

Ross E. Shanberg, Esq. (SBN 179842)
rshanberg@ssbfirm.com
Shane C. Stafford, Esq. (SBN 216151)
sstafford@ssbfirm.com
SHANBERG STAFFORD LLP
4100 Newport Place, Suite 820
Newport Beach CA 92660
Telephone: (949) 205-7515 / Fax: (949) 205-7144

Aaron A. Bartz, Esq. (SBN 198722)
aaron@bartzlawgroup.com
BARTZ LAW GROUP, APC
5151 California Ave., Suite 100
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-CIV-02057

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

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

) Date: October 24, 2023

) Time: 2:00 p.m.

) Dept: 4

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 co-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 Final Approval of Class Settlement.

PRELIMINARY APPROVAL AND NOTICE TO CLASS MEMBERS

3. The parties in this case have reached a proposed \$12 million non-reversionary Settlement in this class action case. Attached as **Exhibit A** is a true and correct copy of the Joint Stipulation of Class Action and PAGA Settlement and Release. On April 26, 2023, this Court granted Preliminary Approval of the parties' Settlement. Attached as **Exhibit B** is a true and correct copy of the Court's Order Granting Preliminary Approval ("Order").

4. Pursuant to the Order, on July 21, 2023, the settlement administrator, ILYM Group, Inc. ("ILYM") sent out the Notice of Pendency of Class Action Settlement and Final Hearing, Objection Form, and Request for Exclusion Form ("Class Notice Packet"), to the 22,326 class members. (*See Declaration of Cassandra Polites*).

5. Prior to sending out the Class Notice Packet, the Settlement Administrator analyzed the class member data provided by Defendant, and calculated the number of class members and workweeks. Defendant further provided ILYM with the names, last known addresses, and social security numbers for the class members based upon Defendant's employment records. After receiving the relevant contact information, ILYM accessed the National Change of Address ("NCOA") database and updated the addresses provided by Defendant.

6. Class Counsel, through their own efforts, the efforts of their immediate staff, and the Settlement Administrator have made every effort to ensure that each and every Class Member has received the Class Notice Packet and accompanying forms via the most direct and cost effective manner possible. Moreover, throughout the class notice process, Class Counsel

has fielded numerous phone calls and other inquiries from class members, all of whom have expressed their favorable views of the settlement.

7. As of the date of the preparation of this motion, other than 209 Class Notice Packets deemed undeliverable, no other Class Notice Packets have been returned as undeliverable with no forwarding address located. (*See* Polites Decl., ¶ 10.) Further, not a single Class Member has objected to the settlement, and only .30% of the class (67 class members) requested exclusion from the settlement. (*See* Polities Decl., ¶¶ 11-12.)

8. On September 19, 2023, ILYM sent supplemental Class Notice Packets to 59 class members who, according to Defendant's re-examination of the class data, received incorrect notices. That is, these class members were identified as being part of the incorrect subclass to which a different release applied. For these 59 class members, in addition to the original 60 day notice of objection and opt out period, they were given an additional 30 days to opt out or object to the settlement. These 59 class members are now eligible for higher settlement payouts than previously indicated in the earlier notice, based upon the earlier incorrect classification. As a result, Class Counsel does not anticipate that any of these class members will opt out or object to the settlement, but Class Counsel will file a supplemental notice with the court prior to the October 24 hearing notifying the Court of any further responses as a result of the supplemental notice.

9. As of the date of this Declaration, the average estimated payment per Class Member is \$345.

SUMMARY OF SETTLEMENT

10. The class members entitled to the settlement fund are grouped into three categories: (1) all current and former non-exempt nurses and surgical technicians, and other non-exempt patient care employees working at California Pacific Medical Center (CPMC); (2) all current and former non-exempt employees who worked at Mills-Peninsula Medical Center (MPMC); and (3) all current and former non-exempt hourly employees of Sutter Bay Hospitals (SBH), excluding those already included in the CPMC and MPMC group above.¹ The Class

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

Period is between July 20, 2016 and January 31, 2023. There are 22,259 class members after accounting for class members who excluded themselves from the settlement.

11. The settlement fund is all in (except for the employer's share of payroll taxes, which SBH shall pay in addition to the \$12 million settlement). In the event a class member does not negotiate his or her settlement check, the settlement administrator will forward the check to the cy pres recipient Legal Aid at Work.

12. The payment to the Class Members will be characterized eighty percent interest and penalties, and twenty percent wages. This allocation is justified because many of the claims alleged contain provisions for penalties, and the vast majority of the alleged violations occurred years before the settlement, implicating significant alleged interest owed. The class administrator will issue W-2 statements for the wage portion of the settlement, and a form 1099 for all amounts paid as penalties and interest.

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

14. Based on the settlement terms, there will be an approximate net settlement fund of **\$7,683,000**. Subject to Defendant's review and calculation of precise class member data after preliminary approval, the class member payouts are, on average, approximately as follows: (1) \$723 to each member of the CPMC class; (2) \$386 to each member of the MPMC class; and (3) \$221 to each member of the SBH class. In exchange for their payment, the CPMC and MPMC classes will release Defendant from any and all claims, known or unknown, contingent or accrued, arising out of the operative facts alleged in the lawsuit, and the SBH class members will

1 release a narrower set of claims based on rounding and regular rate claims. The named Plaintiffs
2 will, in addition to releasing claims alleged in the lawsuit, give a general release of all claims
3 pursuant to Civil Code section 1542.

4 15. The all-in settlement fund includes all of the attorneys' fees and costs allowed by
5 this Court. The attorneys' fees shall not exceed one-third of the \$12 million settlement fund, or
6 \$4,000,000. Defendant will also pay class counsel's costs, which are \$21,566.33, as well as
7 settlement administration costs of \$67,000, out of the common fund.

8 16. The PAGA allocation of the settlement is \$240,000, of which \$180,000 (75%)
9 will be distributed to the Labor Workforce and Development Agency (LWDA), with the
10 remaining portion - \$60,000 (25%) - going to PAGA Members (all allegedly aggrieved persons
11 who worked for SBH as non-exempt employees in California, at any time from July 17, 2019
12 through January 31, 2023).

13 17. The settlement also includes Plaintiffs' class representative enhancements. Based
14 on Plaintiffs' work in connection with this case, including connecting Class Counsel with other
15 witnesses, meeting and conferring with Class Counsel regarding legal strategies, and assisting
16 with developing the claims and theories in this case, and attending Mediation, Plaintiffs
17 collectively seek \$45,000, and filed supporting declarations on September 1, 2023.

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

- 19 (1) A net settlement fund of approximately \$7,683,000.
20 (2) Attorney's fees and costs: \$4 million in attorneys' fees and \$21,566.33 in costs.
21 (3) Settlement administrator expenses of \$67,000.
22 (4) PAGA payment to the LWDA: \$180,000.
23 (5) Class representative enhancements of \$45,000 for the three named Plaintiffs.

24 **NATURE OF CLAIMS**

25 19. Plaintiffs' First Amended Consolidated Class Action Complaint alleges claims for
26 1) Failure to Pay All Wages and Illegal Rounding; 2) Failure to Provide Meal Periods; 3) Failure
27 to Authorize and Permit Proper Rest Periods; 4) Failure to Pay Meal and Rest Break Premiums at
28 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 exposure and the reasonable settlement value for each of the alleged claims are as follows:

A. Unpaid Wages/Rounding

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

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

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

1 to employees – apply equally to the employee-protective policies embodied in California Labor
2 Law. (*See's Candy I, supra*, 201 Cal.App.4th at p. 907.) Accordingly, California law “permits
3 employers to use a rounding policy for recording and compensating employee time as long as the
4 employer's rounding policy does not ‘consistently result[] in a failure to pay employees for time
5 worked’” and it is “fair and neutral on its face.” (*Id.* at p. 901, quoting *Alonzo v. Maximus, Inc.*,
6 832 F.Supp.2d 1122, 1126 (C.D. Cal. 2011). In other words, a rounding policy must not impose
any burden on employees. (*See's Candy I, supra*, 210 Cal.App.4th at p. 902.)

7 Recently, the California Supreme Court weighed in on the rounding of meal periods, and
8 held that such a practice was illegal. *See Donohue v. AMN Services, LLC*, 11 Cal.5th 58 (2021).
9 The Court, however, declined to rule on the “validity of the rounding standard articulated in
10 *See's Candy I.*” *Id.* at 72. Thus, whether rounding of time is appropriate in California is still an
11 open question.²

12 Defendant contends that its rounding policy is legal under California law, and that it does
13 not individually round meal periods as in *Donohue*. Defendant also hired an expert showing
14 that, if anything, Defendant's rounding policy benefited class members, and that there are no
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
23 ² After the parties reached a settlement, the Sixth District in *Camp v. Home Depot U.S.A.,*
24 *Inc.*, 84 Cal.App.5th 638, 300 Cal.Rptr.3d 548 (2022), criticized *See's Candy I* and related cases
25 upholding rounding, and reversed summary judgment in favor of the employer. The court
26 invited the California Supreme Court to “review the issue of neutral time rounding by employers
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.

1 rounding practices in similar situations, the Plaintiffs placed a reasonable settlement value of the
2 rounding claim at ten percent of the total verdict value, or **\$4.8 million**. This valuation takes into
3 consideration Plaintiffs' counsels' analysis of the law, and evidence produced by the Defendant.

4 **B. Meal and Rest Period Claims**

5 1. Meal period liability and damages

6 Plaintiffs contend that SBH fails to provide duty-free meal periods to Plaintiffs and the
7 class members, who suffered short, late and missed meal periods on a regular basis. Plaintiffs'
8 expert analyzed each pay period for any meal violation (ie short, late, missed) and calculated
9 1.35 million shifts with at least one (1) violation.

10 In *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012), the California
11 Supreme Court held that “under ... Labor Code section 512, subdivision (a), an employer must
12 relieve the employee of all duty for the designated period but need not ensure that the employee
13 does no work” during the meal period. *Brinker*, 53 Cal. 4th at 1034. However, “...an employer
14 may not undermine a formal policy of providing meal breaks by pressuring employees to
15 perform their duties in ways that omit breaks. *Cicairos v. Summit Logistics, Inc.*, 133 Cal. App.
16 4th 949, 962–963 (2005); *see also Jaimez v. DAIOHS USA, Inc.*, 181 Cal. App. 4th 1286, 1304–
17 1305 (2010) [proof of common scheduling policy that made taking breaks extremely difficult
18 would show violation]; *Dilts v. Penske Logistics, LLC*, 267 F.R.D. 625, 638 (S.D.Cal.2010)
19 [indicating informal anti-meal-break policy "enforced through 'ridicule' or 'reprimand' " would
20 be illegal].) The wage orders and governing statute do not countenance an employer's exerting
21 coercion against the taking of, creating incentives to forego, or otherwise encouraging the
22 skipping of legally protected breaks.” *Brinker*, 53 Cal. 4th at 1040.

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

28 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

1 class members were required to carry communications devices during their meal periods, and
2 they were often interrupted during their meal periods to address work issues.

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

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

19 2. Rest period liability and damages

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

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

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

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

15 **C. 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*
Hotel, LLC, 11 Cal.5th 858, 878 (2021).

27 *Ferra* was decided during the pendency of this case, and Defendant does not seriously
28

1 contend that it is not liable for these damages. Plaintiffs' expert concludes that the regular rate
2 claim has a maximum verdict value of **\$665,220**, based on tallying the total number premium
3 payments and multiplying those payments by the percentage of pay periods when the regular rate
4 was underpaid as well as the average underpayment. Plaintiffs do not discount this claim
5 whatsoever, and believe they have a 100% chance of recovering on this claim.

6 **D. Wage Statement Claim**

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

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

Pursuant to Labor Code section 226, subd. (e)(1), employees are entitled to \$50 for the

1 initial pay period in which a violation occurs, and \$100 per pay period for subsequent violations.
2 Nevertheless, pursuant to *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008), the
3 heightened penalty amount is not recoverable unless there is a showing of a prior citation or in
4 the absence of a good faith dispute. *See also Bernstein v. Virgin America, Inc.*, 3 F.4th 1127,
5 1144 (9th Cir. 2021). Because there is no evidence here that Defendant has previously been cited
6 with Labor Code violations, Class Counsel believes the \$50 penalty to be applicable for all
7 violations.

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

14 **E. Waiting Time Penalties**

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

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

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

1
2 **F. PAGA**

3 Plaintiffs contend that PAGA penalties are owed based on the numerous alleged Labor
4 Code violations identified above. Once a PAGA violation is found, a court must award civil
5 penalties. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1211-1213 (2008).
6 Nevertheless, a court has discretion to reduce the award of civil penalties if it finds that “based
7 on the facts and circumstances of the particular case, to do otherwise would result in an award
8 that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(e)(2).

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

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

23 **G. Total Damage Exposure³**

24 Plaintiffs believe that the **\$12 million** settlement achieved in this case is excellent for the
25 class members. Based upon a realistic exposure of approximately \$32 million, the settlement
26 represents approximately 38% of that total value. Given the many defenses raised, the
27

28 ³ The Unfair Competition claim is subsumed into the *Kullar* analysis above. The Unfair
Competition claim is based upon the wage and hour violations, and adds an extra year of
damages, and is included within the above analysis.

1 uncertainty of the certifiability of any class, and the difficulty in proving the claims, Class
2 Counsel believes this settlement is an excellent result for all of the class members.

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

6 I declare under penalty of perjury under the laws of California that the foregoing is true
7 and correct. Executed on September 27, 2023, at Irvine, California.

8
9 //Aaron A. Bartz//

10 Aaron A. Bartz
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EXHIBIT A

Ross E. Shanberg, Esq. (SBN 179842)
 Shane C. Stafford, Esq. (SBN 216151)
 SHANBERG STAFFORD LLP
 4100 Newport Place, Suite 820
 Newport Beach, California 92660
 Telephone: (949) 205-7515
 Facsimile: (949) 205-7144

Aaron A. Bartz, Esq. (SBN 198722)
 aaron@bartzlawgroup.com
 BARTZ LAW GROUP, APC
 5151 California Ave., Suite 100
 Irvine, CA 92617
 Telephone: (949) 293-3448
 Facsimile: (949) 656-7760

Attorneys for Plaintiffs and all others similarly situated

GBG LLP
 THOMAS E. GEIDT (SB# 080955)
 TERESA W. GHALI (SB# 252961)
 AMANDA M. OSOWSKI (SB# 317843)
 tomgeidt@gbgllp.com
 teresaghali@gbgllp.com
 amandaosowski@gbgllp.com
 601 Montgomery Street, Suite 1150
 San Francisco, CA 94111
 Telephone: (415) 603-5000
 Facsimile: (415) 840-7210

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 1. "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

relief; and

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

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

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

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

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

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

TERMS OF THE SETTLEMENT

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

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

8. **Maximum Settlement Amount.** The claims of all members of all Settlement Classes and all Participating PAGA Members, collectively, are settled for a maximum sum of Twelve Million Dollars and No Cents (\$12,000,000) ("the Maximum Settlement Amount"). This 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:

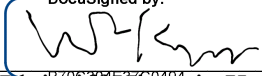
Dated: _____

Plaintiff Lori Roark

Dated: _____

Plaintiff Lisa Skerl

Dated: 12/22/2022

DocuSigned by:

Plaintiff Victoria Kropp

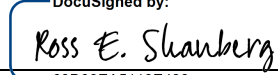
Dated: _____

SUTTER BAY HOSPITALS

APPROVED AS TO FORM:

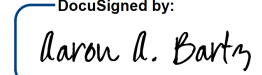
Dated: 12/22/2022

SHANBERG STAFFORD LLP

DocuSigned by:

63D99EA5119E438...
Ross E. Shanberg
Shane C. Stafford
Attorneys for Plaintiffs Lisa Skerl and Lori Roark

Dated: 12/22/2022

BARTZ LAW GROUP, APC

DocuSigned by:

EG5A3FE789D1423...
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: _____

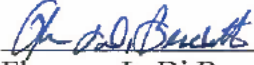
6 _____
Plaintiff Lisa Skerl

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**

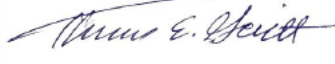
26 
27 Thomas E. Geidt
28 Teresa W. Ghali
Amanda M. Osowski
Attorneys for Defendant
SUTTER BAY HOSPITALS

EXHIBIT B

Ross E. Shanberg, Esq. (SBN 179842)
rshanberg@ssbfirm.com
Shane C. Stafford, Esq. (SBN 216151)
sstafford@ssbfirm.com
SHANBERG STAFFORD LLP
4100 Newport Place, Suite 820
Newport Beach CA 92660
Telephone: (949) 205-7515 / Fax: (949) 205-7144

Aaron A. Bartz, Esq. (SBN 198722)
aaron@bartzlawgroup.com
BARTZ LAW GROUP, APC
5151 California Ave., Suite 100
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-CIV-02057

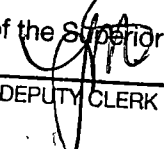
[Assigned For All Purposes To The Hon.
Nancy L. Fineman, Dept. 4]

**ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND SETTING
OF HEARING DATE FOR FINAL
APPROVAL AND REQUEST FOR FEES
AND COSTS**

Date: April 25, 2023
Time: 2:00 p.m.
Dept: 4

FILED
SAN MATEO COUNTY

APR 26 2023

Clerk of the Superior Court
By  DEPUTY CLERK

1 This matter came on for hearing on April 25, 2023, at 2:00 p.m. in Department 4 of the
2 above-referenced Court, located at 800 North Humboldt Street, San Mateo, CA 94401, on the
3 Motion for Preliminary Approval of Class Action Settlement (“Motion”). Plaintiffs LISA
4 SKERL, VICTORIA KROPP, and LORI ROARK (hereinafter “Plaintiffs”) appeared through
5 their attorneys of record. Defendant SUTTER BAY HOSPITALS (hereinafter “Defendant”)
6 appeared through its counsel of record.

7 Having fully reviewed and considered the Motion and moving papers, and having
8 analyzed the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement
9 Agreement”) attached as Exhibit “A” to the Declaration of Aaron A. Bartz filed with the Motion
10 and the Notice of Pendency of Class Action Settlement and Final Hearing attached as Exhibit 2
11 to the Supplemental Declaration of Aaron A. Bartz, THE COURT HEREBY MAKES THE
12 FOLLOWING DETERMINATIONS AND ORDERS:

13 1. The Court had posed questions in its tentative ruling, which were resolved at the
14 hearing and by a joint email sent to the Court after the hearing. The Court incorporates the
15 minutes of the hearing as if fully set forth herein, including the deadlines for filing the motions
16 for final approval and attorneys’ fees. Plaintiffs’ counsel is to provide a tabbed binder with all
17 documents submitted within two (2) days after the last pleading is filed.

18 2. The Court preliminarily approves the proposed Settlement Agreement
19 (incorporated herein by this reference) as being fair, reasonable, and adequate; and finds on a
20 preliminary basis that the Settlement Agreement appears to be within the range of reasonableness
21 of a settlement which the Court could ultimately give final approval.

22 3. With the concurrence of the parties, the Court modifies the settlement agreement,
23 paragraphs 1(jj) on page 14 and 18(m) on page 33 of the Joint Stipulation of Class Settlement.
24 Rather than any uncashed checks going to the State of California State Controller’s Office, any
25 uncashed checks will be sent to Legal Aid at Work, which the Court finds is an appropriate cy
26 pres recipient for this case.

27 4. The initial capitalized terms in this Order shall have the same meanings as those
28 set forth in the Settlement Agreement.

1 5. The Court finds that the elements of numerosity, commonality, typicality and
2 adequacy have been established to support conditional certification of the Settlement Class for
3 settlement purposes. Solely for the purposes of the proposed Settlement, a Class is provisionally
4 certified pursuant to California Code of Civil Procedure section 382 and defined as follows:

5 i. "CPMC Settlement Class" means all current and former nonexempt
6 nurses and surgical technicians, and other current and former non-exempt
7 employees of Defendant performing patient care who worked at California Pacific
8 Medical Center ("CPMC") during the Class Period.

9 ii. "MPMC Settlement Class" means all current and former nonexempt
10 employees of Defendant who worked at Mills-Peninsula Medical Center
11 ("MPMC") during the Class Period.

12 iii. "SBH Premium Calculation and Rounding Settlement Class" means all
13 current and former non-exempt employees of Defendant who have been employed
14 by SBH during the Class Period, excluding any members of the Hurtubise
15 Settlement Class, the CPMC Settlement Class, and the MPMC Settlement Class.

16 6. Solely for the purposes of the proposed Settlement, the Court preliminarily
17 approves (a) Shanberg Stafford LLP and Bartz Law Group, APC as Class Counsel; and (b) Lisa
18 Skerl, Victoria Kropp, and Lori Roark as Class Representatives. The Court appoints ILYM
19 Group, Inc. as Settlement Administrator.

20 7. The Court shall hold a final approval hearing (the "Final Approval Hearing") on
21 **October 24, 2023 at 2:00 p.m.** at the Central Courthouse, 800 North Humboldt St., San Mateo,
22 California 94401 to review the notice process and objections to the Settlement, if any; and to
23 determine whether the proposed Settlement on the terms and conditions set forth in the
24 Settlement Agreement is fair, reasonable, and adequate, and should be finally approved by the
25 Court; to determine whether the Court should enter the Judgment as provided in the Settlement
26 Agreement; and to determine the amount of attorneys' fees and costs to approve for Class
27 Counsel and the amount of the enhancement award to approve for the Class Representatives.
28 Zoom appearances are allowed for the hearing and a tentative will be posted in accordance with
the local rules.

1 8. The Court approves, as to form and content, the Notice of Pendency of Class
2 Action Settlement and Final Hearing (the "Settlement Notice") attached as Exhibit 2 to the
3 Supplemental Declaration of Aaron A. Bartz. The Court finds that distribution of the Settlement
4 Notice substantially in the manner set forth in the Settlement Agreement and Settlement Notice
5 meets the requirements of California law and due process, is the best notice practicable under the
6 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

7 9. The Settlement Administrator shall supervise and administer the notice procedure
8 as set forth in the Settlement Agreement as follows:

9 a. After entry of the Preliminary Approval Order, Defendant shall provide
10 the Settlement Administrator with the Class Lists for purposes of mailing the Settlement
11 Notices to Class Members, along with data enabling the Settlement Administrator to
12 determine the number of Workweeks worked by each Class Member during the relevant
13 Class Period. Defendant shall have up to sixty (60) days to provide the Class data after
14 entry of the Preliminary Approval Order, if necessary, but Defendant shall use its best
15 efforts to provide the data earlier, within thirty (30) days after entry of the Preliminary
16 Approval Order. The Settlement Administrator shall not be permitted to share any Class
17 Information included in the Class Lists with Plaintiffs or Class Counsel absent express
18 approval by Defendant or Defense Counsel;

19 b. Upon receipt of the Class Lists, the Settlement Administrator shall
20 perform a search based on the National Change of Address Database maintained by the
21 United States Postal Service to update and correct any known or identifiable address
22 changes. Within twenty (20) calendar days after receiving the Class Lists from Defendant
23 as provided herein, the Settlement Administrator shall mail copies of the Settlement
24 Notice to all Class Members via regular First-Class U.S. Mail. The Settlement
25 Administrator shall exercise its best judgment to determine the current mailing address
26 for each Class Member. The address identified by the Settlement Administrator as the
27 current mailing address shall be presumed to be the most current mailing address for each
28

1 Class Member. The Parties agree that this procedure for notice provides the best notice
2 practicable to Class Members and fully complies with due process;

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

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

26 e. The Settlement Administrator will provide Defense Counsel and Class
27 Counsel a weekly report which certifies: (i) the number of Class Members who have
28 submitted valid Requests for Exclusion or objections; and (ii) whether any Class Member

1 has submitted a challenge to any information contained in their Settlement Notice,
2 including but not limited to the number of Class Members from the Settlement Class who
3 have submitted a dispute of Workweeks. Additionally, the Settlement Administrator will
4 provide to counsel for both Parties any updated reports regarding the administration of
5 the Settlement Agreement as needed or requested;

6 f. Class Counsel shall file a declaration from the Settlement Administrator
7 along with the Motion for Final Approval of Class Settlement that attests to the
8 completion of the Notice process, including specifying the due diligence undertaken by
9 the Settlement Administrator with respect to the mailing of the Class Notice; verifying its
10 settlement administration costs; and reporting on the number of Participating Class
11 Members and the number of objections, disputes (and status of the disputes), and requests
12 for exclusion received.

13 10. In order for any Settlement Class member to object to this Settlement, or any term
14 of it, the person making the objection may submit the objection to the Settlement Administrator
15 by no later than the Response Deadline specified in the Class Notice setting forth the grounds of
16 objection. All such objections must state the Class Member's full name, address, the last 4 digits
17 of the objector's Social Security number using the Objection Form attached to the Settlement
18 Notice, and, in clear and concise terms, the reason(s) why the objector objects to the Settlement.
19 A Class Member may also appear personally or through an attorney, at his or her own expense,
20 at the Final Approval hearing to present his or her objection directly to the Court.

21 11. In order for any Settlement Class member to validly exclude themselves from the
22 Settlement Class and this Settlement (i.e., to validly opt out), a written request for exclusion must
23 be submitted to the Settlement Administrator postmarked no later than the Response Deadline.
24 Exclusion Requests may be submitted via U.S. Mail and/or facsimile, using the Request for
25 Exclusion Form attached to the Settlement Notice. A Class Member who timely submits a valid
26 Exclusion Request shall not participate in, or be bound by, the Settlement or the Final Judgment
27 in any respect, except for the PAGA claim, which does not allow an opt-out. Individuals who
28

1 submit an Exclusion Request shall not be permitted to file or pursue objections to the Settlement
2 or appear at the Final Approval Hearing to voice any objections to the Settlement.

3 12. At the Final Approval Hearing, the Court shall finally determine whether the
4 proposed Settlement is fair, reasonable, and adequate; and shall also rule on Class Counsel's
5 application for attorneys' fees, the Class Representative's enhancement award, reimbursement of
6 Class Counsel's costs, and the Settlement Administrator expenses for administering the
7 Settlement.

8 13. The Court's preliminary approval of the Settlement is not to be deemed an
9 admission of liability or fault by Defendant, or a finding as to the validity of any claims or
10 defenses asserted in the Action.

11 14. The Court reserves the right to adjourn or continue the date of the Final Approval
12 Hearing without further notice to the Class Members, and it will retain jurisdiction to consider all
13 further applications arising out of or connected with the proposed Settlement.

14 15. If for any reason the Settlement ultimately does not become final, the parties will
15 return to their respective positions in this Action as those positions existed immediately before
16 the Parties executed the Settlement, and nothing stated in the Settlement or any other papers filed
17 with this Court in connection with the Settlement will be deemed an admission of any kind by
18 any of the parties or used as evidence against, or over the objections of, any of the parties for any
19 purpose in this Action or in any other action.

20 **IT IS SO ORDERED.**

21
22
23 Dated April 26, 2023

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25 Hon. Nancy L. Fineman
26 Judge of the Superior Court
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