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 6 individually and on behalf of similarly situated employees

7
 8 **SUPERIOR COURT OF CALIFORNIA**
 9 **FOR THE COUNTY OF SOLANO**

10 KIMBERLY WEBB, individually and on
 11 behalf of all other similarly situated
 12 employees,

13 Plaintiff,

14 vs.

15 PROFESSIONAL HEALTHCARE AT
 16 HOME, LLC, a California Limited Liability
 17 Company; and DOES 1 to 100, inclusive,

18 Defendants.

Case No. FCS055317

**Assigned For All Purposes to Hon. Christine A.
 Carringer**

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
 MOTION FOR FINAL APPROVAL OF
 CLASS ACTION AND PAGA SETTLEMENT**

Date: May 4, 2022

Time: 8:30 a.m.

Dept.: 12

Judge: Hon. Christine A. Carringer

Filed: August 27, 2020

FAC Filed: January 11, 2021

SAC Filed: July 26, 2021

TAC Filed: October 28, 2021

Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on May 4, 2022, at 8:30 a.m., or as soon thereafter as the matter
3 may be heard in Department 12 of the above-entitled Court, Plaintiff Kimberly Webb, individually and
4 on behalf of all other similarly situated individuals, hereby move for entry of an Order for the following:

- 5 1. Certifying the proposed class herein for purposes of settlement;
- 6 2. Appointing Plaintiff Kimberly Webb as class representative for purposes of settlement;
- 7 3. Appointing the Shimoda & Rodriguez Law, PC as Class Counsel for purposes of settlement;
- 8 4. Approving the proposed class action settlement, in the amount of \$55,500, which is
9 incorporated herein by reference;
- 10 5. Approving the application for payment to Class Counsel of attorneys' fees in the amount of
11 \$19,425 (35% of the Gross Settlement Amount);
- 12 6. Approving the application for payment to class counsel of reasonable costs in the amount of
13 \$7,164.57;
- 14 7. Approving the Class Representative Enhancement Payment of \$5,500 to Plaintiff Kimberly
15 Webb;
- 16 8. Approving the appointment of Simpluris, Inc. as the Claims Administrator and for payment
17 to Simpluris, Inc. for administering said class action settlement in the amount of \$4,000;
- 18 9. Approving the settlement of claims under the Private Attorneys General Act for the total
19 amount of \$5,000, 75% of which will be paid to the Labor and Workforce Development
20 Agency and 25% of which will be paid to Aggrieved Employees;
- 21 10. Approving the procedures to notify the class and determining that the proposed notification
22 procedures and process complied with class members' due process rights;
- 23 11. Directing that any residue from settlement checks that were not cashed by the check cashing
24 deadline be donated to Capital Pro Bono, Inc. under the doctrine of *cy pres*;
- 25 12. Approving and adopting the Proposed Order and its implementation schedule, which is filed
26 herewith and incorporated by reference.

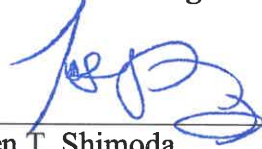
27 This motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section
28 2699(l), and California Rule of Court 3.769 and 3.764, on the grounds that the proposed class action and

1 Private Attorneys General Act settlement is fair, reasonable, and adequate as to all class members and
2 should be given final approval by the Court. This motion will be based on the notice of motion,
3 memorandum of points and authorities, the Declaration of Justin P. Rodriguez, the Declaration of
4 Lindsay Kline, exhibits, the record and files of this case, and any further oral or documentary evidence
5 introduced at the hearing of this motion.

6 **Notice: The Superior Court in and for Solano County has adopted a tentative rulings system that**
7 **is described in the court's local Rule 3.9. Failure to comply with Rule 3.9 may seriously affect**
8 **parties' rights in this case.**

9
10 Dated: April 7, 2022

Shimoda & Rodriguez Law, PC

11
12 By: 

13 Galen T. Shimoda
14 Justin P. Rodriguez
15 Brittany V. Berzin
16 Attorneys for Plaintiff
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17 Company; and DOES 1 to 100, inclusive,

18 Defendants.

Case No. FCS055317

**Assigned For All Purposes to Hon. Christine A.
Carringer**

CLASS ACTION

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

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I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT

This Motion is brought seeking final approval of a wage and hour class action settlement in the gross amount of \$55,500. *See generally* Exhibit A (Joint Stipulation Regarding Class Action and PAGA Settlement and Release). Plaintiff Kimberly Webb (“Plaintiff”) brought this class action individually and on behalf of other similarly situated employees employed by Defendant Professional Healthcare At Home, LLC (“Defendant”). Plaintiff worked for Defendant in California from about June 26, 2012 to June 26, 2020 and was subject to the same policies and practices that are alleged to be unlawful in this litigation. *See generally* Exhibit B (Plaintiff’s Operative Complaint).

Plaintiff has alleged that Defendant failed to include its address on paper copies of paystubs issued to Class Members. *See generally* Exhibit B. Plaintiff has also alleged Defendant is liable for a civil penalties under the Private Attorneys General Act (“PAGA”) based on this violation. *See id.*; Exhibit C (Plaintiff’s Ltr. to the LWDA Regarding PAGA Claims). Plaintiff has contended that this is a meritorious class action lawsuit and that this case is appropriate for class certification for settlement purposes as the requisites for class certification in this case can be satisfied. *See* Exhibit B.

Defendant has denied all of Plaintiff’s allegations in their entirety and any liability or wrongdoing of any kind. *See* Declaration of Justin P. Rodriguez (“Decl. Rodriguez”), ¶ 5. Defendant has denied that this case is meritorious. *See id.* However, subject to approval by the Court, the parties have been able to compromise and settle all asserted claims for monetary compensation as a result of extensive investigations, informal and formal document and data exchanges, and extended negotiations relating to all aspects of the asserted claims. *See* Exhibit A. Plaintiff’s counsel is convinced that the proposed settlement is in the best interest of the putative class based on the discovery, investigations, negotiations, and a detailed knowledge of the issues in this case. *See* Decl. Rodriguez, ¶¶ 3, 6-10. The risk that the Court would find no knowing and intentional violation, the difficulties of complex litigation, the Court’s discretion to reduce PAGA penalties, the lengthy process of establishing specific damages and various possible delays and appeals were carefully considered by Plaintiff and Plaintiff’s counsel in agreeing to the proposed settlement. *See id.*

It is well within the discretion of this Court to grant final approval of the Agreement, which satisfies all of the criteria for preliminary settlement approval under California law. Accordingly,

Plaintiff requests that the Court: (1) certify the proposed settlement class; (2) grant final approval of the proposed Agreement (Exhibit A); (3) adopt the implementation schedule contained in the proposed order.

II. PROCEDURAL AND LITIGATION HISTORY

Plaintiff filed a class action complaint on approximately August 27, 2020, in the Solano County Superior Court against Defendant. Plaintiff exhausted administrative remedies under the PAGA by providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code § 2699.3(a), (c); Decl. Rodriguez, ¶ 3. Then, Plaintiff filed a First Amended Class Action Complaint on approximately January 11, 2021 to include a PAGA claim. Plaintiff filed a Second and Third Amended Complaint to narrow the issues after completing further investigations and discovery. *See id.*; Exhibit B. There is no date set for a motion for certification or trial in this matter. *See* Decl. Rodriguez, ¶ 4.

III. INVESTIGATION AND DISCOVERY CONDUCTED

Plaintiff thoroughly investigated issues affecting certification, the merits of the class claims, and potential damages for such claims. *See id.* Plaintiff worked during the time Defendant's policies and practices at issue in the Complaint were in effect and provided information regarding these policies and practices, enabling pre-filing investigations to take place. The parties engaged in formal and informal discovery and exchange of documents, including paystubs, payroll data and relevant policies for the entirety of the statute of limitations applicable to the alleged claims. The discovery covered all aspects of the asserted claims, including certification issues, merits issues, damages, the scope and configuration of Class Members, the content and implementation of the policies at issue, among other relevant areas. *See id.* The information allowed Plaintiff to determine the extent and frequency of any violations in accordance with Plaintiff's contentions and create an accurate damages model to assess the reasonableness of any settlement. *See id.*

IV. NEGOTIATION AND PROPOSED SETTLEMENT

a. Plaintiff and Defendant Engaged in Extensive Arm's Length Negotiations

The final settlement occurred only after extended, and sometimes contentious, arm's length negotiations. Over the course of nearly one year, Plaintiff has been investigating the claims and discussing with Defendant's counsel the merits of the claims and certification issues present in this case.

1 *See id.* at ¶¶ 6-10. The parties exchanged substantial amounts of information and legal analysis
2 regarding the asserted claims. *See id.* Then, only after nearly one year of litigation and negotiation,
3 which included a full day mediation with Hon. Ronald Sabraw (Ret.), the parties able to reach a
4 mutually agreeable settlement. *See id.* at ¶ 8. In light of the claims and defenses at issue, the parties
5 agreed to a Gross Settlement Amount of \$55,500. *See* Exhibit A.

6 **b. The Terms of the Settlement**

7 Under the settlement agreement, Defendant has agreed to the following:

8 1. The following groups of individuals are covered by the Settlement (*See* Exhibit A, ¶¶
9 1.2, 1.8, 1.9, 1.26):

10 All individuals who have worked, or continue to work, for Defendant in
11 California and received hard copies of their paystubs from August 13,
2019 up to November 20, 2021 (“Aggrieved Employees”).

12 All individuals who have worked, or continue to work, for Defendant in
13 California and received hard copies of their paystubs from April 20, 2018
up to November 20, 2021 (“Class Members”).

14 2. Pay Gross Settlement Amount of \$55,500 to resolve and release the claims alleged in the
15 Complaint. *See id.* at ¶¶ 5.1, 5.2. No portion of the Gross Settlement Amount will revert to Defendant.
16 *See id.* at ¶ 5.6. Aggrieved Employees will still be paid their share of the PAGA Payment regardless of
17 whether they opt out of being Class Members. *See id.* at 7.5.1.

18 3. The parties agree that up to \$5,500 for Plaintiff Kimberly Webb will be paid as a Class
19 Representative Enhancement Payment. This amount will be in addition to any amount Plaintiff may be
20 entitled to under the terms of the Agreement. *See id.* at ¶ 5.4.

21 4. The parties agree that the cost of administering this class action settlement shall be paid
22 from the settlement proceeds. Subject to Court approval, the parties have selected Simpluris, Inc. to act
23 as the class action claims administrator, who has provided a final cost estimate of \$4,000 to administer
24 the class settlement. *See* Declaration of Lindsay Kline (“Decl. Kline”), ¶ 17. The difference between
25 the actual administration costs and the \$10,000 allocated under the Agreement will be paid to Class
26 Members on a pro rata basis. *See id.* At ¶ 5.6.

27 5. The parties agree that \$5,000 of the Gross Settlement Amount shall be allocated to
28 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to

1 the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. *See* Exhibit A, ¶
2 5.5.

3 6. The parties agree that up to thirty-five percent (35%) of the Gross Settlement Amount
4 (\$19,425) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendant
5 will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2.
6 Additionally, the parties agree that Plaintiff will also be entitled to the actual litigation costs in the
7 amount of \$7,164.57. *See* Exhibit D (Plaintiff's Itemized Costs). The difference between the actual
8 costs and the originally allocated \$10,000 will be redistributed to Class Members on a pro rata basis.
9 *See* Exhibit A, ¶ 5.2. The proposed notice sent to class members stated the maximum cost potential of
10 \$10,000. *See* Exh. A to the Declaration of Lindsay Kline.

11 7. Any Claims Administrator Costs, any amounts paid for attorneys' fees and costs, the
12 Class Representative Enhancement Payment, and PAGA Payment will be paid out from the Gross
13 Settlement Amount, not in addition to the Gross Settlement Amount. *See* Exhibit A, ¶¶ 5.1-5.5.

14 8. For any portion of the Net Settlement Sum or PAGA Payment allocated to Qualified
15 Claimants and/or Aggrieved Employees that is not claimed by them by cashing their respective
16 settlement checks within 120 days, the remaining amount shall be paid to Capital Pro Bono, Inc. under
17 the doctrine of *cy pres*. *See* Exhibit A, at ¶ 5.6.

18 **c. Allocation of Settlement Funds**

19 Payment to Qualified Claimants and Aggrieved Employees of their Claim Amount will not
20 require the submission of a claim form. A Net Settlement Amount will be determined by subtracting
21 from the Gross Settlement Amount any amounts for approved attorneys' fees and costs, any
22 Enhancement Payment to the Class Representative, the Claims Administrator Costs, and the PAGA
23 Payment. Each Class Member's share will be determined by dividing their total number of payment
24 date(s) for which they received hard paper copies of their paystubs within the Class Period by the total
25 number of payment date(s) for which all Class Members received hard paper copies of their paystubs
26 within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive
27 at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's
28 share of the 25% portion of the PAGA Payment will be determined by dividing their total number of

1 payment date(s) for which they received hard paper copies of their paystubs within the PAGA Claim by
2 the total number of payment date(s) for which all Aggrieved Employees received hard paper copies of
3 their paystubs within the PAGA Claim Period the total number of payment date(s) for which all Class
4 Members received hard paper copies of their paystubs. That fraction will then be multiplied by the
5 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. *See*
6 Exhibit A, at ¶ 5.8.

7
8 **V. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND THE
SUBSEQUENT CLASS ACTION ADMINISTRATION**

9 Plaintiff's motion for preliminary approval of the class action settlement was approved by the
10 Court, in its entirety, on January 12, 2022. To comply with the class members' due process rights, the
11 parties enlisted an exhaustive method to ensure the best practical means possible was used to provide
12 notice to the class. The parties provided the class action administrator the names, last known address,
13 and social security numbers for the class. The class action administrator then updated this information
14 by doing an address trace for each individual using this information. *See* Decl. Kline, ¶¶ 6-7. If the
15 Notice Packets were returned as undeliverable, further investigation was performed and they were re-
16 mailed using updated information. *See id.* at ¶ 9. Of the 112 Notice Packets mailed, only 1 was
17 undeliverable after use of these methods. *See id.* The Notice Packets included information regarding
18 the requested attorneys' fees, costs, payment to the LWDA, administration costs, and tax allocations.
19 *See* Decl. Kline, Ex. A.

20 The average distribution to participating class members is approximately \$139.83, the
21 maximum distribution is approximately \$2,317.58. *See id.* at ¶ 16. No objections to the proposed
22 settlement have been received and no class members opted out. *See* Decl. Kline, ¶¶ 11-12.

23 **VI. ARGUMENT**

24 **a. Class Action Settlements are Subject to Court Review and Approval Under the**
25 **California Rules of Court**

26 A class action may not be dismissed, compromised, or settled without Court approval and the
27 decision to approve or reject a settlement is committed to the Court's sound discretion. *See* Cal. Rules
28

of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)¹; *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001); *see also* Cal. Lab. Code §§ 2699(l)(2) (requiring Court review of PAGA settlements). However, courts should give “proper deference to the private consensual decision of the parties,” since “the court’s intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). Where a settlement is reached on terms agreeable to all parties, a court should disapprove of the settlement “only with considerable circumspection.” *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481 (E.D. Pa. 1975). The law favors settlement of lawsuits, particularly class actions and other complex cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992).

b. The Terms of The Settlement Are Fair and Within the Range of Reasonableness

The purpose of the Court’s final evaluation of a proposed class action settlement is to determine only whether the proposed settlement is within the range of reasonableness. *See Wershba*, 91 Cal. App. 4th at 234-35. If the Court finds a proposed settlement falls within “the range of reasonableness,” it should grant final approval of the class action settlement. *See, e.g., North County Contr. ’s Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal. App. 4th 1085, 1089-90 (1994). To make the fairness determination, the Court must consider several factors, including:

the strength of the Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Dunk v. Ford Motor Co., 48 Cal. App. 4th 1794, 1801 (1996). However, this Court should begin its analysis with a presumption that the settlement is fair. “A presumption of fairness exists where: (1) the

¹The California Supreme Court has authorized California’s trial courts to rely on these federal resources to decide class certification issues. *See Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

1 settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to
2 allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4)
3 the percentage of objectors is small." *Id.* at 1802.

4
5 **i. The Settlement is a Result of Extensive, Non-Collusive Arm's Length
Negotiations Between the Parties**

6 Settlement in this case was reached only after litigation and extensive arm's length negotiations
7 lasting nearly one year, which included a full day mediation with Hon. Ronald Sabraw (Ret.). *See Decl.*
8 *Rodriguez*, ¶¶ 6-10. At all times, the negotiations were adversarial and contentious, although still
9 professional in nature. *See id.* Further, while Plaintiff contends she would ultimately prevail on the
10 claims, this is not a certainty and there is substantial risk in proceeding to further litigation. *See id.* at ¶¶
11 6-10. The ability to secure a guaranteed settlement now and ensure class members receive some
12 compensation, rather than proceed to further litigation and potentially recover nothing, was a motivating
13 factor in reaching this settlement. *See id.*

14 **ii. The Extent of Investigation and Discovery Completed Provided Ample
15 Information to Enter Into an Informed and Reasonable Settlement**

16 The parties were in possession of all necessary information during the negotiations. The parties
17 engaged in formal and informal discovery and exchange of documents, including paystubs, payroll data
18 and relevant policies for the entirety of the statute of limitations applicable to the alleged claims, which
19 covered all aspects of the class claims and helped thoroughly vet the extent of Plaintiff's claims against
20 Defendant and create an accurate damages model. *See id.* at ¶ 6-10. Plaintiff was in possession of this
21 information prior to calculating the potential damages in this case. *See id.* As a result, Plaintiff was
22 able to make a reasonable estimation of Defendant's potential liability. *See id.* For these reasons, the
23 settlement now before the Court was reached at a stage where "the parties certainly have a clear view of
24 the strengths and weaknesses of their cases" sufficient to support the settlement. *Boyd v. Bechtel Corp.*,
25 485 F.Supp. 610, 617 (N.D. Cal. 1979).

26 //

27 //

28 //

1
2 **iii. Plaintiff's Counsel Is Experienced in Similar Litigation and No Class Members**
3 **Opted Out Or Made Objections to the Settlement**

4 Plaintiff's counsel has considerable experience in class actions and wage and hour litigation.
5 Plaintiff's counsel has brought and is currently bringing several wage and hour class and/or PAGA
6 actions. Thus, Plaintiff's counsel is qualified to evaluate the class claims, value of settlement versus
7 moving for certification and going to trial, and the viability of possible affirmative defenses. *See Decl.*
8 *Rodriguez*, ¶¶ 11-18. Plaintiff's counsel believes that the settlement is fair and reasonable in light of the
9 complexities of the case, the uncertainties of class certification and litigation, and the secured benefit to
10 the class. *See id.* at ¶ 6. This belief is bolstered by the fact that no objections to the settlement have
11 been made by class members and no class members opted out. *See Decl. Kline*, ¶¶ 11-12.

12 **iv. The Settlement is Fair and Reasonable Based on the Strength of Plaintiff's Case**
13 **and the Risks and Costs of Further Litigation**

14 A review of the Agreement's terms does not give rise to any doubts about its fairness. Based on
15 the records and facts of this case, Plaintiff has secured a gross recovery of approximately 61% and a net
16 recovery of approximately 17.2% of the claims' maximum likely value. *See id.* at ¶¶ 9-10.
17 Additionally, the average net award per class member is approximately \$139.83 and the highest
18 recovery is approximately \$2,317.58. *See id.* This settlement is a reasonable compromise of the class
19 and PAGA claims, and is within the percentile ranges of the total available damages that have been
20 approved in other class settlements. *See Wershba*, 91 Cal. App. 4th at 246, 250; *Rebney v. Wells Fargo*
21 *Bank*, 220 Cal.App.3d 1117, 1139 (1990); *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615,
22 628 (9th Cir. 1982); *see also In re Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007)
23 (noting that certainty of recovery in settlement of 6% of maximum potential recovery after reduction
24 for attorney's fees was higher than median percentage for recoveries in shareholder class action
25 settlements, averaging 2.2%-3% from 2000 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017 U.S.
26 Dist. LEXIS 77714 (C.D. Cal. 2017) (approving a settlement where the net recovery to class members
27 was approximately 7.5% of the projected maximum recovery amount); *Avila v. Cold Spring Granite*
28 *Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal. 2017): (approving a settlement with a gross recovery of
11% of the projected maximum damages available and a net recovery of approximately 6.7% of the

1 projected maximum recovery); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245 (N.D. Cal 2015)
2 (approving a settlement where the gross recovery was approximately 8.5% of the projected maximum
3 recovery).

4 **v. The Proposed Settlement is a Reasonable Compromise of Claims**

5 The case of *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008) requires additional
6 information be presented to the Court, acting as a fiduciary for the absent class members “to ensure that
7 the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims
8 being released, discounted by the risks and expenses of attempting to establish and collect on those
9 claims by pursuing the litigation . . .” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los*
10 *Angeles*, 186 Cal. App. 4th 399 (2010), clarified that a *Kullar* showing does not require the parties to
11 submit an illusory prediction of the outer reaches of exposure without taking into account the actual
12 risks of certification, decertification, dispositive motions, and trial. *Kullar* also does not require an
13 explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its
14 claims provided there is a record that allows “an understanding of the amount that is in controversy and
15 the realistic range of outcomes of the litigation.” *Id.* at 409. The *Munoz* Court found that the record
16 before the trial court was sufficient, having included the number of class members, payroll data,
17 declarations describing hours and overtime worked, as well as variances in duties and rest and meal
18 period experience, and a companion action alleging less than \$5,000,000 in damages. This information
19 constituted “an adequate basis from which to garner a reasonably adequate understanding of the amount
20 that is in controversy within the meaning of *Kullar*.” *Id.*

21 Plaintiff similarly relied upon payroll data and Class Members data to determine the realistic
22 potential damages suffered by the class as a whole. *See* Decl. Rodriguez, ¶¶ 6-10. This analysis
23 allowed Plaintiff to determine the extent and frequency of potential violations on all claims as to all
24 Class Members. *See id.* Ultimately, Plaintiff secured a percentage of the total demand for the putative
25 class that is within the range of what has been found to be sufficient in several other cases. *See, supra*,
26 Section V.c.iv; *see also, e.g., In re Omnivision Technologies, Inc.*, 559 F.Supp.2d at 1042; *Reed v. 1-*
27 *800 Contacts, Inc.*, 2014 U.S. Dist. LEXIS 255 (S.D. Cal. 2014) (approving a settlement of \$11.7
28 million where the maximum range of damages was \$5,000 for each of the alleged 300,000 instances of

1 unlawful recording violations (\$1.5 billion), equaling approximately .78% of the total demand and
2 approximately \$800 per class member). This settlement represents a reasonable compromise given the
3 percentage of the total demand that was secured, the average recovery per class member, the Court's
4 ability and discretion to cut PAGA penalties, and the uncertainty of class certification. *See Decl.*
5 *Rodriguez*, ¶¶ 9-10.

6 **vi. The Enhancement Payment to the Named Plaintiff for Plaintiff's Services to the**
7 **Putative Class Is Reasonable and Routinely Awarded by Courts**

8 The Enhancement Payment to the named Plaintiff is intended to recognize the time and effort
9 expended on behalf of the class. Indeed, Courts routinely approve enhancement payments to
10 compensate named plaintiffs for the services they provide and the risks they incurred during the course
11 of the class action litigation. *See Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001).
12 In *Ingram*, the Court approved enhancement payments of \$300,000.00 to each named plaintiff in
13 recognition of the services they provided to the class by responding to discovery, participating in the
14 mediation process, and taking the risk of stepping forward on behalf of the class. *See Id.* at 694; *see*
15 *also Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00
16 enhancement payment).

17 In this case, Plaintiff provided and explained documents and was available at all times to
18 discuss the case with Plaintiff's counsel. *See Decl. Rodriguez*, ¶ 7. Plaintiff spent a significant amount
19 of time pursuing this litigation for the benefit of all Class Members. *See id.* Plaintiff brought this
20 action knowing there would be a delay in any payment as the litigation progressed, rather than
21 proceeding on individual claims in front of the California Labor Commissioner. *See id.* Payment of
22 \$5,500 to Plaintiff is appropriate given the risk, assistance, time required in bringing this case and
23 resolution of this case.

24 **vii. Awarding Attorneys' Fees as a Percentage of the Common Fund Is Reasonable**
25 **and Customarily Approved by Courts**

26 California state and federal courts have recognized that when a litigant's efforts create or
27 preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally
28 among all the beneficiaries to compensate those who created the fund. *See Boeing Co. v. Van Gemert*,

1 444 U.S. 472, 477-478 (1980) (“A lawyer who recovers a common fund for the benefit of persons other
2 than . . . her client is entitled to a reasonable attorney’s fee from the fund as a whole.”); *Vincent v.*
3 *Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375
4 (1970); *Waters v. Intern. Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999); *see also Serrano v.*
5 *Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016).
6 The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to “spread litigation
7 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
8 burden alone.” *Vincent*, 557 F.2d at 769; *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026,
9 1027 (9th Cir. 1977). California state courts have approved use of a percentage of the fund to calculate
10 reasonable attorney fee awards where the amount of the settlement is certain or is an easily calculable
11 sum of money. *See Dunk*, 48 Cal. App. 4th at 1808.

12 The Ninth Circuit has also held that the common fund doctrine applies when: (1) the class of
13 beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the fee can be
14 shifted with some exactitude to those benefitting. *See Paul, Johnson, Alston & Hunt v. Graulity*, 886
15 F.2d 268, 271 (9th Cir. 1989). These criteria are “easily met” when “each member of a certified class
16 has an undisputed and mathematically ascertainable claim to part of a lump-sum settlement recovered
17 on her behalf.” *Id.* at 271 (citations omitted). Under the three (3) factors set forth in *Paul, Johnson,*
18 *Alston & Hunt*, the common fund doctrine applies in this case because there is a sufficiently identifiable
19 class of beneficiaries (*e.g.* the settlement class), the benefits can be accurately traced to the settlement
20 Plaintiff and Plaintiff’s counsel were able to negotiate on behalf of the class, and the fee can be shifted
21 with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the common
22 fund. As set forth in the fee award examples provided below for the Court’s reference, it is an accepted
23 practice in wage and hour class action settlements to award attorneys’ fees based on a percentage of the
24 common fund. *See, e.g., Staton v. Boeing Co.*, 327 F.3d 938, 967-972 (9th Cir. 2003); *Sanders v. City*
25 *of Los Angeles*, 3 Cal.3d 252, 261, 263 (1970); *Wershba*, 91 Cal. App. 4th at 254; *Bell v. Farmers Ins.*
26 *Exchange*, 115 Cal. App. 4th 715, 726, 765 (2004).

27 Historically, attorneys’ fee awards in common fund cases in general range from 20% to 50% of
28 the fund, depending on the circumstances of the case. *See Newberg on Class Actions*, (3rd Ed.), 1992,

§14.03 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are generally approved as reasonable in wage and hour settlements below \$10 million:

More particularly, courts may award attorneys fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under \$10 million. *See Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-492 (E.D. Ca. 2010) (citing to five recent wage and hour class actions where federal district courts approved attorney fee awards ranging from 30 to 33%); *Singer v. Becton Dickinson and Co.*, 2010 U.S. Dist. LEXIS 53416, 2010 WL 2196104, *8 (S.D. Ca. June 1, 2010) (approving attorney fee award of 33.33% of the common fund and holding that award was similar to awards in three other wage and hour class action cases where fees ranged from 33% to 40%); *Romero v. Producers Dairy Foods, Inc.*, 2007 U.S. Dist. LEXIS 86270, 2007 WL 3492841 (E.D. Ca. Nov. 14, 2007).

See Martin v. Ameripride Servs., 2011 U.S. Dist. LEXIS 61796 at *22-23 (S.D. Cal. 2011). Plaintiff's request of thirty-five percent (35%) of the settlement sum for attorneys' fees is within established rates for fee awards in class settlements pursuant to the common fund doctrine, especially in light of the excellent results achieved in this case. *See In re Activision Sec. Litigation*, 723 F.Supp. 1373, 1379 (N.D. Cal. 1989); *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-cv-00634; *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745; *Green, et al. v. Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069; *Benitez et al. v. Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122; *Chavez et al. v. Petrissans et al.*, USDC Eastern District, Case No. 1:08-cv-00122; *Willis et al. v. Cal-Western Transport*, USDC Eastern District, Case No. 1:00-cv-05695. To determine whether a percentage is reasonable, a court should consider: (1) the percentage that would likely be negotiated between parties in a similar case; (2) the percentage applied in other class actions; (3) the quality of class counsel; (4) the size of the award; and (5) whether there are any objections by class members. *See In re Ikon Office Solutions, Inc. Secur. Litig.*, 194 F.R.D. 166, 193 (E.D. Pa. 2000); *In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, 71 (C.D. Cal. 2005) ("the absence of objections or disapproval by class members to class counsel's fee request further supports finding the fee request reasonable").

These factors support Plaintiff's request for reasonable attorneys' fees. The typical percentage negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual litigation depending on the complexity of the case. In class action litigation, the typical percentage negotiated between parties ranges from thirty to forty percent (30% to 40%) based on the same factors. Plaintiff's

1 request of 35% falls within these typical fee arrangements. *See* Decl. Rodriguez, ¶ 19. The quality of
2 counsel and the average size of settlement payments to Class Members and Aggrieved Employees
3 (\$139.83) also support the fee request when compared to other settlements courts have considered as
4 good results. *See Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal.
5 2012) ("Class Members will receive an average of approximately \$198.70, with the highest payment to
6 a Class Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is
7 highlighted by the fact that there was no objection to the settlement amount or the attorneys' fees
8 requested."); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) ("the
9 results achieved in this case were very favorable. Class members are provided with immediate
10 monetary relief, with an average award of around several hundred dollars and a minimum award of
11 \$50"). Furthermore, no class members have opted out of the settlement and no objections to the
12 settlement have been made by class members in any way. *See* Decl. Kline, ¶¶ 11-12; *In re Heritage*
13 *Bond Litig.*, 2005 U.S. Dist. LEXIS 13555 at *71 ("the absence of objections or disapproval by class
14 members to class counsel's fee request further supports finding the fee request reasonable").

15 To the extent the Court wishes to exercise its discretion to conduct a lodestar cross check, the
16 cross check only validates the fee request. *See Laffitte*, 1 Cal. 5th at 503-506. Plaintiff has provided a
17 summary chart, which shows the types of tasks performed and total amount of time spent performing
18 the tasks by each timekeeper. *See* Exhibit F (Summary Chart of Plaintiff's Counsel's Hours); *Syers*
19 *Props. III, Inc. v. Rankin*, 226 Cal. App. 4th 691, 699 (2014) ("Because time records are not required
20 under California law . . . , there is no required level of detail that counsel must achieve.") (internal
21 quotations omitted). As set forth in the summary chart and in Plaintiff's counsel's declaration,
22 Plaintiff's counsel reasonably spent a substantial amount of hours in this class action case. *See* Exhibit
23 F; Decl. Rodriguez, ¶ 20; *Ketchum v. Moses*, 24 Cal.4th 1122, 1133 (2001) (fee award should be "fully
24 compensatory [and] absent circumstances rendering the award unjust, an attorney fee award should
25 ordinarily include compensation for *all* the hours reasonably spent.") (emphasis in original); *Serrano v.*
26 *Priest*, 20 Cal. 3d 25, 49 (1977). Plaintiff's counsel's hourly rates also reasonably reflect the prevailing
27 market rates for attorneys of similar skill and experience practicing within Santa Clara County. *See*
28 Decl. Rodriguez, ¶ 21; *Children's Hosp. and Med. Ctr. v. Bonta*, 97 Cal.App.4th 740, 783 (2002).

1 Declarations regarding the prevailing market rate in the relevant community are sufficient to establish a
2 reasonable rate. *See Syers Props. III, Inc.*, 226 Cal. App. 4th at 698. Based on Plaintiff's counsel's
3 hourly rates and hours worked on this case, the lodestar calculation equals \$63,565.50.

4 Plaintiff's counsels' request for attorney's fees of \$19,425 is reasonable considering their
5 lodestar of \$63,564.50, which results in a negative multiplier. *See Decl. Rodriguez* ¶¶ 20-22; *see also*
6 *Laffitte*, 1 Cal.5th 480 (finding the trial court did not abuse its discretion in approving a fee award of
7 1/3 of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13);
8 *Wershba*, 91 Cal. App. 4th at 255 ("Multipliers can range from 2 to 4 or even higher").

9 **c. Certification of the Class is Appropriate**

10 Class certification is appropriate when (1) the class is ascertainable and (2) there is "a well-
11 defined community of interest in the questions of law and fact involved affecting the parties to be
12 represented." *Dunk*, 48 Cal. App. 4th at 1806. The "community of interest" element "embodies three
13 factors: (1) common questions of law or fact predominate; (2) class representatives with claims or
14 defenses typical of the class; and (3) class representatives who can adequately represent the class." *Id.*
15 Here, the parties agree that, for the purposes of settlement, these prerequisites are met. *See Exhibit A.*

16 **i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous**

17 The proposed settlement class is ascertainable because all putative class members can be readily
18 identified through employee personnel and payroll files. *See Noel v. Thrifty Payless, Inc.*, 7 Cal.5th
19 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex, Inc.*, 166
20 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are 112 individuals
21 who fall within the definition of Class Member, which makes joinder of all members impracticable.
22 *See Gay v. Waiters' & Dairy Lunchmen's Union*, 489 F.Supp. 282 (N.D. Cal. 1980), *aff'd* 694 F.2d 531
23 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017, 1030 (1972) (noting no set minimum to
24 meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is acceptable). Thus,
25 these requirements are satisfied.

26 **ii. The Commonality, Predominance, and Typicality Requirements are Met**

27 The commonality requirement is met when there are questions of law or fact regarding the class
28 as a whole. *See Hanlon*, 150 F.3d at 1019. Commonality requires only that some common legal or

1 factual questions exist; Plaintiff need not show that all issues in the litigation are identical. *See*
2 *Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d
3 447, 460 (1974). Common questions of law or fact must also predominate over individual questions
4 and class-wide treatment of a dispute must be superior to individual litigation.² *See Richmond*, 29
5 Cal.3d at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication
6 by representation. *See Hanlon*, 150 F.3d at 1022. The typicality requirement is met when claims of the
7 named representative are typical of those of the class, though “they need not be substantially identical.”
8 *Id.* at 1020; *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983).

9 The common questions of law and fact in this case stem from Plaintiff’s contention that
10 Defendant failed to include its address on paystubs issued to Class Members who elected to receive
11 paper copies of their paystubs. *See Exhibit B*. The PAGA claims are derivative of these violations.
12 *See id.* Plaintiff and the Class Members seek the same remedies under state law. Under these specific
13 circumstances, the commonality and predominance requirements are satisfied. Regarding the typicality
14 requirement, Plaintiff contends she suffered from the same unlawful policies, treatment, and
15 circumstances as Class Members did, will request the same remedies, and will rely on the same
16 methods of proof to establish liability and damages. *See id.* Thus, the typicality requirement is also
17 satisfied for settlement purposes.

18 **iii. The Adequacy Requirement is Met**

19 The adequacy of representation requirement is met if the named representative and counsel have
20 no interests adverse to those of the putative class members and are committed to vigorously prosecuting
21 the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60
22 Cal.App.3d 442, 450-51 (1976). Those standards are met here. Under the preliminary approved
23 settlement, Plaintiff and the putative class members will receive a pro rata share of the settlement based
24 on the number of workweeks they worked for Defendant. *See Exhibit A*. Finally, any settlement class
25 member who wished to opt-out of the settlement had the opportunity to do so, and he or she also had
26 the opportunity to dispute the number of workweeks stated in the Notice of Settlement.

27
28 ²When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

1 There is no conflict of interest between Plaintiff and Class Members. Plaintiff and Plaintiff's
2 counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class.
3 Plaintiff's counsel, with Plaintiff's assistance, thoroughly investigated the claims made in this case by
4 speaking with Plaintiff and reviewing substantial amounts of documents. Plaintiff's counsel thereafter
5 engaged Defendant's counsel in settlement discussions over the course of nearly one year. Moreover,
6 Plaintiff's counsel has experience defending and bringing wage and hour claims. Because Plaintiff's
7 counsel has vigorously pursued Plaintiff's and the class members' claims, the adequacy requirement is
8 met. *See generally* Decl. Rodriguez.

9 **VII. CONCLUSION**

10 For all of the foregoing reasons, Plaintiff respectfully requests that this Court certify the class
11 for settlement purposes; grant final approval to the proposed settlement, including the Plaintiff's Class
12 Representative Enhancement Payment, the payment to the LWDA under PAGA, and Class Counsel's
13 application for reasonable attorneys' fees and costs; find that the Notice of Settlement, and
14 administration process satisfied class member' due process rights; and approve the proposed order
15 concurrently herewith.

16
17 Dated: April 7, 2022

Shimoda & Rodriguez Law, PC

18
19 By: _____


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 individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SOLANO

KIMBERLY WEBB, individually and on
 behalf of all other similarly situated
 employees,

Plaintiff,

vs.

PROFESSIONAL HEALTHCARE AT
 HOME, LLC, a California Limited Liability
 Company; and DOES 1 to 100, inclusive,
 Defendants.

Case No. FCS055317

**Assigned For All Purposes to Hon. Christine A.
 Carringer**

CLASS ACTION

**EXHIBIT LIST AND EXHIBITS IN
 SUPPORT OF PLAINTIFF'S MOTION FOR
 FINAL APPROVAL OF CLASS ACTION
 AND PAGA SETTLEMENT**

Date: May 4, 2022

Time: 8:30 a.m.

Dept.: 12

Judge: Hon. Christine A. Carringer

Filed: August 27, 2020

FAC Filed: January 11, 2021

SAC Filed: July 26, 2021

TAC Filed: October 28, 2021

Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Joint Stipulation Regarding Class Action and PAGA Settlement and Release
B	Plaintiff's Operative Complaint
C	Plaintiff's Letter to the LWDA Regarding PAGA Claims
D	Plaintiff's Itemized Costs
E	Proof of Submission of Proposed Settlement Agreement to LWDA
F	Summary Chart of Plaintiff's Counsel's Hours

Dated: April 7, 2022

Shimoda & Rodriguez Law, PC

By: _____

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EXHIBIT A

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11 Attorneys for PROFESSIONAL HEALTHCARE AT HOME, LLC

12 **SUPERIOR COURT OF CALIFORNIA**
13 **FOR THE COUNTY OF SOLANO**

14 **KIMBERLY WEBB, individually and on**
15 **behalf of all other similarly situated employees,**

16 **Plaintiff,**

17 **vs.**

18 **PROFESSIONAL HEALTHCARE AT HOME,**
19 **LLC, a California Limited Liability Company;**
20 **and DOES 1 to 100, inclusive,**
21 **Defendants.**

Case No.: FCS055317

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

Filed: August 27, 2020
FAC Filed: January 11, 2021
SAC Filed: July 26, 2021
Trial Date: None Set

This Joint Stipulation Regarding Class Action and PAGA Settlement and Release ("Agreement") is made and entered into between the Plaintiff Kimberly Webb ("Plaintiff"), on behalf of herself, the Labor and Workforce Development Agency, and Aggrieved Employees, and Defendant Professional Healthcare At Home, LLC ("Defendant"). This Agreement is subject to the terms and conditions set forth below and the approval of the Court.

1. DEFINITIONS

The following terms, when used in this Agreement, have the following meanings:

1.1 "Action" means the above stated lawsuit, *Webb v. Professional Healthcare At Home, LLC*, Solano County Superior Court, Case No. FCS055317, filed August 27, 2020.

1.2 "Aggrieved Employee(s)" means all individuals who have worked, or continue to work for Defendant in California and received hard copies of their paystubs during the PAGA Claim Period.

1.3 "Agreement" or "Settlement" or "Settlement Agreement" means this Joint Stipulation Regarding Class Action and PAGA Settlement and Release.

1.4 "Claim Amount" means an individual Qualified Claimant's and Aggrieved Employee's allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in Sections 1.21, 1.25, 5.5, and 5.8.

1.5 "Claims Administrator" means and refers to Simpluris, Inc., the third-party entity that will administer the Agreement as outlined in Sections 4 and 7, or any other third-party class action settlement claims administrator agreed to by the Parties and approved by the Court for the purposes of administering this Agreement. The Parties each represent that they do not have any financial interest in the Claims Administrator or otherwise have a relationship with the Claims Administrator that could create a conflict of interest.

1.6 "Claims Administrator Costs" means the fees and expenses reasonably incurred by the Claims Administrator as a result of the procedures and processes expressly required by this Agreement, and shall include all costs of administering the Agreement, including, but not limited to, all tax document preparation, custodial fees, and accounting fees incurred by the Claims Administrator; all costs and fees associated with preparing, issuing and mailing any and all notices and other correspondence to Class Members and/or Aggrieved Employees; all costs and fees associated with communicating with Class

Members and/or Aggrieved Employees, Class Counsel, and Defendant's Counsel; all costs and fees associated with computing, processing, reviewing, and paying the Claim Amounts, and resolving disputes; all costs and fees associated with calculating tax withholdings, if any, making related payment to federal and state tax authorities, if any, and issuing tax forms relating to payments made under the Agreement; all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency; all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering Claim Amounts; and any other costs and fees incurred and/or charged by the Claims Administrator in connection with the execution of its duties under this Agreement.

1.7 "Class Counsel" means Galen T. Shimoda and Justin P. Rodriguez, of the Shimoda Law Corp.

1.8 "Class Member(s)" means all individuals who have worked, or continue to work for Defendant in California and received hard copies of their paystubs during the Class Period. The estimated number of Class Members is 105.

1.9 "Class Period" means from April 20, 2018 and up to either (1) the Preliminary Approval Date, or (2) November 20, 2021, whichever is earlier.

1.10 "Class Representative" means Plaintiff Kimberly Webb

1.11 "Class Representative's Released Claims" means all claims arising out of or related to Class Representative's employment with Defendant and all rights and benefits of the section 1542 of the Civil Code of the State of California, and does so understanding and acknowledging the significance and consequence of specifically waiving section 1542. Section 1542 of the Civil Code of the State of California states as follows:

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

1 Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release and
2 discharge of the Released Parties, Plaintiff expressly acknowledges this Agreement is intended to include
3 in its effect, without limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at
4 the time of signing this Agreement, and that this Agreement contemplates the extinguishment of any such
5 claims. Plaintiff warrants Plaintiff has read this Agreement, including this waiver of California Civil Code
6 section 1542, and that Plaintiff has consulted with or had the opportunity to consult with counsel of
7 Plaintiff's choosing about this Agreement and specifically about the waiver of section 1542, and that
8 Plaintiff understands this Agreement and the section 1542 waiver, and so Plaintiff freely and knowingly
9 enters into this Agreement. Plaintiff further acknowledges that Plaintiff later may discover facts different
10 from or in addition to those Plaintiff now knows or believes to be true regarding the matters released or
11 described in this Agreement, and even so Plaintiff agrees that the releases and agreements contained in
12 this Agreement shall remain effective in all respects notwithstanding any later discovery of any different
13 or additional facts. Plaintiff expressly assumes any and all risk of any mistake in connection with the true
14 facts involved in the matters, disputes, or controversies released or described in this Agreement or with
15 regard to any facts now unknown to Plaintiff relating thereto.

16 1.12 "Complaint" means the operative Complaint on file in the Action with the Court.

17 1.13 "Court" means the Solano County Superior Court.

18 1.14 "Defendant" means Professional Healthcare At Home, LLC.

19 1.15 "Defendant's Counsel" means Jackson Lewis P.C.

20 1.16 "Enhancement Payment" means the amount approved by the Court to be paid to the Class
21 Representative in recognition of the time and effort expended on behalf of Class Members for the benefit
22 of Class Members, which is in addition to any Claim Amount paid to the Class Representative as a
23 Qualified Claimant.

24 1.17 "Effective Date" means either (a) the 60th calendar day after a signed order granting final
25 approval of this Agreement has been filed provided no motion to vacate the judgment, appeal, writ or
26 other appellate proceeding having been filed; or (b) the seventh (7th) calendar day after any motion to
27 vacate the judgment, appeal, writ, or other appellate proceeding opposing the Agreement has been finally
28

1 dismissed with no material change to the terms of this Agreement and there is no right to pursue further
2 remedies or relief, whichever is later.

3 1.18 "Final Approval Date" means the date a signed order granting final approval of this
4 Agreement is filed with the Court.

5 1.19 "Gross Settlement Amount" is the sum of Fifty Five Thousand Five Hundred Dollars and
6 No Cents (\$55,500.00).

7 1.20 "LWDA" means the California Labor and Workforce Development Agency.

8 1.21 "Net Settlement Amount" is the portion of the Gross Settlement Amount available for
9 distribution to Qualified Claimants, as described in this Agreement, after deduction of Plaintiff's attorneys'
10 fees and litigation costs, Claims Administrator Costs, the PAGA Payment, and Enhancement Payment to
11 the Class Representative.

12 1.22 "Notice of Settlement" means the document substantially in the form attached hereto as
13 Exhibit 1.

14 1.23 "Notice Period" means forty-five (45) calendar days from the initial mailing of the Notice
15 of Settlement to Class Members and Aggrieved Employees.

16 1.24 "PAGA" means Private Attorneys General Act.

17 1.25 "PAGA Payment" means the amount allocated from the Gross Settlement Amount towards
18 resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

19 1.26 "PAGA Claim Period" means August 13, 2019 up to either (1) to the Preliminary Approval
20 Date or (2) November 20, 2021, whichever is earlier.

21 1.27 "Parties" mean Defendant and Plaintiff.

22 1.28 "Preliminary Approval Date" means the date a signed order granting preliminary approval
23 of this Agreement is filed with the Court.

24 1.29 "QSF" means a Qualified Settlement Fund set up by the Claims Administrator for the
25 benefit of the Qualified Claimants and/or Aggrieved Employees and from which the payments under this
26 Agreement shall be made. Any amounts Defendant has agreed to pay under this Agreement shall remain
27 the property of Defendant until the payments required under the Agreement are made.
28

1.30 "Qualified Claimant" means any and all Class Members who have not made any timely request to opt-out of the Agreement.

1.31 "Qualified Claimant's Released Claims" means all claims for wage statement violations, that were brought or could have been brought based on the allegations in the Complaint, including, but not necessarily limited to any and all claims for alleged violation under Labor Code §§ 226 and 226.3, through the Class Period. This release excludes the release of claims not permitted by law. The Qualified Claimant's Released Claims exclude claims for workers' compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

1.32 "Qualifying Wage Statements" are the number of payment date(s) for which Class Members and/or Aggrieved Employees received hard paper copies of their paystubs during the Class Period and/or PAGA Claim Period, respectively, in California. The calculation of Qualifying Wage Statements shall be construed from Defendant's records.

1.33 "Released PAGA Claims" means all Private Attorneys General Act claims for civil penalties based on Labor Code §§ 226, 226.3 and any claims for individual liability of these section under Labor Code §§ 558 and 558.1 or related provisions through the PAGA Claim Period and inclusive of any civil penalties, attorneys' fees, interest, liquidated damages, injunctive relief and costs based on those claims. This release will cover all Aggrieved Employees regardless of whether or not they opted-out as Class Members. Aggrieved Employees cannot opt out of this waiver of claims.

1.34 "Released Parties" means Defendant, its shareholders, officers, directors, agents, employees, attorneys, and insurers, as well as Defendant's present and former parent companies, subsidiaries, divisions, related or affiliated companies, including but not limited to Gentiva Home Healthcare, Kindred at Home, and those entities' shareholders, officers, shareholders, directors, agents, employees, attorneys, and insurers. The Released Parties also include, but are not necessarily limited to David Gieringer, Ronald C. Lazas, Kriston Nearhood, Joseph L. Landenwich, Benjamin A. Breier, Douglas Curnutte, and Stephen Cunanan.

2. DESCRIPTION OF THE LITIGATION

2.1 On or about August 13, 2020, Plaintiff sent notice to the LWDA to exhaust administrative remedies under the PAGA. The LWDA did not respond to the notice within the statutorily required time

1 frame and, as such, Plaintiff became authorized to act as a Private Attorneys General on all alleged PAGA
2 claims.

3 2.2 On or about August 27, 2020, Plaintiff filed a class action Complaint in Solano County
4 Superior Court on behalf of herself and Class Members. Plaintiff filed a First Amended Complaint on
5 approximately January 11, 2021 to add a PAGA cause of action based on the violations alleged in the
6 August 13, 2020 notice to the LWDA on behalf of herself and Aggrieved Employees. Plaintiff filed a
7 Second Amended Complaint on July 26, 2021 to narrow the issues after completing some discovery.
8 Plaintiff's operative Third Amended Complaint was filed to further narrow the claims at issue in this
9 action.

10 2.3 Through formal and informal discovery, Defendant and Defendant's Counsel provided
11 Class Counsel with copies of all applicable versions of its policies and procedures, information on Class
12 Members including, but not limited to the total number of Class Members and the number of payment
13 dates for which they received hard paper copies of their paystubs.

14 2.4 After Class Counsel received the data, the Parties engaged in informal settlement
15 negotiations, but were not able to come to a resolution. On August 10, 2021, the Parties participated in a
16 mediation with private mediator Hon. Ronald M. Sabraw (Ret.). At the conclusion of the mediation, the
17 Parties were able to come to a resolution. At all times, the Parties' settlement negotiations have been non-
18 collusive, adversarial, and at arm's length.

19 2.5 Discussions between Plaintiff and Class Counsel, between counsel for the Parties, document
20 productions, extensive legal analysis, the provision of information by Defendant to Plaintiff and the
21 detailed analysis of the records, including expert analysis, have permitted each side to assess the relative
22 merits of the claims and the defenses to those claims.

23 2.6 In the Action, Plaintiff contends that Defendant violated California law by failing to include
24 Defendant's address on wage statements included with live checks mailed to putative class members.
25 Defendant denies Plaintiff's claims. The agreed upon Gross Settlement Amount was reached after
26 evaluating the Parties' theories of potential exposure for the underlying claims and the class data
27 supporting these claims. The Parties, with the assistance of the mediator, also assessed appropriate
28 discounts to the potential liability based on Defendant's factual and legal contentions and defenses.

2.7 The Parties agree that the above-described investigation and evaluation, as well as discovery and the information exchanged to date, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Class Counsel, Defendant, and Defendant's Counsel have concluded that it is desirable that the Action be settled in a manner and upon such terms and conditions set forth herein in order to avoid further expense, inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action. Plaintiff, Class Counsel, Defendant, and Defendant's Counsel are of the opinion that the Agreement for the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and circumstances.

3. THE CONDITIONAL NATURE OF THIS AGREEMENT

3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose of settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a conditional basis. If the Court does not enter an order granting final approval of the Agreement, or if the Court's approval of the settlement is reversed or materially modified on appellate review, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

3.2 Defendant has denied all claims as to liability, damages, liquidated damages, penalties, interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendant has agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or the Final Approval Date does not occur, Defendant does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability to challenge class or collective treatment on any grounds, as well as to assert any and all other potential defenses or privileges.

1 **4. SCOPE**

2 4.1 The scope of the class of individuals encompassed under the Agreement, who are entitled
3 to all benefits as authorized under the Agreement and subject to all obligations and duties required under
4 the Agreement, shall include all Class Members as defined in Section 1.8 and all Aggrieved Employees
5 as defined in Section 1.2. However, the Class shall not include any Class Members who submit valid and
6 timely requests to opt-out of the Agreement and settlement, as set forth in Section 7.5.1.

7 4.2 Individuals entitled to recover under this Agreement will include only those individuals who
8 are identified as being within the scope of this Agreement under Section 4.1.

9 4.3 Any person who believes that he or she is a Class Member or Aggrieved Employee and
10 wishes to participate in the Agreement, but did not receive a Notice of Settlement because his or her name
11 did not appear on the class list provided to the Claims Administrator prior to mailing, may submit a data
12 request to the Claims Administrator. The data request must contain all of the following information: (a)
13 the full name and, if applicable, Social Security Number of the individual making the request; (b) the
14 name used by such employee as of the time his or her employment with Defendant ended; (c) the years
15 during which such employee was employed with Defendant; and (d) a return address to which a response
16 may be sent. Every data request must be postmarked on or before the conclusion of the Notice Period or
17 otherwise submitted to the Claims Administrator such that it is received before the conclusion of the
18 Notice Period. Upon receipt of any data requests, the Claims Administrator shall promptly (in no event
19 more than two business days) transmit the data requests to Defendant's Counsel and request that Defendant
20 review their records.

21 4.4 If Defendant agrees that the person listed in a data request is a Class Member and/or
22 Aggrieved Employee, the Claims Administrator shall promptly mail a Notice of Settlement to the person
23 who submitted the data request, at the address designated for that purpose in the data request. All
24 provisions of this Agreement relating to the Notice of Settlements shall apply to Notice of Settlements
25 sent in response to data requests, and any person who submits a data request and is sent a Notice of
26 Settlement in response shall be treated by the Claims Administrator as a Class Member and/or Aggrieved
27 Employee for all other purposes.

4.5 If Defendant disagrees that the person listed in a data request is a Class Member and/or Aggrieved Employee, Defendant's Counsel and Class Counsel shall attempt to resolve any such dispute in good faith within seven (7) calendar days of Class Counsel being advised in writing of the data request dispute. Defendant's records shall control unless the individual submitting the data request provides persuasive evidence to doubt the accuracy of those records. Each data request dispute that Defendant's Counsel and Class Counsel cannot timely resolve shall be resolved by the Claims Administrator. The Claims Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve the dispute. The Claims Administrator must resolve any dispute submitted to it within seven (7) calendar days after Defendant's Counsel and Class Counsel submit the dispute to the Claims Administrator. The decision by the Claims Administrator shall be final and there shall be no right of appeal.

5. TERMS OF THE SETTLEMENT

The Parties agree as follows:

5.1 Gross Settlement Amount: In consideration and exchange for the releases described in Section 6, Defendant shall pay the Gross Settlement Amount (\$55,500). Funding of the Gross Settlement Amount shall occur within twenty-one (21) calendar days (1) after the Effective Date or (b) 21 calendar days after Defendant's counsel is emailed wiring instructions from the third-party administrator, whichever is last, and is to be held in trust in a QSF by the Claims Administrator. The following payments will be made out of the Gross Settlement Amount: payments to Qualified Claimants, Aggrieved Employees, all attorneys' fees, costs and litigation expenses related to the Action incurred to date, as well as all such fees and costs incurred in documenting the Agreement, administering the Agreement (including Claims Administrator Costs), and obtaining final approval of the Agreement, the Enhancement Payment to the Class Representative and the PAGA Payment.

5.2 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of 35% or \$19,425 of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendant has agreed to not oppose Class Counsel's application for attorneys' fees so long as it does not exceed the \$19,425 threshold. Class Counsel will also be entitled to reimbursement for advanced litigation expenses not to exceed \$10,000, which shall be paid from the Gross Settlement Amount. Defendant has agreed to not oppose Class Counsel's request for reimbursement for advanced litigation expenses so long

1 as they do not exceed the \$10,000 threshold. The Claims Administrator will issue Class Counsel an IRS
2 Form 1099 for the attorneys' fees and costs paid under this Agreement. In the event that the Court awards
3 less than the requested attorney's fees and/or costs, the portion of the requested amounts not awarded to
4 Class Counsel shall be added to the Net Settlement Amount to be distributed to Qualified Claimants on a
5 pro rata basis.

6 5.3 Claims Administrator Costs: The Claims Administrator Costs shall be paid from the Gross
7 Settlement Amount and shall not exceed \$10,000. The difference between any actual costs and the
8 allocated \$10,000 shall be added to the Net Settlement Amount.

9 5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiff, shall apply to the Court for
10 an Enhancement Payment to the Class Representative in an amount not to exceed Five Thousand Five
11 Hundred Dollars (\$5,500) to compensate for the risks, time, and expense of her involvement in the Action
12 and securing the benefits of this Agreement for Class Members. The Enhancement Payment is in addition
13 to the Claim Amount Plaintiff would otherwise be due under the Agreement as a Qualified Claimant.
14 Defendant has agreed to not oppose Class Counsel's request for an Enhancement Payment to Plaintiff so
15 long as it does not exceed the amount stated herein. The Enhancement Payment will be designated as a
16 non-wage payment and reported on an IRS Form 1099. In the event that the Court awards less than the
17 Enhancement Payment amount requested, then any portion of the requested amount not awarded to the
18 Class Representative shall be added to the Net Settlement Amount to be distributed to Qualified Claimants
19 on a pro rata basis.

20 5.5 PAGA Payment: Five Thousand Dollars (\$5,000) of the Gross Settlement Amount shall be
21 allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will
22 be paid to the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees on a pro rata
23 basis as described below in Section 5.5. Any amount not approved by the Court for the allocated PAGA
24 Payment shall be added to the Net Settlement Amount to be distributed to Qualified Claimants on a pro
25 rata basis.

26 5.6 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount or PAGA
27 Payment allocated to Qualified Claimants and/or Aggrieved Employees that were not claimed by cashing
28 their respective settlement checks before the deadline to do so, that remaining amount shall be donated to

Capital Pro Bono, Inc.. No portion of the Gross Settlement Amount will revert to Defendant for any reason.

5.7 No Additional Benefits Contributions: All Claim Amounts paid to Qualified Claimants and Aggrieved Employees shall be deemed to be income solely in the year in which such amounts were actually received. It is expressly understood and agreed that the receipt of such Claim Amounts will not entitle any Qualified Claimant or Aggrieved Employee to any new or additional compensation or benefits under any company bonus or other compensation or benefit plan or agreement in place during the period covered by the Agreement, nor will it entitle any Qualified Claimant Aggrieved Employee to any increased retirement, 401(k) and/or 403(b) benefits or matching benefits, or deferred compensation benefits. It is the intent of this Agreement that the Claim Amounts provided for in this Agreement are the sole payments to be made by Defendant to the Qualified Claimants and Aggrieved Employees in connection with this Agreement (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the period covered by this Agreement).

5.8 Pro Rata Distribution Formula: Payment to Qualified Claimants and Aggrieved Employees of their Claim Amount will not require the submission of a claim form. A Net Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for approved attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Claims Administrator Costs, and the PAGA Payment. Each Class Member's share will be determined by dividing their Qualifying Wage Statements by the total Qualifying Wage Statements worked by all Class Members. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total Qualifying Wage Statements by the total Qualifying Wage Statements worked by all Aggrieved Employees. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share.

5.9 Tax Allocation: The Parties recognize that the Claim Amounts to be paid to Qualified Claimants and/or Aggrieved Employees reflect a settlement of a dispute over claimed penalties. The characterization of Claim Amounts to Qualified Claimants and Aggrieved Employees are as follows:

1 5.9.1 One hundred percent (100%) of each Qualified Claimants' Claim Amount shall be
2 allocated for disputed statutory penalties and interest, and no amount shall be deducted for any taxes. This
3 portion of the Claim Amount consists of other income, not wages, for which the Qualified Claimants shall
4 receive an IRS Form 1099-MISC.

5 5.9.2 The entirety (100%) of each Aggrieved Employee's share of the 25% portion of the
6 PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted
7 for any taxes. This portion of the Claim Amount consists of other income, not wages, for which the
8 Aggrieved Employees shall receive an IRS Form 1099-MISC.

9 5.10 Qualified Claimants and Aggrieved Employees shall be solely responsible for the reporting
10 and payment of their share of any federal, state and/or municipal income or other taxes on payments made
11 pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendant's Counsel free and
12 harmless from any claims resulting from treatment of such payments as non-taxable. No party has made
13 any representation to any of the other Parties as to the taxability of any payments pursuant to this
14 Agreement, including the payments to Qualified Claimants, the payments to Aggrieved Employees, the
15 payments to Class Counsel, the payments to the Class Representative, , or the allocation of the Net
16 Settlement Amount or PAGA Payment, or otherwise as to tax implications of any provision of this
17 Agreement.

18 5.11 No Additional Contribution by Defendant: Defendant's total monetary obligation under this
19 Agreement is limited to the Gross Settlement Amount, only. All other costs and expenses arising out of
20 or in connection with the performance of this Agreement shall be paid from the Gross Settlement Amount,
21 unless expressly provided otherwise herein. However, in the event this agreement is deemed null and
22 void as described in Section 3 because the Court, in its independent determination, finds that the
23 Agreement does not meet the standards for settlement approval, then Defendant and Plaintiff shall be
24 equally responsible for the costs of the Claims Administrator incurred between the date the Agreement
25 was executed and the date of such event.

26 5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement
27 only, certification of the class as defined in Section 1.8 and 4.1 is appropriate and the requisites for
28 establishing class certification have been met and are met.

1 5.13 Adequacy of Class Counsel and Class Representatives: The Parties agree that, for purposes
2 of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members and
3 Aggrieved Employees.

4 **6. RELEASE**

5 6.1 Release of Claims by Qualified Claimants: Upon the Effective Date, all Qualified Claimants
6 will be deemed to fully, finally and forever release Qualified Claimant's Released Claims as to all
7 Released Parties. In addition, on the Effective Date, all Qualified Claimants and their successors in
8 interest will be permanently enjoined and forever barred from prosecuting any of Qualified Claimant's
9 Released Claims against any of the Released Parties.

10 6.2 Release of Claims by Aggrieved Employees: Upon the Effective Date, all Aggrieved
11 Employees will be deemed to fully, finally and forever release the Released PAGA Claims as to all
12 Released Parties. In addition, on the Effective Date, all Aggrieved Employees and their successors in
13 interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA
14 Claims against any of the Released Parties.

15 6.3 Release by Plaintiff: Upon the Effective Date, Plaintiff will be deemed to fully, finally and
16 forever release the Qualified Claimant's Released Claims, Released PAGA Claims, and Class
17 Representative's Released Claims as to all Released Parties. In addition, on the Effective Date, Plaintiff
18 and any successors in interest will be permanently enjoined and forever barred from prosecuting any of
19 the Qualified Claimant's Released Claims, Released PAGA Claims, and Class Representative's Released
20 Claims against any of the Released Parties.

21 **7. SETTLEMENT ADMINISTRATION**

22 7.1 Duties of Claims Administrator: The Claims Administrator shall be responsible for: 1)
23 receiving Class Member and Aggrieved Employee contact information and confirming addresses are
24 valid; 2) calculating estimated Claim Amounts and any and all taxes associated with the Claim Amounts;
25 3) taking appropriate steps to trace and locate any individual Class Members and Aggrieved Employee
26 whose address or contact information as provided to the Claims Administrator is inaccurate or outdated
27 and mailing the Notice of Settlement to Class Members; 4) providing notification to the appropriate state
28 and federal officials of this Agreement as required under the law; 5) receiving, independently reviewing,

1 and resolving any challenges (in consultation with Class Counsel and Defendant's Counsel) from Class
2 Members or Aggrieved Employees, including any associated documentation, regarding their Qualified
3 Wage Statement calculations; 6) receiving and serving on Class Counsel, Defendant's Counsel, and the
4 Court, copies of any written objections, and/or any opt out statements; 7) establishing a toll free telephone
5 line and responding to inquiries and requests for information or assistance from Class Members and/or
6 Aggrieved Employees; 8) maintaining a QSF; 9) determining and paying the final amounts due to be paid
7 under the Agreement after resolution of all challenges, disputes, opt-outs, awarded attorneys' fees and
8 costs, Claims Administrator Costs, PAGA Payment, any Enhancement Payments, and for funds that
9 cannot be distributed due to the inability to locate Class Members or Aggrieved Employees; 10)
10 determining the validity of any disputes or late opt-outs by previously unidentified Class Members or
11 Aggrieved Employees; 11) paying any residual funds from uncashed checks; 12) reporting to Class
12 Counsel and Defendant's Counsel regarding the statistics of the administration, including (a) the number
13 of initial Notice of Settlements mailed; (b) the number of forwarded Notice of Settlements; (c) the number
14 of re-mailed Notice of Settlements; (d) the number of total undeliverable Notice of Settlements; (e) the
15 number of address traces performed for undeliverable Notice of Settlements; (f) the number of Notice of
16 Settlements undeliverable from traced addresses; (g) the number of total objections received; (h) the
17 number of opt-out requests received; (i) the number of disputes received; (j) the number of disputes
18 resolved; 13) providing a declaration to the Court regarding the final statistics of the administration and
19 compliance with all payment obligations under the Agreement; 14) completing all necessary tax reporting
20 on the QSF and payment of the Claim Amounts to Qualified Members and Aggrieved Employees; and
21 15) carrying out other related tasks as necessary to effectuate the terms of this Agreement and any Order
22 of the Court. All disputes relating to the Claims Administrator's ability and need to perform its duties
23 shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and
24 conditions of this Agreement, until all payments and obligations contemplated by the Agreement have
25 been fully executed.

26 7.2 Notice to Class Members and Aggrieved Employees: The Notice of Settlement will provide
27 Class Members and Aggrieved Employees with a summary of the terms and conditions of the Agreement,
28 how to participate in the settlement, how to object to the Agreement, how to dispute the individual's

1 Qualifying Wage Statements, and how to opt-out from the Agreement. The Notice of Settlement will also
2 inform Class Members and Aggrieved Employees of the Gross Settlement Amount, Net Settlement
3 Amount, proposed attorneys' fees and costs allocations, any proposed Enhancement Payments, proposed
4 Claims Administrator Cost allocations, proposed PAGA Payment allocations, the scope of the class, the
5 nature and extent of the released claims, dates set for a fairness hearing and hearing on Class Counsels'
6 motion for attorneys' fees and costs. The Notice of Settlement shall include information regarding Class
7 Member's and Aggrieved Employee's estimated Claim Amount.

8 7.3 Class Member Data and Mailing: No later than fourteen (14) calendar days after the
9 Preliminary Approval Date, Defendant shall provide the Claims Administrator with the name, last known
10 mailing address, last known telephone number, Social Security Number, and any other information the
11 Claims Administrator needs to effectuate notice to Class Members and Aggrieved Employees as outlined
12 herein. The Claims Administrator shall review the data to determine the number of Qualifying Wage
13 Statements for each Class Member and Aggrieved Employee. No later than fourteen (14) calendar days
14 after receipt of such address information, the Claims Administrator will perform a national change of
15 address ("NCOA") search, update the addresses per the results of the NCOA search, and then mail the
16 Notice of Settlement, substantially in the form attached as Exhibit 1, to each Class Member and Aggrieved
17 Employee by first-class mail, postage prepaid. The Claims Administrator shall maintain all information
18 received from Defendant confidential to itself, and Defendant's Counsel. However, Class Counsel shall
19 be able to review the breakdown of Qualified Wage Statements and estimated Claim Amounts for Class
20 Members and Aggrieved Employees prior to mailing for quality assurance provided the personal
21 identifying information is redacted and/or omitted.

22 7.4 Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement
23 is returned to the Claims Administrator as non-delivered on or before the conclusion of the Notice Period,
24 the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5) calendar
25 days. If no forwarding address is provided, then the Claims Administrator shall promptly attempt to
26 determine a correct address using a single skip-trace, computer or other search using the name, address
27 and/or Social Security number of the individual involved, and shall then perform a single re-mailing within
28 five (5) calendar days. Following each search that does not result in a corrected address, the Claims

1 Administrator will ask Defendant's counsel if the Class Member is a current employee or not. Only for
2 those Class Members who are current employees of Defendant at the time of the Preliminary Approval
3 Date and for whom a search did not result in a corrected address, Defendant shall cooperate in good faith
4 and make reasonable efforts to obtain a different mailing addresses for that Class Member to the extent
5 they are active employees of Defendant and to the extent it can be located. In the event the Notice of
6 Settlement is forwarded to a new address and/or re-mailed to a Class Member, the deadline for the Class
7 Member to submit any request to opt-out, dispute, or objection shall be the end of the Notice Period or 10
8 days from the date of the re-mailing, whichever is later. In the event the procedures in this Section are
9 followed and the Class Member does not timely and properly request to opt-out, the Class Member shall
10 be bound by all terms of the Agreement, including the Releases contained in Section 6.

11 7.5 Responses to Notice of Settlement:

12 7.5.1 *Opt-Outs:* The Notice of Settlement shall provide that Class Members who wish
13 to exclude themselves from the Agreement must submit a request to opt-out as provided in this Section.
14 The request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that
15 he or she does not want to be a Class Member, does not want to participate in the settlement, and/or wants
16 to be excluded from the settlement; (c) identify the case name and number (i.e. Webb v. Professional
17 Healthcare At Home, LLC, FCS055317); (d) be signed; and (e) be post-marked no later than the
18 conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4. The Class Member must
19 personally sign the request to opt-out. No request to opt-out may be made on behalf of a group of Class
20 Members. The date of the postmark on the return-mailing envelope shall be the exclusive means used to
21 determine whether a request to opt-out has been timely submitted. Any Class Member who requests to
22 opt-out of the Agreement will not be entitled to any benefit of the Agreement or any portion of the Net
23 Settlement Amount, will not be bound by the Agreement, nor will they have any right to object, appeal or
24 comment thereon. Class Members who fail to submit a valid and timely request to opt-out shall be bound
25 by all terms of the Agreement and any order or final judgment thereon, regardless of whether they
26 otherwise have requested to opt-out of the Agreement. Aggrieved Employees cannot opt out of this
27 Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt
28 out of being a Class Member.

1 **7.5.2 Objection Procedures:** Any Class Member who does not opt-out but who wishes
2 to object to this Agreement or otherwise to be heard concerning this Agreement shall send their written
3 objections to the Claims Administrator and also serve copies of the objections on Class Counsel and
4 Defendant's Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny
5 the Agreement, not change the terms of the Agreement. The objection must (a) state the Class Member's
6 full name and date of birth; (b) provide evidence that the individual is, in fact, a Class Member; (c) state
7 the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify
8 the case name and number (i.e. Webb v. Professional Healthcare At Home, LLC, FCS055317) (e) be
9 signed; and (f) be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline
10 stated in Section 7.4. The objecting Class Member must also file a notice of intent to appear with the
11 Court and serve the notice on Class Counsel and Defendant's Counsel, if they intend to appear at the final
12 approval hearing.

13 **7.5.3 Dispute Procedures:** Any Class Member who disputes the number of Qualifying
14 Wage Statements on the Notice of Settlement shall contact the Claims Administrator. The dispute must
15 (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute;
16 (c) be signed; and (d) be post-marked no later than the conclusion of the Notice Period or the re-mailing
17 timeline stated in Section 7.4. The Claims Administrator shall promptly (in no event more than two
18 business days) forward all such disputes to Defendant's Counsel and request that Defendant review the
19 dispute. Defendant's records shall presumptively control unless the Class Member can produce
20 documentation evidencing other payment dates in which hard paper copies of wage statements were
21 mailed to the Class Member. If Defendant does agree with submitted information, the Class Member shall
22 be credited or subtracted Qualifying Wage Statements in accordance with their submitted dispute and that
23 final number of Qualified Wage Statements shall govern the calculation of that Class Member's Claim
24 Amount. If Defendant does not agree with the submitted information, Defendant's Counsel will promptly
25 advise Class Counsel of the dispute, which includes turning over any documentation submitted by the
26 Class Member as part of the dispute. Defendant's Counsel and Class Counsel shall attempt in good faith
27 to resolve any such dispute within five (5) calendar days of Class Counsel being advised of the dispute.
28

Each dispute that Defendant's Counsel and Class Counsel cannot timely resolve shall be resolved by the Claims Administrator or Court.

7.5.4 Deficient Opt-Outs, Objections, or Disputes: In the event that a deficient opt-out, objection, or dispute is received on or before the conclusion of the Notice Period, the Claims Administrator shall mail a letter to the Class Member within five (5) calendar days informing them of the deficiency. If a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure the deficiency shall be the end of the Notice Period or 10 days from the date of the deficiency letter, whichever is later.

7.6 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class Counsel or Defendant's Counsel to provide notice of the proposed Agreement.

7.7 Claims Administrator Declaration Regarding Notice Period: Within twenty-one (21) days after the conclusion of the Notice Period, the Claims Administrator shall provide Class Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete and detailed report regarding the statistics and responses of settlement administration to date and all the Claims Administrators' obligations under Sections 5.8 to 5.9-5.9.3, 7.1 to 7.5.4, and 7.9.

7.8 Claims Administrator Payments to Qualified Claimants, Class Counsel and Plaintiff: Within seven (7) calendar days after the Final Approval Date and the Court's determination of the amount of attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to Plaintiff, the PAGA Payment, and Claims Administrator Costs, the Claims Administrator shall calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendant's Counsel. The Claims Administrator shall also email Defendant and Defendant's counsel the wiring instructions for funding at this time. Defendant shall wire the Gross Settlement Amount and applicable taxes necessary to fund the Settlement as described in Section 5.1. Within seven (7) calendar days after the Gross Settlement Amount is wired, the Claims Administrator shall deliver payment of Class Counsels' attorney's fees and costs, the Enhancement Payment payable to Plaintiff, the 75% portion of the PAGA

1 Payment payable to the LWDA, Claims Administrator Costs, and payment to Qualified Claimants and/or
2 Aggrieved Employees as required under this Agreement and approved by Court.

3 7.8.1 The Claims Administrator shall wire the Court-approved attorneys' fees and costs
4 to Class Counsel unless other method is requested by Class Counsel. Class Counsel shall provide the
5 Claims Administrator with the pertinent taxpayer identification number and payment instructions after the
6 Final Approval Date.

7 7.8.2 The Claims Administrator shall send a check by mail for the Court-approved
8 Enhancement Payment to the Class Representative, care of Class Counsel unless other method is requested
9 by Class Counsel.

10 7.8.3 Only Qualified Claimants and Aggrieved Employees will receive their Claim
11 Amount.

12 7.9 Settlement Check Expiration and Uncashed Checks: The Claims Administrator shall issue
13 Claim Amounts to Qualified Claimants and Aggrieved Employees in the form of a check, which shall
14 become null and void if not deposited within one hundred twenty (120) calendar days of issuance. After
15 one hundred twenty (120) calendar days of issuance, the checks shall be voided and funds from all
16 uncashed checks shall be transmitted in accordance with Section 5.6. The Claims Administrator shall
17 deliver these funds within fourteen (14) calendar days after the check cashing deadline.

18 7.10 Claims Administrator Declaration Regarding Compliance and Settlement Administration:
19 Within twenty-one (21) days after the last day for Qualified Claimants and Aggrieved Employees to cash
20 their settlement checks, the Claims Administrator shall provide Class Counsel and Defendant's Counsel
21 with a signed declaration under penalty of perjury providing a complete and detailed report regarding the
22 settlement administration documenting that all payments under the Agreement have been made, that the
23 Court's final approval order has been complied with, and that all the obligations of the Claims
24 Administrator have been completed.

25 **8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE**

26 8.1 The schedule may be modified depending on whether and when the Court grants necessary
27 approvals, orders notice to Class Members, and sets further hearings. The schedule may also be modified
28 to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event

of such modification, the Parties shall cooperate to complete the settlement procedures as expeditiously as reasonably practicable. The preliminary schedule for notice, approval, and payment procedures carrying out the Agreement is as follows:

Last day for Defendant to provide Claims Administrator with Class Member information	Within 14 calendar days after the Preliminary Approval Date
Last day for Claims Administrator to complete NCOA search, update Class Member mailing information, and mail Notice of Settlement	Within 14 calendar days after the Claims Administrators' receipt of Class Members' information from Defendant
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Claims Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 21 calendar days after end of the Notice Period
Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendant's Counsel	Within 7 days after the Final Approval Date
Last day for Defendant to fund settlement	Within 21 calendar days after the Effective Date or (b) 21 calendar days after Defendant is emailed wiring instructions from the third-party administrator, which is last
Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	Within 7 calendar days after the Gross Settlement Amount is wired to the settlement administrator
Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 days after issuance of checks to Qualified Members and Aggrieved Employees

1 2 3 4 5 6	Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cypres</i> beneficiaries	Within 14 days after settlement check cashing deadline
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 days after settlement check cashing deadline

9. DUTIES OF THE PARTIES

9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final approval. Within one week of signing this Agreement Class Counsel shall provide a draft of the Preliminary Approval Motion to Defendant's Counsel. Defendant's Counsel will make best efforts to provide comments and/or proposed revisions within one week after receipt of the draft Preliminary Approval Motion from Class Counsel. With regard to the final approval documents, a similar one-week maximum review and response time shall be observed by the Parties. The Parties will request that the Court's preliminary approval of this Agreement be embodied in an Order Granting Preliminary Approval of Class Action and PAGA Settlement.

9.1.1 Plaintiff's motion shall seek an order: 1) Preliminarily approving the Agreement; 2) Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the Notice of Settlement by first class mail to Class Members and Aggrieved Employees; 4) Preliminarily appointing Plaintiff and Class Counsel as representatives of Class Members; 5) Preliminarily approving settlement administration services to be provided by the Claims Administrator; 6) Preliminarily approving

1 the proposed Enhancement Payment to Plaintiff; 7) Preliminarily approving the application for payment
2 of reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8)
3 Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally
4 approved as fair, reasonable and adequate as to the Class Members.

5 9.1.2 Defendant shall not oppose Plaintiff's motion for approval of the proposed
6 Agreement.

7 9.1.3 The Parties shall cooperate with each other and the Claims Administrator during
8 the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and
9 appropriate to assure effective communication to individual Class Members of information about their
10 rights and obligations under this Agreement.

11 9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the
12 Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if
13 any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the
14 Agreement, a declaration by the Claims Administrator of due diligence and proof of mailing of the Notice
15 of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results of
16 the Claim Administrator's mailings including tracing and re-mailing efforts.

17 9.2.1 Class Counsel will submit a proposed order and judgment for final approval, which
18 shall include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair,
19 reasonable and adequate, and directing that its terms and provisions be carried out; 2) Approving the
20 payment of an Enhancement Payment to the Class Representative; 3) Approving Class Counsel's
21 application for an award of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4)
22 Approving the Claims Administrator Costs; and 5) Providing that the Court will retain jurisdiction to
23 oversee administration and enforcement of the terms of the Agreement and the Court's orders.

24 9.2.2 Following entry of the Court's Order granting final approval of the Agreement, the
25 Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the
26 following: 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside
27 the judgement be filed, all parties will support the final approval order on appeal or otherwise; 2) Class
28 Counsel will assist the Claims Administrator as needed or requested in the process of identifying and

1 locating Qualified Claimants and Aggrieved Employees entitled to payments under the Agreement and
2 assuring delivery of such payments; 3) Class Counsel and Defendant's Counsel will cooperate with each
3 other and assist the Claims Administrator as needed or requested in completing the distribution of any
4 residual amounts, as specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction with
5 the Claims Administrator, will certify to the Court completion of all payments required to be made by this
6 Agreement.

7 9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness
8 hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action
9 and PAGA Settlement and Final Judgment.

10 9.4 Notice to LWDA: Plaintiff agrees to provide notice to the Labor and Workforce
11 Development Agency ("LWDA") of this settlement in accordance with Labor Code § 2699(1)(2).

12 **10. MISCELLANEOUS TERMS**

13 10.1 Defendant's Right to Withdraw Based on Opt-Outs: If, prior to the Final Approval Date,
14 10% or more of the Class Members have submitted proper and timely requests to opt-out in accordance
15 with the provisions of the Agreement, Defendant may, at its election, rescind the Agreement and all actions
16 taken in its furtherance will be thereby null and void. Defendant must exercise this right of rescission, in
17 writing, to Class Counsel, within seven (7) calendar days after the Claims Administrator notifies the
18 Parties of the total number of opt-outs. If the option to rescind is exercised, then any Claims Administrator
19 Costs shall be paid by Defendant.

20 10.2 Escalation Clause: Defendant has represented that there are no more than 958 payment
21 dates during the Class Period for which Class Members received hard paper copies of paystubs in the
22 mail. In the event the number of payment dates during the Class Period wherein Class Members
23 received hard paper copies of paystubs is more than 1,054 (*i.e.*, greater than 10% more than 958), then
24 the Gross Settlement Amount shall be increased proportionally by the number of those payment dates
25 in excess of 958, multiplied by the Qualifying Wage Statement Value. "Qualifying Wage Statement
26 Value" is calculated as follows: Net Settlement Amount allocated to Class Members (defined in section
27 5.8) divided by 958 payment dates (total Qualifying Wage Statements as of May 17, 2021). For
28 example, if there were 11,900 payment dates represented to exist during the Class Period, but there are

1 actually 15,000 payment dates in the Class Period, and the Qualifying Wage Statement Value is \$5.00
2 per wage statement, Defendant would have to increase the Gross Settlement Amount by \$15,500.00
3 (15,000 payment dates – 11,900 payment dates = 3,100 payment dates x \$5.00/per wage statement).

4 10.3 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF
5 THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT
6 OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND
7 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
8 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
9 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
10 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
11 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
12 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
13 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
14 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
15 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
16 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
17 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
18 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY
19 TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
20 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
21 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX
22 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
23 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
24 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
25 BY THIS AGREEMENT.

26 10.4 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
27 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
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any person or entity any portion of any liability, claim, demand, action, cause of action or right released and discharged in this Agreement.

10.5 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by signing this Agreement Defendant is waiving any rights to appeal from the Court's approval of the settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement Plaintiff is waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.

10.6 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

10.7 Judgment and Retention of Jurisdiction to Enforce: Upon the Final Approval Date, judgment will be entered according to this Agreement, with the Court to retain jurisdiction over the parties to enforce the terms therein.

10.8 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Agreement. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other action as may reasonably be necessary to fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by Court order, or otherwise, to effectuate this Agreement and the terms set forth herein.

10.9 No Admission of Liability: Neither the acceptance nor the performance by Defendant of the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to be, construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in the Complaint, the representative character of the Action, the validity of any of the claims that were or could have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of Defendant in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by Defendant of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members, or any other person, and Defendant specifically disclaim any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members, or any other person. Each of the Parties has entered into this Stipulation with the intention to avoid further disputes and litigation.

1 10.10 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
2 communications given hereunder shall be in writing and shall be deemed to have been duly given as of
3 the third business day after mailing by United States certified mail, return receipt requested, addressed as
4 follows:

5 To Plaintiff and the Class:

6 Galen T. Shimoda (attorney@shimodalaw.com)
7 Justin P. Rodriguez (jrodriguez@shimodalaw.com)
8 Brittany V. Berzin (bberzin@shimodalaw.com)
9 Shimoda Law Corp.
10 9401 East Stockton Blvd., Suite 120
11 Elk Grove, CA 95624

12 To Defendant:

13 Shannon Bettis Nakabayashi (Shannon.Nakabayashi@jacksonlewis.com)
14 Hardev Chhokar (Hardev.Chhokar@jacksonlewis.com)
15 Jackson Lewis P.C.
16 50 California Street
17 9th Floor
18 San Francisco, CA 94111
19 Telephone: (415) 796-5465
20 Facsimile: (415) 394-9401

21 Courtesy copies of all notices, demands, or other communications given hereunder shall also be
22 emailed to Defendant's counsel at the emails above on the same day they are mailed.

23 10.11 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of
24 this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that
25 this Agreement shall not be construed in favor of or against any party by reason of the extent to which any
26 party or its counsel participated in the drafting of this Agreement.

27 10.12 Binding Effect of Agreement: The Parties, by signing this Agreement, are bound by the
28 terms herein. The Parties waive their rights to file an appeal, writ, or any challenge whatsoever to the
terms of this Agreement. This Stipulation shall be binding upon and inure to the benefit of the Parties
hereto and their respective heirs, trustees, executors, Claims Administrators, successors, and assigns.

1 10.13 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys
2 acting for, or purporting to act for, the Class, Class Members, or Plaintiff, may recover or seek to recover
3 any amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except
4 as expressly provided in this Agreement. The Parties stipulate and agree that the Solano County Superior

1 Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil Procedure
2 Code section 664.6 and that the prevailing party any action necessary to enforce the terms of the
3 Agreement after default by the other party may recover reasonable attorney's fees and costs related thereto.

4 10.14 No Modifications: This Agreement may be amended or modified only by a written
5 instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be
6 discharged except by performance in accordance with its terms.

7 10.15 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and
8 represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement
9 and to take all appropriate action required or permitted to be taken by such Parties pursuant to this
10 Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of
11 this Agreement.

12 10.16 Class Member Signatories: Because the Action has not yet been certified, and the Class
13 Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member
14 sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement
15 may be executed on behalf of all Class Members by the Class Representative.

16 10.17 Counterparts: This Agreement shall become effective upon its execution by all of the
17 undersigned. Plaintiff, Class Counsel, Defendant and Defendant's Counsel may execute this Agreement
18 in counterparts, and execution of counterparts shall have the same force and effect as if each had signed
19 the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force
20 and effect of originals.

21 10.18 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been
22 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and
23 the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance
24 with, and governed by, the substantive laws of the State of California without giving effect to that State's
25 choice of law principles.

26 10.19 Headings and Captions: Section titles or captions contained in the Agreement are inserted
27 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
28 this Agreement, or any provision thereof.

1 **10.20 No Retaliation or Discouragement:** The Parties agree they will take no action that could be
2 construed as retaliation against any Class Members for participating or seeking to participate in this class
3 action settlement. The Parties will not discourage any class member from participating or seeking to
4 participate in this class action settlement. This is a material term of the Agreement and non-breaching
5 Parties will seek court intervention if this provision is breached. Should non-breaching Party prevail, they
6 shall be entitled to further attorneys' fees and costs.

7 **10.21 Integrated Agreement:** This Agreement sets forth the entire understanding between the
8 Parties and incorporates the terms of the Parties' Memorandum of Understanding and supersedes any and
9 all prior agreements, oral or written, pertaining to the subject matter hereof. Each party acknowledges
10 that there is no representation, inducement, promise or agreement which has been made, orally or
11 otherwise, by the other party, concerning the terms or conditions of this Agreement, which is not expressly
12 embodied in this Agreement. In entering into this Agreement, the Parties represent that the terms of this
13 Agreement are fully understood and voluntarily accepted by the Parties.

14 **10.22 Binding on Successors and Assigns:** This Agreement will be binding upon, and inure to the
15 benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

16 **10.23 Invalidity of Any Provision:** Before declaring any provision of this Agreement invalid, the
17 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
18 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

19 **10.24 Waiver of Compliance:** No waiver of any condition or covenant contained in this
20 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
21 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

22 **10.25 Captions:** The captions and section numbers in this Agreement are inserted for the reader's
23 convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this
24 Agreement.

25 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
26 attorneys, as of the day and year herein set forth.

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For Plaintiff:

Date: _____

Kimberly Webb

For Defendant:

Date: 11/5/2021

By: Keith R. Jewell
For Professional Healthcare At Home, LLC

APPROVED AS TO FORM

Shimoda Law Corp.

Dated: _____

By: _____
Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorney for Plaintiff and Aggrieved
Employees

APPROVED AS TO FORM

JACKSON LEWIS P.C.

Dated: 11/03/2021

By: H. Chhokar
Shannon Bettis Nakabayashi
Hardev S. Chhokar
Attorney for Defendant

For Plaintiff:

Date: 11/4/2021

DocuSigned by:
Kimberly Webb
028517231048489...
Kimberly Webb

For Defendant:

Date: _____

By: _____
For Professional Healthcare At Home, LLC

APPROVED AS TO FORM

Dated: 11/5/21

Shimoda Law Corp.
By: _____
Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Attorney for Plaintiff and Aggrieved
Employees

APPROVED AS TO FORM

JACKSON LEWIS P.C.

Dated: _____

By: _____
Shannon Bettis Nakabayashi
Hardev S. Chhokar
Attorney for Defendant

Exhibit 1

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SOLANO

KIMBERLY WEBB, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

PROFESSIONAL HEALTHCARE AT HOME,
LLC, a California Limited Liability Company;
and DOES 1 to 100, inclusive,

Defendant.

Case No. FCS055317

CLASS ACTION

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT, AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: all individuals who have worked, or continue to work, for Defendant in California and received hard copies of their paystubs from April 20, 2018 to _____ (the "Class Members").

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE OR TO OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

Pursuant to an order from the Solano County Superior Court ("Court") granting preliminary approval of this class action settlement, entered on _____, you are receiving notice of a proposed class action settlement between Plaintiff Kimberly Webb ("Plaintiff" or "Class Representative") and Defendant Professional Healthcare At Home, LLC ("Defendant") on behalf of Class Members as defined above. You are receiving this notice because Defendant's records indicate you fall within the definition of "Class Member." Defendant's records also indicate that there was/were _____ payment date(s) for which you received hard paper copy/copies of your paystub during the applicable Class Period (as defined below) ("Qualifying Wage Statement"), which means your share of the settlement proceeds is estimated to be _____. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any Qualifying Wage Statement disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court's order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On August 27, 2020, Plaintiff, a former employee, filed a Complaint against Defendant in the California Superior Court for the County of Solano on behalf of herself and Class Members. The term "Action" means this putative class action pending in the Superior Court of California for the County of Solano, Case No. FCS055317. The Class Period is April 20, 2018 to _____ (the "Class Period").

In the Action, Plaintiff sought to obtain statutory penalties, civil penalties, fees, and costs on behalf of herself and Class Members. Plaintiff alleged that Defendant violated California law by failing to include Defendant's address on hard paper copies of paystubs issued to Class Members. Defendant denies all of Plaintiff's allegations and maintains that it complied with the law. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide Settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process, but Defendant has not admitted to any fault. Despite agreeing to and supporting the Agreement, Defendant continues to deny all allegations and claims. Defendant has entered into this settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the

Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Parties have entered into a Joint Stipulation of Regarding Class Action PAGA Settlement and Release ("Agreement"), which has been preliminarily approved by the Court. The Agreement applies to any and all Class Members as defined above. "Class Member" does not include persons who submit valid request to opt out (as explained below). If you are a Class Member, you have the opportunity to participate in the settlement, or to exclude yourself ("opt out") from the settlement. This notice is to advise you of how you can either participate in the settlement or be excluded from the settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant agrees to pay a total sum of Fifty-Five Thousand Five Hundred Dollars and No Cents (\$55,500.00) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 35% of the Gross Settlement Amount which equals \$19,425, attorneys' costs not to exceed \$10,000, Claims Administrator Costs estimated not to exceed \$10,000, Class Representative's Enhancement Payment of \$5,500, and \$5,000 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. The maximum Defendant will pay is the Gross Settlement Amount and no portion of the Gross Settlement Amount will be attributable to payments allocated as wages. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of payment dates during the Class Period for which they received hard paper copy/copies of their paystub(s). Of the \$5,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees, which are defined as all individuals who have worked, or continue to work for Defendant in California and received hard copies of their paystubs from August 13, 2019 to ____.

The number of your Qualifying Wage Statements and your estimated share of the Net Settlement Amount and PAGA Payment ("Claim Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the Qualifying Wage Statements of other Class Members, the resolution of any disputes regarding Qualifying Wage Statements, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees' allocations for the PAGA claims.

B. Claim Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant will pay Claim Amounts through the Claims Administrator, as described below, to each Class Member who does not opt out of the settlement and to Aggrieved Employees. All Claim Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Claim Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 100% for disputed statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Class Members who do not opt out and Aggrieved Employees will not require the submission of a claim form. Each Class Member's share will be determined by dividing their Qualifying Wage Statements within the Class Period by the total Qualifying Wage Statements by all Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their Qualifying Wage Statements by the total Qualifying Wage Statements within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. Receipt of the Claim Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendant's Records and Resolution of Qualifying Wage Statement Disputes

For each Class Member, the amount payable will be calculated by the Claims Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Claims Administrator. Defendant's records and any additional evidence will be reviewed by the Claims Administrator in the event of a dispute about Qualifying Wage Statements. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional Qualifying Wage Statements must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information

or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than _____. The dispute will be resolved by the Claims Administrator based on the records and evidence provided. The Claims Administrator's decision on all disputes will be final and binding.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released all claims for wage statement violations, that were brought or could have been brought based on the allegations in the Complaint, including, but not necessarily limited to any and all claims for alleged violation under Labor Code §§ 226 and 226.3, through the Class Period.

Aggrieved Employees will be deemed to have released all Private Attorneys General Act claims for civil penalties based on Labor Code §§ 226, 226.3 and any claims for individual liability of these section under Labor Code §§ 558 and 558.1 through the PAGA Claim Period and inclusive of any civil penalties, attorneys' fees, interest, liquidated damages, injunctive relief and costs based on those claims.

The individuals released ("Released Parties") include means Defendant, its shareholders, officers, directors, agents, employees, attorneys, and insurers, as well as Defendant's present and former parent companies, subsidiaries, divisions, related or affiliated companies, including but not limited to Gentiva Home Healthcare, Kindred at Home, and those entities' shareholders, officers, shareholders, directors, agents, employees, attorneys, and insurers. The Released Parties also include, but are not necessarily limited to David Gieringer, Ronald C. Lazas, Kriston Nearhood, Joseph L. Landenwich, Benjamin A. Breier, Douglas Curnutte, and Stephen Cunanan.

If Class Member have any questions, they can contact Class Counsel or the third-party administrator.

E. Attorneys' Fees and Costs

Defendant has agreed to pay Class Counsel's attorneys' fees and costs to be approved by the Court, up to a maximum of 35% of the Gross Settlement Amount which equals \$19,425, and attorneys' costs not to exceed \$10,000. Class Counsel's attorneys' fees and costs will be paid and deducted from the Gross Settlement Amount.

F. Reasonableness of Settlement

All attorneys for the Parties to the Action believe the amounts payable to Class Members, Aggrieved Employees, and amounts for attorneys' fees and costs requested are fair and reasonable. The Class Representative and Class Counsel support this Settlement. Among the reasons for support are the defenses to liability potentially available to Defendant, the inherent risk of trial on the merits, the risk of denial of class certification, and the delays associated with litigation.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement

If you wish to participate in the settlement and believe your Qualifying Wage Statement information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the Qualifying Wage Statement calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement

If you do not wish to participate in the settlement, you may be excluded (i.e., "opt out") by submitting a timely written request to the Claims Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the settlement, and/or wants to be excluded from this settlement; (c) identify the

case name and number (i.e. Webb v. Professional Healthcare At Home LLC, FCS055317); (d) be signed; and (e) be post-marked no later than _____. The request to opt out must be signed, dated and mailed by First Class U.S. Mail or the equivalent, to:

[admin info]

The request to opt out must be postmarked no later than _____. If you submit a request to opt out which is not postmarked by _____, your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. If the request to opt out is sent from within the United States it must be sent through the United States Postal Service by First Class Mail, or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Claims Administrator, no longer be a Class Member and not received their share of the class settlement payment. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the settlement, you can object to the terms of the Agreement. However, if the Court rejects your objection, you will still be bound by the terms of the Agreement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify the case name and number (i.e. Webb v. Professional Healthcare At Home LLC, FCS055317) (e) be signed; and (f) be post-marked no later than _____. The objection must be sent to the Claims Administrator at the address identified in section III.B and to counsel for Plaintiff and Defendant at the addresses identified in section IV of this notice.

If you have submitted a written objection as outlined above, you may also appear at the Final Approval Hearing, either in person or through your own attorney, to state your objection. However, you must file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendant. If you appear through your own attorney, you are responsible for paying that attorney.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

After final approval of the settlement has been granted by the Court, each and every Class Member who does not opt out of the settlement and all Aggrieved Employees, will release Defendant and the Released Parties from the released claims described above. In other words, if you are a Class Member during the Class Period (defined above), and you do not exclude yourself from the settlement, you will be deemed to have entered into this release and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this settlement. If the settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department _____, [address] on _____ at _____ to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs. The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing, unless you wish to object to the settlement.

VI. ADDITIONAL INFORMATION

If you want additional information about this lawsuit and its proceedings, you can contact Class Counsel or Defendant' Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Shimoda Law Corp.
9401 East Stockton Blvd., Suite 120

Shannon Bettis Nakabayashi
Hardev S. Chhokar
JACKSON LEWIS P.C.
50 California Street
9th Floor

Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

San Francisco, CA 94111
Telephone: (415) 796-5465
Facsimile: (415) 394-9401
On behalf of Defendant

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT

EXHIBIT B

FILED BY FAX

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Brittany V. Berzin (Cal. State Bar No. 325121)
4 Shimoda Law Corp.
5 9401 East Stockton Boulevard, Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733
9
10 Attorneys for Plaintiff KIMBERLY WEBB
11 on behalf of herself and similarly situated employees

FILED/ENDORSED
Clerk of the Superior Court

OCT 28 2021
By D. HERTZ
DEPUTY CLERK

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SOLANO**

KIMBERLY WEBB, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

PROFESSIONAL HEALTHCARE AT
HOME, LLC, a California Limited Liability
Company; and
DOES 1 to 100, inclusive,

Defendants.

Case No. FCS055317

Assigned to Judge Christine Carringer For All
Purposes

CLASS ACTION

**THIRD AMENDED COMPLAINT FOR
DAMAGES:**

1. Wage Statement Violations
2. Private Attorneys General Act

DEMAND FOR JURY TRIAL

Plaintiff KIMBERLY WEBB ("Plaintiff"), on behalf of herself and all other similarly
situated employees, hereby files this Complaint against Defendants PROFESSIONAL
HEALTHCARE AT HOME, LLC, a California Limited Liability Company; and DOES 1 to 100,

1 inclusive (hereinafter all collectively referred to as "Defendants"). On information and belief,
2 Plaintiff allege the following:

3 **INTRODUCTION**

4 1. This is a class action and Private Attorneys General Act ("PAGA") lawsuit brought by
5 Plaintiff for wage statement violations.

6 **JURISDICTION AND VENUE**

7 2. The Solano County Superior Court has jurisdiction in this matter pursuant to California
8 Code of Civil Procedure section 410.10 to determine alleged violations of the California Labor Code and
9 Wage Order No. 5.

10 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some of
11 the wrongful acts and violations of law asserted herein occurred within Solano County, and Defendants'
12 obligation to pay wages arose in Solano County pursuant to *Madera Police Officers Assn. v. City of*
13 *Madera*, 36 Cal.3d 403, 414 (1984).

14 4. Plaintiff sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the
15 claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of herself
16 and other similarly situated employees. Pursuant to Labor Code section 2699.3, Plaintiff gave written
17 notice via online submission to the Labor and Workforce Development Agency ("LWDA") on
18 approximately August 13, 2020. Plaintiff provided facts and legal bases for her claims within the notice
19 to the LWDA on all violations asserted under the Private Attorneys General Act cause of action.
20 Plaintiff submitted the \$75.00 filing fee. The August 13, 2020 notice was also sent via certified mail to
21 Defendants on the same day. Plaintiff is informed and believes, that to date, the LWDA has not
22 provided any response to Plaintiff's notice correspondence. Accordingly, Plaintiff is informed and
23 believes that she has exhausted all administrative remedies pursuant to the Private Attorneys General
24 Act and may bring this action on behalf of herself and all similarly situated employees. See Cal. Labor
25 Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385
26 n.19 (2005).

27 //

28 //

PARTIES

5. KIMBERLY WEBB is an individual over the age of eighteen (18) and is a resident of the State of California.

6. On information and belief, Plaintiff alleges, PROFESSIONAL HEALTHCARE AT HOME, LLC, is now and/or at all times mentioned in this Complaint was a California Limited Liability Company and the owner and operator of an industry, business and/or facility doing business in the State of California.

7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true names and capacities of these DOE Defendants when they are ascertained. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiff.

8. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiff.

9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint employment, joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuance of said joint employment, joint venture, partnership and common enterprise.

10. Defendants, and each of them, now and/or at all times mentioned in this Complaint approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

11. Defendants proximately caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

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CLASS ALLEGATIONS

12. Plaintiff brings the First Cause of Action on behalf of herself and all others similarly situated as a class action pursuant to California Code of Civil Procedure section 382. The class which Plaintiff seeks to represent is composed of, and defined, as follows:

all individuals who have worked, or continue to work, for Defendants in California at any time from April 20, 2018 to the present who received paper copies of their paystubs.

13. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) Numerosity: The putative class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that Defendants have employed as many as fifty (50) individuals falling within the above stated class definition throughout the State of California during the applicable statute of limitations, who were subjected to the policies and practices outlined in this Complaint. As such, joinder of all members of the putative class is not practicable.

(b) Common Questions Predominate: Common questions of law and fact exist as to all members of the putative class and predominate over questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the following:

- (1) Whether Defendants had a policy and practice to issue paystubs to Plaintiff and putative class members that complied with Labor Code section 226;
- (2) Whether Defendants issued paystubs to Plaintiff and putative class members that did not state the address of the legal entity that employed Plaintiff and putative class members;

(c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative class. The putative class also sustained damages arising out of Defendants' common course of conduct in violation of the law as complained of herein. Plaintiff and all

members of the putative class received inaccurate wage statements that did not state all of the information required by Labor Code section 226. As a result, Plaintiff and each member of the putative class will have suffered the same type of harm and seek the same type of recovery based on the same legal theories.

(d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the putative class. For all relevant times, Plaintiff resided in California and worked for Defendants in California. Moreover, Plaintiff is an adequate representative of the putative class as Plaintiff has no interests that are adverse to those of putative class members. Additionally, Plaintiff has retained counsel who has substantial experience in complex civil litigation and wage and hour matters.

(e) Superiority: A class action is superior to other available means for the fair and efficient adjudication of the controversy since individual joinder of all members of the putative class is impracticable. Class action treatment will permit a larger number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as damages suffered by each individual member of the class may be relatively small, the expenses and burden of the individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, and an important public interest will be served by addressing the matter as a class action. The cost to the court system of adjudication of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

14. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

GENERAL ALLEGATIONS

15. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14 as though fully set forth herein.

16. Plaintiff worked for Defendants from approximately June 26, 2012 to June 26, 2020.

1 17. Defendants issued defective paystubs to Plaintiff and similarly situated employees.
2 Specifically, the paystubs did not include the address of the legal entity that employed Plaintiff and
3 similarly situated employees. As a result, Plaintiff and similarly situated employees were not able to
4 promptly and easily determine the address of their employer from their paystubs alone.

5
6 **CAUSES OF ACTION**
7 **FIRST CAUSE OF ACTION**
8 **WAGE STATEMENT VIOLATIONS**
9 **(As to all Defendants)**

10 18. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 17 as though fully
11 set forth herein.

12 19. Pursuant to California Labor Code section 226(a), an employer must provide an itemized
13 statement to an employee, semimonthly or at the time of each payment of wages, showing:

14 *(1) gross wages earned, (2) total hours worked by the employee, except for*
15 *any employee whose compensation is solely based on a salary and who is*
16 *exempt from payment of overtime under subdivision (a) of Section 515 or*
17 *any applicable order of the Industrial Welfare Commission, (3) the*
18 *number of piece-rate units earned and any applicable piece rate if the*
19 *employee is paid on a piece-rate basis, (4) all deductions, provided that*
20 *all deductions made on written orders of the employee may be aggregated*
21 *and shown as one item, (5) net wages earned, (6) the inclusive dates of the*
22 *period for which the employee is paid, (7) the name of the employee and*
23 *the last four digits of his or her social security number or an employee*
24 *identification number other than a social security number, (8) the name*
25 *and address of the legal entity that is the employer and, if the employer is*
26 *a farm labor contractor, as defined in subdivision (b) of Section 1682, the*
27 *name and address of the legal entity that secured the services of the*
28 *employer, and (9) all applicable hourly rates in effect during the pay*
period and the corresponding number of hours worked at each hourly rate
by the employee. The deductions made from payment of wages shall be
recorded in ink or other indelible form, properly dated, showing the
month, day, and year, and a copy of the statement and the record of the
deductions shall be kept on file by the employer for at least three years at
the place of employment or at a central location within the State of
California.

20. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
itemized statement or failed to provide an accurate and complete itemized statement showing the
requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not
include the address of the legal entity that employed Plaintiff and similarly situated employees.

1 Plaintiff and similarly situated employees were not able to promptly and easily determine the address
2 of their employer during the pay period from their paystubs alone

3 21. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
4 employees have been damaged as stated in the section below entitled "DAMAGES," which is
5 incorporated here to the extent pertinent as if set forth here in full.

6 **SECOND CAUSE OF ACTION**
7 **PRIVATE ATTORNEYS GENERAL ACT**
8 **(As to all Defendants)**

9 22. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 21 as though fully
10 set forth herein.

11 23. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
12 following provisions of the Labor Code in their dealings with him and other similarly situated current
13 and former employees:

- 14 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage
15 Statements)
- 16 • Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of
17 Work in Any Industrial Welfare Commission Order)

18 24. Plaintiff seeks civil penalties against Defendants as provided in the Labor Code, or, if no
19 civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

20 25. Plaintiff seeks these civil penalties from Defendants pursuant to Labor Code sections
21 2699(a) and 2699.3.

22 **DAMAGES**

23 WHEREFORE Plaintiff requests relief as follows:

- 24 1. A jury trial;
- 25 2. As to the First Cause of Action:
 - 26 a. Penalties as provided for in Labor Code section 226, including the greater of all
27 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
28 violation occurred and one hundred dollars (\$100.00) per employee for each

1 *Webb v. Professional Healthcare at Home, LLC*
2 *Solano County Superior Court of California, FCS055317*

3 **PROOF OF SERVICE — CCP §§ 1010.6, 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Caitlyn A. Lopez, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to the
7 within above-entitled action.

8 On October 25, 2021, I served the following documents on the party below:

9 • **THIRD AMENDED COMPLAINT FOR DAMAGES**

10 Shannon B. Nakabayashi (SBN: 215469)
11 Hardev S. Chhokar (SBN: 311802)
12 JACKSON LEWIS P.C.
13 50 California Street, 9th Floor
14 San Francisco, CA 94111-4615
15 Telephone: (415) 394-9400
16 Facsimile: (415) 394-9401
17 Email: hardev.chhokar@jacksonlewis.com
18 shannon.nakabayashi@jacksonlewis.com
19 fatimah.sikin@jacksonlewis.com
20 Suddie.Scott@jacksonlewis.com

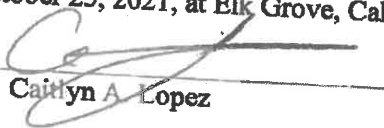
21 [] [By Mail] I am familiar with my employer's practice for the collection and
22 processing of correspondence for mailing with the United States Postal
23 Service and that each day's mail is deposited with the United States Postal
24 Service that same day in the ordinary course of business. On the date set forth
25 above, I served the aforementioned document(s) on the parties in said action
26 by placing a true copy thereof enclosed in a sealed envelope with postage
27 thereon fully prepaid, for collection and mailing on this date, following
28 ordinary business practices, at Elk Grove, California, addressed as set forth
above.

19 [] [By Personal Service] By personally delivering a true copy thereof to the
20 office of the addressee above.

21 [XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown
22 above. No error was reported by the e-mail service that I used.

23 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
24 personally delivered via the following overnight courier service: UPS.

25 I declare under penalty of perjury under the laws of the State of California that the foregoing is
26 true and correct, and that this declaration was executed on October 25, 2021, at Elk Grove, California

27 
28 Caitlyn A. Lopez

PROOF OF SERVICE

EXHIBIT C



Shimoda Law Corp.
9401 East Stockton Blvd.
Suite #120
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

August 13, 2020

For Online Filing:

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Webb v. Professional Healthcare At Home, LLC*

Dear Labor Commissioner,

As counsel for Kimberly Webb ("Plaintiff"), I am writing to provide you and the following "employers" notice pursuant to California Labor Code section 2699.3:

Professional Healthcare At Home, LLC
3350 Riverwood Pkwy SE, Suite 1400
Atlanta, GA 30339

David Gieringer
3350 Riverwood Pkwy SE, Suite 1400
Atlanta, GA 30339

Ronald C. Lazas
3350 Riverwood Pkwy SE, Suite 1400
Atlanta, GA 30339

Kristen Nearhood
3350 Riverwood Pkwy SE, Suite 1400
Atlanta, GA 30339

Joseph L. Landenwich
680 South Fourth Street
Louisville, KY 40202

Benjamin A. Breier
680 South Fourth Street
Louisville, KY 40202

//



Douglas Curnutte
680 South Fourth Street
Louisville, KY 40202

Stephen Cunanan
680 South Fourth Street
Louisville, KY 40202

We are setting forth the “facts and theories” to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against Professional Healthcare At Home, LLC, David Gieringer, Ronald C. Lazas, Kristen Nearhood, Joseph L. Landenwich, Benjamin A. Breier, Douglas Curnutte, and Stephan Cunanan (“Defendants”). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to the following: all individuals who have worked, or continue to work, for Defendants in California at any time from one (1) year prior to this notice to the present. Plaintiff is entitled to bring a Private Attorneys General Act (“PAGA”) claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).

A. FACTS

Plaintiff worked for Defendants from approximately June 26, 2012 to June 26, 2020. Plaintiff and Aggrieved Employees were reimbursed for certain expenses from Defendants; however, Defendants failed to fully reimburse Plaintiff and Aggrieved Employees as Defendants included the amounts paid as reimbursement to Plaintiff's and Aggrieved Employees' taxable wages. This policy and practice of Defendants to tax Plaintiff's and Aggrieved Employees' reimbursement amounts also resulted in unlawful deductions.

Defendants issued defective paystubs to Plaintiff and Aggrieved employees. Specifically, the paystubs did not include the address of the legal entity that employed Plaintiff and Aggrieved Employees. Additionally, rather than stating the total number of overtime hours worked by Plaintiff and Aggrieved Employees and the corresponding overtime rate, Defendants listed an overtime base rate, which was equivalent to Plaintiff's and Aggrieved Employees' regular rate of pay and an overtime premium rate, which was equivalent to half of Plaintiff's and Aggrieved Employees' regular rate of pay. Thus, Defendants failed to state the actual overtime rate for overtime wages it paid to Plaintiff and Aggrieved Employees. Moreover, by splitting the overtime rate into an overtime base rate and premium rate, Defendants listed twice the number of overtime hours worked by Plaintiff and Aggrieved Employees rather than the correct number



overtime hours worked. For example, during Plaintiff's 3/30/19 to 4/5/19 pay period, rather than stating Plaintiff worked 1.74 overtime hours with a corresponding overtime rate of \$92.70, Plaintiff's paystub stated she worked 1.74 hours earning a rate of \$61.80 and 1.74 hours earning a rate of \$30.90. As a result, Plaintiff and Aggrieved Employees were not able to promptly and easily determine total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate from their paystubs alone.

B. ALLEGATIONS AND CHARGES

Count One – Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

Labor Code section 2802(a) states that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful." Defendants failed to fully reimburse Plaintiff and Aggrieved Employees for expenses they incurred. This was in violation of the law.

Count Two – Violation of Labor Code §§ 221, 223, 224, 225, 225.5 (Failure to Pay Contract Wages and Unlawful Deductions)

Labor Code section 221 states that "[it] shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." Labor Code section 223 prohibits employers from paying an employee less than a statutory or contractually obligated amount. Labor Code section 224 prohibits an employer from "collecting or receiving wages that have already been earned by performance or agreed upon requirements," unless they are (1) expressly authorized in writing by the employee; and (2) do not amount to a rebate or deduction from the standard wage set forth in the parties agreement. As stated above, Defendants deducted taxes from reimbursements it paid to Plaintiff and Aggrieved Employees. This was against the law.

Count Three – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with "an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the



employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee" For the reasons stated above, Defendants failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This is in violation of the law.

Count Four – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf on an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendants, by and through Defendants' agents, violated Plaintiff and Aggrieved Employees' rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. David Gieringer, Ronald C. Lazas, Kristen Nearhood, Joseph L. Landenwich, Benjamin A. Breier, Douglas Curnutte, and Stephan Cunanan were officers, directors, shareholders, and/or managing agents of Defendants responsible for the violations stated herein as they were in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead. This is against the law.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda Law Corp.

By: _____

Justin P. Rodriguez

JPR:bb

cc: Client via e-mail

1 *Webb v. Professional Healthcare At Home, LLC*

2 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
3 **and California Rules of Court, Rule 1.21 and Rule 2.150**

4 I, Caitlyn A. Lopez, declare that:

5 I am a citizen of the United States and am over the age of eighteen years and not a party to
6 the within above-entitled action.

7 On August 13, 2020, I served the following documents on the party below:

8 * Private Attorney General Act Letter

9 Professional Healthcare At Home, LLC 10 3350 Riverwood Pkwy SE, Suite 1400 11 Atlanta, GA 30339	David Gieringer 3350 Riverwood Pkwy SE, Suite 1400 Atlanta, GA 30339
12 Ronald C. Lazas 13 3350 Riverwood Pkwy SE, Suite 1400 14 Atlanta, GA 30339	Kristen Nearhood 3350 Riverwood Pkwy SE, Suite 1400 Atlanta, GA 30339
15 Joseph L. Landenwich 16 680 South Fourth Street 17 Louisville, KY 40202	Benjamin A. Breier 680 South Fourth Street Louisville, KY 40202
18 Douglas Curnutte 19 680 South Fourth Street 20 Louisville, KY 40202	Stephen Cunanan 680 South Fourth Street Louisville, KY 40202

21 [XXX]

[By Certified Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Elk Grove, California, addressed as set forth above.

22 []

[By Personal Service] By personally delivering a true copy thereof to the office of the addressee above.

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[] [By Overnight Courier] By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service: _____.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 13, 2020, at Elk Grove, California.

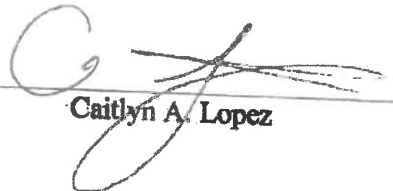

Caitlyn A. Lopez

EXHIBIT D

Date	Description	Amount
8/13/2020	Payment to Court - Complaint Fee Superior Court	\$435.00
8/13/2020	Payment to LWDA - PAGA Filing Fee	\$75.00
8/13/2020	Administration/Copy Fee - Class Action - Phone, Fax, Scan, Copying, Non-Certified/Courier Postage, Westlaw Legal Research Fees	\$500.00
8/13/2020	Certified Mail - PAGA Letters to Employers	\$4.20
9/1/2020	Payment to Court - Complex fee	\$1,000.00
9/18/2020	One Legal Service Fee - Serve Defendant w/ Complaint	\$34.00
11/30/2020	Payment for Records - PRA Documents	\$31.16
12/11/2020	Payment to Court - Stipulation to File Amended Complaint	\$20.00
2/5/2021	ALS Service Fee - Stipulated Discovery Schedule and Proposed Order	\$90.00
2/5/2021	Payment to Court - Stipulated Discovery Schedule and Proposed Order	\$20.00
7/9/2021	Payment to Court - Second to File Second Amended Complaint	\$20.00
7/19/2021	Mediation - JAMS Mediator Fee	\$4,549.89
8/11/2021	Mediation - Attorney Lunch	\$44.32
9/27/2021	Payment to Court - Stipulation to File Third Amended Complaint	\$20.00
11/23/2021	Payment to Court - Preliminary Approval Motion	\$60.00
11/23/2021	Payment to Court - Court Reporter Fee	\$30.00
11/23/2021	UPS to Court - Preliminary Approval Motion	\$27.00
Anticipated	Payment to Court - Final Approval Motion	\$60.00
Anticipated	Payment to Court - Court Reporter Fee	\$30.00
Anticipated	UPS to OC - Final Approval Motion	\$32.00
Anticipated	UPS to Court - Final Approval Motion	\$32.00
Anticipated	One Legal Service Fee - Compliance Declarations to Court	\$50.00
TOTAL:		\$7,164.57

EXHIBIT E

EXHIBIT F

<u>TASK CATEGORY</u>	<u>Galen Shimoda</u>	<u>Justin Rodriguez</u>	<u>Brittany Berzin</u>
Initial client meeting and review of claims, communications with client, pre-filing investigation	-	1.8	3.5
Pleadings, amendment of pleadings, service of pleadings, stipulations, protective order, administrative notices	-	3.3	16.4
Case review and strategy meetings, research and analysis regarding claims and certification elements, case management filings, speak with opposing counsel regarding same	6.1	10.2	23.3
Discovery, including reviewing the file, requesting information and documents from client, speaking with client about discovery, reviewing documents from client, drafting discovery, reviewing discovery responses, drafting meet and confer letter, stipulation and order re discovery schedule, and speaking with opposing counsel regarding the same	-	9	23
Settlement, including reviewing and analyzing documents and data for Plaintiff and putative class members, preparation for and attendance at mediation, drafting mediation brief and preparing exhibits, communications regarding settlement, preparing and reviewing the settlement agreement and related exhibits, research regarding claims for exposure analysis, drafting MOU and long form settlement agreement, speak with opposing counsel regarding same	-	17.1	26.6
Settlement Approval and Administration, including working with proposed settlement administrator to cost out administration, motion for preliminary approval and supporting declarations and order, class data review, motion for final approval and supporting declarations and order, and reviewing and communicating with settlement administrator, monitoring settlement disbursements, notifying the LWDA of settlement status, and responding to class member inquiries, speak with opposing counsel regarding same	-	9.4	28.6
TOTAL PER TIMEKEEPER:	6.1	50.8	121.4
SLC OVERALL TOTAL HOURS:	178.3		

1 Galen T. Shimoda (Cal. State Bar No. 226752)
 Justin P. Rodriguez (Cal. State Bar No. 278275)
 2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
 3 9401 East Stockton Boulevard, Suite 120
 Elk Grove, CA 95624
 4 Telephone: (916) 525-0716
 Facsimile: (916) 760-3733

5 Attorneys for Plaintiff KIMBERLY WEBB
 6 individually and on behalf of similarly situated employees

7
 8 **SUPERIOR COURT OF CALIFORNIA**
 9 **FOR THE COUNTY OF SOLANO**

10
 11 KIMBERLY WEBB, individually and on
 12 behalf of all other similarly situated
 employees,

13 Plaintiff,

14 vs.

15 PROFESSIONAL HEALTHCARE AT
 16 HOME, LLC, a California Limited Liability
 Company; and DOES 1 to 100, inclusive,
 17 Defendants.

Case No. FCS055317

**Assigned For All Purposes to Hon. Christine A.
 Carringer**

CLASS ACTION

**DECLARATION OF JUSTIN P.
 RODRIGUEZ IN SUPPORT OF
 PLAINTIFF'S MOTION FOR FINAL
 APPROVAL OF CLASS ACTION AND PAGA
 SETTLEMENT**

Date: May 4, 2022

Time: 8:30 a.m.

Dept.: 12

Judge: Hon. Christine A. Carringer

Filed: August 27, 2020

FAC Filed: January 11, 2021

SAC Filed: July 26, 2021

TAC Filed: October 28, 2021

Trial Date: None Set

1 I, Justin P. Rodriguez, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiff Kimberly Webb ("Plaintiff") herein. I am making this
4 declaration on behalf of the named Plaintiff, the putative class members, and in support of Plaintiff's
5 Motion for Final Approval of Class Action and PAGA Settlement ("Motion"). A true and correct copy
6 of the Joint Stipulation Regarding Class Action and PAGA Settlement and Release ("Agreement") in
7 this matter is filed with this Motion as Exhibit A.

8 2. This case was brought as a wage and hour class action based on Plaintiff's contention
9 that Defendant Professional Healthcare At Home, LLC ("Defendant") failed to include its address on
10 paystubs provided to putative class members who requested paper rather than electronic copies of their
11 paystubs. Plaintiff also alleged liability for civil penalties under the Private Attorneys General Act
12 ("PAGA") based on this same contention.

13 3. Plaintiff is the only named representative in this matter. From our initial investigations
14 of Plaintiff's claims and documents, we believed these claims had merit and could be maintained as a
15 class action. We filed the action on or about August 27, 2020. Plaintiff exhausted administrative
16 remedies through the Labor and Workforce Development Agency ("LWDA") prior to amending the
17 Complaint to add a PAGA claim. Plaintiff filed a notice with the LWDA on August 13, 2020 setting
18 forth the facts and theories of liability. A true and correct copy of the notice filed with the LWDA is
19 being filed with this Motion as Exhibit C. A copy of the notice was also sent to Defendant via certified
20 mail and the \$75.00 filing fee was remitted to the LWDA at that time. There was no response by the
21 LWDA regarding its intent to investigate the claims alleged in Plaintiff's notice for more than 65 days.
22 As such, Plaintiff became authorized to commence a civil action under the PAGA and filed a First
23 Amended Complaint on January 11, 2021. A second Amended Complaint was filed on July 26, 2021
24 and a Third Amended Complaint on October 28, 2021. Plaintiff filed these amended complaints to
25 narrow the claims at issue in this action after further investigation and completing some discovery. A
26 true and correct copy of Plaintiff's operative Complaint is filed with this Motion as Exhibit B. A copy
27 of the complaint was uploaded to the LWDA on November 15, 2021, after we received an endorsed
28 copy back from Court.

1 4. Currently, there is no date set for a motion to certify the class and there is no trial date.

2 5. Defendant is represented in this matter by Shannon B. Nakabayashi of Jackson Lewis
3 P.C. From the beginning, Defendant has contested the merits of this case and Plaintiff's ability to prove
4 a violation in each pay period for each employee among other defenses and contentions they made
5 challenging the propriety of this action. Defendant further contended that, even assuming there was a
6 finding supporting the imposition of PAGA penalties, the Court would likely exercise its discretion to
7 substantially reduce any such penalties owed based on evidence of good faith attempts to comply with
8 Labor Code obligations by Defendant. Notwithstanding its agreement to settle this matter, Defendant
9 believe the practices Plaintiff is contending are unlawful either do not exist or, to the extent they do
10 exist, fully comply with all state and federal employment laws with respect to Plaintiff and Class
11 Members.

12 6. Based on the expected testimony from Plaintiff and Class Members, a review of
13 Defendant's policies and procedures and other documents relating to the alleged claim, information on
14 the number of Class Members, the number of workweeks and pay periods in which Class Members
15 received paper copies of their paystubs, the scope of the potential damages to Plaintiff and Class
16 Members in light of the claims alleged, and the negotiations that have taken place, I am convinced that
17 the proposed settlement is in the best interest of the class. The length and risks of trial and other normal
18 perils of litigation that impact the value of the claims were also considered and weighed in reaching the
19 Agreement. In addition, I carefully considered the fact that penalties under the PAGA could be
20 substantially cut at the discretion of the Court even if Plaintiff was successful on proving her claim and
21 there was risk that a Court could find no knowing and intentional failure to include an address, which
22 would eliminate the value of the statutory wage statement penalties entirely, the difficulties of complex
23 litigation, and various possible delays and appeals in agreeing to the proposed settlement. Overall, I
24 believe it is more beneficial to secure a guaranteed benefit to the class now rather than to proceed with
25 litigation and potentially obtain zero funds to the class due to legal or factual issues in the case.

26 7. My office, including my partner, Galen T. Shimoda, my associate, Brittany V. Berzin,
27 and myself, along with Plaintiff's assistance, thoroughly investigated the merits of the claims and
28 potential damages for such claims. The parties engaged in formal and informal discovery and exchange

1 of documents, including paystubs, payroll data and relevant policies for the entirety of the statute of
2 limitations applicable to the alleged claims. The discovery covered all aspects of the asserted claims,
3 including certification issues, merits issues, damages, and the scope and configuration of Class
4 Members. From this production we were able to determine information critical to a reliable damages
5 analysis such as the number of pay periods that had potential violations based on the asserted claims.
6 This information allowed my office to assess both liability and damages and create an accurate damages
7 model. Plaintiff assisted in all aspects of this litigation including providing factual information relating
8 to Plaintiff's and similarly situated employees' employment conditions, providing a substantial number
9 of documents, and answering questions regarding Defendant's factual contentions in this matter. This
10 was important because it directly related to our ability to maintain this case as a class action and our
11 ability to obtain a favorable settlement for the class.

12 8. Throughout this litigation our office had numerous communications with Defendant's
13 Counsel discussing our respective positions. The parties engaged in mediation on August 10, 2021
14 using an experienced mediator, Hon. Ronald Sabraw (Ret.). It was only after nearly one year of
15 extensive, arm's length negotiations that the parties were able to reach a settlement, which only occurred
16 after a full-day mediation. The negotiations were at all times contentious and adversarial, though still
17 professional in nature.

18 9. The parties reviewed and analyzed all data relevant to the class claims. Based on our
19 analysis and review of all relevant documents and Class Member information, I have determined that
20 the maximum damages for the asserted class claims is approximately \$287,400, which includes civil
21 penalties under the PAGA. The likely exposure for PAGA penalties is approximately \$239,500, based
22 on the counts alleged to the LWDA and the class data. Based on our research, we did not find any prior
23 Labor Commissioner or court decisions that stated Defendant's practices and/or policies were
24 improper. As such, a "subsequent violation" may not be found for penalty calculation purposes and the
25 exposure analysis here is based on an "initial violation" valuation being adopted by any fact finder if
26 this matter went to trial.

27 10. I believe the PAGA penalties in this case may be reduced however due to the fact that
28 the penalties would be in addition to amounts owed for substantive violations and much of the penalties

are based on violations due to technical non-compliance with the Labor Code. Furthermore, Defendant produced a substantial number of documents that a Court may find demonstrates a good faith attempt at compliance that merits the reduction of civil penalties. Courts regularly cut civil penalties on PAGA claims where statutory penalties for the same violations are assessed as well. The statutorily authorized discretion that Courts have used to reduce penalties ranges substantially. *See Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction). Thus, civil penalties may be cut to approximately \$43,110 (82% reduction) or lower given the derivative recovery. Taking this into account, the likely recovery if Plaintiff was successful at trial on proving all the substantive class damages plus civil penalties after a reduction of the PAGA penalties would be approximately \$91,010. Taking this into account, Plaintiff's \$55,500 gross recovery under the Agreement represents approximately 61% of the maximum likely value in this matter. After deducting from the Gross Settlement Amount the proposed allocations for attorneys' fees (\$19,425) and costs (\$7,164.57), any Enhancement Payment to the Class Representative (\$5,500), Claims Administrator Costs (\$4,000), and the 75% portion of the PAGA Payment to the LWDA (\$3,750), the net recovery under the Agreement, \$15,660.43, represents approximately 17.2% of the maximum likely value in this matter. The average net award is approximately \$139.83 and the highest net award is \$2,317.58. I believe the Agreement represents a reasonable compromise of claims based on the legal and factual disputes in this case. The ability to secure a guaranteed settlement now and ensure Class Members receive some compensation, rather than proceed to further litigation and potentially recover nothing, was a motivating factor in reaching this Agreement.

11. I am a shareholder at Shimoda & Rodriguez Law, PC. In agreeing to represent Plaintiff and take on the case for all Class Members, I agreed to take this case on a contingency basis, meaning that I would take a percentage of any settlement or judgment should we recover a monetary amount. I took a risk that we would not recover any money in this matter if we were unsuccessful at trial. I also took on the risk that the case may not be certified as a class action and/or be subject to an unfavorable summary judgment ruling. However, I believe it is important to make sure employees are able to find

1 affordable representation in order to ensure that employers are complying with all their legal
2 obligations towards employees and paying employees all their hard-earned wages.

3 12. My law firm is a boutique law practice that focuses primarily in employment litigation,
4 emphasizing wage and hour litigation. I attended and graduated college from U.C. Davis, receiving a
5 Bachelor of Arts in Philosophy and the Departmental Citation for Academic Achievement in the
6 Philosophy program. I was one of only two recipients of this award out of the entire Philosophy
7 Department. After U.C. Davis, I attended the University of the Pacific, McGeorge School of Law,
8 graduating in 2011 and receiving a Juris Doctorate. I graduated in the top 20% of my class and was a
9 member of the Traynor Honor Society at McGeorge. Other academic achievements of mine include
10 receiving a Witkin Award (top grade) in my legal research and writing course, a Witkin Award in
11 complex civil litigation, being a member of the Dean's List from 2008 to 2011, being a Legislative
12 Staff Writer for the *McGeorge Law Review* from 2009–2010, being an Associate Comment Editor for
13 the *Pacific McGeorge Global Business & Development Law Journal* from 2010–2011, and being
14 selected as a Sacramento County Bar Association Diversity Fellow in 2009. I was also a member of
15 the Employment and Labor Law Society and an officer for the Latino Law Students Association from
16 2009 to 2010.

17 13. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda
18 & Rodriguez Law, PC as an Associate. I became a Shareholder/Partner in the firm in 2017. Since
19 2017, I have received an AV Preeminent rating from Martindale-Hubbell for my legal ability and
20 ethical standards. From 2018 to present, I have been recognized as a Super Lawyer (Rising Star). In
21 September 2018, I was a panel speaker for the Sacramento County Bar Association Labor and
22 Employment Law Section's presentation of "*Epic Systems*, PAGA, and the Future of Employment
23 Arbitration in California." In July 2020, I was a panel speaker for the Association of Defense Counsel
24 of Northern California & Nevada presentation of "Class Actions and PAGA Claims." My practice
25 focuses on complex civil litigation, including wage and hour class actions, PAGA claims, and Fair
26 Labor Standards Act ("FLSA") claims. I am actively involved in most all of the complex litigation
27 handled by our firm. Class and/or PAGA actions I have litigated or am currently litigating, including
28 the instant case, includes, but is not limited to, the following:

- 1 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 2 • *Adams-Anguy v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- 3 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 4 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup.
- 5 Ct.);
- 6 • *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-
- 7 0012080 (San Joaquin Sup. Ct.);
- 8 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 9 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 10 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
- 11 Sup. Ct.);
- 12 • *Barkhousen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup.
- 13 Ct.);
- 14 • *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- 15 • *Bershell v. Dignity Health Methodist Hospital Sacramento, et al.*, Case No. 34-2017-
- 16 0222269 (Sac. Sup. Ct.);
- 17 • *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-
- 18 00271174 (Sac. Sup. Ct.);
- 19 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
- 20 Ct.);
- 21 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac.
- 22 Sup. Ct.);
- 23 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880
- 24 (Sac. Sup. Ct.);
- 25 • *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- 26 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
- 27 Ct.);
- 28 • *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);

- 1 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
2 00209613 (Sac. Sup. Ct.);
- 3 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 4 • *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-
5 2017-00222101 (Sac. Sup. Ct.);
- 6 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- 7 • *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup.
8 Ct.);
- 9 • *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- 10 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 11 • *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup.
12 Ct.);
- 13 • *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac.
14 Sup. Ct.);
- 15 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 16 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 17 • *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- 18 • *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup.
19 Ct.);
- 20 • *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- 21 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup.
22 Ct.);
- 23 • *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup.
24 Ct.);
- 25 • *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- 26 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- 27 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 28 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);

- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-EFB (E.D. Cal.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Salmon v. Ovarions Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.) ;
- *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.) ;
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

14. The preceding list does not include those cases where, for various reasons, the case was filed as a class action and/or PAGA action, but did not maintain that status through the end of the case.

15. My partner, Galen T. Shimoda, Esq., also worked with me on this matter and was critical in assisting with all aspects of the litigation of this case. Mr. Shimoda and I are some of only a handful of plaintiff attorneys located in Sacramento who handle wage and hour class actions. Mr. Shimoda attended and graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in Asian Studies, with a minor in Japanese language. He then attended and

1 graduated from the University of the Pacific, McGeorge School of Law and received his J.D. degree in
2 2003. He graduated from McGeorge in the top 5% of his class and was a member of the Order of the
3 Coif and Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a
4 number of employment law articles for journals and our firm regularly publishes articles on our firm's
5 website. Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar)
6 Employment Review seminars from 2014 to the present. His speaking engagements include the
7 following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual
8 Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the
9 Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in
10 Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6)
11 CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law
12 Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class
13 Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21,
14 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the
15 Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour
16 Panel and AB 1825 Training: Updates on California's New Wage Laws and Manager Compliance
17 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
18 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
19 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
20 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
21 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
22 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);
23 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
24 Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,
25 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized
26 as a Super Lawyer from 2014 to present.

27 16. Mr. Shimoda has practiced law in California since being admitted to the State Bar in
28 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases.

1 Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington &
2 Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is
3 in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and
4 Federal Courts, including up to certification, settlement, preliminary and final approval, and
5 disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel.
6 Some of the class action and/or PAGA cases I am litigating and/or have litigated as lead or co-counsel
7 include the following:

- 8 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 9 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 10 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 11 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 12 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 13 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 14 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 15 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 16 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
17 Sup. Ct.);
- 18 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 19 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
20 Ct.);
- 21 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
22 Ct.);
- 23 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
24 Sup. Ct.);
- 25 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 26 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
27 Ct.);
- 28 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);

- 1 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
2 00209613 (Sac. Sup. Ct.);
- 3 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 4 • *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- 5 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- 6 • *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242
7 (San Joaquin Sup. Ct.);
- 8 • *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- 9 • *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac.
10 Sup. Ct.);
- 11 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 12 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 13 • *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac.
14 Sup. Ct.);
- 15 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 16 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 17 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 18 • *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- 19 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- 20 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 21 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 22 • *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- 23 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 24 • *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- 25 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 26 • *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- 27 • *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac.
28 Sup. Ct.);

- 1 • *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- 2 • *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- 3 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- 4 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 5 • *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- 6 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-
- 7 00082201 (Sac Sup. Ct.);
- 8 • *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac.
- 9 Sup. Ct.);
- 10 • *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- 11 • *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- 12 • *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- 13 • *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac.
- 14 Sup. Ct.);
- 15 • *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- 16 • *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- 17 • *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- 18 • *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

19 17. The preceding list of cases does not include those where, for a variety of reasons, the
20 case was initially filed as a class and/or PAGA action, but did not maintain that status through the end
21 of the case.

22 18. My associate, Brittany V. Berzin, Esq., also worked with me on this matter and was
23 critical in assisting with all aspects of the litigation of this case. In May 2017, Ms. Berzin graduated
24 from University of the Pacific, McGeorge School of Law with Great Distinction and was inducted into
25 the Order of the Coif, graduating in the top 10% of her class. In addition, Ms. Berzin received the
26 Witkin Award for Academic Excellence in Legal Research and Writing, Civil Procedure, Bankruptcy,
27 and Criminal Procedure. From 2020 to present, Ms. Berzin has been recognized as a Super Lawyer
28 (Rising Star). Ms. Berzin has been a member of the executive committee of the Sacramento County

1 Bar Association Labor & Employment Section since January 2020, serving as Co-Chair of the
2 committee through 2021. Ms. Berzin has worked on a variety of individual, class action, and Private
3 Attorneys General Act cases involving wage and hour claims. As an associate, some of the class action
4 and/or PAGA cases Ms. Berzin is litigating and/or has litigated as lead or co-counsel include the
5 following:

- 6 • *Arosemena v. Ranchhodrai, Inc., et al.*, Case No. STK-CV-UOE-2019-15963 (San Joaquin
7 Sup. Ct.);
- 8 • *Balli v. Brown Box Investments, Inc., et al.*, Case No. 34-2018-00232656 (Sac. Sup. Ct.);
- 9 • *Barrios v. American Property Management, Inc.*, Case No. 1:18-cv-00352-AWI-SKO (E.D.
10 Cal.);
- 11 • *Callahan v. Creative Alternatives, Inc., et al.*, Case No. 2027518 (Stanislaus Sup. Ct.);
- 12 • *Cirrincione v. American Scissor Lift, Inc., et al.*, Case No. STK-CV-UOE-2018-7558 (San
13 Joaquin Sup. Ct.);
- 14 • *Coronado v. MGD, Inc.*, Case No. STK-CV-UOE-2021-893 (San Joaquin Sup. Ct.);
- 15 • *Estrada v. MAD Security Services, Inc.*, Case No. 34-2021-00300627 (Sac. Sup. Ct.);
- 16 • *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- 17 • *Finance of America Wage And Hour Cases*, Case No. JCCP 5081 (Orange County Sup. Ct.);
- 18 • *Gomez, et al. v. Kleary Masonry, Inc.*, Case No. 34-2020-00278067 (Sac. Sup. Ct.);
- 19 • *Gonzalez v. Northcentral Pizza, LLC, et. al.*, Case No. 34-2019-00252018 (Sac. Sup. Ct.);
- 20 • *Gordon, et al. v. Hospice Source, LLC*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- 21 • *Hercules, et al. v. Maximus Services, LLC*, Case No. 34-2019-00268385 (Sac. Sup. Ct.);
- 22 • *Insixiengmay v. Hyatt Corporation*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal);
- 23 • *Kurtz v. Perimeter Security Group, LLC, et al.*, Case No. CU19-083650 (Nevada Sup. Ct.);
- 24 • *Leong-Call v. MRB Foods, Inc.*, Case No. 34-2020-00287486 (Sac. Sup. Ct.);
- 25 • *Magat v. Medical Care Professionals, Inc., et. al.*, Case No. SCV0042579 (Placer Sup. Ct.);
- 26 • *Mayorga v. Brown Strauss, Inc.*, Case No. STK-CV-UOE-2020-0010906 (San Joaquin Sup.
27 Ct.);
- 28 • *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);

- 1 • *Meals v. Grass Valley Extended Care, Inc., et al.*, Case No. CU19-083606 (Nevada Sup.
2 Ct.);
- 3 • *Munoz v. Wilmor And Sons Plumbing And Construction*, Case No. 34-2021-00306609 (Sac.
4 Sup. Ct.);
- 5 • *Neufield v. Professional Transportation, Inc.*, Case No. 34-2021-00309849 (Sac. Sup. Ct.);
- 6 • *Romaine v. Queen of the Valley Medical Center*, Case No. 18CV001642 (Napa Sup. Ct.);
- 7 • *Ruiz v. CTE Cal, Inc.*, Case No. 34-2020-00289168 (Sac. Sup. Ct.);
- 8 • *Saavedra, et al. v. SMF Global, Inc.*, Case No. 34-2018-00243363 (Sac. Sup. Ct.);
- 9 • *Scarano v. J.R. Putman, Inc., et al.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- 10 • *Scoggins, et al. v. Energy Star Construction, Inc.*, Case No. 34-2018-00243048 (Sac. Sup.
11 Ct.);
- 12 • *Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.);
- 13 • *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- 14 • *Thornton v. Resolute Security Group, Inc.*, Case No. 34-2018-00241293 (Sac. Sup. Ct.);
- 15 • *Tracy v. Von Housen's Sacramento, Inc.*, Case No. 34-2020-00282778 (Sac. Sup. Ct.);
- 16 • *Uribe v. Ecoguard Pest Management, Inc.*, Case No. 34-2021-00300650 (Sac. Sup. Ct.);
- 17 • *Vasquez v. Chriswell Home Improvements, Inc.*, Case No. 34-2021-00305938 (Sac. Sup.
18 Ct.); and
- 19 • *Walker v. Yan Kalika Dental Corporation*, Case No. 34-2021-00305106 (Sac. Sup. Ct.).

20 19. I am requesting attorneys' fees and costs pursuant to the common fund doctrine as I
21 believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977),
22 *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v.*
23 *Grauly*, 886 F.2d 268, 271 (9th Cir. 1989). Plaintiff and our firm have been able to secure an
24 identifiable benefit on behalf of the class and equity counsels that the cost of the representation should
25 be born equally amongst all class members receiving these benefits. The settlement recovery provides
26 an excellent result and is the product of substantial time and effort in analyzing the facts and law
27 applicable to this case. I agreed to take this case on a contingency and as a class action with the
28 possibility that I would not receive any compensation for my time and efforts due to issues regarding

1 the merits and/or certification and have carried that risk over the course of the case. I have reviewed
2 fee arrangements and Court ordered fee awards in similar class cases and I believe that the thirty-five
3 percent (35%) fee request is within the accepted ranges. In my experience with contingency cases in
4 employment law cases, the typical percentage negotiated between parties ranges from thirty-five to
5 forty percent (35% to 40%) in individual litigation. In class action litigation, my experience in my own
6 firm and working with several other firms has been that the typical percentage negotiated between
7 parties and approved by a court ranges from thirty to forty percent (30% to 40%) based on the same
8 factors. I have also reviewed several recent Federal District Court Cases where the Court has approved
9 common fund based fee requests. These cases include *In re Activision Sec. Litigation*, 723 F.Supp.
10 1373, 1379 (N.D. Cal. 1989), *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-
11 cv-0063, *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745, *Green,*
12 *et al. v. Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069, *Benitez et*
13 *al. v. Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122, *Chavez et al. v. Petrissans et al.*, USDC
14 Eastern District, Case No. 1:08-cv-00122, and *Willis et al. v. Cal-Western Transport*, USDC Eastern
15 District, Case No. 1:00-cv-05695, which are cited in Plaintiff's Memorandum of Points and Authorities.
16 I believe my request of \$19,425 (approximately 35%) for attorneys' fees is justified given the results
17 obtained on behalf of the class. Moreover, at this time, my firm has advanced all costs for Plaintiff and
18 Class Members and has not received any compensation whatsoever for our time expended in this case.
19 The costs through final approval are \$7,164.57. Attached as Exhibit D is a true and correct copy of the
20 costs incurred prior to the filing of this Motion and the expected costs incurred through the final
21 approval and fairness hearing. The difference in the actual costs and the maximum amount allocated
22 under the Agreement will be added to the Net Settlement Amount.

23 20. A lodestar cross check validates the fee request in this case. A true and correct copy of a
24 summary of the tasks my firm completed, and the hours expended completing them is attached to this
25 declaration as Exhibit F. This summary was created from time entries in our firm's timekeeping and
26 billing software. Our firm uses software that tracks our time in 1/10 of an hour increments. I have
27 reviewed the time entries and summary thereof and believe all entries to be accurate. A summary of the
28 entries in Exhibit F by timekeeper is as follows:

<u>Timekeeper</u>	<u>Hours</u>	<u>Lodestar</u>
Justin P. Rodriguez	50.8	\$26,670.00
Galen T. Shimoda	6.1	\$4,117.50
Brittany V. Berzin	121.4	\$32,778.00
TOTALS:	178.3	\$63,565.50

This summary does not include approximately 5-10 additional hours of anticipated time spent preparing for and attending the final approval hearing, addressing any class member inquiries, or monitoring payments under the Agreement.

21. I regularly practice law in the greater Sacramento area, Bay area, Central Valley, and Chico/Redding area in California state courts and have practiced law in federal courts, including the Northern and Eastern District. I have also, on occasion, practiced law in Southern California. In July 2020 in a wage and hour class action in Solano County (*Valdez. v. Karma, Inc., et al*, Case No. FCS053239), my hourly rate of \$525 was found to be reasonable. In this same case, Mr. Shimoda's hourly rate of \$675 was found to be reasonable and Ms. Berzin's hourly rate of \$270 was found to be reasonable.

22. We are requesting a fee award of 35% of the gross settlement (\$19,425). This request is reasonable considering our lodestar of \$63,565.50, which results in a negative multiplier. *See Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480 (2016) (finding the trial court did not abuse its discretion in approving a fee award of 35% of the common fund, cross-checked against a lodestar resulting in a multiplier of 2.03 to 2.13). We rely on attorneys' fee awards in order to continue working to ensure enforcement of California wage and hour protections. Recovery of our full lodestar is necessary to compensate for the risk undertaken in contingency cases in general and class action cases in particular. Otherwise, we could not continue to represent employees who are denied wages, but whose cases may be time-consuming and difficult to prove. There have been many class cases we have litigated where ultimately, we get zero for our time because we are unable to meet certification requirements, or the

1 company becomes financially insolvent. I believe our fee request is reasonable and appropriate to
2 compensate for the risk undertaken in this case considering what has been awarded in other class
3 litigation cases. *See Wershba v. Apple Comput., Inc.*, 91 Cal. App. 4th 224, 255 (2001) (“Multipliers
4 can range from 2 to 4 or even higher”).

5 23. I have used several class action administrator companies in the wage and hour class
6 actions I have resolved in the past and believe Simpluris, Inc. will provide the best service to administer
7 the proposed class settlement. Simpluris, Inc.’s costs for the administration of this settlement are
8 \$4,000. The, the difference between the actual, lesser costs and the originally allocated \$10,000 will be
9 paid to the participating Class Members on a pro rata basis.

10 24. A copy of the Agreement and the entire Motion was submitted to the LWDA for review
11 at the same time the Motion was submitted to the Court pursuant to California Labor Code section
12 2699(1)(2). A true and correct copy of documents demonstrating the settlement documents were
13 provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as
14 Exhibit E.

15 I declare under penalty of perjury under the laws of the State of California that the foregoing is
16 true and correct. Executed this 7th day of April 2022 in Sacramento, California.

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Justin P. Rodriguez

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
3 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733

5 Attorneys for Plaintiff KIMBERLY WEBB
6 individually and on behalf of similarly situated employees

7
8 **SUPERIOR COURT OF CALIFORNIA**

9 **FOR THE COUNTY OF SOLANO**

10
11 KIMBERLY WEBB, individually and on
behalf of all other similarly situated
12 employees,

13 Plaintiff,

14 vs.

15 PROFESSIONAL HEALTHCARE AT
16 HOME, LLC, a California Limited Liability
Company; and DOES 1 to 100, inclusive,

17 Defendants.
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Case No. FCS055317

**Assigned For All Purposes to Hon. Christine A.
Carringer**

CLASS ACTION

**DECLARATION OF LINDSAY KLINE
REGARDING NOTICE AND SETTLEMENT
ADMINISTRATION**

Date: May 4, 2022

Time: 8:30 a.m.

Dept.: 12

Judge: Hon. Christine A. Carringer

Filed: August 27, 2020

FAC Filed: January 11, 2021

SAC Filed: July 26, 2021

TAC Filed: October 28, 2021

Trial Date: None Set

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I, LINDSAY KLINE, hereby declare:

1. I am employed as a Case Manager by Simpluris, Inc. ("Simpluris"), the claims administrator in the above-entitled action. Our Corporate Office address is 3194-C Airport Loop Dr., Costa Mesa, CA 92626. My telephone number is (714) 640-5635. I am over twenty-one years of age and authorized to make this declaration on behalf of Simpluris and myself.

2. Simpluris is a Class Action Settlement Administration company located in Costa Mesa, California. It was founded by individuals who have each managed hundreds of settlements, along with professionals in the areas of Software Development, Third-Party Claims Administration, Mail-House Operations, and Call Center Support Management.

3. Simpluris was approved by Counsel for Kimberly Webb, (“Plaintiff”), and Professional Healthcare at Home, LLC, (Defendant”), (collectively the “Parties”), to provide settlement administration services in the *Webb v. Professional Healthcare at Home, LLC* case (“Settlement”). In this capacity, Simpluris was charged with (a) establishing and maintaining a related settlement fund account; (b) establishing and maintaining a calendar of administrative deadlines and responsibilities; (c) processing and mailing payments to the Plaintiff, Class Counsel and Class Members; (d) printing and mailing the Notice of Class Action and PAGA Settlement, and Hearing Date for Final Court Approval of Settlement, to Class Members; (e) receiving and validating Requests for Exclusion, Objections or Disputes of wage statements submitted by Class Members; (f) any necessary tax reporting; (g) mailing settlement checks, (h) providing counsel with weekly reports; and (i) other tasks as the Parties mutually agree or the Court orders Simpluris to perform.

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4. A toll-free telephone number was included in the Notice of Class Action and PAGA Settlement, and Hearing Date for Final Court Approval of Settlement for the purpose of allowing the Class Members to call Simpluris and to make inquiries regarding the Settlement. The system is accessible 24 hours a day, 7 days a week, and will remain in operation throughout the settlement process. Callers have the option to speak with a live call center representative during normal business hours or to leave a

1 message and receive a return call during non-business hours. Spanish-speaking representatives are
2 available during normal business hours. The toll-free telephone number included in the Notice of Class
3 Action and PAGA Settlement, and Hearing Date for Final Court Approval of Settlement was (888) 369-
4 3780 and was live on February 2, 2022.

5 NOTIFICATION TO THE CLASS

6 5. On January 10, 2022, Simpluris received the Court-approved Notice of Class Action and
7 PAGA Settlement, and Hearing Date for Final Court Approval of Settlement (hereafter "Notice"). The
8 Notice advised Class Members of their right to request exclusion from the Settlement, object to the
9 Settlement, dispute wage statements, do nothing, and the implications of each such action. The Notice
10 advised Class Members of applicable deadlines and other events, including the Final Approval Hearing,
11 and how Class Members could obtain additional information.

12 6. On January 19, 2022, Defense Counsel provided Simpluris with a mailing list ("Class
13 List") containing Class Members' names, most recent mailing address, Social Security numbers and dates
14 of employment for each Class Member during the Class Period. The Class List contained data for one
15 hundred twelve (112) Class Members.

16 7. The mailing addresses contained in the Class List were processed and updated utilizing
17 the National Change of Address Database ("NCOA") maintained by the U.S. Postal Service. The NCOA
18 contains requested changes of address filed with the U.S. Postal Service. In the event that any individual
19 had filed a U.S. Postal Service change of address request, the address listed with the NCOA would be
20 utilized in connection with the mailing of the Notice. Simpluris was able to locate nineteen (19) updated
21 addresses using NCOA prior to the mailing of the Notice.

22 8. On February 2, 2022, Notice was mailed to one hundred twelve (112) Class Members with
23 addresses contained in the Class List via First Class mail or updated via the NCOA search. A copy of the
24 Notice is attached hereto as **Exhibit A**.

25 9. A total of five (5) Notices were returned to Simpluris. Of these, none were returned with
26 a forwarding address. If a Class Member's Notice was returned by the USPS as undeliverable and without
27 a forwarding address, Simpluris performed an advanced address search (i.e. skip trace) on all of these
28

1 addresses by using Accurant, a reputable research tool owned by Lexis-Nexis. Simpluris used the Class
2 Member's name and previous address to locate a current address. Through the advanced address searches,
3 Simpluris was able to locate four (4) updated addresses and Simpluris promptly mailed a Notice to those
4 updated addresses. Ultimately, there is one (1) Notice that remains undeliverable.

5 **REQUESTS FOR EXCLUSION, OBJECTIONS AND DISPUTES**

6 10. The deadline for Class Members to submit a Request for Exclusion, Object to the
7 Settlement or Dispute wage statements was March 19, 2022.

8 11. As of this date, Simpluris has not received any Request for Exclusion from a Class
9 Member.

10 12. As of this date, Simpluris has not received any Objections to the Settlement from Class
11 Members.

12 13. As of this date, Simpluris has not received any Disputes regarding work weeks from Class
13 Members.
14

15 **CLASS MEMBER AWARDS**

16 14. As of this date, there are one hundred twelve (112) Class Members who will be paid their
17 portion of the Net Settlement Fund.

18 15. The Net Settlement Fund of \$12,825.00 available to pay Class Members was determined
19 by subtracting the Class Counsel's Fees (\$19,425.00), Class Counsel's Litigation Costs (\$7,164.57),
20 Named Plaintiff Service Award (\$5,500.00), PAGA LWDA payment (\$3,750.00), and the
21 Administration Costs (\$4,000.00) from the Maximum Settlement Amount (\$55,500.00).

22 16. The *average estimated payment* is \$139.83 and the *highest estimated payment* is
23 \$2,317.58.

24 **ADMINISTRATION COSTS**

25 17. Simpluris' total costs for services in connection with the administration of this Settlement,
26 including fees incurred and anticipated future costs for completion of the administration, are \$4,000.00.
27 Simpluris' work in connection with this matter will continue with the calculation of the settlement checks,
28

1 issuance and mailing of those settlement checks, etc., and to do the necessary tax reporting on such
2 payments.

3
4 I declare under penalty of perjury under the laws of the State of California that the foregoing is
5 true and correct. Executed this 29th day of March 2022, in Costa Mesa, CA.
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8  _____

9 Lindsay Kline
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EXHIBIT A

CALIFORNIA SUPERIOR COURT FOR THE COUNTY OF SOLANO
Case No. FCS055317

Webb v. Professional Healthcare at Home, LLC

**NOTICE OF PROPOSED CLASS ACTION AND PAGA SETTLEMENT, AND HEARING DATE FOR
FINAL COURT APPROVAL OF SETTLEMENT**

ATTENTION: all individuals who have worked, or continue to work, for Defendant in California and received hard copies of their paystubs from April 20, 2018 to November 20, 2021 (the “Class Members”).

«IMbFullBarcodeEncoded»

«FirstName» «LastName» «BusinessName»

«Address1» «Address2»

SIMD «SIMD»
action payable

«City», «State» «Zip»-«ZipDPC3»

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE OR TO OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

Pursuant to an order from the Solano County Superior Court (“Court”) granting preliminary approval of this class action settlement, entered on January 12, 2022, you are receiving notice of a proposed class action settlement between Plaintiff Kimberly Webb (“Plaintiff” or “Class Representative”) and Defendant Professional Healthcare At Home, LLC (“Defendant”) on behalf of Class Members as defined above. You are receiving this notice because Defendant's records indicate you fall within the definition of “Class Member.” Defendant's records also indicate that there was/were «MERGED_WageStatements» payment date(s) for which you received hard paper copy/copies of your paystub during the applicable Class Period (as defined below) (“Qualifying Wage Statement”), which means your share of the settlement proceeds is estimated to be «MERGED_EstSettAmnt_CALC». Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any Qualifying Wage Statement disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court’s order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On August 27, 2020, Plaintiff, a former employee, filed a Complaint against Defendant in the California Superior Court for the County of Solano on behalf of herself and Class Members. The term “Action” means this putative class action pending in the Superior Court of California for the County of Solano, Case No. FCS055317. The Class Period is April 20, 2018 to November 20, 2021 (the “Class Period”).

In the Action, Plaintiff sought to obtain statutory penalties, civil penalties, fees, and costs on behalf of herself and Class Members. Plaintiff alleged that Defendant violated California law by failing to include Defendant’s address on hard paper copies of paystubs issued to Class Members. Defendant denies all of Plaintiff’s allegations and maintains that it complied with the law. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related

to legal actions, the Parties reached a class-wide Settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process, but Defendant has not admitted to any fault. Despite agreeing to and supporting the Agreement, Defendant continues to deny all allegations and claims. Defendant has entered into this settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Parties have entered into a Joint Stipulation of Regarding Class Action PAGA Settlement and Release ("Agreement"), which has been preliminarily approved by the Court. The Agreement applies to any and all Class Members as defined above. "Class Member" does not include persons who submit valid request to opt out (as explained below). If you are a Class Member, you have the opportunity to participate in the settlement, or to exclude yourself ("opt out") from the settlement. This notice is to advise you of how you can either participate in the settlement or be excluded from the settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant agrees to pay a total sum of Fifty-Five Thousand Five Hundred Dollars and No Cents (\$55,500.00) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 35% of the Gross Settlement Amount which equals \$19,425, attorneys' costs not to exceed \$10,000, Claims Administrator Costs estimated not to exceed \$10,000, Class Representative's Enhancement Payment of \$5,500, and \$5,000 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. The maximum Defendant will pay is the Gross Settlement Amount and no portion of the Gross Settlement Amount will be attributable to payments allocated as wages. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of payment dates during the Class Period for which they received hard paper copy/copies of their paystub(s). Of the \$5,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees, which are defined as all individuals who have worked, or continue to work for Defendant in California and received hard copies of their paystubs from August 13, 2019 to November 20, 2021.

The number of your Qualifying Wage Statements and your estimated share of the Net Settlement Amount and PAGA Payment ("Claim Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the Qualifying Wage Statements of other Class Members, the resolution of any disputes regarding Qualifying Wage Statements, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees' allocations for the PAGA claims.

B. Claim Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant will pay Claim Amounts through the Claims Administrator, as described below, to each Class Member who does not opt out of the settlement and to Aggrieved Employees. All Claim Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Claim Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 100% for disputed statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Class Members who do not opt out and Aggrieved Employees will not require the submission of a claim form. Each Class Member's share will be determined by dividing their Qualifying Wage Statements within the Class Period by the total Qualifying Wage Statements by all Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual

share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their Qualifying Wage Statements by the total Qualifying Wage Statements within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. Receipt of the Claim Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendant's Records and Resolution of Qualifying Wage Statement Disputes

For each Class Member, the amount payable will be calculated by the Claims Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Claims Administrator. Defendant's records and any additional evidence will be reviewed by the Claims Administrator in the event of a dispute about Qualifying Wage Statements. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional Qualifying Wage Statements must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than March 19, 2022. The dispute will be resolved by the Claims Administrator based on the records and evidence provided. The Claims Administrator's decision on all disputes will be final and binding.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released all claims for wage statement violations, that were brought or could have been brought based on the allegations in the Complaint, including, but not necessarily limited to any and all claims for alleged violation under Labor Code §§ 226 and 226.3, through the Class Period.

Aggrieved Employees will be deemed to have released all Private Attorneys General Act claims for civil penalties based on Labor Code §§ 226, 226.3 and any claims for individual liability of these section under Labor Code §§ 558 and 558.1 through the PAGA Claim Period and inclusive of any civil penalties, attorneys' fees, interest, liquidated damages, injunctive relief and costs based on those claims.

The individuals released ("Released Parties") include means Defendant, its shareholders, officers, directors, agents, employees, attorneys, and insurers, as well as Defendant's present and former parent companies, subsidiaries, divisions, related or affiliated companies, including but not limited to Gentiva Home Healthcare, Kindred at Home, and those entities' shareholders, officers, shareholders, directors, agents, employees, attorneys, and insurers. The Released Parties also include, but are not necessarily limited to David Gieringer, Ronald C. Lazas, Kriston Nearhood, Joseph L. Landenwich, Benjamin A. Breier, Douglas Curnutte, and Stephen Cunanan.

If Class Member have any questions, they can contact Class Counsel or the third-party administrator.

E. Attorneys' Fees and Costs

Defendant has agreed to pay Class Counsel's attorneys' fees and costs to be approved by the Court, up to a maximum of 35% of the Gross Settlement Amount which equals \$19,425, and attorneys' costs not to exceed \$10,000. Class Counsel's attorneys' fees and costs will be paid and deducted from the Gross Settlement Amount.

F. Reasonableness of Settlement

All attorneys for the Parties to the Action believe the amounts payable to Class Members, Aggrieved Employees, and amounts for attorneys' fees and costs requested are fair and reasonable. The Class Representative

and Class Counsel support this Settlement. Among the reasons for support are the defenses to liability potentially available to Defendant, the inherent risk of trial on the merits, the risk of denial of class certification, and the delays associated with litigation.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement

If you wish to participate in the settlement and believe your Qualifying Wage Statement information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the Qualifying Wage Statement calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement

If you do not wish to participate in the settlement, you may be excluded (*i.e.*, “opt out”) by submitting a timely written request to the Claims Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the settlement, and/or wants to be excluded from this settlement; (c) identify the case name and number (*i.e.* Webb v. Professional Healthcare At Home LLC, FCS055317); (d) be signed; and (e) be post-marked no later than March 19, 2022. The request to opt out must be signed, dated and mailed by First Class U.S. Mail or the equivalent, to:

Webb v. Professional Healthcare at Home, LLC
c/o Claims Administrator
P.O. Box 26170
Santa Ana, CA 92799

The request to opt out must be postmarked no later than March 19, 2022. If you submit a request to opt out which is not postmarked by March 19, 2022, your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. If the request to opt out is sent from within the United States it must be sent through the United States Postal Service by First Class Mail, or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Claims Administrator, no longer be a Class Member and not received their share of the class settlement payment. **Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.**

C. Objection to Settlement

If you do not opt out of the settlement, you can object to the terms of the Agreement. However, if the Court rejects your objection, you will still be bound by the terms of the Agreement. You can ask the Court to deny approval by filing an objection. You **cannot** ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify the case name and number (*i.e.* Webb v. Professional Healthcare At Home LLC, FCS055317) (e) be signed; and (f) be post-marked no later than March 19, 2022. The objection must be sent to the Claims Administrator at the address identified in section III.B and to counsel for Plaintiff and Defendant at the addresses identified in section IV of this notice.

If you have submitted a written objection as outlined above, you may also appear at the Final Approval Hearing, either in person or through your own attorney, to state your objection. However, you must file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendant. If you appear

through your own attorney, you are responsible for paying that attorney.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

After final approval of the settlement has been granted by the Court, each and every Class Member who does not opt out of the settlement and all Aggrieved Employees, will release Defendant and the Released Parties from the released claims described above. In other words, if you are a Class Member during the Class Period (defined above), and you do not exclude yourself from the settlement, you will be deemed to have entered into this release and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this settlement. If the settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 12, Old Solano Courthouse, 580 Texas St., Fairfield, CA 94533 on May 4, 2022 at 8:30 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs. The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing, unless you wish to object to the settlement.

VI. ADDITIONAL INFORMATION

If you want additional information about this lawsuit and its proceedings, you can contact Class Counsel or Defendant' Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Shimoda Law Corp.
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

Shannon Bettis Nakabayashi
Hardev S. Chhokar
JACKSON LEWIS P.C.
50 California Street
9th Floor
San Francisco, CA 94111
Telephone: (415) 796-5465
Facsimile: (415) 394-9401
On behalf of Defendant

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL (888) 369-3780.

BY ORDER OF THE COURT

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
3 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733

5 Attorneys for Plaintiff KIMBERLY WEBB
6 individually and on behalf of similarly situated employees

7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SOLANO**

10 KIMBERLY WEBB, individually and on
11 behalf of all other similarly situated
12 employees,

13 Plaintiff,

14 vs.

15 PROFESSIONAL HEALTHCARE AT
16 HOME, LLC, a California Limited Liability
Company; and DOES 1 to 100, inclusive,

17 Defendants.
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Case No. FCS055317

**Assigned For All Purposes to Hon. Christine A.
Carringer**

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: May 4, 2022

Time: 8:30 a.m.

Dept.: 12

Judge: Hon. Christine A. Carringer

Filed: August 27, 2020

FAC Filed: January 11, 2021

SAC Filed: July 26, 2021

TAC Filed: October 28, 2021

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement ("Motion") in the above
3 referenced case came before this Court, on May 4, 2022 at 8:30 a.m., in Department 12 before the
4 Honorable Christine A. Carringer presiding. Named Plaintiff Kimberly Webb ("Plaintiff") filed this
5 putative class action on August 27, 2020. The operative Complaint alleges that Defendant
6 Professional Healthcare At Home, LLC ("Defendant") violated California law by failing to include its
7 address on paystubs issued to Class Members who opted to receive paper copies of their paystubs.
8 Plaintiff has also alleged Defendant is liable for a civil penalties under the Private Attorneys General
9 Act ("PAGA") based on these violations. Plaintiff sought attorneys' fees and costs as part of this
10 Action. Defendant denied all of Plaintiff's claims and denied that this case was appropriate for class
11 treatment. No class has been certified. The class and PAGA settlement was preliminarily approved
12 by this Court on January 12, 2022.

13 The parties have agreed to settle the class and PAGA claims. Defendant will provide monetary
14 consideration in exchange for a release of claims consistent with the terms of the proposed settlement
15 as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
16 ("Agreement"). Any capitalized terms herein shall have the same meaning as set forth in the
17 Agreement. The Court, having received and considered Plaintiff's Motion for Final Approval of Class
18 Action and PAGA Settlement, the declarations in support, the Agreement, the Notice of Settlement,
19 and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS FOLLOWS:

20 **1. CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF CLASS**
21 **REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

22 The Court finds that certification of the following class for settlement purposes only is
23 appropriate under the California Code of Civil Procedure and related case law:

24 All individuals who have worked, or continue to work, for Defendant in
25 California and received hard copies of their paystubs from April 20, 2018
to November 20, 2021.

26 The Court recognizes that the foregoing definition is for Class Member identification purposes only and
27 is not intended to capture the claims at issue or limit or alter the released claims under the Agreement.
28

1 The Court finds that Class Members meet the ascertainability and numerosity requirements since
2 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
3 the definition and the number of Class Members would make joinder impractical. The commonality and
4 predominance requirements are met for settlement purposes since there are questions of law and fact
5 common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's
6 contentions that Defendant failed to include its address on paper copies of paystubs issued to Class
7 Members. The PAGA claim also derives from this violation. Additionally, Class Members seek the
8 same remedies under state law. The typicality requirement for settlement purposes is also satisfied since
9 the claims of the Class Representative is based on the same facts and legal theories as those applicable to
10 the class members.

11 The Court also finds that certifying the settlement class is required to avoid each Class Member
12 from litigating similar claims individually. This settlement will achieve economies of scale for Class
13 Members with relatively small individual claims and conserve the resources of the judicial system.

14 The Court finds that Plaintiff Kimberly Webb and Plaintiff's counsel, Galen T. Shimoda,
15 Justin P. Rodriguez, and Brittany V. Berzin of Shimoda & Rodriguez Law, PC, to be adequate
16 representatives of the settlement class. The Court appoints them as class representative and class
17 counsel, respectively.

18 **2. APPROVING CLASS ACTION AND PAGA SETTLEMENT**

19 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
20 A. The Court finds that final approval is warranted as the Agreement falls within the range of
21 reasonableness and is fair, reasonable, and adequate for the class. The Court also acknowledges that
22 Class Members were able to object to the settlement through the administration process and at a fairness
23 hearing approved by this Court or opt-out of being bound by the preliminarily approved Agreement. No
24 such objections were made by class members and no class members opted out of the class settlement.

25 Because the Court finds the Parties' settlement to have been agreed upon only after an extensive
26 investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court
27 gives final approval to the Agreement and all terms therein as if stated here in full, including the \$55,500
28 Gross Settlement Amount.

1 The Court orders that Plaintiff Kimberly Webb will receive \$5,500 as a Class Representative
2 Enhancement Payment in addition to any amount Plaintiff may be entitled to under the Agreement's pro
3 rata distribution formula for Plaintiff's time and effort on behalf of Class Members.

4 The Court orders and approves Simpluris, Inc. to act as the Claims Administrator in this case.
5 The Claims Administrator will take its fees out of the Gross Settlement Amount, which are \$4,000. The
6 difference between the actual cost of the Claims Administrator and the originally allocated amount will
7 be redistributed to Qualified Claimants on a pro-rata basis.

8 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
9 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits can be
10 accurately traced as set forth in the Agreement, Plaintiff and Class Counsel were able to negotiate on
11 behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request
12 is a specific, lump-sum percentage of the Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt*
13 *v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v.*
14 *Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees request of
15 thirty-five percent (35%) of the Gross Settlement Amount, *i.e.*, \$19,425, to be appropriate compensation
16 for Class Counsel. The attorneys' fees request is within the range that has been approved by other
17 Courts in similar cases and is reasonable in light of the circumstances of this case, the substantial and
18 beneficial results obtained on behalf of Class Members, and the contingent nature of the recovery over
19 the course of this case, which included potential loss at summary judgment, certification, and/or trial
20 proceedings. Additionally, the Court orders that \$7,164.57 of the settlement proceeds will be paid to
21 Class Counsel for reasonable costs incurred in this case. The difference between the actual costs
22 incurred and the originally allocated amount shall be paid to the Qualified Claimants on a pro-rata basis.

23 The Court approves of the Five Thousand Dollars (\$5,000) PAGA Payment, which shall be paid
24 from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the
25 alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and
26 Workforce Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to Aggrieved
27 Employees on a pro rata basis as described in the Agreement. The Court also finds that the Agreement
28

1 provides a recovery that creates an effective substantial deterrent to any potential future non-compliance,
2 furthering the purpose of the Labor Code and LWDA.

3 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to
4 Qualified Claimants and/or Aggrieved Employees that are not cashed by the deadline to do so shall be
5 paid out to Capital Pro Bono, Inc.

6 The releases and waivers for Class Members who do not opt out of being bound by the
7 Agreement (*i.e.*, Qualified Claimants), Aggrieved Employees, and the Class Representative are also
8 approved by the Court as set forth in the Agreement.

9 **3. APPROVAL OF DISTRIBUTION TO THE CLASS, THE NOTICE OF SETTLEMENT,**
10 **OPPORTUNITY TO OPT OUT OF, AND OBJECT TO, THE SETTLEMENT**

11 The Court finds that the Notice of Settlement, which was submitted with Plaintiff's Motion as
12 Exhibit A to the Declaration of Lindsay Kline, fairly and adequately advised Class Members of the
13 terms of the Agreement, the rights being waived, their right to opt out, the ability to dispute the number
14 payment dates in which they received physical hard copy paystubs, their pro rata share of the Net
15 Settlement Amount, how to participate in the settlement, how to file documentation in opposition to the
16 proposed settlement, and when to appear at the fairness hearing. The Court further finds that the Notice
17 of Settlement and proposed distribution of such notice by first class mail to each identified Class
18 Member at his or her most recent address based on a National Change of Address database search from
19 the Class Members' last known address and a skip trace on any Class Members who have the Notice of
20 Settlement returned as "undeliverable" or "not at this address" comported with all constitutional
21 requirements, including those of due process.

22 **4. IMPLEMENTATION SCHEDULE**

23 Accordingly, with good cause shown, the Court hereby approves and orders that the following
24 implementation schedule be adhered to:

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1 2 3 4 5	Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendant's Counsel	Within 7 days after the Final Approval Date
6 7 8	Last day for Defendant to fund settlement	Within 21 calendar days after the Effective Date or (b) 21 calendar days after Defendant is emailed wiring instructions from the third-party administrator, whichever is last
9 10 11 12	Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	Within 7 calendar days after the Gross Settlement Amount is wired to the settlement administrator
13 14 15	Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 days after issuance of checks to Qualified Members and Aggrieved Employees
16 17 18	Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 days after settlement check cashing deadline
19 20	Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 days after settlement check cashing deadline

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2 IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each
3 party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to
4 the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved
5 Agreement.

6 **IT IS SO ORDERED.**

7
8 Date: _____

By: _____
Judge of the Superior Court

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
Shimoda & Rodriguez Law, PC
3 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733

5 Attorneys for Plaintiff KIMBERLY WEBB
6 individually and on behalf of similarly situated employees

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

11 KIMBERLY WEBB, individually and on
12 behalf of all other similarly situated
employees,

13 Plaintiff,

14 vs.

15 PROFESSIONAL HEALTHCARE AT
16 HOME, LLC, a California Limited Liability
Company; and DOES 1 to 100, inclusive,

17 Defendants.
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Case No. FCS055317

**Assigned For All Purposes to Hon. Christine A.
Carringer**

CLASS ACTION

PROOF OF SERVICE

Date: May 4, 2022

Time: 8:30 a.m.

Dept.: 12

Judge: Hon. Christine A. Carringer

Filed: August 27, 2020

FAC Filed: January 11, 2021

SAC Filed: July 26, 2021

TAC Filed: October 28, 2021

Trial Date: None Set

1 *Webb v. Professional Healthcare at Home, LLC*
2 *Solano County Superior Court of California, FCS055317*

3 **PROOF OF SERVICE — CCP §§ 1010.6, 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Erika F. Collazo, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to the
7 within above-entitled action.

8 On April 7, 2022, I served the following documents on the party below:

- 9 • Plaintiff's Notice of Motion and Motion for Final Approval of Class
- 10 • Action and PAGA Settlement
- 11 • Memorandum of Points and Authorities In Support of Plaintiff's Motion
- 12 • for Final Approval of Class Action and PAGA Settlement
- 13 • Exhibit List and Exhibits In Support of Plaintiff's Motion for Final
- 14 • Approval of Class Action and PAGA Settlement
- 15 • Declaration of Justin P. Rodriguez In Support of Plaintiff's Motion for
- 16 • Final Approval of Class Action and PAGA Settlement
- 17 • Declaration of Lindsay Kline Regarding Notice and Settlement
- 18 • Administration
- 19 • [PROPOSED] Order Granting Plaintiff's Motion for Final Approval of
- 20 • Class Action and PAGA Settlement

21 Shannon B. Nakabayashi (SBN: 215469) 22 Hardev S. Chhokar (SBN: 311802) 23 Swaja Khanna (SBN: 334833) 24 JACKSON LEWIS P.C. 25 50 California Street, 9 th Floor 26 San Francisco, CA 94111-4615 27 Telephone: (415) 394-9400 28 Facsimile: (415) 394-9401 Email: hardev.chhokar@jacksonlewis.com shannon.nakabayashi@jacksonlewis.com fatimah.sikin@jacksonlewis.com suddie.Scott@Jacksonlewis.com swaja.khanna@jacksonlewis.com	
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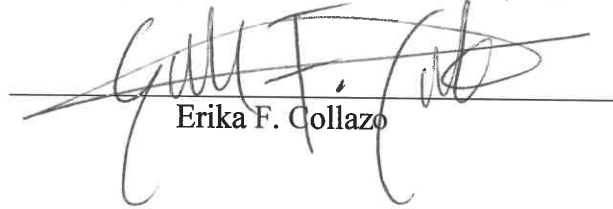
[] [By Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Elk Grove, California, addressed as set forth above.

[] [By Personal Service] By personally delivering a true copy thereof to the office of the addressee above.

[XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown above. No error was reported by the e-mail service that I used.

1 [XXX] [By Overnight Courier] By causing a true copy and/or original thereof to be
2 personally delivered via the following overnight courier service: UPS.

3 I declare under penalty of perjury under the laws of the State of California that the foregoing is
4 true and correct, and that this declaration was executed on April 7, 2022, at Elk Grove, California

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6 Erika F. Collazo
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