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Attorneys for Plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

JOSELUIS DAVILA, as an individual and on
behalf of all others similarly situated, and as a
private attorney general,

Plaintiff,

vs.

HAYWARD SISTERS HOSPITAL dba ST.
ROSE HOSPITAL, a California corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. RG20074747

[Hon. Brad Seligman, Department 23]

**DECLARATION OF SIMON L. YANG IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: December 13, 2022
Time: 3:00 p.m.
Department: 23

Reservation ID: 105787183984

Complaint Filed: September 23, 2020

1 I, Simon L. Yang, declare as follows:

2 1. I am an attorney admitted to practice in the State of California and, with the law firm
3 Diversity Law Group, P.C., am counsel of record for Plaintiff. I make this declaration on the basis of my
4 own personal knowledge, except as to those matters stated on information and belief and, as to those
5 matters, I believe them to be true. If called as a witness, I could testify competently as to the facts stated
6 in this declaration.

7 2. On September 23, 2020, Plaintiff initiated this class and private attorney general action.
8 Upon the filing of the Action, Plaintiff and Defendant met and conferred about the alleged claims. On or
9 about February 5, 2021, Plaintiff served initial written discovery. On or about March 30, 2021,
10 Defendant served responses to the discovery.

11 3. Class Counsel continued investigating the alleged claims and also analyzed any defenses
12 raised by Defendant. The Parties supplemented formal discovery by continuing to exchange information
13 and documentation pursuant to informal methods to assist them in exploring the possibility of a
14 mediated resolution. Defendant's willingness to supplement formal discovery with informal discovery
15 enabled Plaintiff to evaluate the full scope of Defendant's potential liability. For example, Defendant
16 provided the relevant numbers of individuals and wage statements, among other things—enabling
17 Plaintiff to assess the full value of Class Members' claims and further enabling negotiations to take
18 place between the Parties. Ultimately, the Parties agreed to schedule a mediation.

19 4. On March 29, 2022, the Parties attended mediation with Russ Wunderli, Esq., an
20 experienced mediator knowledgeable of both the wage and hour laws and class and representative action
21 claims at issue. With the mediator's assistance and based on a mediator's proposal, the Parties were able
22 to negotiate the settlement terms in the Joint Stipulation of Class Action Settlement and Release (the
23 "Agreement"), a true and correct copy of which is attached as **Exhibit 1**.

24 5. The Agreement requires Defendant to pay \$1,008,000.00—or approximately \$828.27, on
25 average, per Class Member. As discussed below, this amounts to approximately 14.28% of Defendant's
26 potential liability and is an excellent result for Class Members. Plaintiff contended that class claims
27 under Section 226(e) result in a \$50 penalty for the first non-compliant wage statement to each Class
28 Member and a \$100 penalty for each additional non-compliant wage statement to the Class Member, up

1 to a maximum of \$4,000 per class member.¹ Plaintiff also contended that PAGA penalties under Section
2 2699(f) also result in up to \$100 per non-compliant wage statement.

3 6. Defendant contested the merits and denied it was liable at all. Moreover, even if Plaintiff
4 prevailed on the merits, Defendant contested the extent of liability. For example, Defendant contended
5 that liability under Section 226(e) would be subject to additional defenses requiring proof of injuries
6 resulting from knowing and intentional violations. Likewise, Defendant contended that PAGA penalties
7 in any event would be subject to discretionary reductions.

8 7. While the Parties disagree on the application of the law to the facts, each Party
9 recognized in negotiations that, if taken to trial, the other Party would at least have reasonable
10 arguments, such that the Gross Settlement Amount to which the Parties ultimately agreed was
11 reasonable. Ultimately, based on data available at mediation on February 3, 2022, Plaintiff argued that
12 the potential total recovery amounted to \$7,058,750.00—which included \$3,498,950.00 in penalties
13 under Section 226(e) and \$3,559,800 in penalties under Section 226(e). Plaintiff contends that the Gross
14 Settlement Amount of \$1,008,000.00—approximately 14.28% of the potential total recovery of
15 \$7,058,750.00—is an excellent result. Based on the terms of the Agreement, it is expected that, on
16 average, each Class Member would be allocated \$427.28 (*after* all requested payments from the Gross
17 Settlement Amount).²

18 8. Although I am confident that litigation of the claims would result in a classwide judgment
19 against Defendant, I recognize the inherent risks in litigation, including the specific risks that class
20 certification could be denied, liability could not be established at trial, or the applicable law could
21 change. I recognize that the settlement resulting from extensive arm's length negotiations between the
22 Parties is fair, reasonable, and adequate for each participating Class Member, given the inherent risks of
23 litigation, as well as the potential for appeals and the costs of pursuing litigation.

24
25
26 ¹ Except as otherwise noted, all "Section" references are to the Labor Code.

27 ² The amount paid on average to each Class Member may increase, depending on how many Class
28 Members opt out of the class action settlement. The amount actually paid to any Class Member may
increase or decrease depending on his or her number of relevant wage statements during the Class
Period.

1 9. I am one of the primary attorneys on this matter. My qualifications are as follows: After
2 completing my undergraduate education at The Wharton School at the University of Pennsylvania in
3 2004 with concentrations in Management and Human Resources, I continued studying labor and
4 employment issues by enrolling in post-graduate education at the School of Labor and Employment
5 Relations at the University of Illinois. I determined before enrolling in law school that I wanted to
6 practice labor and employment law in California. I thus received my J.D. from UCLA School of Law in
7 2008. During law school, I spent the summer of 2006 with the National Labor Relations Board, Region
8 21, and the summer of 2007 with the law firm of Seyfarth Shaw LLP in 2007.

9 10. Upon graduating from law school in 2008, I practiced labor and employment law at
10 Seyfarth Shaw LLP, a well-regarded labor and employment firm. I was elevated to partner in 2019. My
11 practice focused on wage and hour class, collective, and representative actions, with a particular
12 emphasis on matters involving the Labor Code Private Attorneys General Act of 2004 (“PAGA”).
13 During my time with Seyfarth Shaw LLP, I was a primary attorney on numerous wage and hour class,
14 collective, and representative actions that resulted in published opinions, including for example, *Ehret v.*
15 *WinCo Foods, LLC*, 26 Cal. App. 6th 1 (2018) (affirming summary judgment in PAGA action based on
16 absence of meal period violations in light of collectively bargained waiver of meal periods on shifts of
17 not more than six hours), and *Ruelas v. Costco Wholesale Corporation*, 67 F. Supp. 3d 1137 (C.D. Cal.
18 Sept. 8, 2014) (obtaining dismissal of wage statement allegations in PAGA representative action). I was
19 also able to obtain experience litigating representative claims or wage and hour matters through trial and
20 appeal. *E.g.*, *Velazquez v. Costco Wholesale Corporation*, 603 Fed. App’x 584 (9th Cir. Mar. 25, 2015)
21 (reversing award of waiting-time penalties based on lack of evidence supporting any willful failure to
22 pay wages); *Ward v. Costco Wholesale Corporation*, 552 Fed. App’x 631 (9th Cir. Jan. 9, 2014)
23 (affirming bench-trial judgment in favor of defendant against named plaintiff and 18 opt-in plaintiffs in
24 collective action with involving deductions from final paychecks). I also litigated class certification on
25 numerous matters. *E.g.*, *Martinez v. Guess?, Inc.*, Los Angeles Superior Court Case No. BC 498326
26 (denial of class certification on behalf of retail employees alleging off-the-clock work).

27 11. Based on my experience in wage and hour class, collective, and representative actions, I
28 have been interviewed and quoted in articles published in the Northern California Record about

1 legislative efforts to reform PAGA. I also have published articles on myriad topics relevant to wage and
2 hour class and representative action litigation, including for example articles on California kin care
3 requirements in *Employee Relations Law Journal* (Vol. 36, No. 2), the extraterritorial application of
4 California employment laws in *The Recorder* (134RD Year No. 28), and California meal and rest break
5 laws in *California Transportation News*, a publication of the California Construction Trucking
6 Association.

7 12. In 2020 I left Seyfarth Shaw LLP and joined my current firm, Diversity Law Group, P.C.,
8 which also focuses primarily on employment law. I have handled a number of wage and hour class and
9 representative actions and continue litigating such matters in numerous Superior Courts and District
10 Courts. From matters with both Seyfarth Shaw LLP and Diversity Law Group, P.C., I have successfully
11 mediated the resolution of dozens of wage and hour class, collective, and representative actions. I have
12 obtained class certification and been appointed class counsel. No court has ever found me to be
13 inadequate class counsel.

14 13. My co-counsel and I will adequately represent the Class Members in this action.
15 Plaintiff's Counsel have and will zealously represent Plaintiff and the Class and pursue this lawsuit to its
16 conclusion.

17 14. Along with the filing of the motion for preliminary approval of the settlement in this
18 matter, a copy of the motion papers have also been uploaded to the Labor and Workforce Development
19 Agency ("LWDA") in compliance with Section 2699(1)(2) and (4). Similarly, upon approval of a
20 settlement in this matter, my regular practice would be to direct my office staff to upload a copy of the
21 Court's judgment, papers, or other orders awarding civil penalties under PAGA.

22 I declare under penalty of perjury under the laws of the State of California that the foregoing is
23 true and correct. Executed this 17th day of November 2022, at Pasadena, California.

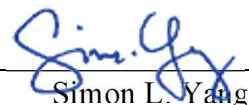
24
25 
Simon L. Yang

EXHIBIT 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

JOSELUIS DAVILA, as an individual and on
behalf of all others similarly situated, and as a
private attorney general,

Plaintiff,

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HAYWARD SISTERS HOSPITAL dba ST.
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DOES 1 through 50, inclusive,

Defendants.

Case No. RG20074747

[Hon. Brad Seligman, Department 23]

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

Complaint Filed: September 23, 2020

Trial Date: None Set

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

2 This Joint Stipulation of Class Action and PAGA Settlement and Release is made and entered
3 into by and between Plaintiff, Joseluis Davila, on the one hand, and Defendant, Hayward Sisters
4 Hospital, a California corporation dba St. Rose Hospital, on the other hand.

5 **1. DEFINITIONS**

6 As used herein, the following terms are defined as:

7 **1.1. Action.** “Action” means the civil lawsuit originally entitled *Joseluis Davila v. Hayward*
8 *Sisters Hospital dba St. Rose Hospital*, filed on or about September 23, 2020, in the Superior Court of
9 the State of California for the County of Alameda designated as Case No. RG20074747.

10 **1.2. Administrator.** “Administrator” means the third-party settlement administrator mutually
11 agreed to by the parties and approved by the Court to administer the settlement.

12 **1.3. Agreement and/or Settlement** means this Joint Stipulation of Class Action Settlement
13 and Release.

14 **1.4. Class Counsel.** “Class Counsel” means Larry W. Lee and Simon L. Yang of Diversity
15 Law Group, P.C. and William L. Marder of Polaris Law Group.

16 **1.5. Class Members.** “Class Members” and “Aggrieved Employees” mean any current or
17 former non-exempt employees who worked for Defendant in the State of California who were paid shift
18 differential wages at any time during the Class Period. Defendant represents that there are approximately
19 1,217 Class Members.

20 **1.6. Class Notice.** “Class Notice” means the Notice of Class Action Settlement, substantially
21 in the form attached as Exhibit A.

22 **1.7. Class Period.** “Class Period” and “PAGA Period” mean September 23, 2019, through
23 March 29, 2022.

24 **1.8. Court.** “Court” means the Superior Court of California for the County of Alameda.

25 **1.9. Defendant.** “Defendant” means Hayward Sisters Hospital, a California corporation dba
26 St. Rose Hospital.

27 **1.10. Defendant’s Counsel.** “Defendant’s Counsel” means Linda M. Moroney, Sara A.
28 Moore, and Violaine Brunet of Gordon Rees Scully Mansukhani, LLP.

1 **1.11. Effective Date.** “Effective Date” means: (a) if no objections to the settlement are filed,
2 the date the Final Approval Order is signed by the Court; (b) if objections to the settlement are filed, the
3 day following the expiration of the time for the filing of an appeal of the Final Approval Order; or (c) if
4 any appeals of the Final Approval Order are filed, the day following the expiration of time to further
5 appeal an order affirming the Final Approval Order. However, Defendant shall not be required to pay
6 any portion of the Gross Settlement Amount and the Claims Administrator shall not distribute or pay
7 any monies, unless and until all such appeals have been finally resolved or dismissed with prejudice.

8 **1.12. “Final Approval” and/or “Final Approval Order and Judgment”** means the Court’s
9 order granting final approval of a settlement pursuant to this Agreement and entering judgment thereon
10 in a form to be agreed upon by the Parties in advance, subject to approval and modification by the Court

11 **1.13. Gross Settlement Amount.** “Gross Settlement Amount” means the total amount
12 Defendant is obligated to pay under the terms of this Agreement, which is equal to \$1,008,000.00. The
13 Gross Settlement Amount is all-inclusive, encompassing the Administration Costs, Attorneys’ Fees and
14 Costs Award, Class Representative Award, PAGA Penalty Fund, and Individual Settlement Payments.

15 **1.13.1. Administration Costs.** “Administration Costs” means a Court approved payment
16 from the Gross Settlement Amount to the Administrator for administering the settlement, which includes
17 but is not limited to printing, distributing, or tracking Class Notices, processing any required tax
18 payments or reporting, providing any required tax forms, distributing payments pursuant to a Final
19 Approval Order, and providing necessary reports or declarations, as requested by the Court or Class
20 Counsel and Defendant’s Counsel, not to exceed \$14,000.00.

21 **1.13.2. Attorneys’ Fees and Costs Award.** “Attorneys’ Fees and Costs Award” means a
22 Court approved payment from the Gross Settlement Amount for Class Counsel’s attorneys’ fees and
23 costs associated with the litigation and resolution of the Action (excluding third-party Administration
24 Costs separately addressed above).

25 **1.13.3. Class Representative Award.** “Class Representative Award” means a Court
26 approved payment from the Gross Settlement Amount to Plaintiff Joseluis Davila in recognition of his
27 efforts and work in prosecuting the Action on behalf of Class Members and in consideration of
28 Plaintiff’s additional general release of claims inapplicable to Settlement Class Members.

1 **1.14. Individual Settlement Payment.** “Individual Settlement Payment” means a Class
2 Member’s potential share of the payment from the Net Settlement Amount and PAGA Penalty Fund,
3 subject to applicable payroll deductions or withholdings as required by law.

4 **1.14.1. Individual Class Payment.** “Individual Class Payment” means a Settlement
5 Class Member’s potential payment from the Net Settlement Amount for settlement of class action
6 claims.

7 **1.14.2. Individual PAGA Payment.** “Individual PAGA Payment” means an Aggrieved
8 Employee’s potential share of the payment from the PAGA Penalty Fund for settlement of PAGA
9 claims brought pursuant to the Private Attorneys General Act, California Labor Code Section 2698 et
10 seq.

11 **1.15. Net Settlement Amount.** “Net Settlement Amount” means the remainder of the Gross
12 Settlement Amount after Court approved deductions for the PAGA Penalty Fund, Attorneys’ Fees and
13 Costs Award, Class Representative Award, and Administration Costs.

14 **1.16. PAGA Penalty Fund & LWDA Payment.** “PAGA Penalty Fund” means the portion of
15 the settlement allocated to PAGA penalties. “LWDA Payment” means a payment of 75% of the PAGA
16 Penalty Fund to the Labor & Workforce Development Agency (“LWDA”).

17 **1.17. Parties.** “Parties” means Plaintiff Joseluis Davila and Defendant Hayward Sisters
18 Hospital, a California corporation dba St. Rose Hospital.

19 **1.18. Plaintiff.** “Plaintiff” means Joseluis Davila.

20 **1.19. Preliminary Approval Order.** “Preliminary Approval Order” means an order granting
21 preliminary approval of a settlement pursuant to this Agreement.

22 **1.20. Released Party.** “Released Party” means Defendant Hayward Sisters Hospital, a
23 California corporation dba St. Rose Hospital and any of its parents, subsidiaries, officers, managers,
24 directors, and any of their officers, directors, managers, managing agents, and successors and assigns.

25 **1.21. Settlement Class Members.** “Settlement Class Members” means Class Members who do
26 not exclude themselves from the class action settlement by complying with the procedures set forth in
27 the Class Notice to opt out of the class action settlement.
28

1 **2. RECITALS**

2 **2.1. Initiation of Action.** On or about September 9, 2020, Plaintiff sent notice to the LWDA
3 and Defendant regarding violations of the Labor Code resulting from Defendant’s alleged failure to
4 furnish non-exempt employees with wage statements that accurately showed the total hours worked. On
5 or about September 23, 2020, Plaintiff filed the original complaint pursuing class action claims on
6 behalf of a putative class of current and former non-exempt employees of Defendant in the State of
7 California who were paid shift differential wages from September 23, 2019 through March 29, 2022.
8 The Complaint also pursues claims under the Labor Code Private Attorneys General Act of 2004
9 (“PAGA”) for the same Labor Code violations.

10 **2.2. Class Counsel’s Investigation.** On numerous dates, Plaintiff and Defendant met and
11 conferred about the alleged claims. Plaintiff served written discovery and met and conferred with
12 Defendant about supplemental responses to the written discovery. The Parties also continued engaging
13 in informal discovery, and Defendant provided Plaintiff with information about various defenses. Class
14 Counsel continued investigating the alleged claims and also analyzed any defenses raised by Defendant.

15 **2.3. Mediation and Settlement.** On March 29, 2022, the Parties attended a mediation with
16 Russ Wunderli, Esq., an experienced mediator knowledgeable of both the wage and hour laws and class
17 and representative action claims at issue in the Action. With the mediator’s assistance and based upon a
18 mediator’s proposal, the Parties were able to agree to settlement terms, which was reached after
19 extensive arm’s length negotiations in light of all known facts and circumstances—including the
20 uncertainty associated with litigation, the risks of significant delay, and numerous potential appellate
21 issues.

22 **2.4. No Admission of Liability.** Defendant denied and continues to deny all of the allegations
23 made by Plaintiff in the Action. Although Defendant denied and continues to deny all of the allegations
24 made by Plaintiff in the Action, Defendant—without admitting or conceding any liability or wrongdoing
25 whatsoever—has agreed to settle the Action on the terms and conditions set forth in this Agreement for
26 the sole purpose of avoiding the burden, expense, and uncertainty of continuing the Action.

1 **2.5. Class Counsel's Evaluation.** Based on Class Counsel's ongoing investigation and
2 evaluation, Class Counsel is of the opinion that the terms set forth in this Agreement are fair, reasonable,
3 adequate, and in the best interests of Class Members.

4 **2.6. Certification of Settlement Class.** This Agreement is contingent upon the approval and
5 certification by the Court of a class for purposes of settlement. The Parties agree to cooperate and take
6 all steps necessary and appropriate to effectuate all aspects of this Agreement and to obtain a
7 Preliminary Approval Order and then Final Approval Order.

8 **3. Notice to Class Members**

9 **3.1. Administrator.** Plaintiff and Class Counsel shall request that the Court appoint Phoenix
10 Settlement Administrators as the Administrator for purposes of sending notice of the settlement to Class
11 Members. The Parties agree that Administration Costs should not exceed \$14,000.00.

12 **3.2. Class Data for Administrator.** Within seven calendar days of the Preliminary Approval
13 Order, Defendant shall provide to the Administrator each Class Member's last known mailing address,
14 as well as data sufficient for the Administrator to perform all necessary responsibilities pursuant to this
15 Agreement.

16 **3.3. Class Notice of Settlement.** The Administrator shall send Class Notice to Class
17 Members to provide notice of settlement within 14 calendar days of the Preliminary Approval Order,
18 pursuant to the procedures below. This shall be the sole means of notice to Class Members.

19 **3.4. Mailing of Notice.** The Administrator shall send Class Notice to each Class Member via
20 First Class U.S. Mail, using the last known mailing address for each Class Member, based on class data
21 provided by Defendant. Any Class Notice returned to the Administrator as undeliverable shall be sent
22 promptly via First Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is
23 provided, the Administrator shall promptly attempt to determine the correct address using a single skip-
24 trace search and shall then promptly send a single re-mailing.

25 **3.5. Proof of Mailing.** The Administrator shall provide Class Counsel and Defendant's
26 Counsel a declaration of due diligence and proof of mailing with regard to mailing of Class Notice.
27
28

1 **4. Class Members' Response Options**

2 **4.1. Consideration Period.** Class Members shall be provided 30 calendar days after the
3 postmark date of the initial mailing of Class Notice to exercise any rights to opt out of the class action
4 settlement. Except as provided herein, no Class Member responses that are postmarked more than 30
5 calendar days after the initial mailing of Class Notice shall be considered. The Parties shall do nothing to
6 encourage or solicit Class Members to opt out of or object to the class action settlement.

7 **4.2. Objection Right and Effect.** Settlement Class Members shall be given the opportunity to
8 object to the terms of the class action settlement. Settlement Class Members may object to the class
9 action settlement by mailing to the Administrator an objection within 30 calendar days after the
10 postmark date of the initial mailing of Class Notice, which describes the objection and states any
11 intention to appear at the final approval hearing. Alternatively, Settlement Class Members may appear at
12 the final approval hearing to object to the class action settlement. Absent good cause as determined by
13 the Court, any Settlement Class Member who does not comply with the objection procedures in the
14 Class Notice shall be deemed to have waived any objections and shall be foreclosed from making any
15 objection, whether by appeal or otherwise, to the class action settlement. Settlement Class Members who
16 object to the class action settlement pursuant to the terms of the Class Notice shall remain subject to
17 being bound by the release provisions in this Agreement pursuant to a Final Approval Order and shall
18 remain eligible to receive an Individual Class Payment.

19 **4.3. Opt-Out Right and Effect.** Class Members shall be given the opportunity to opt out of
20 the class action settlement. Class Members may opt out of the class action settlement by mailing to the
21 Administrator a Request for Exclusion within 30 calendar days after the postmark date of the initial
22 mailing of Class Notice. Any Request for Exclusion that does not comply with the procedures in the
23 Class Notice shall be deemed void and ineffective. Class Members who opt out of the class action
24 settlement pursuant to the terms of the Class Notice shall not receive any Individual Class Payments,
25 shall not be bound by the class action release provisions in this Agreement pursuant to a Final Approval
26 Order, and shall not be permitted to object to the settlement or appeal. If a Class Member submits both a
27 Request for Exclusion and an objection, the Administrator shall attempt to determine whether the Class
28 Member would like to withdraw either the Request for Exclusion or the objection. If the Class Member

1 does not withdraw a Request for Exclusion, or if the Administrator cannot contact the Class Member
2 who submits both a Request for Exclusion and an objection, the Request for Exclusion shall be deemed
3 valid and shall be deemed to invalidate the objection.

4 **4.4. Objection Response.** The Administrator must provide a copy of any objection received
5 to Class Counsel and Defendant's Counsel upon receipt. Either of the Parties may file a response to any
6 written objection no later than five court days before the final approval hearing.

7 **4.5. Proof of Class Members' Responses.** As soon as practicable after the end of the
8 consideration period, the Administrator shall provide a declaration attesting to (by number of relevant
9 individuals), its mailing of Class Notice, its inability to deliver Class Notice due to invalid addresses,
10 and its receipt of valid Requests for Exclusion or objections. The Administrator shall prepare any
11 supplemental declarations regarding the administration of the settlement, as necessary or as jointly
12 requested by the Parties or the Court.

13 **5. Settlement Proceeds**

14 **5.1. Gross Settlement Amount.** Defendant agrees to pay a non-reversionary Gross
15 Settlement Amount of \$1,008,000.00. The Gross Settlement Amount was negotiated based on
16 approximately 36,000 wage statements issued to Class Members from September 23, 2019 through
17 March 29, 2022. To the extent that the actual number of relevant wage statements exceeds 36,000 by
18 more than 5% (i.e., more than 37,800), the Gross Settlement Amount shall increase on a pro rata basis
19 equal to the percentage increase exceeding 5% (e.g., if the actual number of relevant wage statements
20 were 7.5% greater than 36,000, then the Gross Settlement Amount would be increased by 2.5%).

21 **5.1.1. Attorneys' Fees and Costs.** Class Counsel intends to request—and Defendant
22 agrees not to oppose—that the Court approve an Attorneys' Fees and Costs Award in the amount of (a)
23 33⅓% of the Gross Settlement Amount (or \$336,000.00) and (b) litigation costs of up to \$20,000.00.
24 Except as stated in this Agreement, the Parties are to be responsible for their own attorneys' fees and
25 costs.

26 **5.1.2. Class Representative Award.** Class Counsel intends to request—and Defendant
27 agrees not to oppose—that the Court approve a Class Representative Award of \$10,000. Any Class
28 Representative Award would be supplemental to Plaintiff's Individual Settlement Payment.

1 **5.1.3. Administration Costs.** Class Counsel intends to request—and Defendant agrees
2 not to oppose—that the Court approve Administration Costs of up to \$14,000.00. The Parties agree to
3 cooperate in the settlement administration process and to make all reasonable efforts to control and
4 minimize Administration Costs.

5 **5.1.4. PAGA Penalty Fund and LWDA Payment.** The Parties intend to request that
6 the Court approve a PAGA Penalty Fund of \$144,000.00. The PAGA Penalty Fund shall be distributed
7 pursuant to statute with 75% of the PAGA Penalty Fund payable as an LWDA Payment. The remaining
8 25% of the PAGA Penalty Fund is to be distributed to Aggrieved Employees on a pro rata basis, based
9 on the number of relevant wage statements they received as reflected in Defendant’s records.

10 **5.1.5. Differences in Requested and Approved Payments.** If the Court does not
11 approve the requested amounts for the Attorneys’ Fees and Costs Award, Class Representative Award,
12 or Administration Costs, or PAGA Penalty Fund, any differences in the requested and approved amount
13 shall be allocated either to the Net Settlement Amount or from the Gross Settlement Amount.

14 **5.2. Net Settlement Amount and Individual Settlement Payments.** After deducting the
15 approved Attorneys’ Fees and Costs Award, Class Representative Award, Administration Costs, and
16 PAGA Penalty Fund from the Gross Settlement Amount, Individual Settlement Payments shall be
17 distributed to Settlement Class Members, without the need to submit a claim form on a pro rata basis,
18 based on the number of relevant wage statements they received as reflected in Defendant’s records.

19 **5.3. Funding and Distribution.** By seven calendar days after the Final Approval Order,
20 Defendant shall deposit the Gross Settlement Amount with the Administrator. By seven calendar days
21 after the Effective Date and deposit of funds, the Administrator shall distribute all amounts to be paid
22 pursuant to the Final Approval Order. Upon completion of administration of the settlement, the
23 Administrator shall provide written certification of such completion to Class Counsel and Defendant’s
24 Counsel.

25 **5.4. Undeliverable or Uncashed Checks.** All uncashed or undeliverable settlement checks
26 will expire 180 days after the postmarked date of their initial mailing. After 180 days, the sum value of
27 all expired checks will be tallied by the Administrator. The Administrator shall direct the principal for
28 any expired checks in accordance with the Final Approval Order. The Parties shall request that the Court

order that the principal for any expired checks escheat to the State of California's Unclaimed Property Fund in the name of the Class Member.

5.5. No Tax Advice or Liability. All payments from the Net Settlement Amount shall be classified for tax reporting purposes as penalties. The Administrator shall issue an IRS Form 1099 to Plaintiff for any Class Representative Award, to Class Counsel for any Attorneys' Fees and Costs Award, to the LWDA for any LWDA Payment, and to the Administrator for any Administration Costs. The Parties have had an opportunity to consult with independent tax counsel. The Parties are not giving any tax advice in connection with the settlement or any payments to be made pursuant to the Agreement. The Parties do not intend anything contained in this Agreement to constitute legal advice regarding the taxability of any amount paid hereunder, nor shall anything in this Agreement be relied upon as such. By participating in the settlement, each Class Member shall agree to be solely and legally responsible for paying any applicable taxes on their respective Individual Settlement Payments and shall indemnify and hold harmless the Parties from any claim or liability for taxes, penalties, or interest arising as a result of the payments.

6. Releases

6.1. Releases by All Settlement Class Members. By operation of the entry of the Final Approval Order, and except as to such rights or claims as may be created by this Agreement, all Settlement Class Members (including the Class Representative) fully release Defendant and each Released Party from any and all claims for violations of Labor Code section 226(a) during the Class Period that were alleged in the Action or that reasonably could have been alleged based on the facts alleged in the Action.

6.2. Releases by Aggrieved Employees. By operation of the entry of the Final Approval Order, and except as to such rights or claims as may be created by this Agreement, all Aggrieved Employees and the LWDA fully release Defendant and each Released Party from any and all claims for civil penalties for violations of Labor Code section 226(a) during the PAGA Period that were alleged in the Action or that reasonably could have been alleged based on the facts alleged in the Action.

6.3. Additional Release by Plaintiff. In addition to the above releases applicable to Plaintiff as a Settlement Class Member and Aggrieved Employee, Plaintiff also generally releases all claims,

known or unknown, in favor of each Released Party, including a waiver of Civil Code section 1542. Plaintiff expressly waives all rights provided by Civil Code section 1542 that Plaintiff may have against each Released Party. Civil Code section 1542 states:

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.

Plaintiff acknowledges that he has read the entirety of the Agreement, including the above language from the Civil Code, and that he fully understands both the Agreement and Civil Code section 1542. By executing this Agreement, Plaintiff expressly waives any benefits and rights granted pursuant to Civil Code section 1542.

7. Court Approval

7.1. Preliminary Approval. Plaintiff shall submit a motion seeking a Preliminary Approval Order, which would, among other things: (i) preliminarily approve the proposed settlement according to the terms of this Agreement; (ii) set a date for a final approval hearing; and (iii) provide for Class Notice to be sent to Class Members as specified herein.

7.2. Final Approval. Not later than 16 court days before the date set by the Court for a final approval hearing, or such other time as the Court requires, Plaintiff shall submit a motion seeking a Final Approval Order, which would, among other things: (i) approve the settlement, (ii) deem the terms to be fair, reasonable, and adequate, (iii) approve the releases, (iv) direct that the settlement's terms and provisions be carried out; (v) enter final judgment; and (vi) retain jurisdiction to oversee administration and enforcement of the terms of this Agreement and the Court's orders.

7.3. Effect of Failure to Obtain Final Approval. In the event the Court effects a material change or fails to enter a Final Approval Order in accordance with this Agreement, or such Final Approval Order is vacated, then this entire Agreement shall be void and unenforceable, the Action shall proceed as if no settlement has been attempted, and the costs of administration shall be split equally between the Parties, subject to the Parties' agreement to the contrary. In such event, except as otherwise stated in this Agreement, this Agreement and any documents in furtherance of this Agreement shall be inadmissible in any future proceedings in this Action or any other action.

1 **8. Miscellaneous**

2 **8.1. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties
3 with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and
4 understandings between the Parties shall be deemed merged into this Agreement. The signatories
5 represent that they are fully authorized to enter into this Agreement and are fully authorized to bind the
6 Parties to all terms stated herein.

7 **8.1.1. Counterparts and Signatures.** This Agreement may be executed in counterparts,
8 and when all signatories have signed and delivered at least one such counterpart, each counterpart shall
9 be deemed an original, and when taken together with other signed counterparts, shall constitute one
10 signed Agreement, which shall be binding upon and effective as to all Parties. Any party may sign and
11 deliver this Agreement by signing on the designated signature block and transmitting that signature page
12 via e-mail to counsel for the other party. Any signature via DocuSign or other electronic means or
13 transmitted via e-mail shall be deemed an original signature and shall be binding upon the party who
14 transmits the signature page.

15 **8.1.2. Waivers, Modifications, Etc. to Be in Writing.** No waiver, modification, or
16 amendment of the terms of this Agreement, whether purportedly made before or after the Court's
17 approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all
18 Parties and then only to the extent set forth in such written waiver, modification, or amendment, subject
19 to any required Court approval. Any failure by any Party to insist upon the strict performance by the
20 other Party of any of the provisions of this Agreement shall not be deemed a waiver of future
21 performance of the same provisions or of any of the other provisions of this Agreement, and such Party,
22 notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of
23 any and all of the provisions of this Agreement.

24 **8.1.3. Construction.** The determination of the terms and conditions of this Agreement
25 has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this
26 Agreement, and the terms and conditions of this Agreement are not intended to be, and shall not be,
27 construed against any party by virtue of draftsmanship. The captions of paragraphs of this Agreement
28

1 have been inserted for convenience of reference only and shall have no effect upon the construction or
2 interpretation of any part of this Agreement.

3 **8.1.4. Invalidity of Any Provision.** Before declaring any provision of this Agreement
4 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible so as to
5 render all provisions of this Agreement valid and enforceable.

6 **8.2. Further Acts and Cooperation Between the Parties.** The Parties shall cooperate and
7 use their best efforts to obtain the Court's approval of this Agreement and its terms. Each of the Parties,
8 upon the request of another, agrees to perform such further acts and to execute and deliver such other
9 documents as are reasonably necessary to carry out the provisions of this Agreement.

10 **8.3. Continuing Jurisdiction.** The Court shall retain jurisdiction over the implementation of
11 this Agreement as well as any and all matters arising out of, or related to, the implementation of this
12 Agreement and of the settlement contemplated thereby.

13 **8.4. Disputes.** If the Parties have a dispute with regard to the language of this Agreement,
14 they agree to engage mediator Russ J. Wunderli, Esq. to mediate any such dispute. The Parties will split
15 the costs of the mediator, and the Parties will bear their own fees and costs.

16 **8.5. Governing Law and Enforcement Actions.** All terms of this Agreement shall be
17 governed by and interpreted according to the laws of the State of California.

18
19
20
21 **PLAINTIFF**

22
23 Dated: November ___, 2022

Joseluis Davila

24 **COUNSEL FOR PLAINTIFF AND CLASS**

25
26 Dated: November ___, 2022

Larry W. Lee
Simon L. Yang
DIVERSITY LAW GROUP, P.C.

DEFENDANT

Dated: November __, 2022

Michael J. Sarrao, General Counsel
HAYWARD SISTERS HOSPITAL dba ST. ROSE
HOSPITAL

COUNSEL FOR DEFENDANT

Dated: November __, 2022

Linda M. Moroney
Sara A. Moore
Violaine Brunet
GORDON REES SCULLY MANSUKHANI, LLP

EXHIBIT A

This notice is being sent pursuant to court order. This is not a solicitation from a lawyer.

NOTICE OF CLASS ACTION SETTLEMENT

Joseluis Davila v. Hayward Sisters Hospital dba St. Rose Hospital,
Superior Court of the State of California for the County of Alameda Case No. RG20074747

If you were a non-exempt employee for Hayward Sisters Hospital dba St. Rose Hospital in the State of California and paid shift differential wages at any time from September 23, 2019, through March 29, 2022 (“Class Period”), you could receive a payment from a class action settlement (hereinafter, “Settlement”).

Read this notice carefully, as your legal rights could be affected whether you act or not.

The Superior Court of the State of California for the County of Alameda (the “Court”) has preliminarily approved a Settlement that could affect your rights. The proposed Settlement resolves a class action and Labor Code Private Attorneys General Act of 2004 (“PAGA”) action filed by Plaintiff, Joseluis Davila, against Defendant, Hayward Sisters Hospital dba St. Rose Hospital, which has been designated Case No. RG20074747 (the “Action”).

- The Action alleges Defendant failed to furnish wage statements that accurately show the total hours worked to non-exempt employees who were paid shift differential wages. On this basis, the Action pursues class action and PAGA claims.
- Defendant denies Plaintiff’s allegations and maintains it has fully complied with the law. By agreeing to the Settlement, Defendant in no way admits any violation of law or any liability whatsoever to Plaintiff or others and expressly denies all such liability. Both Plaintiff and Defendant have agreed to the Settlement in light of all known facts and circumstances—including the uncertainty associated with litigation.
- If the Court grants final approval of the settlement, it would provide cash payments to Class Members, based on the number of relevant wage statements that they received during the Class Period.
- Based on Defendant’s records, you received **XXX** relevant wage statements during the Class Period. An *estimate* of the amount that could be allocated to you is **\$XXX**. Whether you receive a payment depends on whether the Court grants final approval of the class action settlement, and the amount you ultimately receive depends on the terms the Court finally approves and whether you opt out of the class action settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS CLASS ACTION SETTLEMENT:	
DO NOTHING	You do not have to do anything in response to this notice. If you do nothing and the Court grants final approval of the class action settlement, you will remain eligible to automatically receive an Individual Class Payment and will be bound by the class action release provisions of the Settlement.
OPT OUT	You may opt out of the class action settlement by submitting a Request for Exclusion. If you opt out, you may not object to the class action settlement, will not be eligible to receive an Individual Class Payment, and will not be bound by the class action release provisions of the Settlement.
OBJECT	You may object to the class action settlement by submitting a written objection. If you object and the Court grants final approval of the class action settlement despite your objection, you will remain eligible to automatically receive an Individual Class Payment and will be bound by the class action release provisions of the Settlement.

If the Court approves the Settlement, you will receive an Individual PAGA Payment and will be bound by the PAGA release provisions of the Settlement, regardless of whether you opt out of the class action settlement.

**THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION FROM THE COURT
AS TO THE MERITS OF THE CLAIMS.**

NOTICE OF CLASS ACTION SETTLEMENT

Questions? Please contact the Administrator at (xxx) xxx-xxxx.

1. Why Did I Receive This Notice?

You are receiving this Notice of Class Action Settlement (the “Notice”) because Defendant’s records show that you were a Class Member because you were employed as a non-exempt employee by Defendant in the State of California and were paid shift differential wages at any time from September 23, 2019, through March 29, 2022 (the “Class Period”). All Class Members are also “Aggrieved Employees” under PAGA and may be entitled to share in the funds to be made available for the PAGA settlement.

Because the Settlement preliminarily approved by the Court would affect Settlement Class Members’ legal rights, the Court ordered that this Notice be sent to you. This Notice provides a brief description of the Action, informs you of the settlement terms preliminarily approved by the Court, and advises you of your legal rights with respect to the Settlement. If the Court finally approves the Settlement, the Settlement will fully resolve the Action, and your legal rights may be affected by the Settlement.

The Court has preliminary approved Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C. and William L. Marder of Polaris Law Group as Class Counsel. Based on their investigation and evaluation, they are of the opinion that the terms of Settlement are fair, reasonable, adequate, and in the best interests of Class Members. The terms of the Settlement are set forth in detail in the Joint Stipulation of Class Action Settlement and Release (“Agreement”). You may obtain a copy of the Agreement from Phoenix Settlement Administrators, a neutral third-party appointed by the Court to administer the settlement (the “Administrator”).

2. What Is the Action About?

On September 23, 2020, Plaintiff filed a complaint in Court that alleged that Defendant failed to provide accurate, itemized wage statements to Plaintiff and other non-exempt employees who were paid shift differential wages. Specifically, Plaintiff alleged that whenever shift differential wages are paid, Defendant fails to itemize the accurate total hours worked on wage statements furnished to Plaintiff and other non-exempt employees. Plaintiff alleged that when the hours shown on the wage statements are added up, they do not appear to add up to the actual total hours worked.

Defendant denies and continues to deny (i) all of the allegations made by Plaintiff, (ii) that it violated any applicable laws, or (iii) that it is liable or owes damages, penalties, or other compensation or remedies to anyone with respect to the alleged facts or claims asserted in the Action. Nonetheless, without admitting or conceding any liability or wrongdoing whatsoever, Defendant has agreed to settle the Action, to avoid the burden, expense, and uncertainty of continuing the Action.

3. What Are the Payments Under the Settlement?

Defendant agrees to pay a Gross Settlement Amount of \$1,008,000.00, which is inclusive of any Administration Costs, Attorneys’ Fees and Costs Award, Class Representative Award, PAGA Penalty Fund, and Individual Class Payments awarded by the Court. The Court may approve payment of (i) Administration Costs to the Administrator for administering the settlement (e.g., printing, distributing, or tracking Notices, distributing payments, etc.); (ii) an Attorneys’ Fees and Costs Award to Class Counsel for litigation and resolution of the Action; (iii) a Class Representative Award to Plaintiff both for his efforts in prosecuting the Action for Class Members and for Plaintiff’s additional general release of claims inapplicable to Class Members; and (iv) a PAGA Penalty Fund.

PAGA Penalty Fund: The Settlement requests that the Court approve a PAGA Penalty Fund of \$144,000.00. Pursuant to Labor Code requirements, 75% of the PAGA Penalty Fund will be allocated to the LWDA as an LWDA Payment. The remainder of the PAGA Penalty Fund will be allocated and entirely payable to Aggrieved Employees on a pro rata basis, based on the number of relevant wage statements they received. These payments shall be classified for tax reporting purposes as penalties.

Individual Class Payments: Individual Class Payments shall be distributed to Settlement Class Members, without the need to submit a claim form. Individual Class Payments and allocated among Settlement Class

Members on a pro rata basis, based on the number of relevant wage statements they received. These allocations shall be classified for tax reporting purposes as penalties.

Through this settlement, each Class Member shall agree to be solely and legally responsible for paying all other applicable taxes on their respective Individual Settlement Payments and shall indemnify and hold harmless the Parties from any claim or liability for taxes, penalties, or interest arising as a result of the payments.

All uncashed or undeliverable settlement checks will expire 180 days after the postmarked date of their initial mailing. After 180 days, the sum value of all expired checks will be tallied by the Administrator. The Administrator shall direct the principal for any expired checks in accordance with the Final Approval Order. The Parties shall request that the Court order that the principal for any expired checks escheat to the State of California's Unclaimed Property Fund in the name of the Class Member.

Attorneys' Fees and Costs Award: You do not need to individually pay any portion of Class Counsel's attorneys' fees and costs. Any payments for those attorneys' fees and costs will be determined by the Court. Class Counsel intends to request that the Court approve an Attorneys' Fees and Costs Award in the amount of (a) 33⅓% of the Gross Settlement Amount (or \$336,000.00) and (b) litigation costs of up to \$20,000.00.

Class Representative Award: Any Class Representative Award is to be determined by the Court and would be supplemental to Plaintiff's Individual Settlement Payments. Class Counsel intends to request that the Court approve a Class Representative Award of \$10,000.00 for Plaintiff's efforts in prosecuting the Action for Class Members and for Plaintiff's additional general release of claims inapplicable to Class Members.

Administration Costs: Class Counsel intends to request that the Court approve Administration Costs of up to \$14,000.00, payable to the Administrator for administering the settlement, including, but not limited to, printing, distributing, or tracking Notices, providing any required tax forms, processing any required tax payments, or reporting, and calculating and distributing all payments under the Settlement.

All Payments Subject to Court Approval: The above payments will be made if and only if the Court concludes the settlement is reasonable, fair, and adequate for the Class. The Court may adjust the amounts of certain payments.

4. What Do I Release Under the Settlement?

If the Court grants final approval of the class action settlement and concludes it is reasonable, fair, and adequate for Class Members, Settlement Class Members would release Defendant and any of its parents, subsidiaries, officers, managers, directors, and any of their officers, directors, managers, managing agents, and successors and assigns (a "Released Party") from any and all claims for violations of Labor Code section 226(a) during the Class Period that were alleged in the Action or that reasonably could have been alleged based on the facts alleged in the Action.

This means that, if you do not timely and formally exclude yourself from the class action settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

Upon approval, all Aggrieved Employees and the LWDA fully release Defendant and each Released Party from any and all claims for civil penalties for violations of Labor Code section 226(a) during the PAGA Period that were alleged in the Action or that reasonably could have been alleged based on the facts alleged in the Action.

5. How Do I Object to the Class Action Settlement?

If you want to participate in the Settlement, you do not have to do anything and do not have to appear at the final approval hearing before the Court. You will automatically receive your Individual Settlement Payment if the Court grants final approval of the class action settlement and approves the PAGA settlement.

If you want to object to the class action settlement, you may appear at the final approval hearing to object to the class action settlement. Alternatively, you must take the steps below:

- (1) You must mail a written statement to the Administrator listed below.
- (2) The written statement must include: your name, address, last four digits of your Social Security number, and the basis for your objection.
- (3) If you object, you may but are not required to appear at the final approval hearing either in person or through counsel, paid for at your own expense.
- (4) The written statement must be postmarked by [45 calendar days after the initial mailing of Notice].

If you object, you will remain bound by the class action settlement if finally approved and bound by the PAGA settlement if approved. If you do not want to be bound by the class action settlement if finally approved, you must opt out of the class action settlement. Regardless of whether you object to the class action settlement, you will be bound by the PAGA settlement if approved.

6. How Do I Opt Out of the Class Action Settlement?

If you do not want to participate in the class action settlement, you may opt out of the class action settlement. If you opt out of the class action settlement, you may not object to the class action settlement, will not receive any Individual Class Payment, and will not be bound by the class action release provisions of the Settlement.

In order to opt out, you MUST express your desire to be excluded from the class action settlement by mailing to the Administrator a "Request for Exclusion," which must state "Request for Exclusion," include your name, current address, current telephone number, and last four digits of your social security number. Any such Request for Exclusion must be postmarked by [45 calendar days after the initial mailing of Notice].

Any Request for Exclusion that does not include all required information or that is not submitted on a timely basis will be deemed null, void, and ineffective. A Request for Exclusion shall be deemed to be submitted as of the postmarked date. If you submit both a Request for Exclusion and an objection, your Request for Exclusion will be valid and be deemed to invalidate the objection.

7. Where Can I Get Additional Information?

This Notice summarizes the Settlement. For more information, you may contact the Administrator. Contact information for the Administrator and Class Counsel are as follows:

Administrator: xxx xxx xxx, California xxx Telephone: (xxx) xxx-xxxx	Class Counsel: DIVERSITY LAW GROUP, P.C. Larry W. Lee (lwlee@diversitylaw.com) Simon L. Yang (sly@diversitylaw.com) 515 S. Figueroa St., Suite 1250 Los Angeles, California 90071 Telephone: (213) 488-6555	POLARIS LAW GROUP William L. Marder (bill@polarislawgroup.com) 501 San Benito Street, Suite 200 Hollister, California 95023 Telephone: (831) 531-4214
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PLEASE DO NOT TELEPHONE THE COURT OR DEFENDANT'S COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT.

NOTICE OF CLASS ACTION SETTLEMENT

Questions? Please contact the Administrator at (xxx) xxx-xxxx.