226 and relevant IWC Wage Orders by failing to, among other violations, accurately report total hours worked, all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly work, by Plaintiffs and the members of the Class;
- xii. Whether Defendants knowingly and intentionally failed to maintain records for Plaintiffs and members of the Class as required by Labor Code § 1174 and section 7 of the IWC Wage Order 5-2001;
- xiii. Whether Defendants engaged in illegal rounding as to Plaintiffs and the class members' hours worked, and time spent during any of their meal periods.

22. Plaintiffs' claims are typical of the claims of all members of the classes and subclasses mentioned herein. Plaintiffs, as representative parties, will fairly and adequately protect the interest of the classes by vigorously pursuing this suit through their attorneys who are skilled and experienced in handling matters of this type. Plaintiffs have no claim or interest that is antagonistic to any class member.

23. The nature of this action and the nature of laws available to the members of the classes and subclasses identified herein make use of the class action format a particularly

1 efficient and appropriate procedure to afford relief to Plaintiffs for the wrongs alleged herein.
2 Further, this claim involves a large corporate employer, Defendants Sutter, and a large number of
3 individual employees (Plaintiffs and all others similarly situated) with many relatively small
4 claims with common issues of law and fact. If each employee were required to file an individual
5 lawsuit, the corporate defendants would necessarily gain an unconscionable advantage since they
6 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
7 their vastly superior financial and legal resources. Requiring each class member to pursue an
8 individual remedy would also discourage the assertion of lawful claims by employees who
9 would be disinclined to pursue an action against their present and/or former employer for an
10 appreciable and justifiable fear of retaliation and permanent damage to their careers at present
11 and/or subsequent employment. Proof of a common business practice or factual pattern, of
12 which the Plaintiffs experienced, is representative of the class mentioned herein and will
13 establish the right of each of the members of the named class to recovery on the causes of action
14 alleged herein.

15 24. The prosecution of separate actions by the individual class members, even if
16 possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with
17 respect to the individual class members against Defendants herein; and which would establish
18 potentially incompatible standards of conduct for Defendants; and/or (b) legal determinations
19 with respect to individual class members which would, as a practical matter, be dispositive of the
20 interest of the other class members not parties to adjudications or which would substantially
21 impair or impede the ability of the class members to protect their interests. Further, the claims of
22 the individual members of the class are not sufficiently large to warrant vigorous individual
23 prosecution considering all of the concomitant costs and expenses attending thereto.

24 25. Plaintiffs and all others similarly situated are entitled to the wages and other
25 monies unlawfully withheld. This action is brought for the benefit of the public.
26
27
28

1 **FIRST CAUSE OF ACTION**

2 **(Violation of B&PC §17200, et seq.)**

3 26. Plaintiffs re-allege and incorporate by reference herein the allegations of all
4 preceding paragraphs as though fully set forth herein.

5 27. Beginning on an exact date unknown to Plaintiffs but believed to have occurred
6 from July 17, 2016, Defendants have engaged in a pattern and practice of acts of unfair
7 competition in violation of B&PC §17200, including the practices alleged herein.

8 28. Defendants, and each of them, own, operate, manage and control Defendants'
9 hospital facilities, and have engaged in the practice of paying their employees, including surgical
10 techs, nurses, and all other hourly employees in a fashion that circumvents California overtime
11 laws.

12 **FAILURE TO PAY PROPER WAGES AND OVERTIME COMPENSATION**

13 29. Plaintiffs are informed and believe and thereon allege that as part of Defendants'
14 ongoing unfair business practices, Defendants' hourly employees worked in excess of eight (8)
15 hours per day, and in excess of forty (40) hours per week without receiving the proper regular
16 rate of pay and therefore have failed to receive overtime compensation and/or the proper
17 overtime premium. That is, the hourly rate which Defendants use to calculate the overtime and
18 double time premiums is an artifice, subterfuge, and sham in that the regular rate is not based on
19 all remuneration earned. The regular rate must include all remuneration as provided in
20 *Huntington v. Superior Court (Mutuc)* (2005) 131 Cal App. 4th 893. Accordingly, the class
21 members allege that the Defendants fail to pay the full amount of wages due because the
22 Defendants miscalculate the regular rate. Plaintiffs and the class members allege and will prove
23 that they are entitled to payment based on the proper and legal regular rate which will include all
24 damages that flow from this calculation. Defendants are in violation of Labor Code §§ 510 and
25 1194, and the relevant California Industrial Welfare Commission Orders 5-2001, et seq.

26 30. Defendants, and each of them, consistently administered a corporate policy
27 regarding both staffing levels, duties and responsibilities of Defendants' employees, including
28 surgical techs which required that the entirety of the employees work overtime without proper

1 premium overtime pay and/or the regular rate of pay. This corporate policy and pattern of
2 conduct is accomplished with the advance knowledge and designed intent to avoid paying
3 premium overtime. Accordingly, Plaintiffs and the class members are entitled to the proper
4 overtime compensation under California law. Further, Plaintiffs and the class are entitled to
5 restitution of these wages obtained by Defendants, and each of them. Furthermore, Defendants
6 have failed to properly include items of remuneration when determining the employees' regular
7 rate, including but not limited to the failure to include the shift differentials and non-
8 discretionary bonuses paid to all eligible employees.

9 **VIOLATION OF LABOR CODE § 200, ET SEQ.**

10 31. Plaintiffs are informed and believe and thereon allege that as part of Defendants'
11 ongoing unfair business practices, Defendants failed to provide all employees all wages at the
12 time of their separation in violation of Labor Code § 200, et. seq., including but not limited to,
13 §§201, 202, 203 & 204.

14 32. Labor Code § 200, et seq. provides that an employer is required to pay an
15 employee all wages (including accrued vacation) immediately upon the employee's involuntary
16 separation from employment; immediately upon his or her voluntary separation if the employee
17 gave at least seventy-two (72) hours notice, and within seventy-two (72) hours, if the employee
18 voluntarily separated, but did not give at least seventy-two (72) hours notice.

19 33. Plaintiffs are informed and believe and thereon allege that all employees who
20 have been separated from Defendants did not timely receive a final paycheck detailing the proper
21 amount of pay from Defendants in violation of Labor Code § 200, et. seq.

22 34. Pursuant to Labor Code § 200, et seq. employees that no longer work for
23 Defendants, and who were not timely paid, are entitled to one (1) day of pay in penalties for each
24 day that he or she was paid late, until payment was made, up to a maximum of thirty (30) days.

25 **VIOLATION OF MEAL PERIOD PROVISIONS**

26 35. Defendants' improper meal and rest period policies are in violation of California
27 law including, but not limited to Labor Code § 226.7, 512, and IWC Wage Order 5-2001.
28 Plaintiffs and these classes are entitled to wages at their regular rate of pay for each violation

1 where Defendants violated the meal and rest break provisions and paid the class the missed meal
2 and rest period premiums at an artificially reduced regular rate. Plaintiffs and the class were
3 entitled to 1 hour of pay for each meal and rest break violation at their regular rate of pay.

4 Defendants failed and continue to fail to pay for meal and rest period violations at the
5 employees' regular rate of pay in violation of Section 11 of the applicable Wage Orders.

6 36. Plaintiffs seek restitution and injunctive relief for said violations.

7 37. Plaintiffs are informed and believe and thereon allege that at all times herein
8 mentioned, Defendants have engaged in unlawful, deceptive, and unfair business practices
9 prohibited by California B&PC §17200, thereby depriving their employees and the putative class
10 the minimum working standards and conditions due to them under the California labor laws and
11 Industrial Welfare Commission wage orders as specifically described herein. Plaintiffs seek an
12 injunction preventing Defendants from continuing their unfair business practice of improperly
13 depriving their employees of overtime pay, and payment of their regular rate of pay for meal and
14 rest period premiums. Plaintiffs further seek an order requiring Defendants to identify by full
15 name, telephone number, and last known address employees who worked or still work for
16 Defendants from July 17, 2016 through the date of judgment; Plaintiffs further seek an order
17 requiring Defendants to timely pay restitution to all current and former employees, including
18 back wages, premium payments, and interest.

19 **FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS**

20 38. Plaintiffs are informed and believe and thereon allege that as part of Defendants'
21 ongoing unfair business practices, Defendants, and each of them, fail to provide their employees
22 with proper and understandable itemized wage statement, as required by Labor Code § 226.

23 39. Plaintiffs are informed and believe, and thereon allege, that Defendants, and each
24 of them, fail to provide each employee with an itemized statement which states the actual regular
25 rate paid, the total hours worked by the employee, the net wages earned, and all applicable
26 hourly rates in effect during the pay period and the corresponding number of hours worked at
27 each hourly rate by the employee.
28

1 **FAILURE TO PAY ALL WAGES DUE TO ILLEGAL ROUNDING**

2 40. Defendants have adopted and implemented an illegal rounding policy that
3 disproportionately impacts employees, which results in lost wages for hourly employees.

4 41. Defendants' conduct in their rounding of Plaintiffs' and other members of the
5 class' time and failing to pay all wages due is also unfair within the meaning of Business and
6 Professions Code §17200 because it is against established public policy and has been pursued to
7 attain an unjustified monetary advantage for Defendants by unfairly and unlawfully reducing
8 Plaintiffs' and the other class members' wages, and by rounding down Plaintiffs' and class
9 members' meal periods, such that they were not entitled to at least 30 minute duty-free meal
10 periods. As such, Defendants' business practices, including their illegal rounding policy and
11 practice, is unfair, illegal and fraudulent, in that such policy and practice was intended to reduce
12 lawful wages due, and deceive Plaintiffs and the other class members' into believing that they
13 were being paid for all hours worked and receiving mandatory 30 minute duty-free meal periods,
14 when in fact they were not.

15 **SECOND CAUSE OF ACTION**

16 **RECOVERY OF UNPAID WAGES & PENALTIES**

17 **(Violation of Labor Code §§ 204, 510, 1194 and 1198)**

18 42. Plaintiffs re-allege and incorporate by reference herein the allegations of all
19 preceding paragraphs as though fully set forth herein.

20 43. Plaintiffs and all others similarly situated identified herein were and are employed
21 and scheduled as a matter of established company policy to work and in fact worked as non-
22 exempt hourly employees in excess of eight (8) hours per day and/or in excess of forty (40)
23 hours per week. Defendants employed and scheduled all employees without providing overtime
24 compensation for such excess hours worked in violation of Labor Code §§ 510 and 1194 and the
25 relevant California Industrial Welfare Commission (IWC) orders. Labor Code § 204 establishes
26 the fundamental right of all employees in the State of California to be paid the proper amount of
27 wages in a timely fashion for their work, including overtime. Defendants always had a written
28

1 and verbal agreement to pay overtime and double time based on the Plaintiffs' and classes'
2 regular rate of pay.

3 44. Pursuant to Labor Code §§ 218 and 1194(a), Plaintiffs may bring a civil action for
4 overtime wages directly against the employer without first filing a claim with the Division of
5 Labor Standards Enforcement (hereinafter "DLSE") and may recover such wages, together with
6 interest thereon, penalties, attorneys' fees and costs.

7 45. At all times relevant hereto, Defendants have failed to pay to Plaintiffs and all
8 persons similarly situated wages when due as required by Labor Code § 204.

9 46. Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than
10 the hours set by the IWC or under conditions prohibited by the applicable IWC Wage Orders.

11 47. At all times relevant hereto, Plaintiffs are informed and believe and thereon allege
12 that Defendants have treated Plaintiffs as hourly non-exempt employees. Despite this
13 classification, Defendants have willfully violated the Labor Code with respect to meeting the
14 requirements of paying one (1) regular rate of pay and calculating overtime and double time
15 based on that regular rate, as herein before alleged. Defendants have failed to properly pay
16 premium overtime for hours worked in a week, and as such, Defendants are able to reduce their
17 overhead and operating expenses and gain an unfair advantage over competing companies
18 complying with state law. Furthermore, Defendants have failed to include all items of
19 remuneration when determining the employees' regular rate of pay, as described above.

20 48. Plaintiffs are informed and believe and thereon allege that the hourly non-exempt
21 class was never paid any premium compensation or paid significantly less premium
22 compensation for work accomplished in excess of forty (40) hours per week, and/or eight (8)
23 hours per day.

24 49. Furthermore, Plaintiffs are informed and believe that Defendants have a policy of
25 not paying overtime to their employees despite the fact that the employees actually worked the
26 overtime hours. Further, Plaintiffs allege that in an attempt to circumvent the overtime
27 requirements, Defendants code mandatory classes, bonus shifts, in-house registry hours, and
28 other work differently from other hours worked so as not to incur overtime payments for

consecutive hours worked. Essentially, the employee is subject to a forfeiture of wages for the hours worked.

50. Plaintiffs are informed and believe and thereon allege that Defendants consistently administered a corporate policy regarding both staffing levels and duties and responsibilities of the members of the classes which required the entirety of all classes to work overtime without proper premium pay. This included a uniform corporate policy and practice of failing to include all remuneration into the regular rate for purposes of calculating premium overtime payments and meal period penalties. This corporate policy and pattern of conduct was/is accomplished with the advance knowledge and design of all Defendants herein. Thus, Plaintiffs and all others similarly situated routinely, regularly and customarily performed overtime work. Accordingly, Plaintiffs and all others similarly situated are entitled to overtime compensation under California law. Further, Defendants disseminated false information throughout Defendants' facilities and among the employees reciting that all hourly non-exempt employees would receive premium overtime pay.

51. Plaintiffs are informed and believe and thereon allege that the obligations and responsibilities of the class employees are irrelevant because Plaintiffs and all others similarly situated merely allege wrongdoing with Defendants' pay plans. Further, the duties of Plaintiffs and all others similarly situated are not relevant in certifying any of the classes. Defendants' hourly non-exempt employees work routinely in excess of eight (8) hours per day, forty (40) hours per week and/or and they were not, and have never been, paid the proper regular rate of compensation nor the proper premium compensation for their overtime work.

52. Defendants, and each of them, in violation of Labor Code §§ 201 and 202, et seq., respectively, had a consistent and uniform policy, practice and procedure of willfully failing to pay the earned and unpaid wages of all such former employees. Defendants have willfully failed to pay the earned and unpaid wages of such individuals, including, but not limited to regular pay, premium pay, and other wages earned and remaining uncompensated according to amendment, or proof.

1 53. The pattern, practice and uniform administration of corporate policy regarding
2 illegal employee compensation as described herein is unlawful and creates an entitlement to
3 recovery by Plaintiffs and all others similarly situated, in a civil action, for the unpaid balance of
4 the full amount of the all wages owing, including the proper calculation of the regular rate and
5 the proper overtime premiums calculated at 1.5 or 2 times the legal regular rate which are owing,
6 including interest thereon, willful penalties, reasonable attorneys' fees, and costs of suit
7 according to the mandate of Labor Code § 1194, et. seq.

8 54. Likewise, Defendants have a pattern, practice and uniform administration of
9 corporate policy regarding failure to comply with the required provisions of Labor Code § 226.7,
10 in failing to pay Plaintiffs and the class the meal and rest period premium payment at the regular
11 rate.

12 **THIRD CAUSE OF ACTION**

13 **(Violation of Labor Code §§ 200, et. seq.)**

14 55. Plaintiffs re-allege and incorporate by reference herein the allegations of all
15 preceding paragraphs as though fully set forth herein.

16 56. Labor Code §§ 200, et. seq., provides that an employer is required to pay an
17 employee all wages (including accrued vacation) immediately upon an employee's involuntary
18 separation from employment; immediately upon her voluntary separation if the employee gave at
19 least seventy two (72) hours notice, and within seventy two (72) hours, if the employee
20 voluntarily separated, but did not give at least seventy two (72) hours notice.

21 57. Plaintiff Skerl and other former employees of Defendants employed in the State
22 of California separated from employment with Defendants, and did not timely receive a final pay
23 check with all of their wages due from Defendants in violation of Labor Code §§
24 200, et seq. Plaintiffs are informed and believe and thereon allege that Defendants also violated
25 the mandates of Labor Code §§ 200, et seq., as to other employees whose employment ended
26 during the period of time covered by this action.

27 58. Pursuant to Labor Code §§ 200, et. seq., each member of the class that no longer
28 works for Defendants, and who was not timely paid all of his or her wages due is entitled to one

(1) day of pay in penalties for each day that he or she was paid late, until payment was made, up to a maximum of thirty (30) days.

FOURTH CAUSE OF ACTION

FAILURE TO PAY MEAL AND REST PERIOD PREMIUMS AT THE PROPER REGULAR RATE OF PAY

(Violation of Labor Code §§ 226.7 & 512, et seq.)

59. Plaintiffs re-allege and incorporate by reference herein the allegations of all preceding paragraphs as though fully set forth herein.

60. Plaintiffs believe and thereon allege that Labor Code §226.7 requires an employer to pay an additional hour of compensation at the employee's regular rate of pay for each meal period and rest period violation. During the class period, Plaintiffs are informed and believe, and based thereon allege that Defendants have paid meal period and rest period violations, however, Defendants have paid those premiums at an artificially low regular rate of pay. Defendants' improper meal and rest period practices and policies are in violation of California law including, but not limited to Labor Code § § 226.7, 512, and IWC Wage Order 5-2001, et seq. Plaintiffs and the class are entitled to 1 hour of pay for each meal and rest period violation at their regular rate of pay.

61. Pursuant to Labor Code §226.7, Plaintiffs are entitled to damages in an amount equal to one (1) hour of the employee's regular rate of pay per each meal and rest period violation, in a sum to be proven at trial.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Violation of Labor Code § 226)

62. Plaintiffs re-allege and incorporate by reference herein the allegations of all preceding paragraphs as though fully set forth herein.

63. Labor Code §226(a) provides, in pertinent part:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher

1 paying the employee's wages, or separately if wages are paid by personal check or
2 cash, an accurate itemized statement in writing showing (1) gross wages earned,
3 (2) total hours worked by the employee, except as provided in subdivision (j), (3)
4 the number of piece-rate units earned and any applicable piece rate if the
5 employee is paid on a piece-rate basis, (4) all deductions, provided that all
6 deductions made on written orders of the employee may be aggregated and shown
7 as one item, (5) net wages earned, (6) the inclusive dates of the period for which
8 the employee is paid, (7) the name of the employee and only the last four digits of
9 his or her social security number or an employee identification number other than
10 a social security number, (8) the name and address of the legal entity that is the
11 employer and, if the employer is a farm labor contractor, as defined in subdivision
12 (b) of Section 1682, the name and address of the legal entity that secured the
13 services of the employer, and (9) all applicable hourly rates in effect during the
14 pay period and the corresponding number of hours worked at each hourly rate by
15 the employee. . .

16 64. During the Class Period, Defendants knowingly and intentionally failed to provide
17 the Class Members, including Plaintiffs, with timely and accurate wage and hour statements
18 showing gross wages earned, total hours worked, all deductions made, net wages earned, the
19 name and address of the legal entity employing that Class Member, and all applicable hourly
20 rates in effect during each pay period and the corresponding number of hours worked at each
21 hourly rate by that Class Member.

22 65. The Class Members, including Plaintiffs, suffered injury as a result of Defendants'
23 knowing and intentional failure to provide the Class Members, with the wage and hour
24 statements required by law.

25 66. Based on Defendants' conduct as alleged herein, Defendants are liable for actual
26 damages, statutory damages and/or statutory penalties pursuant to California Labor Code § 226,
27 attorney's fees and costs and other applicable provisions of the Labor Code and applicable Wage
28 Order.

(Violation of Labor Code §§ 226.7 and 512)

70. Plaintiffs and members of the Class were not provided with or given the opportunity to take the requisite meal periods before the end of the first 5 hours of work, nor were they provided with or given the opportunity to take a proper second meal period during the days when they worked more than 10 hours in a day. Defendants coerced Plaintiffs and the members of the Class to forego meal periods by disciplining and/or threatening disciplinary action against them if they attempted to take meal periods, created incentives to forego meal breaks, and encouraged the skipping of meal periods by scheduling work to coincide with the meal periods, among other things. In addition, the pace of the job required Class Members to eat while working in order to keep up with patient care needs. As a result, Plaintiffs and members of the Class were required to work and/or were not relieved of all duties during any meal period taken, and thus were considered “on duty;” however, Defendants failed to count as time worked any “on duty” meal period taken by Plaintiffs and the members of the Class.

1 71. Pursuant to California Labor Code § 226.7(c) and IWC Wage Order 5-2001, if an
2 employer fails to provide an employee a meal period in accordance with the applicable
3 provisions of the IWC Wage Orders, the employer shall pay the employee one (1) hour of pay at
4 the employee's regular rate of pay for each workday that the meal period is not provided. As
5 such, Plaintiffs and members of the Class are entitled to an additional one hour's pay for each
6 day in which Plaintiffs and members of the Class were not provided a proper meal break under
7 the above-described authorities.

8 72. Plaintiffs and the members of the Class request that the Court award interest on all
9 unpaid wages at the legal rate specified by California Civil Code § 3289(b), accruing from the
10 date the wages were due and payable pursuant to Labor Code § 218.6.

11 **SEVENTH CAUSE OF ACTION**

12 **FAILURE TO AUTHORIZE OR PERMIT REST PERIODS**

13 **(Violation of Labor Code § 226.7)**

14 73. Plaintiffs re-allege and incorporate by reference as if fully set forth herein, the
15 allegations of the preceding paragraphs.

16 74. IWC Wage Order 5-2001 states that every employer shall authorize and permit all
17 employees to take rest periods. The authorized rest period time shall be based on the total hours
18 worked daily at the rate of ten (10) minutes net rest time per four hours of work, or major
19 fraction thereof. An employer must provide employees with 10 minutes' rest for shifts from
20 three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10
21 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.

22 75. Plaintiffs and Class Members were not permitted to take rest periods, were
23 required to work during their rest periods, and/or were disciplined and/or were advised that they
24 would be disciplined if they took rest periods during work hours, in contravention of California
25 law.

26 76. Pursuant to California Labor Code § 226.7(c) and the applicable IWC Wage
27 Orders, if an employer fails to provide an employee a rest period in accordance with the
28

1 applicable IWC Wage Orders, the employer shall pay the employee one (1) hour of pay at the
2 employee's regular rate of compensation for each workday that the rest period is not provided.

3 77. As such, Plaintiffs and the Class members are entitled to an additional one hour's
4 pay for each day in which they were not provided a proper rest period under the above-described
5 authorities.

6 78. Plaintiffs and the members of the Class request that the Court award interest on all
7 unpaid wages at the legal rate specified by California Civil Code § 3289(b), accruing from the
8 date the wages were due and payable pursuant to Labor Code § 218.6.

9 **EIGHTH CAUSE OF ACTION**

10 **FAILURE TO PAY ALL WAGES DUE TO ILLEGAL ROUNDING**

11 **(Violation of (Labor Code §§ 204, 510, 1194, 1194.2,**
12 **1197, 1198))**

13 79. Plaintiffs re-allege and incorporate by reference as if fully set forth herein, the
14 allegations of the preceding paragraphs.

15 80. Labor Code § 510(a) states in pertinent part: "Any work in excess of eight hours
16 in one workday and any work in excess of 40 hours in any one workweek . . . shall be
17 compensated at the rate of no less than one and one-half times the regular rate of pay for any
18 employee."

19 81. The applicable Wage Orders provide that effective January 1, 2016, "[e]very
20 employer shall pay to each employee . . . wages not less than . . . \$10 per hour for all hours
21 worked. . ."

22 82. Labor Code §1194(a) states: "Notwithstanding any agreement to work for a
23 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
24 compensation applicable to the employee is entitled to recover in a civil action the unpaid
25 balance of the full amount of this minimum wage or overtime compensation, including interest
26 thereon, reasonable attorney's fees, and costs of suit."

27 83. Pursuant to Labor Code §1197, payment of less than the minimum wage fixed by
28 the Labor Commissioner is unlawful.

1 84. Pursuant to Labor Code § 1198: “The employment of any employee for longer
2 hours than those fixed by the [Wage Order] or under conditions of labor prohibited by the [Wage
3 Order] is unlawful.”

4 85. Pursuant to the applicable Wage Orders, Defendants are required to pay Plaintiffs
5 and the members of the Class for all hours worked, including all time during which an employee
6 is subject to the control of an employer, as well as all time the employee is suffered or permitted
7 to work, whether or not required to do so.

8 86. Defendants, as a matter of established company policy and procedure, uniformly
9 and consistently, adopted and implemented a rounding system whereby the hours worked by
10 Plaintiffs and members of the Class were rounded, usually down, so that during the course of
11 their employment, Plaintiffs and the members of the Class were paid far less than they would
12 have been paid had they been paid for actual recorded time, rather than rounded time. Moreover,
13 Plaintiffs are informed and believe and based thereon allege that the rounding policy and
14 procedure was applied to clocking in and out for meal periods, and/or that the rounding policy
15 deducted 30 minutes from each class member’s time worked each day, such that Plaintiffs and
16 members of the Class were not entitled to all of the time to properly take their meal periods as
17 required by law and/or their time worked was reduced based on the illegal rounding policy.

18 87. Based on Defendants’ illegal rounding policy and practice, Plaintiffs and the
19 members of the Class were required to remain under Defendants’ control without pay, resulting
20 in Plaintiffs and the members of the Class earning less than the minimum wage or the full
21 amount of overtime compensation for overtime hours worked.

22 88. Pursuant to Labor Code §§ 218.6, 1194(a) and Civil Code 3287, Plaintiffs and the
23 members of the Class are entitled to pre-judgment interest on all amounts recovered herein.
24 Moreover, further to Labor Code §§ 218.5 and 1194, Plaintiffs and the members of the Class
25 seek an award of reasonable attorneys’ fees and costs incurred in prosecuting this action.
26
27
28

1 **NINTH CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 2699 et seq.,**
3 **the Private Attorney General Act)**

4 89. Plaintiffs re-allege and incorporate by reference as if fully set forth herein, the
5 allegations of the preceding paragraphs.

6 90. Plaintiffs are aggrieved employees as defined in Labor Code § 2699(c) and related
7 Labor Code provisions. Plaintiffs bring this cause of action on behalf of themselves, the
8 members of the Class, and other current and former employees affected by the labor law
9 violations alleged herein.

10 91. Defendants committed numerous violations of the California Labor Code and
11 IWC Wage Orders against the Plaintiffs, and on information and belief, against members of the
12 Class and other current and former employees while they were employed by Defendants,
13 including but not limited to:

14 a. Defendants violated Labor Code §§ 510, 1194 and/or Wage Order 5-2001 by
15 failing to pay Plaintiffs and the members of the Overtime Class, and on information and belief,
16 other current and former employees of Defendants, all overtime wages owed in compliance with
17 California law;

18 b. Defendants violated Labor Code §§ 226.7, 510, 1194, 1197 and/or Wage Order 5-
19 2001 by failing to pay Plaintiffs and the members of the Meal and Rest Reduced Rate Subclass
20 by failing to pay for a missed meal or rest period at the regular rate of pay;

21 c. Defendants violated Labor Code §§ 1194, 1197 and/or Wage Order 5-2001 by
22 failing to pay Plaintiffs and the members of the Minimum Wage Class, and on information and
23 belief, other current and former employees of Defendants, all minimum wages owed in
24 compliance with California law;

25 d. Defendants violated Labor Code §§ 1194, 204, 510 and/or Wage Order 5-2001 by
26 failing to pay Plaintiffs and the members of the Rounding Class, and on information and belief,
27 other current and former employees of Defendants, all wages owed in a timely manner in
28 compliance with California law;

e. Defendants violated Labor Code § 226.7, 512, and /or Wage Order 5-2001 by

1 failing to provide Plaintiffs and the members of the Meal Break Subclass, and on information
2 and belief, other current and former employees of Defendants, the opportunity to take the
3 requisite meal periods in compliance with California law;

4 f. Defendants violated Labor Code § 226.7 and/or Wage Order 5-2001 by
5 failing to authorize and permit Plaintiffs and the members of the Rest Break Subclass, and on
6 information and belief, other current and former employees of Defendants, the opportunity to
7 take the requisite rest periods in compliance with California law;

8 g. Defendants violated Labor Code §§ 226, 1174 and/or Wage Order 5-2001 by
9 failing to properly maintain accurate employment time and records, maintain and/or submit
10 accurate itemized wage statements on behalf of Plaintiffs, the Pay Stub Class members, and on
11 information and belief, on behalf of other current and former employees of Defendants as
described herein; and

12 h. Defendants violated Labor Code §§ 201, 202 and/or Wage Order 5-2001 by
13 failing to pay Plaintiffs, the Waiting Time Penalty Class members, and on information and
14 belief, other current and former employees of Defendants as described herein;

15 92. Pursuant to Labor Code § 2699, Plaintiffs, members of the Class, and all other
16 aggrieved current and former employees seek to recover civil penalties, as otherwise provided by
17 statute and wage order, for which Defendants are liable as a result of their violations of the
18 California Labor Code and applicable wage order(s) in an amount to be proven at trial. These
19 penalties include, but are not limited to, those provided by Labor Code §§ 210, 226.3, 558,
20 1174.5, 1197.1 and 2699. Plaintiffs and aggrieved current and former employees further seek
21 and award of reasonable attorneys' fees and costs pursuant to Labor Code § 2699, et seq.

22 PRAYER FOR RELIEF

23 WHEREFORE, Plaintiffs pray:

24 1. That the Court determine this action may be maintained as a class action;

25 As to the First Cause of Action:

26 2. For an order preliminarily and permanently enjoining Defendants from engaging
27 in the practices challenged herein;
28

1 3. An order for full restitution of all monies, as necessary and according to proof, to
2 restore any and all monies withheld by the Defendants by means of the unfair practices
3 complained of herein. Plaintiffs seek, on behalf of the putative class, the appointment of a
4 receiver, as necessary. The restitution includes all monies retained as wages, as defined in Labor
5 Code §§ 201, 202, 510 and 1194, and interest, and attorneys' fees as a result of the unfair
6 business practices;

7 4. For an order finding and declaring that Defendants' acts and practices as
8 challenged herein are unlawful, and unfair and/or fraudulent;

9 5. For an accounting, under administration of Plaintiffs and subject to court
10 supervision, to determine the amount to be returned by Defendants and the amounts to be
11 refunded to members who are or were not paid all their wages due to Defendants' unfair business
12 practices;

13 6. For the creation of an administrative process wherein each injured current and
14 former employee receives his or her back wages in the form of overtime pay or alternatively that
15 each current or former eligible employee may submit a claim in order to receive his/her money;

16 7. For an order requiring Defendants to make full restitution and payment pursuant
17 to B&PC Sections 17200, et seq.;

18 8. For all other appropriate declaratory and equitable relief;

19 9. For pre-judgment interest to the extent permitted by law;

20 10. For an order requiring Defendants to identify, by name, address and telephone
21 number of each person who worked as an hourly non-exempt employee for Defendants from four
22 (4) years before filing of the original complaint in this action through the time of judgment;

23 11. For an order imposing all civil and statutory penalties provided by law.

24 **As to the Second and Fourth Cause of Action:**

25 12. For damages according to proof, as set forth in Labor Code §§ 510, 226.7 and
26 1194, et seq., (and the applicable California Industrial Welfare Commission wage orders)
27 regarding wages due and owing;
28

1 13. For pre-judgment interest as allowed by Labor Code § 1194 and California Civil
2 Code § 3287(b), for waiting time penalties as authorized by Labor Code § 203, and for
3 reasonable attorneys' fees;

4 14. For an order imposing all civil and statutory penalties provided by law.

5 **As to the Third Cause of Action:**

6 15. For waiting time penalties for all former employees not timely paid their last pay
7 check, including vacation pay;

8 16. For reasonable attorneys' fees and costs;

9 17. For an order imposing all civil and statutory penalties provided by law.

10 **As to the Fifth Cause of Action:**

11 18. For recovery as authorized by Labor Code §226(e);

12 19. For injunctive relief to ensure Defendants' compliance with Labor Code §226 and
13 the IWC Wage Orders §7(A) pursuant to Labor Code §226(h);

14 20. For an award of costs and reasonable attorneys' fees pursuant to Labor Code
15 §226(e) and/or §226(h);

16 21. For an order imposing all civil and statutory penalties provided by law.

17 **As to the Sixth Cause of Action:**

18 22. One (1) hour of pay at each of the employees' regular rate of compensation for
19 each workday that a meal period was not provided, impeded, discouraged and/or dissuaded;

20 23. For an order imposing all civil and statutory penalties provided by law.

21 **As to the Seventh Cause of Action:**

22 24. One (1) hour of pay at each of the employees' regular rate of compensation for
23 each workday that a rest period was not authorized or permitted, or impeded, interrupted,
24 discouraged and/or dissuaded;

25 25. For an order imposing all civil and statutory penalties provided by law.

As to the Eighth Cause of Action:

26. For recovery of the unpaid balance of the full amount of unpaid minimum wage or overtime and double time compensation, pursuant to Labor Code §§ 204, 510, 1194, 1194.2, 1197, and 1198 due and owing, according to proof;

27. For liquidated damages in an amount equal to the wages unlawfully unpaid pursuant to Labor Code § 1194.2(a);

28. For pre-judgment interest as allowed by Labor Code §§ 218.6, 1194(a), and Civil Code § 3287;

29. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §§ 218.5 and/or 1194(a);

30. For an order imposing all civil and statutory penalties provided by law.

As to the Ninth Cause of Action:

31. That the Court declare, adjudge and decree that Defendants violated California Private Attorneys General Act, Labor Code § 2699 et seq;

32. For an order imposing all civil and statutory penalties provided by law;

33. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 2699 (g); and

34. For such other and further relief as the Court may deem equitable and appropriate.

As to All Causes of Action:

35. For reasonable costs incurred;

36. For such other and further relief as this Court may deem just and proper.

Dated: October 6, 2022

SHANBERG STAFFORD LLP
BARTZ LAW GROUP APC

By: /s/ Ross E. Shanberg
Ross E. Shanberg
Aaron A. Bartz
Attorneys for Plaintiffs LISA SKERL, VICTORIA
KROPP, and LORI ROARK, on behalf of themselves
and all other similarly situated employees

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Dated: October 6, 2022

By: /s/ Ross E. Shanberg
 Ross E. Shanberg
 Aaron A. Bartz
 Attorneys for Plaintiffs LISA SKERL, VICTORIA
 KROPP, and LORI ROARK, on behalf of themselves
 and all other similarly situated employees

PROOF OF SERVICE - C.C.P. §§ 1013A, 2015.5
STATE OF CALIFORNIA, COUNTY OF ORANGE

I, the undersigned, am employed in the County of Orange, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 5151 California Ave., Suite 100, Irvine, California 92617.

On October 6, 2022, I served true copies of the foregoing documents described as:
FIRST AMENDED CONSOLIDATED CLASS ACTION COMPLAINT on the interested parties in this action, addressed as follows:

THOMAS E. GEIDT
TERESA GHALI
GBG LLP

Attorneys for Defendants

601 Montgomery Street, Suite 1150
San Francisco, CA 94111
tomgeidt@gbgllp.com
teresaghali@gbgllp.com

() BY U.S. MAIL: The documents were placed in sealed, addressed envelopes on the above date and placed for collection and mailing at my place of business. I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Newport Beach, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

() BY OVERNIGHT DELIVERY: The documents were placed in a sealed, addressed packaging for overnight delivery on this date in the ordinary course of business, with all charges to be paid by my employer, to be deposited in a facility regularly maintained by the overnight delivery carrier or delivered to a courier or driver authorized by the overnight delivery carrier to receive such packages.

(X) BY ELECTRONIC TRANSMISSION: I transmitted a PDF version of this document by electronic mail to the party(s) identified on the above service list using the e-mail address(es) indicated.

(X) (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 6, 2022, at Newport Beach, California.

/s/ Aaron A. Bartz
Aaron A. Bartz

EXHIBIT D

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Skerl v Sutter Bay Hospital - Damage Calculation

Employee Classification - Hourly Employees

Assumptions:

Damage Periods:

Rounding Claim: July 20, 2016 through August 31, 2022

Regular Rate Claim: January 1, 2017 through December 31, 2021

Meal Break Claim: July 20, 2016 through August 31, 2022

Rest Break Claim: July 20, 2016 through August 31, 2022

Waiting Time Penalties: July 20, 2017 through August 31, 2022

Paystub Penalties: July 20, 2019 through August 31, 2022

PAGA: July 20, 2019 through August 31, 2022

Wages Interest : 10% *(Interest calculated through August 31, 2022)*

Meal & Rest Break Interest : 7% *(Interest calculated through August 31, 2022)*

Year	2016	2017	2018	2019	2020	2021	2022	Total
Compensation								
S.T. Rate	\$69.73	\$73.53	\$77.49	\$81.60	\$84.23	\$87.15	\$90.17	
O.T. Rate	\$104.60	\$110.30	\$116.24	\$122.40	\$126.35	\$130.73	\$135.26	
Weighted Average OT Rate	\$93.44	\$98.53	\$103.84	\$109.34	\$112.87	\$116.78	\$120.83	
Calendar Week Count	37.7	52.0	52.0	52.0	52.0	52.0	34.7	332.4
FTE Count	1,046.8	1,592.3	1,524.7	1,497.0	1,483.5	1,444.5	1,444.5	
<u>Provided Counts</u>								
Work Week Ct - Skerl	39,465.0	82,802.0	79,283.0	77,842.0	77,142.0	73,878.0		430,412.0
Extrapolated Week Counts	39,465.0	82,802.0	79,283.0	77,842.0	77,142.0	75,113.0	50,125.0	481,772.0
Shifts Per Week	3.2	3.2	3.2	3.1	3.0	2.9	2.9	
Total Shift Count	126,288.0	264,966.0	253,706.0	241,310.0	231,426.0	217,828.0	145,363.0	1,480,887.0
Pay Period Count	19,733.0	41,401.0	39,642.0	38,921.0	38,571.0	37,557.0	25,063.0	240,888.0
LC 226 & PAGA Period Counts				28,218.0	38,571.0	37,557.0	25,063.0	101,191.0

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Damages:

Regular Rate Claim - Meal Premium								
	2016	2017	2018	2019	2020	2021	2022	Total
Meal Break Premium Payments		22,775.0	20,693.0	18,690.0	17,365.0	15,797.0		95,320.0
% of PP - Bonus/Differential		60.0%	60.0%	60.0%	60.0%	60.0%		
Meal Break Premium Issue Count		13,665.0	12,416.0	11,214.0	10,419.0	9,478.0		57,192.0
Average Under Payment Amount		\$1.25	\$1.25	\$1.25	\$1.25	\$1.25		
Sub-Total Damages		\$17,081.25	\$15,520.00	\$14,017.50	\$13,023.75	\$11,847.50		\$71,490.00
Interest		7,155.73	6,501.69	4,470.50	2,851.20	1,408.94		22,388.06
Total Damages		<u>\$24,236.98</u>	<u>\$22,021.69</u>	<u>\$18,488.00</u>	<u>\$15,874.95</u>	<u>\$13,256.44</u>		<u>\$93,878.06</u>

- The Meal Break Premium count is based on the Meal Break Premium amounts provided by opposing counsel. The count is calculated by taking the premium payment amount divided by the straight time rate for the year.

Rounding Claim								
	2016	2017	2018	2019	2020	2021	2022	Total
Pay Period Count	19,733.0	41,401.0	39,642.0	38,921.0	38,571.0	37,557.0	25,063.0	240,888.0
% of Pay Period - Unfavorable	56.9%	62.5%	63.2%	65.5%	64.4%	61.0%	61.0%	
Unfavorable Pay Period Ct	11,228.0	25,876.0	25,054.0	25,493.0	24,840.0	22,910.0	15,288.0	150,689.0
Unfavorable Min. Per Pay Period	28.5	27.8	28.4	25.6	24.9	22.1	22.1	
Total Unfavorable Minutes	319,998.0	719,352.8	711,533.6	652,620.8	618,516.0	506,311.0	337,864.8	3,866,197.0
Total Unfavorable Hours	5,333.3	11,989.2	11,858.9	10,877.0	10,308.6	8,438.5	5,631.1	64,436.6
Weighted Average OT Rate	\$93.44	\$98.53	\$103.84	\$109.34	\$112.87	\$116.78	\$120.83	
Sub-Total Damages	\$498,343.55	\$1,181,297.19	\$1,231,427.48	\$1,189,292.64	\$1,163,531.68	\$985,449.98	\$680,403.40	\$6,929,745.92
Interest	250,935.14	494,872.65	515,873.39	379,292.87	254,723.94	117,192.74	22,243.96	2,035,134.69
Total Damages	\$749,278.69	\$1,676,169.84	\$1,747,300.87	\$1,568,585.51	\$1,418,255.62	\$1,102,642.72	\$702,647.36	\$8,964,880.61

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Meal Break Claim

	2016	2017	2018	2019	2020	2021	2022	Total
Shift Count	126,288.0	264,966.0	253,706.0	241,310.0	231,426.0	217,828.0	145,363.0	1,480,887.0
% of Shifts > 6.0	94.5%	93.3%	93.2%	93.4%	91.2%	91.9%	91.9%	
Shifts > 6.0 Count	119,342.0	247,213.0	236,454.0	225,384.0	211,061.0	200,184.0	133,589.0	1,373,227.0
<u>Violation %</u>								
Missed Break %	8.1%	5.5%	5.4%	7.7%	6.3%	8.3%	8.3%	
Late Break %	32.3%	31.9%	37.2%	43.7%	44.4%	46.7%	46.7%	
Short Break %	4.1%	3.1%	2.1%	4.2%	3.8%	4.0%	4.0%	
2nd Break %	10.0%	9.5%	18.3%	26.2%	24.5%	27.7%	27.7%	
Total Violation %	<u>54.5%</u>	<u>50.0%</u>	<u>63.0%</u>	<u>81.8%</u>	<u>79.0%</u>	<u>86.7%</u>	<u>86.7%</u>	
Net Violation %	44.8%	41.3%	47.2%	58.1%	57.6%	63.8%	63.8%	
Total Violation Count	53,465.0	102,099.0	111,606.0	130,948.0	121,571.0	127,717.0	85,230.0	732,636.0
S.T. Rate	\$69.73	\$73.53	\$77.49	\$81.60	\$84.23	\$87.15	\$90.17	
Sub-Total Damages	\$3,728,114.45	\$7,507,339.47	\$8,648,348.94	\$10,685,356.80	\$10,239,925.33	\$11,130,536.55	\$7,685,189.10	\$59,624,810.64
Meal Premium Payments	<u>(798,161.77)</u>	<u>(1,674,630.46)</u>	<u>(1,603,465.33)</u>	<u>(1,525,120.49)</u>	<u>(1,462,651.92)</u>	<u>(1,376,710.23)</u>	<u>(918,719.03)</u>	<u>(9,359,459.23)</u>
Sub-Total Damages	\$2,929,952.68	\$5,832,709.01	\$7,044,883.61	\$9,160,236.31	\$8,777,273.41	\$9,753,826.32	\$6,766,470.07	\$50,265,351.41
Interest	1,241,781.56	2,118,709.11	2,065,885.02	2,044,987.52	1,345,083.39	811,968.53	154,848.07	9,783,263.20
Total Damages	<u>\$4,171,734.24</u>	<u>\$7,951,418.12</u>	<u>\$9,110,768.63</u>	<u>\$11,205,223.83</u>	<u>\$10,122,356.80</u>	<u>\$10,565,794.85</u>	<u>\$6,921,318.14</u>	<u>\$60,048,614.61</u>
		-22,774.8						

Rest Break Claim

	2016	2017	2018	2019	2020	2021	2022	Total
Shift Count	126,288.0	264,966.0	253,706.0	241,310.0	231,426.0	217,828.0	145,363.0	1,480,887.0
% of Shifts > 3.5	98.3%	98.4%	97.6%	97.1%	96.6%	96.9%	96.9%	
Shifts > 3.5 Count	124,141.0	260,727.0	247,617.0	234,312.0	223,558.0	211,075.0	140,857.0	1,442,287.0
Violation %	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%	
Total Violation Count	62,071.0	130,364.0	123,809.0	117,156.0	111,779.0	105,538.0	70,429.0	721,146.0
S.T. Rate	\$69.73	\$73.53	\$77.49	\$81.60	\$84.23	\$87.15	\$90.17	
Net Sub-Total Damages	\$4,328,210.83	\$9,585,664.92	\$9,593,959.41	\$9,559,929.60	\$9,415,145.17	\$9,197,636.70	\$6,350,582.93	\$58,031,129.56
Interest	1,834,395.63	3,481,955.91	2,813,391.70	2,134,217.51	1,442,834.79	765,667.88	145,330.65	12,617,794.07
Total Damages	<u>\$6,162,606.46</u>	<u>\$13,067,620.83</u>	<u>\$12,407,351.11</u>	<u>\$11,694,147.11</u>	<u>\$10,857,979.96</u>	<u>\$9,963,304.58</u>	<u>\$6,495,913.58</u>	<u>\$70,648,923.63</u>

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Waiting Time Penalty

	2016	2017	2018	2019	2020	2021	2022	Total
Termination Count		171	236	236	236	236	157	1,272
Hours (30 * 8)		240.0	240.0	240.0	240.0	240.0	240.0	
S.T. Rate		\$73.53	\$77.49	\$81.60	\$84.23	\$87.15	\$90.17	
Avg. Penalty Per Termination		\$17,647.20	\$18,597.60	\$19,584.00	\$20,215.20	\$20,916.00	\$21,640.80	
Total		<u>\$3,017,671.20</u>	<u>\$4,389,033.60</u>	<u>\$4,621,824.00</u>	<u>\$4,770,787.20</u>	<u>\$4,936,176.00</u>	<u>\$3,397,605.60</u>	<u>\$25,133,097.60</u>

- The termination count is based on information provided by defendant.

Paystub Penalty - LC §226

	EE Count	Pay Periods	Penalty Amount	Total Penalty
1st Violation	2,008	2,008	\$50.00	\$100,400.00
Subsequent Periods		99,183	\$100.00	<u>9,918,300.00</u>
Sub-Total		<u>101,191</u>		\$10,018,700.00
			> \$4,000	<u>(2,750,000.00)</u>
				<u>\$7,268,700.00</u>

Grand Total

Sub-Total	\$172,158,094.51
PAGA	\$53,404,880.00
Total	<u>\$225,562,974.51</u>

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Skerl v Sutter Bay Hospital - Damage Calculation

PAGA Claims July 20, 2019 through August 31, 2022

	Labor Code §1194	Meal Breaks Labor Code §512/226.7	Rest Breaks Labor Code §512/226.7	Labor Code §226(a)	Sub-Total
Employee Count	2,008	2,008	2,008	2,008	
Per Period Penalty Amount	\$100.00	\$100.00	\$100.00	\$100.00	
Total Pay Period Count	80,950	86,000	101,191	101,191	
Total Penalty	<u>\$8,095,000.00</u>	<u>\$8,600,000.00</u>	<u>\$10,119,100.00</u>	<u>\$10,119,100.00</u>	<u>\$36,933,200.00</u>
<u>Labor Code §203/256</u>			<u>Grand Total</u>		
Penalty Hours Per Employee		240.0			
Weighted Avg Rate		\$85.79			
Penalty Per Employee		\$20,589.60			
Termination Count		800			
Total Penalty		<u>\$16,471,680.00</u>		<u>\$53,404,880.00</u>	

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Roark v Sutter Bay Hospital - Damage Calculation

Employee Classification - Hourly Employees

Assumptions:

Damage Periods:

Rounding Claim: April 12, 2017 through August 31, 2022

Regular Rate Claim: April 12, 2017 through August 31, 2022

Meal Break Claim: April 12, 2017 through August 31, 2022

Rest Break Claim: April 12, 2017 through August 31, 2022

Waiting Time Penalties: April 12, 2018 through August 31, 2022

Paystub Penalties: April 12, 2020 through August 31, 2022

PAGA: April 12, 2020 through August 31, 2022

Wages Interest : 10% (*Interest calculated through August 31, 2022*)

Meal & Rest Break Interest : 7% (*Interest calculated through August 31, 2022*)

Year	2017	2018	2019	2020	2021	2022	Total
Compensation							
S.T. Rate	\$50.49	\$52.88	\$55.15	\$57.15	\$59.33	\$61.59	
O.T. Rate	\$75.74	\$79.32	\$82.73	\$85.73	\$89.00	\$92.39	
Weighted Average OT Rate	\$67.66	\$70.86	\$73.90	\$76.58	\$79.51	\$82.53	
Calendar Week Count	37.7	52.0	52.0	52.0	52.0	34.7	280.4
FTE Count	1,728.4	1,605.9	1,604.0	1,571.3	1,518.8	1,515.9	
<u>Provided Counts</u>							
Work Week Ct - Roark	65,162.0	83,509.0	83,409.0	81,705.0	77,681.0		391,466.0
Extrapolated Week Counts	65,162.0	83,509.0	83,409.0	81,705.0	78,980.0	52,600.0	445,365.0
Shifts Per Week	3.8	3.8	3.6	3.7	3.8	3.8	
Total Shift Count	247,616.0	317,334.0	300,272.0	302,309.0	300,124.0	199,880.0	1,667,535.0
Pay Period Count	32,581.0	41,755.0	41,705.0	40,853.0	39,490.0	26,300.0	222,684.0
LC 226 & PAGA Period Counts				29,618.0	39,490.0	26,300.0	95,408.0

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Damages:

Regular Rate Claim - Meal Premium								
	2016	2017	2018	2019	2020	2021	2022	Total
Meal Break Premium Payments		18,038.0	23,572.0	23,903.0	20,222.0	22,970.0		108,705.0
% of PP - Bonus/Differential		60.0%	60.0%	60.0%	60.0%	60.0%		
Meal Break Premium Issue Count		10,823.0	14,143.0	14,342.0	12,133.0	13,782.0		65,223.0
Average Under Payment Amount		\$1.25	\$1.25	\$1.25	\$1.25	\$1.25		
Sub-Total Damages		\$13,528.75	\$17,678.75	\$17,927.50	\$15,166.25	\$17,227.50		\$81,528.75
Interest		5,667.51	7,406.04	5,717.49	3,320.24	2,048.75		24,160.03
Total Damages		<u>\$19,196.26</u>	<u>\$25,084.79</u>	<u>\$23,644.99</u>	<u>\$18,486.49</u>	<u>\$19,276.25</u>		<u>\$105,688.78</u>

- The Meal Break Premium count is based on the Meal Break Premium amounts provided by opposing counsel. The count is calculated by taking the premium payment amount divided by the straight time rate for the year.

Rounding Claim							
	2017	2018	2019	2020	2021	2022	Total
Pay Period Count	32,581.0	41,755.0	41,705.0	40,853.0	39,490.0	26,300.0	222,684.0
% of Pay Period - Unfavorable	55.4%	59.0%	66.1%	61.8%	67.3%	67.3%	
Unfavorable Pay Period Ct	18,050.0	24,635.0	27,567.0	25,247.0	26,577.0	17,700.0	139,776.0
Unfavorable Min. Per Pay Period	25.8	24.5	26.8	25.8	25.4	25.4	
Total Unfavorable Minutes	465,690.0	603,557.5	738,795.6	651,372.6	675,055.8	449,580.0	3,584,051.5
Total Unfavorable Hours	7,761.5	10,059.3	12,313.3	10,856.2	11,250.9	7,493.0	59,734.2
Weighted Average OT Rate	\$67.66	\$70.86	\$73.90	\$76.58	\$79.51	\$82.53	
Sub-Total Damages	\$525,143.09	\$712,801.41	\$909,949.91	\$831,368.56	\$894,561.44	\$618,397.29	\$4,492,221.70
Interest	265,439.63	298,608.96	290,204.03	182,005.76	106,384.00	22,595.29	1,165,237.67
Total Damages	<u>\$790,582.72</u>	<u>\$1,011,410.37</u>	<u>\$1,200,153.94</u>	<u>\$1,013,374.32</u>	<u>\$1,000,945.44</u>	<u>\$640,992.58</u>	<u>\$5,657,459.37</u>

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Meal Break Claim

	2017	2018	2019	2020	2021	2022	Total
Shift Count	247,616.0	317,334.0	300,272.0	302,309.0	300,124.0	199,880.0	1,667,535.0
% of Shifts > 6.0	91.8%	92.0%	92.9%	89.9%	91.0%	91.0%	
Shifts > 6.0 Count	227,311.0	291,947.0	278,953.0	271,776.0	273,113.0	181,891.0	1,524,991.0
<u>Violation %</u>							
Missed Break %	5.3%	6.0%	3.3%	2.3%	3.9%	3.9%	
Late Break %	31.2%	30.9%	35.5%	32.7%	35.3%	35.3%	
Short Break %	4.0%	4.7%	5.8%	3.5%	3.9%	3.9%	
2nd Break %	1.3%	1.3%	1.1%	1.1%	3.0%	3.0%	
Total Violation %	41.8%	42.9%	45.7%	39.6%	46.1%	46.1%	
Net Violation %	40.1%	40.8%	43.3%	37.6%	42.5%	42.5%	
Total Violation Count	91,152.0	119,114.0	120,787.0	102,188.0	116,073.0	77,304.0	626,618.0
S.T. Rate	\$50.49	\$52.88	\$55.15	\$57.15	\$59.33	\$61.59	
Sub-Total Damages	\$4,602,264.48	\$6,298,748.32	\$6,661,403.05	\$5,840,044.20	\$6,886,611.09	\$4,761,153.36	\$35,050,224.50
Meal Premium Payments	(910,745.44)	(1,246,463.86)	(1,318,229.86)	(1,155,690.57)	(1,362,796.45)	(942,188.08)	(6,936,114.26)
Sub-Total Damages	\$3,691,519.04	\$5,052,284.46	\$5,343,173.19	\$4,684,353.63	\$5,523,814.64	\$3,818,965.28	\$28,114,110.24
Interest	1,306,144.63	1,481,562.99	1,192,842.86	717,859.18	459,836.32	97,677.38	5,255,923.36
Total Damages	\$4,997,663.67	\$6,533,847.45	\$6,536,016.05	\$5,402,212.81	\$5,983,650.96	\$3,916,642.66	\$33,370,033.60

Rest Break Claim

	2017	2018	2019	2020	2021	2022	Total
Shift Count	247,616.0	317,334.0	300,272.0	302,309.0	300,124.0	199,880.0	1,667,535.0
% of Shifts > 3.5	99.0%	98.6%	98.8%	95.5%	96.9%	96.9%	
Shifts > 3.5 Count	245,140.0	312,891.0	296,669.0	288,705.0	290,820.0	193,684.0	1,627,909.0
Violation %	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%	
Total Violation Count	122,570.0	156,446.0	148,335.0	144,353.0	145,410.0	96,842.0	813,956.0
S.T. Rate	\$50.49	\$52.88	\$55.15	\$57.15	\$59.33	\$61.59	
Net Sub-Total Damages	\$6,188,559.30	\$8,272,864.48	\$8,180,675.25	\$8,249,773.95	\$8,627,175.30	\$5,964,498.78	\$45,483,547.06
Interest	2,189,655.09	2,425,985.69	1,826,304.29	1,264,246.13	718,179.16	152,553.53	8,576,923.89
Total Damages	\$8,378,214.39	\$10,698,850.17	\$10,006,979.54	\$9,514,020.08	\$9,345,354.46	\$6,117,052.31	\$54,060,470.95

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Waiting Time Penalty

	2017	2018	2019	2020	2021	2022	Total
Termination Count		245	338	338	338	226	1,485
Hours (30 * 8)		240.0	240.0	240.0	240.0	240.0	
S.T. Rate		\$52.88	\$55.15	\$57.15	\$59.33	\$61.59	
Avg. Penalty Per Termination		\$12,691.20	\$13,236.00	\$13,716.00	\$14,239.20	\$14,781.60	
Total		<u>\$3,109,344.00</u>	<u>\$4,473,768.00</u>	<u>\$4,636,008.00</u>	<u>\$4,812,849.60</u>	<u>\$3,340,641.60</u>	<u>\$20,372,611.20</u>

- The termination count is based on information provided by defendant.

Paystub Penalty - LC §226

	EE Count	Pay Periods	Penalty Amount	Total Penalty
1st Violation	2,324	2,324	\$50.00	\$116,200.00
Subsequent Periods		93,084	\$100.00	<u>9,308,400.00</u>
Sub-Total		<u>95,408</u>		\$9,424,600.00
			> \$4,000	(2,350,000.00)
				<u>\$7,074,600.00</u>

Grand Total

Sub-Total	\$120,640,863.90
PAGA	\$42,233,400.00
Total	<u>\$162,874,263.90</u>

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Roark v Sutter Bay Hospital

PAGA Claims April 12, 2020 through August 31, 2022

	Labor Code §1194	Meal Breaks Labor Code §512/226.7	Rest Breaks Labor Code §512/226.7	Labor Code §226(a)	Sub-Total
Employee Count	2,324	2,324	2,324	2,324	
Per Period Penalty Amount	\$100.00	\$100.00	\$100.00	\$100.00	
Total Pay Period Count	60,100	49,600	95,408	95,408	
Total Penalty	<u>\$6,010,000.00</u>	<u>\$4,960,000.00</u>	<u>\$9,540,800.00</u>	<u>\$9,540,800.00</u>	<u>\$30,051,600.00</u>

	Labor Code §203/256	Grand Total
Penalty Hours Per Employee	240.0	
Weighted Avg Rate	\$59.36	
Penalty Per Employee	\$14,246.40	
Termination Count	809	
Total Penalty	<u>\$11,525,337.60</u>	<u>\$41,576,937.60</u>

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Roark v Sutter Bay Hospital - Damage Calculation

Employee Classification - Hourly Employees

Extrapolation to all location based on a 30% ratio

Assumptions:

Damage Periods:

Rounding Claim: April 12, 2017 through August 31, 2022

Regular Rate Claim: April 12, 2017 through August 31, 2022

Waiting Time Penalties: April 12, 2018 through August 31, 2022

Wages Interest : 10% (*Interest calculated through August 31, 2022*)

Paystub Penalties: April 12, 2020 through August 31, 2022

PAGA: April 12, 2020 through August 31, 2022

Damages:

Regular Rate Claim - Meal Premium

	2016	2017	2018	2019	2020	2021	2022	Total
Roak Amount		\$13,528.75	\$17,678.75	\$17,927.50	\$15,166.25	\$17,227.50		\$81,528.75
Skerl Amount		\$17,081.25	\$15,520.00	\$14,017.50	\$13,023.75	\$11,847.50		\$71,490.00
Regular Rate Sub-Total		\$30,610.00	\$33,198.75	\$31,945.00	\$28,190.00	\$29,075.00		\$153,018.75
Interest		12,823.24	13,907.73	10,187.99	6,171.44	3,457.69		46,548.09
Regular Rate and Interest		\$43,433.24	\$47,106.48	\$42,132.99	\$34,361.44	\$32,532.69		\$199,566.84
Extrapolation based on 30%		\$101,344.23	\$109,915.12	\$98,310.31	\$80,176.69	\$75,909.61		\$465,655.96
Total		<u>\$144,777.47</u>	<u>\$157,021.60</u>	<u>\$140,443.30</u>	<u>\$114,538.13</u>	<u>\$108,442.30</u>		<u>\$665,222.80</u>

Rounding Claim

	2016	2017	2018	2019	2020	2021	2022	Total
Roak Amount		\$525,143.09	\$712,801.41	\$909,949.91	\$831,368.56	\$894,561.44	\$618,397.29	\$4,492,221.70
Skerl Amount	\$498,343.55	\$1,181,297.19	\$1,231,427.48	\$1,189,292.64	\$1,163,531.68	\$985,449.98	\$680,403.40	\$6,929,745.92
Rounding Sub-Total	\$498,343.55	\$1,706,440.28	\$1,944,228.89	\$2,099,242.55	\$1,994,900.24	\$1,880,011.42	\$1,298,800.69	\$11,421,967.62
Interest	250,935.14	760,312.28	814,482.35	669,496.90	436,729.70	223,576.74	44,839.25	3,200,372.36
Regular Rate & Interest	\$749,278.69	\$2,466,752.56	\$2,758,711.24	\$2,768,739.45	\$2,431,629.94	\$2,103,588.16	\$1,343,639.94	\$14,622,339.98
Extrapolation based on 30%	\$1,748,316.94	\$5,755,755.97	\$6,436,992.89	\$6,460,392.05	\$5,673,803.19	\$4,908,372.37	\$3,135,159.86	\$34,118,793.27
Total	<u>\$2,497,595.63</u>	<u>\$8,222,508.53</u>	<u>\$9,195,704.13</u>	<u>\$9,229,131.50</u>	<u>\$8,105,433.13</u>	<u>\$7,011,960.53</u>	<u>\$4,478,799.80</u>	<u>\$48,741,133.25</u>

EXHIBIT E

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Lisa Skerl et. al. v. Sutter Bay Hospitals

Requesting Attorneys Name:

Ross Shanberg

E-Mail:

rshanberg@ssbfirm.com

ILYM Contact:

Sean Hartranft

E-Mail:

Sean@ilymgroupclassaction.com

Contact Number:

949.690.2564

ESTIMATE FOR ADMINISTRATION SOLUTIONS

ASSUMPTIONS

Total Number of Class Members	22,000
Estimated Mail Returned as Undeliverable	20%
Spanish Translation	No
Case Duration (Year(s))	1

Activity

Rate Type

Unit Cost

Volume

Amount

CASE STARTUP

Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	10	\$1,500.00
Programming of Class Database	Hourly	\$175.00	10	\$1,750.00

**ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.*

Subtotal \$3,250.00

PROJECT MANAGEMENT & NOTICING

Project Manager (Case notification and maintenance)	Hourly	\$120.00	12	\$1,440.00
Staff Hours for Processing Opt-Outs, Disputes & Objections	Hourly	\$70.00	8	\$560.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	6	\$420.00
Report Processing	Hourly	\$70.00	10	\$700.00
NCOA	Flat Rate	\$1,500.00	1	\$1,500.00
Toll Free Customer Service Representative	Flat Fee	\$3,000.00	1	\$3,000.00
Static Website, Includes Hosting	Flat Rate	\$1,200.00	1	\$1,200.00
Weekly Reports	Flat Rate	\$750.00	1	Waived

Subtotal \$8,820.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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NOTIFICATION/MAILING				
Fulfillment of Notice	Per Piece	\$0.50	22,000	\$11,000.00
USPS First Class Postage	Per Piece	\$0.43	22,000	\$9,460.00
Re-Mails (Forward/Skip trace Undeliverables)	Per Piece	\$1.00	2,200	\$2,200.00
Storage, Photocopies, Deliveries	Flat Fee	\$500.00	1	\$500.00

Subtotal \$23,160.00

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	10	\$1,500.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	10	\$1,250.00
Check Stub & Release - Print & Mail (W-2/1099)	Per Check	\$0.75	22,000	\$16,500.00
USPS First Class 1oz Postage	Per Piece	\$0.43	22,000	\$9,460.00
Re-Mails (Forward/Skip trace Undeliverables up to 10%)	Per Piece	\$1.50	2,200	\$3,300.00
Preparation of Taxes	Hourly	\$120.00	32	\$3,840.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

**Additional Bank fees may apply*

Subtotal \$37,350.00

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	8	\$800.00
Project Manager Final Reporting	Hourly	\$120.00	8	\$960.00
Declaration	Hourly	\$125.00	6	\$750.00

Subtotal \$2,510.00

TOTAL CASE ESTIMATE: \$75,090.00

NOT TO EXCEED: \$67,000.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintains reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.