

Private Attorneys General Act (Cal. Lab. Code § 2698, *Et Seq.*) Settlement Agreement

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties, subject to the approval of the Court, that the Action and PAGA Released Claims shall be settled and resolved subject to the following terms and conditions set forth in this Private Attorneys General Act (Cal. Lab. Code, § 2698, *et seq.*) Settlement Agreement (“Settlement Agreement”), entered by and between Plaintiff *Ismael Francisco* (“Plaintiff”), for himself and on behalf of the State of California and other Aggrieved Employees pursuant to the California Private Attorneys General Act, and Defendant *United Convalescent Facilities, Inc. dba University Park Healthcare Center, et al.* (“Defendant”) (collectively, the “Parties”).

This Settlement Agreement shall be effective upon the date of the Court order approving the settlement (the “Effective Date”).

I. DEFINITIONS

Unless otherwise defined herein, the following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “Aggrieved Employees” mean all individuals who are or previously were employed by Defendant (United Convalescent) as non-exempt employees during the period September 1, 2019 and the date of the Court’s approval of the settlement.

2. “Defendant” means United Convalescent Facilities, Inc. dba University Park Healthcare Center.

3. “Complaint” means the individual and representative claims and allegations set forth in Plaintiff’s correspondence to the California Labor and Workforce Development Agency dated August 31, 2020 (“LWDA Letter”), and the Complaint in the Action filed on September 1, 2020.

4. “Court” or “Los Angeles County Superior Court” means the Superior Court of California for the County of Los Angeles.

5. “Defense Counsel” or “Counsel for Defendant” is James S. Cooper, Esq. of Levinson Arshonsky & Kurtz, LLP, 15303 Ventura Blvd., Suite 1650, Sherman Oaks, CA 91403.

6. “Employee PAGA Portion” is the amount to be distributed to the Aggrieved Employees, which shall consist of 25% of the PAGA Penalties Amount, as provided in Section III.3 herein.

7. “Employee Payments” refers to the PAGA Penalty Payments that will be distributed to Aggrieved Employees, as provided in Section III.3 herein.

8. “Gross Settlement Amount” is the sum of One Hundred Thousand Dollars and Zero Cents (\$100,000.00), which represents the total amount payable under this Settlement Agreement

by Defendant and includes the Employee PAGA Portion payable to Aggrieved Employees, LWDA Payment payable to the LWDA, Service Payment for the Named Plaintiff, Attorney Fees, Costs, and Settlement Administration Costs.

9. "LWDA" means the California Labor and Workforce Development Agency.
10. "PAGA Action" means the matter *Francisco v. United Convalescent Facilities, Inc. dba University Park Healthcare Center, et al.*, Los Angeles County Case No. 20STCV33493.
11. "Plaintiff" means Ismael Francisco.
12. "Plaintiff's counsel" means Marcus J. Bradley, Esq. of Bradley/Grombacher, LLP, 31365 Oak Crest Dr., Suite 240, Westlake Village, CA 91362.
13. "Net Settlement Amount" is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts are subtracted from the Gross Settlement Amount: (a) Attorneys' Fees to Plaintiff's counsel, (b) Litigation Costs to Plaintiff's counsel, (c) Incentive Award for the Named Plaintiff; (d) and Settlement Administration Costs.
14. "PAGA" means the California Labor Code Private Attorneys General Act, California Labor Code section 2698, *et seq.*
15. "LWDA Payment" means the amount to be paid to the LWDA, which is seventy-five percent (75%) of the Net Settlement Amount as set forth in Section III.3 herein.
16. "PAGA Period" means the time period from September 1, 2019, through until the Court grants approval of the settlement or 90 days from the date of execution of the Settlement Agreement and release, whichever is sooner.
17. "PAGA Released Claims" mean any and all claims, debts, liabilities, demands, obligations, guarantees, damages, wages, benefits, penalties, interest, attorney's fees, costs, expenses, action or causes of action, in law or equity, whether known or unknown, which have been or could have asserted by the Plaintiff and/or any member of the Aggrieved Employees that could have been assessed upon and collected from the Released Parties under PAGA, based on the factual allegations in the Complaint, including, but not limited to, purported violations of California Labor Code sections 200, 201, 202, 203, 226, 226(a), 226.3, 226.7, 226.7(b), 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and IWC Wage Order 5-2001.
18. "Released Parties" mean United Convalescent Facilities, Inc. dba University Park Healthcare Center and its past, present, and future officers, directors, employees, board members, shareholders, relatives, attorneys, insurers, reinsurers, customers, partners, investors, members, representatives, predecessors, parent companies, subsidiaries, affiliates, divisions, successors, agents and principals, and their members, heirs, estates, executors, administrators, servants, insurers, attorneys, and assigns.

II. RECITALS

1. On August 31, 2020, Plaintiff provided written notice to the LWDA and Defendant asserting claims for civil penalties pursuant to PAGA stemming from alleged violations of California Labor Codes.

2. Plaintiff filed his Representative Action against Defendant on September 1, 2020, and later a First Amended Complaint on or about November 1, 2021. Plaintiff alleged a single PAGA action for penalties under Labor Code sections 2698-2699 based upon violations of Labor Code sections 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, among others, and IWC Wage Order 5-2001.

3. On August 24, 2021, the Parties participated in mediation before mediator Steven G. Mehta, Esq., after undertaking an investigation and exchange of information and documents pertaining to Plaintiff and the Aggrieved Employees.

4. On August 25, 2021, following extensive post-mediation settlement discussions, the Parties finalized an agreement to fully and finally resolve the PAGA Action and the PAGA Released Claims as to Plaintiff, the State of California, and the Aggrieved Employees.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission.** Nothing in this Settlement Agreement nor action taken in implementation thereof shall be construed to be an admission or concession by Plaintiff that his claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, Aggrieved Employees, or any other person, and Defendant specifically disclaims any such liability or wrongdoing. Nor will any of the foregoing be used in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement may be used in any court proceeding that has as its purpose the interpretation, implementation, or enforcement of the settlement or any orders or judgments of the Court entered into in connection therewith. The Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and risks. This Settlement Agreement and any related Court documents or orders are not and may not be cited or admitted as evidence of liability.

2. **Gross Settlement Amount.** Defendant shall pay no more than \$100,000.00 as the Gross Settlement Amount ("GSA") to resolve this PAGA Action subject to the Escalator Payment as set forth in Section III.15.

3. **Net Settlement Amount.** The Parties agree that the Net Settlement Amount ("NSA") shall be distributed to the LWDA and Aggrieved Employees as follows: Seventy-five percent (75%) of the Net Settlement Amount shall be distributed to the LWDA (i.e., the LWDA Payment) and twenty-five percent (25%) of the Net Settlement Amount shall be distributed to the

Aggrieved Employees on a *pro rata* basis, based on their respective number of pay periods worked for Defendant during the PAGA Period (i.e. the "Employee Payments"). Payments to Aggrieved Employees of their share of the Net Settlement Amount shall be referred to as "Employee Payments." Each Aggrieved Employee will be paid a non-wage check for the PAGA Penalty Payment, and will receive an IRS Form 1099 for said payment.

4. **Attorneys' Fees Payment.** Plaintiff's counsel shall request and Defendant and Defendant's counsel shall not oppose a fee request of 33⅓% of the GSA. Should the Court award less than 33⅓% of the GSA as attorney fees to Plaintiff's counsel, the remaining amount shall revert to the NSA.

5. **Plaintiff's Litigation Costs Payment.** Plaintiff's counsel shall be reimbursed for all reasonable litigation costs, not to exceed \$10,000.00, to be paid from the GSA.

6. **Incentive Award for Plaintiff.** Plaintiff's counsel shall request and Defendant and Defendant's counsel shall not oppose an incentive award of \$5,000.00 to Plaintiff for his services as Named Plaintiff in this action, to be paid from the GSA. Should the Court award less than \$5,000.00 as an incentive award to Plaintiff, the remaining amount shall revert to the NSA.

7. **Settlement Administration Costs Payment.** The Parties shall agree on a Settlement Administrator (e.g., CPT Group, ILYM Group, Phoenix, etc.) to administer the PAGA settlement process. Settlement administration costs not to exceed \$7,500.00 shall be paid from the GSA.

8. **Plaintiff's Release of PAGA Claims.** In consideration of payment under the settlement, and upon the Effective Date, Plaintiff shall be deemed to release the Released Parties from any and all PAGA Released Claims.

9. **Released Claims.** Upon the Effective Date, Plaintiff, Aggrieved Employees, and the State of California will be forever barred from pursuing any and all PAGA Released Claims defined in Section I.16 herein accrued on or before the Effective Date.

10. **Covenants and Representations by Plaintiff and Plaintiff's counsel.**

a. Plaintiff represents and warrants that he has not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement Agreement.

Plaintiff acknowledges that he has read this Settlement Agreement, whether personally or with the assistance of a translator, as necessary, that they fully understand his rights, privileges, and duties under the Settlement Agreement, and enters into this Settlement Agreement freely and voluntarily. Plaintiff further acknowledges that he has had the opportunity to consult with his attorneys to explain the terms of this Settlement Agreement and the consequences of signing this Settlement Agreement.

11. **Limited Disclosure and No Publicity.** Except to the extent necessary to effectuate the settlement or as required by the PAGA statute, a court of law, or legal process, neither

Defendant, Defendant's Counsel, Plaintiff, nor Plaintiff's counsel will publicize the terms of this Settlement Agreement or issue a press release, hold a press conference, publish information about the settlement on any website or through any social media, or otherwise publicize the settlement or communicate its terms in public or in private, unless ordered by the Court.

12. **Filing of Stipulation or Motion for Approval of Settlement by Plaintiff's Counsel.** Plaintiff's counsel shall be responsible for preparing the Stipulation for Approval of the Settlement ("Stipulation") or Motion for Approval of Settlement ("Motion"). Plaintiff's counsel will file the Stipulation or the Motion, as soon as practicable. Pursuant to California Labor Code section 2698, *et seq.*, Plaintiff's counsel shall undertake all required submissions and disclosures to the LWDA and the Court to obtain approval of the settlement.

13. **Termination of Settlement Agreement.** If the Court does not approve the settlement, if the Court does not dismiss the PAGA Action with prejudice, as provided for in this Settlement Agreement, or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or if one or more of the terms of the Settlement Agreement is not approved or is materially modified or reversed or found to be invalid, or the settlement does not become final for any other reason, then either of the Parties shall have the right within ten (10) calendar days of written notice thereof to elect to terminate the Settlement Agreement, in which case it shall have no force or effect, and the Parties shall be deemed to have reverted to their original, respective status as of the date and time immediately prior to the execution of this Settlement Agreement.

14. **Dismissal.** The Settlement Administrator will timely provide the Parties with a declaration confirming that distribution of payments has been completed in accordance with the Settlement Agreement and the Court's orders. Plaintiff's counsel will file the declaration with the Court and required dismissal papers (i.e., a Request for Dismissal of the Action with prejudice) within ten (10) business days of receipt or as otherwise ordered by the Court. This Settlement Agreement is expressly conditioned upon the Court entering the dismissal of the Action in its entirety. The dismissal will not release or bar any claims other than those set forth in this Agreement.

15. **Escalator Payment.** Prior to the mediation, Defendant provided Plaintiff with the pay period count from September 1, 2019 through August 24, 2021. For the purposes of mediation, the Parties estimated 4,400 Covered Pay Periods. The Parties agree that Defendant will not be required to make any payment in excess of the Gross Settlement Amount if, at the time of Court approval, the number of Covered Pay Periods is 4,400 or fewer. The Parties agree that, if by the time of Court approval of this Settlement, the number of Covered Pay Periods exceeds 4840 Defendant will pay \$22.73 for each Covered Pay Period in excess of 4840 that Defendant seeks to include in the Covered Period ("Escalator Payment").

IV. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administration.** The Parties shall mutually agree upon a Settlement Administrator (e.g., CPT Group, ILYM Group, Phoenix, etc.), which shall be paid from the GSA.

Notice to Aggrieved Employees.

a. No later than twenty (20) calendar days after the Effective Date, Defendant shall provide the Settlement Administrator with a list of the Aggrieved Employees (the "Aggrieved Employees List"). The Aggrieved Employees List shall include each Aggrieved Employee's full name, last known mailing address, last known telephone number, start date(s) of employment, end date(s) of employment, and Social Security number, to the extent available from Defendant's records. The Settlement Administrator will maintain the list in confidence, and shall only access and use the list to administer the settlement in conformity with the Court's orders.

b. No later than fifteen (15) calendar days after receipt of the entire Gross Settlement Amount from Defendant, the Settlement Administrator will mail the Employee Payments under cover letter, substantially in the form attached hereto as "**Exhibit A**" ("Cover Letter"), to each of the Aggrieved Employees identified on the Aggrieved Employees List.

Deposit and Distribution of Gross Settlement Amount.

a. No later than forty-five (45) business days from the Effective Date ("Funding Date"), Defendant shall deposit Gross Settlement Fund, totaling \$100,000.00, into a settlement account established by ILYM Group Inc., for administration and distribution in accordance with this Settlement Agreement and the Court's orders.

b. ILYM Group Inc. shall distribute payments for the Attorneys' Fees, the Litigation Costs, the Employee Payments, and the LWDA Payment within fifteen (15) calendar days after receipt of the entire Gross Settlement Amount from Defendant. All payments provided for by this Settlement Agreement shall be made by ILYM Group Inc. in accordance with this Settlement Agreement and the Court's order approving this settlement.

c. Each Aggrieved Employee will be issued one check for their Employee Payment which will expire one hundred and eighty (180) calendar days from the date the checks are issued by ILYM Group Inc. After the 180-day period, ILYM Group Inc. shall cancel all checks that have not been cashed or deposited and remit funds associated with such canceled checks to the State Controller's Office, Unclaimed Property Division in the name associated with each Aggrieved Employee whose Employee Payment checks are canceled.

V. MISCELLANEOUS PROVISIONS

1. **No Impact on Employee Benefit Plans.** Neither the Settlement Agreement nor any amounts paid to Plaintiff, any Aggrieved Employee, or the LWDA under the settlement will modify any previously credited hours or service under any employee benefit plan, policy, or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Defendant's sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement Agreement shall not be applied retroactively, currently, or on a going-forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any Defendant benefit plan, policy, or bonus program. Defendant retains the right, if necessary, to modify the language

of its benefit plans, policies, and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement Agreement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies, and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

2. **Tax Consequences.** Plaintiff and Aggrieved Employees will be solely responsible for correctly characterizing any compensation received under the settlement on their personal income tax returns for tax purposes, and paying all appropriate taxes due for any and all amounts paid to them under the settlement. Plaintiff, Defendant, Plaintiff's counsel, and Defendant's Counsel make no representations or warranties with respect to tax consequences of any payment under this Settlement Agreement, do not intend anything contained in this Settlement Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement Agreement be relied upon as such.

3. **Governing Law.** This Settlement Agreement shall be construed under and governed by the laws of the State of California. This Settlement Agreement shall be deemed to have been entered into in California, and all questions of validity, interpretation, or performance of any of its terms or of any rights or obligations of the Parties to this Settlement Agreement shall be governed by California law. If any legal or equitable action or arbitration is necessary to enforce the terms of this Settlement Agreement, it shall be brought in the State of California, County of Orange.

4. **Entire Agreement.** This Settlement Agreement and the individual Confidential Settlement Agreement and Release constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties. The Parties each acknowledge and represent that no promise or representation not contained in this Settlement Agreement or the individual Confidential Settlement Agreement and Release has been made to them, and acknowledge and represent that this Settlement Agreement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the Action and PAGA Released Claims.

5. **Judgment and Continued Jurisdiction.** The Parties agree that this Settlement Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6, and the Court, to the fullest extent of the law, shall retain exclusive and continuing jurisdiction over this Action, over all Parties, and the Aggrieved Employees to interpret and enforce the terms, conditions, and obligations of the Settlement Agreement.

6. **Amendment or Modification.** This Settlement Agreement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all Parties, subject to approval by the Court.

7. **Binding on Successors and Assigns.** This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

8. **Execution and Counterparts.** This Settlement Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

9. **Acknowledgement of Mutual Drafting and that the Settlement is Fair, Adequate, and Reasonable.** The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action, and have arrived at this settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this settlement. The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

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

11. **Severability.** If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be valid and will be performed, construed, and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Settlement Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

12. **No Waiver.** No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right, or remedy.

13. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to implement the settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

IN WITNESS THEREOF, the Parties each acknowledge that they have read the

foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement, and hereby executes it voluntarily and with full understanding of its consequences.

DATED: 10/11, 2021

By: 
Plaintiff Ismael Francisco

DATED: 10/12, 2021

By: 
Defendant United Convalescent Facilities, Inc. dba
University Park Healthcare Center

APPROVED AS TO FORM AND CONTENT:

BRADLEY/GROMBACHER LLP

Dated: 10/11

By: 
Marcus J. Bradley, Esq.
Attorney for Plaintiff

LEVINSON ARSHONSKY & KURTZ, LLP

Dated: 10/12/21

By: 
James S. Cooper, Esq.
Attorneys for Defendant