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Attorneys for Plaintiff Nicole Aucedo, on behalf of herself and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

NICOLE AUCEDA, on behalf of herself and
all “aggrieved employees” pursuant to Labor
Code § 2698 *et seq.*,

Plaintiffs,

v.

GRANADA HILLS CONVALESCENT
HOSPITAL, INC., a California corporation,
and DOES 1 through 10, inclusive,

Defendants.

CASE NO: 21CHCV00093

*Assigned to the Hon. David B. Gelfound, Dept.
F49*

**DECLARATION OF DANIEL F. GAINES
IN SUPPORT OF REQUEST FOR
DISMISSAL**

[Filed Concurrently: Request for Dismissal]

*Trial Date: March 10, 2025
Complaint Filed: February 9, 2021
FAC Filed: October 21, 2022*

1 I, Daniel F. Gaines, declare as follows:

2 1. I am an attorney duly admitted to practice law in the State of California and I am a
3 managing shareholder at Gaines & Gaines, APLC, counsel of record for Plaintiff Nicole Auced
4 (“Plaintiff”) in this matter. The matters set forth herein are of my own personal knowledge, and if
5 sworn as a witness, I could and would testify competently thereto.

6 2. On February 9, 2021, Plaintiff filed the instant Action seeking penalties on a
7 representative basis, on behalf of herself and all “aggrieved employees,” for Defendant Granada Hills
8 Convalescent Hospital, Inc.’s (“Defendant”) violations of the California Labor Code’s Private
9 Attorneys General Act of 2004 (“PAGA”), codified at § 2698, *et seq.*, by failing to pay all wages due,
10 failing to provide rest periods, or compensation in lieu thereof, failing to issue complete and accurate
11 wage statements, and failing to timely pay all wages due at separation of employment. On October
12 21, 2022, Plaintiff filed her first amended representative action complaint, which alleged further
13 claims against Defendant. The alleged violations occurred when Plaintiff worked for Defendant in
14 Los Angeles County, California.

15 3. Following conversations with Defendant’s counsel, including a mediation, my office
16 has ascertained that Plaintiff’s claims are quite individual, liability is disputed, and Defendant claims
17 financial hardship. This determination is based on information provided by Defendant’s counsel
18 through discussions in this matter.

19 4. The Parties have negotiated a settlement of Plaintiff’s individual claims only, and the
20 PAGA representative claims will be dismissed without prejudice, as set forth in the concurrently-filed
21 request for dismissal. The Parties entered into a Settlement Agreement. A true and correct copy of
22 the Settlement Agreement is attached hereto as **Exhibit A**.

23 5. The settlement does not contemplate the waiver of any claims by anyone other than
24 Plaintiff and does not provide for the waiver of PAGA representative claims asserted on behalf of any
25 employee or the State, such that there is no allocation of civil penalties in the Settlement.

26 6. Plaintiff, therefore, requests that the Court enter a dismissal of this action *with*
27 *prejudice* as to Plaintiff’s individual claims and *without prejudice* as to the PAGA representative
28 claims, pursuant to the request submitted concurrently herewith.

1 7. Concurrent with the filing of this declaration and the request for dismissal, Plaintiff
2 has submitted the Settlement Agreement to the LWDA in compliance with Labor Code section
3 2699(1)(2).

4 I declare under penalty of perjury under the laws of the State of California that the foregoing
5 is true and correct and was executed on November 6, 2024, at Westlake Village, California.

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7 /s/ Daniel F. Gaines
8 DANIEL F. GAINES
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EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is between Plaintiff Nicole Aucedá, on behalf of herself, her heirs, estates, executors, administrators, representatives, and assigns (collectively, the “Plaintiff”) on one hand, and Defendant Granada Hills Convalescent Hospital, Inc. (“Defendant”), on the other hand. The signatories to this Agreement are referred to jointly as the “Parties.”

This Agreement is a compromise between the Parties for the complete and final settlement of all claims, differences and causes of action, now known or unknown, between them.

BACKGROUND

1. Plaintiff was formerly employed by Defendant.
2. On or around February 9, 2021, Plaintiff filed a wage-and-hour class action lawsuit against Defendant in the Superior Court of California, County of Los Angeles, Case No. 21CHCV00093 (“Lawsuit”). As amended, the Lawsuit alleges a cause of action seeking civil penalties pursuant to California Labor Code section 2699(f) (California Private Attorneys General Act [“PAGA”]) for: (a) failure to pay minimum and overtime wages (Labor Code §§ 510 and 1194); (b) failure to provide meal periods (Labor Code §§ 226.7 and 512); (c) failure to provide rest periods (Labor Code § 226.7); (d) non-compliant wage statements (Labor Code § 226(a)); and (e) late final wages not timely paid (Labor Code §§ 201 and 202) (collectively, the “Claims”).
3. Defendant denies that it engaged in any wrongful conduct. The Parties wish to compromise, resolve, and settle, finally and forever, any claims and causes of action that were or could have been asserted by the Plaintiff against Defendant and/or any other Releasees (as defined in Paragraph 3.1 of this Agreement), to avoid the delay, expense, inconvenience and uncertainty of litigation.
4. The Parties have agreed, without Defendant admitting liability of any kind, to enter into this Agreement pursuant to which every claim and cause of action that was or could have been asserted against Defendant and/or any other Releasees under this Agreement will be forever and finally released, with all claims asserted on behalf of others, including the State of California and other employees of Defendant, to be dismissed without prejudice.

THEREFORE, in consideration of mutual obligations set forth below, the Parties agree as follows:

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TERMS

1. Settlement

Settlement Amount. In consideration of this Agreement and Plaintiff's agreement to all the terms, conditions, and promises in this Agreement, Defendant agree to provide Plaintiff and her counsel the total gross sum of Fifty Thousand Dollars and Zero Cents (\$50,000.00) ("Settlement Amount") in full compromise and settlement of all claims released herein by Plaintiff. The Settlement Amount shall be made by one check in the amount of Fifty Thousand Dollars and Zero Cents (\$50,000.00) made payable to "Gaines & Gaines, APLC Client Trust Account." The Payment shall be made within twenty-two (22) calendar days of the Effective Date.

1.1 Saturday, Sunday, or Holiday. If the date by which the Settlement Amount payment is due falls on a Saturday, Sunday, or holiday, then the payment will be paid on the next following business day that is not a Saturday, Sunday, or holiday.

1.2 Mailing. In conformity with their obligations herein, Defendant shall mail the Settlement Amount to Gaines & Gaines, APLC, c/o Daniel F. Gaines, Esq., 4550 E. Thousand Oaks Blvd., Suite 100, Westlake Village, California 91362. The check will be deemed timely delivered if placed in the United States Mail or with an overnight delivery service on or before the date the payment is due to be delivered. The Settlement Amount shall be inclusive of all claims for attorneys' fees, expenses, or other costs.

1.3 Dismissal. Within ten (10) business days of the date the Settlement Amount is received by Plaintiff's Counsel, Plaintiff will file the Stipulation for Dismissal dismissing the Lawsuit *with prejudice* as to Plaintiff's individual claims and *without prejudice* as to all PAGA claims. As a material term of this Agreement, Plaintiff represents that, other than the Lawsuit and the related PAGA notice to the LWDA, Plaintiff has not filed any complaints, charges, or other actions with any court, agency, or other forum relating to Plaintiff's employment and/or alleged employment with Defendant. In connection with the dismissal, Plaintiff will submit a copy of this Agreement to the Court and the LWDA, as required by PAGA.

1.4 Indemnification and Tax Issues. Plaintiff is not relying on any information provided by Defendant, its employees, or their attorneys concerning the tax consequences of payments made under this Agreement. Plaintiff is solely and entirely responsible for the payment and discharge of all federal, state, and local taxes, if any, which may, at any time, be found to be due upon or as a result of any amount that is paid by the Defendant under this Agreement.

1.5 Resolution of All Claims. This Agreement finally settles and resolves all claims that were asserted, or could have been asserted, by Plaintiff against Defendant and/or any other Releasees described in Paragraph 3.1 of this Agreement.

1.6 Valid Consideration. Plaintiff expressly agrees and acknowledges the payments and other considerations described in this Agreement are not payments or consideration to which Plaintiff is otherwise entitled. Except as stated above in Paragraph 1.1 of this Agreement, Plaintiff shall not be entitled to any compensation, remuneration, benefits or other payments from

Defendant, and each Party shall be responsible for payment of its own costs and attorneys' fees (unless otherwise specified in this Agreement).

2. Compromise

2.1 Liability Not Admitted. The Parties agree and acknowledge that this Agreement is the result of a compromise and shall never be construed as an admission by Defendant of any liability, wrongdoing, or responsibility on their part or on the part of their predecessors, successors, assigns, agents, representatives, parents, subsidiaries, affiliates, officers, directors, or employees. Defendant expressly denies any such liability, wrongdoing, or responsibility. It is expressly understood and agreed that no Party shall be deemed to be a "prevailing party" for the purposes of any fee-shifting statute, rule, or agreement.

3. Release

3.1 Full Release. Plaintiff, on behalf of herself and her heirs, estates, executors, administrators, assigns, transferees and representatives, hereby releases and forever discharges Defendant and its predecessors, successors, parents, subsidiaries, affiliates, assigns, representatives, co-employers, joint employers, insurers and agents, as well as all of their present and former directors, officers, employees, agents, shareholders, representatives, attorneys and insurers (collectively, the "Releasees"), from any and all claims, causes of actions, demands, debts, obligations, damages or liability of any nature whatsoever, known or unknown, that (a) Plaintiff has or may have which arise out of Plaintiff's employment, alleged employment, or cessation of employment with Defendant or its successors, or (b) which concern or relate in any way to any acts or omissions done or occurring prior to and including the Effective Date of this Agreement.

The provisions of this paragraph or any other paragraph in this Agreement shall not be construed to prevent Plaintiff from filing a charge with the Equal Employment Opportunity Commission ("EEOC"), the Securities and Exchange Commission ("SEC") or other governmental agency to the extent Plaintiff is permitted to do so by law. Plaintiff further understands that this Agreement does not limit Plaintiff's ability to communicate with any government agencies or otherwise participate or cooperate with an investigation conducted by the EEOC, SEC, or other similar agency, including providing documents or other information, without notice to the Releasees. Plaintiff expressly waives and disclaims any right to compensation or other benefit that may inure to her because of such charge, except for compensation related to any whistleblower claims to the Securities and Exchange Commission or unfair labor practice charge with the National Labor Relations Board ("NLRB"), and hereby expressly agrees to provide any such benefit or pay any such compensation directly to Company. This Agreement does not prohibit Plaintiff from seeking and obtaining a whistleblower award from the SEC pursuant to Rule 21F of the Securities Exchange Act or unfair labor practice award from the NLRB pursuant to Sections 8 and 10 of the National Labor Relations Act. This Release is not intended to apply to any pension or insured benefits, if any, for which Plaintiff is eligible pursuant to the terms of any employee benefit plan in which Plaintiff is, or has been, a participant (subject to all the terms, conditions, and restrictions of such governing plan). It is understood that all Releasees will have the right and standing to enforce the terms of this

Paragraph. To the maximum extent allowed by law, claims and causes of action released under this Agreement include, but are not limited to, those relating to:

- Wage Orders of the California Industrial Welfare Commission (all the foregoing as amended, if applicable)
- The California Fair Employment and Housing Act
- The California Labor Code
- The California Labor Code Private Attorneys General Act of 2004
- The Equal Pay Act, 29 U.S.C. §206(a) and interpretive regulations
- 42 U.S.C. §§ 1981 et seq.
- The Age Discrimination in Employment Act, as amended, 29 U.S.C. §§ 621 et seq.
- The Family and Medical Leave Act, 29 U.S.C. §§ 2601 et seq.
- The Health Insurance Portability and Accountability Act
- The Plaintiff Retirement and Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001 et seq.
- Claims for breach of contract, express or implied
- The National Labor Relations Act
- The Labor Management Relations Act
- The Fair Credit Reporting Act
- The Genetic Information Nondiscrimination Act
- The Electronic Communication Privacy Act of 1986 (including the Stored Communications Act)
- The Dodd-Frank Wall Street Reform and Consumer Protection Act
- Executive Orders 11246 and 11141
- Claims for compensation, including but not limited to wages, bonuses, or commissions
- Claims for reimbursement of any kind
- Claims arising in tort, including, but not limited to, negligence, intentional or negligent infliction of emotional distress, defamation and/or invasion of privacy
- The Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq.
- The Americans with Disabilities Act, as amended by the ADA Amendments Act of 2008, 42 U.S.C. §§ 12101 et seq.
- The Occupational Safety and Health Act (OSHA)
- Claims for wrongful discharge
- The Consolidated Omnibus Budget Reconciliation Act (COBRA)
- Title VII of the Civil Rights Act of 1964, as amended.
- The Sarbanes-Oxley Act, 18 U.S.C. 1514A
- Any other claims of discrimination or retaliation of any kind
- The Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101 et seq.
- Claims for breach of the covenant of good faith and fair dealing
- Claims for benefits or fringe benefits
- Claims for, or relating to, stock or stock options
- The False Claims Act (including the qui tam provisions thereof)
- Claims for severance or termination pay
- Any claims that were raised or could have been raised in the Lawsuit
- Any and all other claims arising under any other federal, state, local or foreign laws, as well as any and all other common law legal or equitable claims
- Any and all claims for attorneys' fees, costs, expenses and the like, including but not limited to, any claims for attorneys' fees related to services rendered by Plaintiff's attorney of record in the Lawsuit and/or any other attorney who has provided services to Plaintiff (unless otherwise specified in this Agreement)

It is understood that all Releasees will have the right and standing to enforce the terms of the release contained in this Paragraph 3.1.

3.2 OWBPA. Plaintiff is hereby advised in accordance with the Older Workers Benefit Protection Act that: (a) Plaintiff should consult with an attorney (at Plaintiff's own expense) prior to executing this Agreement; (b) Plaintiff is waiving, among other things, any age discrimination claims under the Age Discrimination in Employment Act ("ADEA"), provided, however, Plaintiff is not waiving under Paragraph 3.1 any claims under the ADEA that may arise out of acts or omissions done or occurring after the date this Agreement is executed; (c) Plaintiff has twenty-one (21) calendar days within which to consider the execution of this Agreement, before signing it; and (d) Plaintiff may revoke this Agreement within seven (7) calendar days of executing it by providing notice as set forth in the "Notice" provision of the Agreement. Plaintiff further acknowledges she has requested and received from Defendant any information Plaintiff believes is needed to make a knowing and voluntary release of all claims, including claims of age discrimination under the Age Discrimination in Employment Act.

3.3 Civil Code section 1542. It is understood and agreed by Plaintiff that she may have sustained damages, losses, costs, or expenses for which she might have made claims that are presently unknown or unsuspected, and that such damages, losses, costs, or expenses may give rise to additional damages, losses, costs, or expenses in the future. Plaintiff expressly waives all rights under Section 1542 of the Civil Code, which reads 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.

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of each and all of his claims, Plaintiff expressly acknowledges that this Agreement is intended to include and does include in its effect, without limitation, all claims which she does not know or suspect to exist in her favor at the time she signed this Agreement and that this Agreement contemplates the extinguishment of all such claims.

4. Non-Disparagement

4.1 Disparagement Prohibited. Plaintiff and Defendant mutually agree not to make any disparaging or defamatory remarks against or concerning Defendant or any of the other Releasees.

5. References

5.1 Responding to Prospective Employers. Defendant shall provide Plaintiff with a neutral reference upon inquiry by any prospective employer of Plaintiff.

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6. Miscellaneous

6.1 Beneficiaries and Assignability. This Agreement is binding on, and shall inure to the benefit of, the Parties, their heirs, representatives, transferees, principals, estates, executors, administrators, predecessors, successors, parents, subsidiaries, affiliates, assigns, agents, directors, officers, directors, and employees. Plaintiff represents and warrants that Plaintiff has not assigned any claims released in Paragraph 3.1 to any other person or entity.

6.2 Integration, Modifications. This Agreement constitutes the complete agreement between, and contains all the promises and undertakings of, Plaintiff, on the one hand, and Defendant, on the other hand. All prior agreements, representations, negotiations and understandings between Plaintiff and Defendant, whether oral or written, express or implied, with respect to the subject matter of this Agreement, unless specifically incorporated into this Agreement by reference, are hereby superseded and merged into this Agreement. This Agreement may not be revised or modified without the mutual written consent of the Parties.

6.3 Knowing/Voluntary Waiver. The Parties acknowledge and agree that they have had sufficient time to consider this Agreement and consult with legal counsel of their choosing concerning its meaning prior to entering into this Agreement. In entering this Agreement, no Party has relied on any representations or warranties of any other Party, other than the representations or warranties expressly set forth in this Agreement.

6.4 Severability. Except as otherwise provided in this Paragraph, if any provision of this Agreement shall be finally determined to be invalid or unenforceable by a forum of competent jurisdiction, that part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Agreement. If Paragraph 3.1 of this Agreement is deemed invalid or unenforceable, in whole or in part, by a forum of competent jurisdiction, this entire Agreement shall be null and void, and any payments made by or on behalf of Defendant shall be repaid immediately.

6.5 Counterparts. The Parties agree this Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as the original Agreement.

6.6 Jointly Drafted. Because the Parties have had a full opportunity to consider this Agreement and negotiate its terms, this Agreement is deemed to have been jointly prepared by the Parties, and any uncertainty or ambiguity existing in it shall not be interpreted against any Party as the primary drafter of the Agreement. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its meaning and not strictly for or against any of the Parties.

6.7 Choice of Law/Retention of Jurisdiction. Except as otherwise provided in this Agreement, its interpretation and performance will be governed by the laws of the State of California without reference to that jurisdiction's choice of law provisions. The Court shall retain jurisdiction to enforce this Agreement, pursuant to Code of Civil Procedure section 664.6 and as otherwise allowed by law.

6.8 No Duress, Coercion, Fraud or Undue Influence. Plaintiff has knowingly and voluntarily entered this Agreement and accepts the benefits described herein in exchange for the terms of this Agreement that inure to the benefit of the Releasees, without duress, coercion, fraud, or undue influence.

6.9 Parties' Agreement To Assist in Effectuating Releases. Plaintiff and Defendant represent and warrant that to the extent it is determined that any aspect or portion of this Agreement, including any aspect or portion of the release agreement in this Agreement, requires the approval of any court, agency, or other body to be effective, that Plaintiff and Defendant will cooperate fully to secure that approval, and if requested will join in and support any such request for approval.

7. Effective Date

7.1 This Agreement shall become effective on the eighth (8th) calendar day following Plaintiff returning an executed version of the Agreement to Defendant's counsel ("Effective Date"). Until that time, Plaintiff has the right to revoke Plaintiff's Agreement by sending written notice to counsel for Defendant by email at dmbrownelaw@gmail.com

8. Enforcement of Agreement

8.1 Recovery of Attorneys' Fees. If the either Party prevails in an action to enforce any provision of this Agreement or relating to either Party's breach of any provision of this Agreement, then, in addition to any other relief to which the Party may be entitled, the breaching Party shall be entitled to a reasonable award of attorney's fees and costs incurred in such an action.

[SIGNATURES ON THE FOLLOWING PAGE]

WHEREFORE, having fully read and understood the terms of this Agreement, the Parties sign their names below with the intention that they shall be bound by it.



Plaintiff Nicole Aucaeda

09 / 23 / 2024

Date

On Behalf of Granada Hills Convalescent Hospital, Inc.

By: _____

Name: Kimberly Marcoret
Title: President



9.23.24

Date

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_____ (For messenger) my business address is:

David M. Browne, Esq.
21900 Burbank Blvd., Suite 112
Woodland Hills, CA 91367
dmbrownelaw@gmail.com

____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier to receive documents.

 X (UPLOADED TO LWDA WEB PORTAL) I caused the above-described documents to be delivered to the Labor & Workforce Development Agency via online process at the PAGA Filing website (www.dir.ca.gov) in accordance with the procedure imposed by the LWDA.

Executed on November 6, 2024, at Westlake Village, California.

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PROOF OF SERVICE