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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

THERESA BINGHAM, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

vs.

HERITAGE HEALTH CARE, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: CIVSB2029495

Honorable David S. Cohn
Department S26

CLASS ACTION

**DECLARATION OF YASMIN
HOSSEINI IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: October 21, 2022
Time: 10:00 a.m.
Department: S26

Complaint Filed: December 30, 2020
Trial Date: None Set

DECLARATION OF YASMIN HOSSEINI

I, Yasmin Hosseini, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a member of Lawyers *for* Justice, PC, attorneys of record for Plaintiff Theresa Bingham (“Plaintiff”). The facts set forth in this declaration are within my personal knowledge or based on information and belief, and if called as a witness, I could and would competently testify thereto.

EXPERIENCE AND ADEQUACY OF LAWYERS *for* JUSTICE, PC

2. Since October 2008, Lawyers *for* Justice, PC has almost exclusively focused on the prosecution of consumer and employment class actions, involving wage-and-hour claims, race discrimination, unfair business practices, or consumer fraud. Currently, the firm is attorney of record in over a dozen employment-related putative class actions in both state and federal courts in the State of California. Lawyers *for* Justice, PC is comprised of attorneys who focus on litigating complex wage-and-hour class and Private Attorneys General Act (“PAGA”) representative actions. The firm has successfully litigated cases involving the executive, administrative, and other overtime exemptions to the State of California and federal overtime compensation requirements. During a relatively short time, in association with other law firms, Lawyers *for* Justice, PC has recovered millions of dollars on behalf of thousands of individuals in California. Below is a summary of the experience and qualifications of the attorneys at Lawyers *for* Justice, PC who most recently and primarily have been responsible for the representation of Plaintiff in connection with the resolution of above-captioned matter. Additional attorney and non-attorney staff have also worked on the above-captioned matter.

3. Edwin Aiwazian is the Managing Member and Shareholder of Lawyers *for* Justice, PC. He received his Bachelor of Arts degree from Pepperdine University in April of 1999 and earned a Juris Doctor degree from Pepperdine University School of Law in May of 2004. He has extensive formal training in dispute resolution and negotiation from the Straus Institute for Dispute Resolution as part of its Masters in Dispute Resolution degree program. In addition, he has previously served as a pro bono mediator for the Los Angeles County Superior Court. In October of 2000, he obtained a Litigation Paralegal Certificate from the UCLA

1 Extension Program. During the summer of 2000, he studied Legal Writing at Harvard University.
2 From approximately September 2002 to approximately December 2002, he served as a Judicial
3 Extern to the Honorable Kim McLane Wardlaw of the United States Court of Appeals for the
4 Ninth Circuit. From approximately June 2002 to approximately August 2002, he served as a
5 Judicial Extern to the Honorable Earl Johnson, Jr. of the California Court of Appeal for the Second
6 Appellate District. In December of 2004, he obtained a license to practice law from the California
7 State Bar. From approximately December 2004 to approximately August 2008, he was employed
8 by Girardi & Keese. At Girardi & Keese, his practice focused on class actions and other complex
9 cases involving toxic torts and products liability. In addition, he gained substantial experience on
10 cases involving insurance bad faith, premises liability, and medical negligence. While employed
11 by Girardi & Keese, he argued approximately one hundred (100) motions, took or defended
12 approximately one hundred fifty (150) depositions, and prepared dozens of expert witnesses for
13 deposition or trial. Since in or around October of 2008, through his work at Lawyers *for* Justice,
14 PC, he has almost exclusively focused on the prosecution of consumer and employment class
15 actions, involving wage-and-hour claims, race discrimination, unfair business practices, or
16 consumer fraud. While employed by Lawyers *for* Justice PC, he has argued over one hundred
17 (100) motions, taken or defended over one hundred fifty (150) depositions, prepared dozens of
18 expert witnesses for deposition or trial, and attended over one hundred seventy-five (175)
19 mediations. Together with other attorneys at the firm, and in many cases in conjunction with co-
20 counsel, he has successfully litigated cases involving the executive, administrative, and other
21 overtime exemptions to the State of California and federal overtime compensation requirements.
22 Under his supervision, Lawyers *for* Justice, PC has successfully obtained class certification by
23 contested motion practice in approximately fifteen (15) cases in the last decade, and litigated over
24 1,000 class action or representative action cases.

25 4. Arby Aiwarzian is a Member and Shareholder of Lawyers *for* Justice, PC. He
26 received his Bachelor of Arts degree from University of California, Los Angeles and graduated
27 magna cum laude. He earned a Juris Doctor degree, cum laude, from Southwestern Law School.
28 From approximately May 2007 to approximately July 2007, he served as a Judicial Extern to the

1 Honorable Earl Johnson, Jr. of the California Court of Appeal for the Second Appellate District.
2 From approximately August 2008 to approximately December 2008 he served as a Judicial Extern
3 to the Honorable Kim McLane Wardlaw of the United State Court of Appeals for the Ninth Circuit.
4 He was admitted to practice law in California in 2010. He is admitted to practice before all courts
5 of the State of California and all United States District Courts in the State of California. He has
6 worked on many wage-and-hour class action and representative action cases, taking the lead in
7 taking and defending depositions, arguing motions, and attending mediations. He has played an
8 integral role in preparing matters for class certification, including and not limited to, successful
9 certification of a class in *Upson v. Sur La Table* (Los Angeles County Superior Court Case No.
10 BC424012), *Montazemi v. Regus Management* (Los Angeles County Superior Court Case No.
11 BC478769), and *Abdulhaqq v. Urban Outfitters* (Alameda County Superior Court Case No.
12 RG13680477). He has worked on over one hundred (100) class action or representative action
13 cases which have resulted in settlement, including and not limited to those listed in paragraph 7
14 herein.

15 5. Joanna Ghosh is a Senior Member of Lawyers for Justice, PC. She received a
16 Bachelor of Arts degree from California State University, Los Angeles in 2006, a Master of
17 Science degree from the London School of Economics in 2007, and a Juris Doctor degree from
18 Georgetown University Law Center in 2010. She is admitted to practice in California (since 2010)
19 and in New York (since 2013) and is also admitted to practice in all U.S. District Courts in
20 California, the U.S. Bankruptcy Court for the Central District of California, and the U.S. Supreme
21 Court. She has taken and defended dozens of depositions and successfully handled motion practice
22 in class action cases regarding discovery (including and not limited to, regarding class contact
23 information), class certification (both contested class certification and stipulated class
24 certification), arbitration agreements, coordination, and intervention. She has successfully
25 handled briefing and oral argument on appeal and obtained notable decisions regarding the Private
26 Attorneys General Act (“PAGA”) and employer efforts to compel arbitration of PAGA claims,
27 e.g., *Betancourt v. Prudential Overall Supply*, 9 Cal.App.5th 439 (Cal. Ct. App., Mar. 7, 2017),
28 cert. denied (Cal., May 24, 2017), cert. denied (U.S., Dec. 11, 2017) and *ZB, N.A. v. Superior*

1 Court, 8 Cal.5th175 (2019). She also has extensive experience with class action and/or
2 representative action settlements. Under her, Edwin Aiwasian, and Arby Aiwasian's supervision,
3 the firm has handled the class certification and court approval process for hundreds of class action
4 and/or representative action matters that have successfully resolved. She is a member of the
5 California Employment Lawyers Association.

6 6. I am a Member of Lawyers for Justice, PC. I received my Bachelor of Arts degree
7 from University of California, Santa Barbara in 2013 and earned my Juris Doctor degree from
8 Pepperdine University School of Law in 2017. I was admitted to practice law in California in
9 2019. I am admitted to practice before all courts of the State of California and all federal district
10 courts in the State of California. I have worked on many wage and hour class action and PAGA
11 representative matters, and my work has included, *inter alia*, researching and drafting pleadings,
12 administrative notice exhaustion, drafting, negotiating, and finalizing stipulations and settlement
13 agreements, engaging in motion practice, claims evaluation and analysis, and making court
14 appearances. Prior to working at Lawyers for Justice, PC, I represented filmmakers and talent,
15 negotiating and structuring various types of agreements on their behalf. I am a member of the
16 California Employment Lawyers Association, Beverly Hills Bar Association, and Iranian
17 American Bar Association.

18 **EXAMPLES OF RESULTS IN WAGE-AND-HOUR CLASS ACTION AND**
19 **REPRESENTATIVE ACTION CASES**

20 7. What follows are just a few examples of the type of results Lawyers for Justice, PC
21 ("LFJ") has achieved on behalf of its clients:

22 a) LFJ, in association with co-counsel therein, represented the plaintiffs in a
23 wage-and-hour class action against a major property management company involving allegations
24 of misclassification of various "manager" positions. On September 20, 2010, the court granted
25 final approval of the class action settlement. The Los Angeles County Superior Court Case
26 Number is BC400414.

27 b) LFJ, in association with co-counsel therein, represented the plaintiffs in a
28 wage-and-hour class action against a national retailer of household items involving allegations of

1 misclassification of the “Assistant Store Manager” position. On October 28, 2010, the court
2 granted final approval of the class action settlement. The Los Angeles County Superior Court
3 Case Number is BC413498.

4 c) LFJ, in association with co-counsel therein, represented the plaintiffs in a
5 wage-and-hour class action against a national property management company involving
6 allegations of misclassification of the “Property Manager” position. On May 23, 2012, the court
7 granted final approval of the class action settlement. The Los Angeles County Superior Court
8 Case Number is BC430918.

9 d) LFJ, in association with co-counsel therein, represented the plaintiffs in a
10 wage-and-hour class action against a national retailer involving allegations of misclassification of
11 the “Store Manager” position. On June 10, 2011, the court granted plaintiffs’ motion for class
12 certification. On August 26, 2013, the court granted final approval of the class action settlement.
13 The Los Angeles County Superior Court Case Number is BC424012.

14 e) LFJ, in association with co-counsel therein, represented the plaintiff in a
15 wage-and-hour class and PAGA representative action against a bank, involving allegations of
16 misclassification of the “Assistant Branch Manager” position. On August 27, 2013, the court
17 granted final approval of the class and PAGA representative action settlement. The Kern County
18 Superior Court Case Number is S-1500-CV-273194-LHB.

19 f) LFJ, in association with co-counsel therein, represented the plaintiff in a
20 wage-and-hour class and PAGA representative action against a national wholesale distributor of
21 plumbing and builder supplies, involving allegations of misclassification of multiple salaried
22 “manager” positions. On May 22, 2014, the court granted final approval of the class and PAGA
23 representative action settlement. The Sacramento County Superior Court Case Number is 34-
24 2012-00136285.

25 g) LFJ, in association with co-counsel therein, represented the plaintiff in a
26 wage-and-hour class action against a multinational corporation that provides global workplace
27 solutions, involving allegations of misclassification of the “Operations Manager” position. On
28

1 September 16, 2014, the court granted plaintiff's motion for class certification. The Los Angeles
2 County Superior Court Case Number is BC478769.

3 h) LFJ, in association with co-counsel therein, represented the plaintiff in a
4 wage-and-hour class and PAGA representative action against a national retailer of household
5 items, on behalf of hourly-paid or non-exempt employees. On May 27, 2015, the court granted
6 final approval of the class and PAGA representative action settlement. The San Francisco County
7 Superior Court Case Number is CGC-13-532344.

8 i) LFJ, in association with co-counsel therein, represented the plaintiff in a
9 wage-and-hour class and PAGA action involving allegations of misclassification of the salaried
10 residential "Property Manager" position. On September 17, 2015, the court granted plaintiff's
11 motion for class certification. On October 20, 2017, the court granted final approval of the class
12 and PAGA representative action settlement. The Los Angeles County Superior Court Case
13 Number is BC474784.

14 j) LFJ, in association with co-counsel therein, represented the plaintiffs in a
15 wage-and-hour class and PAGA representative action against a national retailer of upscale
16 hardware and home furnishings, on behalf of non-exempt employees. On April 28, 2016, the court
17 granted final approval of the class and PAGA representative action settlement. The Los Angeles
18 County Superior Court Case Numbers are BC516795 and JCCP4794, and the Judicial Council
19 Coordination Proceeding Number is 4794.

20 k) LFJ, in association with co-counsel therein, represented the plaintiffs in a
21 wage-and-hour class action against a national retailer of apparel and fashion accessories, on behalf
22 of non-exempt employees. On August 5, 2016, the court granted final approval of the class action
23 settlement. The Los Angeles County Superior Court Case Number is BC488069.

24 l) LFJ, in association with co-counsel therein, represented the plaintiffs in a
25 wage-and-hour class action against a national retailer of apparel, accessories, and home products,
26 involving allegations of misclassification of the "Department Manager" position. On August 12,
27 2016, the court granted the plaintiffs' motion for class certification in part and certified a class. On
28

1 August 6, 2019, the court granted final approval of the class action settlement. The Alameda
2 County Superior Court Case Number is RG13680477.

3 m) LFJ represented the plaintiff in a PAGA representative action against a real
4 estate and property management company, on behalf of non-exempt employees. On November 4,
5 2016, the court granted approval of the PAGA representative action settlement. The Orange
6 County Superior Court Case Number is 30-2015-00775439-CU-OE-CXC.

7 n) LFJ, in association with co-counsel therein, represented the plaintiffs in a
8 wage-and-hour class and PAGA representative action against a full-service bank, on behalf of non-
9 exempt employees. On November 18, 2016, the court granted final approval of the class and
10 PAGA representative action settlement. The San Francisco County Superior Court Case Number
11 is CJC-13-004839 and the Judicial Council Coordination Proceeding Number is 4839.

12 o) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
13 representative action against a foodservice distributor, on behalf of non-exempt employees. On
14 January 26, 2017, the court granted final approval of the class and PAGA representative action
15 settlement. The San Bernardino County Superior Court Case Number is CIVDS1507260.

16 p) LFJ, on behalf of the plaintiff and respondent in a PAGA representative
17 action, successfully opposed in the trial court, and briefed and argued an appeal with respect to the
18 employer's motion to compel arbitration, which resulted in a published opinion by the California
19 Court of Appeal in favor of employees. *Roberto Betancourt v. Prudential Overall Supply* (Cal.
20 App. 4th Dist., Mar. 7, 2017) 9 Cal.App.5th 439, review denied, cert. denied (U.S. Supreme Court
21 Docket No. 17-254). The Riverside County Superior Court Case Numbers are RIC1503952 and
22 RICJCCP5046, and the Judicial Council Coordination Proceeding Number is 5046.

23 q) LFJ, in association with co-counsel therein, represented the plaintiffs in a
24 wage-and-hour class and PAGA representative action against a consumer packaging company, on
25 behalf of non-exempt employees. On March 10, 2017, the court granted final approval of the class
26 and PAGA representative action settlement. The Los Angeles County Superior Court Case
27 Number is BC590429.

1 r) LFJ, in association with co-counsel therein, represented the plaintiffs in a
2 wage-and-hour class and PAGA representative action against a manufacturer of food service
3 industry supplies on behalf of non-exempt employees. On April 14, 2017, the court granted final
4 approval of the class and PAGA representative action settlement. The Orange County Superior
5 Court Case Number is 30-2015-00810013-CU-OE-CXC.

6 s) LFJ in association with co-counsel, represented the plaintiffs in a wage-and-
7 hour class and PAGA representative action against a lumber and hardware company on behalf of
8 non-exempt employees. On April 26, 2017, the court granted final approval of the class and PAGA
9 representative action settlement. The Orange County Superior Court Case Number is 30-2014-
10 00747750-CU-OE-CXC.

11 t) LFJ represented the plaintiff in a wage-and-hour class and PAGA
12 representative action against a property management company, on behalf of non-exempt
13 employees. On June 14, 2017, the court granted final approval of the class and PAGA
14 representative action settlement. The Los Angeles County Superior Court Case Number is
15 BC586234.

16 u) LFJ represented the plaintiff in a wage-and-hour class and PAGA
17 representative action against a food company on behalf of non-exempt employees. On June 30,
18 2017, the court granted final approval of the class and PAGA representative action settlement.
19 The Sacramento County Superior Court Case Number is 34-2015-00175871.

20 v) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
21 representative action against a chocolate company on behalf of non-exempt employees. On July
22 19, 2017, the court granted final approval of the class and PAGA representative action settlement.
23 The Alameda County Superior Court Case Number is RG15764300.

24 w) LFJ firm represented the plaintiff in a PAGA representative action, against
25 the parent company of several restaurants, on behalf of hourly-paid, non-exempt employees. On
26 October 18, 2017, the court granted approval of the PAGA representative action settlement. The
27 Los Angeles County Superior Court Case Number is BC569664.
28

1 x) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
2 representative action against a manufacturer of plastic containers on behalf of non-exempt
3 employees. On October 31, 2017, the court granted final approval of the class and PAGA
4 representative action settlement. The Los Angeles County Superior Court Case Number is
5 BC577233.

6 y) LFJ, in association with co-counsel therein, represented the plaintiffs in a
7 wage-and-hour class and PAGA representative action against a bank on behalf of non-exempt
8 employees. On December 11, 2017, the court entered an order granting final approval of the class
9 and PAGA representative action settlement. The Los Angeles County Superior Court Case
10 Number is BC569646.

11 z) LFJ, in association with co-counsel therein, represented the plaintiffs in a
12 wage-and-hour class and PAGA representative action against a property management company
13 on behalf of hourly-paid and non-exempt employees. On January 4, 2018, the court entered an
14 order granting final approval of the class and PAGA representative action settlement. The Los
15 Angeles County Superior Court Case Number is JCCP4819 and the Judicial Council Coordination
16 Proceeding Number is 4819.

17 aa) LFJ, in association with co-counsel therein, represented the plaintiffs in a
18 wage-and-hour class and PAGA representative action against a global provider of flexible office
19 space solutions. On February 15, 2018, the court entered an order granting final approval of the
20 class and PAGA representative action settlement. The Los Angeles County Superior Court Case
21 Number is BC498401.

22 bb) LFJ, in association with co-counsel therein, represents the plaintiff in a
23 wage-and-hour class action against a container manufacturer, on behalf of non-exempt employees.
24 On October 15, 2018, the court granted the plaintiff's motion for class certification. The Tulare
25 County Superior Court Case Number is VCU264528.

26 cc) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
27 representative action against a behavioral health service provider on behalf of non-exempt
28 employees. On November 13, 2018, the court granted final approval of the class and PAGA

1 representative action settlement. The Alameda County Superior Court Case Number is
2 RG16811450.

3 dd) LFJ, in association with co-counsel therein, represented the plaintiff in a
4 PAGA representative action against a global provider of products and services to the energy
5 industry, on behalf of hourly-paid and non-exempt employees. On November 19, 2018, the court
6 granted approval of the PAGA representative action settlement. The Kern County Superior Court
7 Case Number is S-1500-CV-280215-SDC.

8 ee) LFJ, in association with co-counsel therein, represents the plaintiff in a
9 wage-and-hour class action against a parking company on behalf of non-exempt employees. On
10 September 3, 2019, the court granted the plaintiff's motion for class certification and certified a
11 class. The Santa Clara County Superior Court Case Number is 16CV292208 and the Judicial
12 Council Coordination Proceeding Number is 4886.

13 ff) LFJ, in association with co-counsel therein, represents the plaintiffs in a
14 wage-and-hour class and representative action against a bank on behalf of non-exempt employees.
15 On September 27, 2019, the court granted the plaintiffs' motion for class certification in part and
16 certified a class. The Alameda County Superior Court Case Number is RG15757606 and the
17 Judicial Council Coordination Proceeding Number is 4921.

18 gg) LFJ, in association with co-counsel therein, represented the plaintiffs in a
19 wage-and-hour class and PAGA representative action against a national retailer of apparel and
20 fashion accessories, on behalf of non-exempt employees. On October 9, 2019, the court granted
21 the plaintiffs' motion for class certification in part and certified a class. On May 14, 2021, the
22 court granted final approval of the class and PAGA representative action settlement. The
23 Sacramento County Superior Court Case Number is 34-2015-00175330-CU-OE-GDS.

24 hh) LFJ, in association with co-counsel therein, on behalf of the plaintiff and
25 respondent in a PAGA representative action, successfully opposed in the trial court, and briefed
26 and argued an appeal with respect to the employer's motion to compel arbitration, resulting in a
27 notable decision from the California Supreme Court clarifying the law regarding PAGA claims,
28 *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175. On February 21, 2020, the court granted approval

1 of the PAGA representative action settlement. The San Diego County Superior Court Case
2 Number is 34-2015-00175330.

3 ii) LFJ, in association with co-counsel therein, represents the plaintiff in a
4 wage-and-hour class and PAGA representative action against a medical equipment supplier on
5 behalf of non-exempt employees. On February 13, 2020, the court granted the plaintiff's motion
6 for class certification and certified a class. The San Bernardino County Superior Court Case
7 Number is CIVDS1505744.

8 jj) LFJ, in association with co-counsel therein, represents the plaintiff in a
9 wage-and-hour class and PAGA representative action against a large national drug testing
10 laboratory on behalf of non-exempt employees. On February 21, 2020, the court granted the
11 plaintiff's motion for class certification and certified a class. The San Diego County Superior
12 Court Case Number is 37-2018-00019611-CU-OE-CTL.

13 kk) LFJ, in association with co-counsel therein, represents the plaintiffs in a
14 wage-and-hour class and PAGA representative action against a national retailer of sportswear,
15 footwear, and camping equipment on behalf of non-exempt employees. On March 16, 2020, the
16 court granted in part the plaintiff's motion for class certification and certified a class. The
17 Riverside County Superior Court Case Numbers are RIC1507504 and RICJCCP4930, and the
18 Judicial Council Coordination Proceeding Number is 4930.

19 ll) LFJ, in association with co-counsel therein, represents the plaintiffs in a
20 wage-and-hour class action against manufacturer and supplier of power products and services on
21 behalf of non-exempt employees. On July 31, 2020, the court granted in part the plaintiffs' motion
22 for class certification and certified a class. The San Diego County Superior Court Case Number
23 is 37-2015-00025968-CU-OE-CTL.

24 mm) LFJ represents the plaintiff in a wage-and-hour class action against a
25 nutritional products manufacturer on behalf of non-exempt production line employees. On
26 December 13, 2021, the court granted the plaintiff's motion for class certification in part and
27 certified a class. The Solano County Superior Court Case Number is FCS051001.
28

nn) LFJ represents the plaintiff in a wage-and-hour class action against an iconic lifestyle accessories brand and retailer on behalf of non-exempt employees. On March 15, 2022, the court granted the plaintiff's motion for class certification in part and certified a class. The San Francisco Superior Court Case Number is CGC-16-550794.

BASIC INFORMATION ABOUT THE CASE AND REACHING THE SETTLEMENT

8. Marked and attached hereto as "**EXHIBIT 1**" is the Joint Stipulation Class Action and PAGA Settlement ("Settlement," "Agreement" or "Settlement Agreement") entered into by and between Plaintiff, on the one hand, and Defendant Heritage Health Care, Inc. ("Defendant"), on the other hand (collectively, the "Parties"). The Parties and their counsel have approved the proposed Notice of Class Action Settlement ("Class Notice"), which is attached to the Settlement Agreement as "**Exhibit A**" and respectfully request that the Court approve it as well. The Parties have also drafted and agreed to the form and content of the proposed First Amended Consolidated Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* ("First Amended Complaint"), which is attached as "EXHIBIT 1" to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement. As part of the Settlement, Plaintiff agreed to amend the complaint to consolidate the complaint in the above-captioned action and the Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.*, filed in the action entitled *Theresa Bingham v. Heritage Health Care, Inc.*, San Bernardino Case No. CIVSB2102827. Class Counsel respectfully requests that the Court grant leave to file the First Amended Complaint so that the terms of the Settlement Agreement and the intent of the Parties may be effectuated.

9. The effectiveness of Lawyers for Justice, PC ("Class Counsel") in prosecuting this matter has translated into tangible monetary benefits in the following respects: (1) Class Members, PAGA Group Members, and the State of California recover over a reasonably short period of time as opposed to waiting additional years for the same, or possibly worse, result; (2) a guaranteed result that compares favorably with other complex wage and hour class and/or representative action settlements of similar type given the strengths and weaknesses of the matter; and (3) significant savings in attorneys' fees and/or costs that would have only increased significantly had

1 the matter progressed through certification, trial, and/or appeals.

2 10. Class Counsel has litigated the matter for approximately two (2) years and was
3 actively preparing the matter for class certification and trial. The Parties have engaged in extensive
4 settlement negotiations and participated in a formal, full-day mediation conducted by Paul
5 Grossman Esq., a well-respected mediator experienced in mediating complex labor and
6 employment matters. Prior to and during the mediation and settlement discussions, the Parties
7 exchanged extensive information and engaged in discussions regarding their evaluations of the
8 matter and various aspects of the matter, including, but not limited to, the risks and delays of
9 further litigation, the risks to the Parties of proceeding with class certification and/or representative
10 adjudication, the law relating to off-the-clock theory, meal and rest periods, PAGA representative
11 actions, and wage-and-hour law and enforcement, as well as the evidence produced and analyzed,
12 and the possibility of appeals, among other things. During all settlement discussions, the Parties
13 conducted their negotiations at arm's length and in an adversarial position. Arriving at a settlement
14 that was acceptable to all Parties was not easy. Defendant and its counsel felt strongly about their
15 ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that
16 they would be able to obtain class certification and prevail at trial. After conducting investigations,
17 informal discovery, and exchange of information, extensive settlement negotiations, and with the
18 aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for
19 settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and
20 risks to both sides that would attend further litigation. The Settlement is a fair, reasonable, and
21 adequate resolution of the Released Class Claims of Plaintiff and Settlement Class Members and
22 of the Released PAGA Claims of the State of California with respect to employment of Plaintiff
23 and PAGA Group Members.

24 11. Prior to reaching the Settlement, Class Counsel investigated the veracity, strength,
25 and scope of the claims, and was preparing the action for class certification and trial. Class Counsel
26 conducted significant investigation and informal discovery regarding the facts of the matter,
27 including, but not limited to, the exchange, review, and analysis of a large volume of documents
28 and data obtained from Defendant, Plaintiff, and other sources. Class Counsel propounded Special

1 Interrogatories (Set One) onto Defendant. The volume of data and documents that Class Counsel
2 reviewed and analyzed included and was not limited to: Plaintiff's employment records, a detailed
3 sampling of Class Members' time and pay data, earning statements and summaries, multiple
4 iterations of Defendant's Employee Handbook, company policy acknowledgements (including,
5 but not limited to, Defendant's Employee Acknowledgement), internal memoranda, Defendant's
6 operations and employment practices (including, but not limited to, Defendant's Confidentiality
7 and Non-Disclosure Agreement, Employee Separation Report, Corrective or Disciplinary
8 Warning Notice and New Employee Safety Orientation), procedures, and policies (including, but
9 not limited to, Defendant's Meal Break Agreement and Premium Only Plan), among other
10 information and documents. Class Counsel interviewed Plaintiff and other Class Members to
11 gather facts and circumstances surrounding Plaintiff and putative class members' employment.
12 Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues
13 relating to the pleadings, discovery, *Belaire-West* process, and the production of documents and
14 data prior to the mediation. Class Counsel also drafted pleadings and the mediation brief and
15 prepared for and attended court proceedings, mediation, and settlement negotiations, among other
16 tasks.

17 12. Counsel for the Parties have also invested time researching and investigating the
18 applicable law, which is constantly evolving as it relates to certification, representative PAGA
19 claims, the off-the-clock theory, meal and rest periods, wage-and-hour law and enforcement,
20 Plaintiff's claims and damages, and Defendant's defenses thereto, as well as facts discovered.
21 Based on Class Counsel's analysis, the result achieved in this litigation is fair, adequate, and
22 reasonable.

23 13. The Settlement provides for a Maximum Settlement Amount of One Million Three
24 Hundred Thousand Dollars (\$1,300,000.00). The Net Settlement Amount is the Maximum
25 Settlement Amount less the following amounts subject to approval by the Court: Attorneys' Fees,
26 Litigation Costs, Enhancement Payment, Administration Costs, and the PAGA Penalties.
27 Assuming that the amounts allocated under the Settlement toward these payments are awarded by
28 the Court, the Net Settlement Amount that will be available for distribution to Settlement Class

Members is currently estimated to be Five Hundred Twenty-Four Thousand Dollars (\$524,000.00). Additionally, 25% of the PAGA Penalties (i.e., the Employee PAGA Amount), which is \$65,000.00 out of \$260,000.00 will be distributed to PAGA Group Members. The Net Settlement Amount and PAGA Penalties will be fully distributed in accordance with the terms of the Settlement and there is no reversion to Defendant.

14. The Parties have agreed to retain CPT Group, Inc. (“CPT Group” or “Settlement Administrator”) to handle the notice and settlement administration process. The Parties respectfully request that the Court appoint CPT Group to handle these procedures and serve as the Settlement Administrator. Defendant will provide the Settlement Administrator with a list of Class Members that Defendant will compile from its records, which will include each Class Member’s: (1) full name; (2) last known address; (3) last known telephone number; (4) number of Workweeks worked during the Class Period; (5) number of Workweeks worked during the PAGA Period; (6) Social Security number; and (7) last known email address (collectively, “Class List”), and the Settlement Administrator will calculate each Class Member’s estimated share of the Net Settlement Amount (“Individual Settlement Share”) and each PAGA Group Member’s estimated share of the Employee PAGA Amount (“Individual PAGA Payment”). The Settlement Administrator will also receive opt-outs, objections, and disputes regarding Workweeks; provide necessary reports and declarations; calculate, subtract, and transmit necessary taxes and withholdings; prepare and submit informational and other tax filings and documents; issue and transmit all payments provided for by the Settlement, including, but not limited to, mailing payments to Settlement Class Members and PAGA Group Members; and perform any other usual and customary duties for administering a class action settlement. Administration Costs are currently estimated not to exceed Seventeen Thousand Dollars (\$17,000.00) and will be paid out of the Maximum Settlement Amount, subject to approval of the Court.

15. Based on investigation and information discovered, Class Counsel believes that there is sufficient evidence to support the allegations made in the lawsuit, including the allegations that Defendant, with respect to Plaintiff, Class Members, and PAGA Group Members, *inter alia*, failed to properly pay overtime and minimum wages, failed to provide compliant meal and rest

1 periods and pay associated premium pay, failed to timely pay wages during employment and upon
2 termination of employment, failed to provide compliant wage statements, failed to maintain
3 requisite payroll records, and failed to reimburse necessary business expenses, and thereby
4 engaged in unfair business practices and conduct giving rise to civil penalties recoverable under
5 the Private Attorneys General Act of 2004 (California Labor Code sections 2698, et seq.). Plaintiff
6 also asserted that Class Members and PAGA Group Members were expected to perform similar
7 job duties and were subject to the same or similar operations and employment policies, practices,
8 and procedures. Additionally, Plaintiff asserted that Defendant's recordkeeping practices with
9 respect to Plaintiff, Class Members, and PAGA Group Members were substantially the same
10 during the time period at issue. As a result of said alleged uniform practices, Plaintiff claims that
11 Class Members and PAGA Group Members were not paid all of the compensation that was owed
12 to them by Defendant. Thus, in Class Counsel's view, it is clear that the outcome of this litigation
13 would be determined by Defendant's uniform operations and employment practices, policies, and
14 procedures that Plaintiff alleges applied to Defendant's hourly-paid or non-exempt employees in
15 California during the relevant time period.

16 16. Class Counsel is aware of the defenses and position of Defendant but believes that
17 Plaintiff could potentially obtain class certification despite many obstacles. Plaintiff and Class
18 Counsel have also taken into account the uncertainty and risk of the outcome of further litigation,
19 and the difficulties and delays inherent in such litigation, including those involved in class
20 certification and/or representative adjudication. Plaintiff and Class Counsel further recognize the
21 burdens of proof necessary to establish liability for the claims asserted in the lawsuit, Defendant's
22 defenses, and the difficulties in establishing entitlement to monetary recovery. Plaintiff and Class
23 Counsel have also considered the Parties' settlement discussions, as well as the evaluations of the
24 mediator, who is experienced and well-regarded in complex labor and employment matters.

25 17. Defendant, on the other hand, denied and continues to deny any liability and
26 wrongdoing of any kind associated with the allegations in the lawsuit, and further denies that the
27 lawsuit is appropriate for class treatment or representative adjudication for any purpose other than
28 Settlement. Defendant believes that it would ultimately succeed in the matter. Both sides have

1 also had the opportunity to conduct investigations and gather documents and information relating
2 to Plaintiff's, Class Members', and PAGA Group Members' employment with Defendant, and
3 Defendant's operations and employment policies, practices, and procedures. The Parties also
4 reviewed and analyzed a volume of documents and data, including, but not limited to, a detailed
5 sampling of Class Members' time and pay information to determine the potential value and
6 strength of the claims. The available information enabled Class Counsel to assess and value the
7 class and PAGA claims and prepare violation, damages, and penalties analyses and models.
8 Accordingly, the Parties have conducted adequate investigation and discovery to be sufficiently
9 informed of the nature and extent of the class and PAGA claims, and to enable both sides to fully
10 evaluate the Settlement for its fairness, adequacy, and reasonableness. The Settlement takes into
11 account the strengths and weaknesses of each side's position and the uncertainty of how the matter
12 might have concluded at certification, trial, and/or appeals.

13 18. The Settlement Agreement provides for Class Counsel to apply for attorneys' fees
14 in an amount of up to thirty-five percent (35%) of the Maximum Settlement Amount
15 (i.e., \$455,000.00) and expenses and costs in an amount not to exceed Thirty-Five Thousand
16 Dollars (\$35,000.00), which will be paid out of the Maximum Settlement Amount subject to
17 approval by the Court. It should be noted that Class Counsel has borne all of the risks and costs
18 of litigation and will not receive any compensation until recovery is obtained.

19 19. The Settlement Agreement provides for payment of up to Nine Thousand Dollars
20 (\$9,000.00) to Plaintiff as an Enhancement Payment, to be paid out of the Maximum Settlement
21 Amount subject to approval by the Court. Plaintiff spent considerable time and effort to produce
22 relevant documents and past employment records and to provide the facts and evidence necessary
23 to attempt to prove the allegations. Plaintiff was available whenever Class Counsel needed
24 Plaintiff, and actively tried to obtain information that would facilitate the pursuit of the class and
25 PAGA claims. Accordingly, it is appropriate and just for Plaintiff to receive an Enhancement
26 Payment, in addition to an Individual Settlement Payment and Individual PAGA Payment, for
27 services performed in the matter on behalf of the Class, PAGA Group Members, and State of
28 California.

20. The foregoing discussion confirms that the amount of the Settlement is adequate in light of Plaintiff's allegations and causes of action, the evidence at issue with respect to those allegations and causes of action, and legal and factual arguments and circumstances which pose challenges to certification, manageability, merits, and monetary recovery. The conclusion to be drawn from the foregoing analysis is that neither class certification, manageability, liability, nor the ability to adjudicate and/or recover monetary relief on a class-wide or representative basis is clear-cut, which is why the Parties elected to settle this matter. Class Counsel also recognized that additional discounts could be made to the risk-adjusted value to account for the costs and expenses associated with further litigation and the present value of obtaining a settlement now as opposed to monetary recovery, if any, that may be obtained in the future after further litigation. Class Counsel recognized the circumstances and realities of the case, applicable case law and regulations, and risks to recovery and applied appropriate discounts.

21. Class Counsel submits that the Settlement is fair, reasonable, and adequate, and is in the best interests of Plaintiff, the Class, the PAGA Group Members, and the State of California. Class Counsel further submits that the Settlement is within an acceptable range of recovery for this type of litigation given the strengths and weaknesses of the matter, the inherent costs and risks of further litigation, and the costs and risks associated with class certification, representative adjudication, trial, and/or appeals.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 30th day of September 2022, at Glendale, California.



Yasmin Hosseini

EXHIBIT 1

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

2 This Joint Stipulation of Class Action and PAGA Settlement (“Agreement” or “Settlement
3 Agreement”) is made and entered into by and between Plaintiff Theresa Bingham , on behalf of all
4 other similarly situated and aggrieved employees (“Plaintiff”), and Defendant Heritage Health
5 Care, Inc. (“Defendant”) (together with Plaintiff, the “Parties”), in the lawsuits entitled *Theresa*
6 *Bingham v. Heritage Health Care, Inc.*, filed in San Bernardino County Superior Court, Case No.
7 CIVSB2029495 and *Theresa Bingham v. Heritage Health Care, Inc.*, filed in San Bernardino
8 County Superior Court, Case No. CIVSB2102827 (collectively, the “Litigation”).

9 This Settlement Agreement shall be binding on Plaintiff, Settlement Class Members (as
10 defined below), PAGA Group Members (as defined below), the State of California (as set forth
11 herein), and on Defendant, subject to the terms and conditions hereof and the approval of the Court.

12 **I. DEFINITIONS**

13 **A. “Administration Costs”** means all administrative costs of settlement, including
14 costs of notice to the Class, settlement administration, and any fees and costs incurred or charged
15 by the Settlement Administrator in connection with the execution of its duties under this Settlement.

16 **B. “Class Counsel” or “Plaintiff’s Counsel”** means Edwin Aiwazian, Arby Aiwazian,
17 and Joanna Ghosh of Lawyers *for* Justice, PC and all the lawyers of this firm acting on behalf of
18 Plaintiff and the Class.

19 **C. “Class Members”** mean all current and former hourly-paid or non-exempt
20 employees who worked for Defendant within the State of California at any time during the Class
21 Period (collectively referred to as the “Class”).

22 **D. “Class Period”** means the period from December 30, 2016 through January 24
23 2022.

24 **E. “Class Settlement”** means the settlement and release of Released Class Claims.

25 **F. “Court”** means the Superior Court of the State of California for the County of San
26 Bernardino.

27 **G. “Effective Date”** means the later of: (a) if no timely objections are filed or if all
28 objections are withdrawn, the date upon which the Court enters the Final Approval Order; (b) if an

1 objection is filed and not withdrawn, the date for filing an appeal and no such appeal being filed;
2 or (c) if any timely appeals are filed, the date of the resolution (or withdrawal) of any such appeal
3 in a way that does not alter the terms of the Settlement.

4 **H. “Final Approval Order”** means the final, formal judgment entered by the Court
5 granting final approval of this Agreement.

6 **I. “Individual Settlement Payments”** mean the net payment of each Settlement Class
7 Member’s Individual Settlement Share, after reduction for the employee’s share of taxes and
8 withholdings with respect to the wages portion of the Individual Settlement Share, as provided n
9 Paragraph XIII.A.3. herein.

10 **J. “Individual Settlement Share”** means the *pro rata* share of the Net Settlement
11 Amount that a Class Member may be eligible to receive under the Settlement, to be calculated in
12 accordance with Paragraph XIII herein, which is inclusive of the employee’s share of taxes and
13 withholdings with respect to the wages portion of the Settlement.

14 **K. “Individual PAGA Payments”** mean payments made to PAGA Group Members
15 from the Employee PAGA Amount that PAGA Group Members are eligible to receive under the
16 PAGA Settlement.

17 **L. “Maximum Settlement Amount”** means the sum of One Million Three Hundred
18 Thousand Dollars and Zero Cents (\$1,300,000.00), which shall be paid by Defendant, and from
19 which all Individual Settlement Payments pursuant to Paragraph XIII, Court-approved Attorneys’
20 Fees and Litigation Costs pursuant to Paragraph XV, Administration Costs pursuant to Paragraph
21 X, Enhancement Payment pursuant to Paragraph XVI, and PAGA Penalties pursuant to Paragraph
22 XVIII, shall be paid, except as provided herein.

23 **M. “Net Settlement Amount”** means the Maximum Settlement Amount minus any
24 Court-approved award of Attorneys’ Fees to Class Counsel, Litigation Costs to Class Counsel,
25 Administration Costs to the Settlement Administrator, Enhancement Payment to Plaintiff, and
26 PAGA Penalties, as provided in Paragraphs X, XV, XVI, and XVIII.

1 **N. “Operative Complaint”** means the contemplated First Amended Consolidated
2 Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act,
3 Cal. Labor Code § 2698, Et Seq., attached hereto as “**Exhibit A**”.

4 **O. “PAGA Group Members”** mean all current and former hourly-paid or non-exempt
5 employees who worked for Defendant within the State of California at any time during the PAGA
6 Period.

7 **P. “PAGA Period”** means the period from November 12, 2019 through January 24,
8 2022.

9 **Q. “PAGA Settlement”** means the settlement and release of Released PAGA Claims.

10 **R. “PAGA Penalties”** mean the amount of Two Hundred Sixty Thousand Dollars and
11 Zero Cents (\$260,000.00) from the Maximum Settlement Amount which will be allocated toward
12 penalties under the Private Attorneys General Act, California Labor Code § 2698, *et seq.*, of which
13 seventy-five percent (75%) will be paid to the California Labor and Workforce Development
14 Agency (the “LWDA Payment”), and twenty-five percent (25%) will be distributed to PAGA
15 Group Members (the “Employee PAGA Amount”).

16 **S. “Plaintiff”** means Theresa Bingham.

17 **T. “Settlement”** means the disposition and agreement to resolve the Litigation.

18 **U. “Settlement Administrator”** means CPT Group, Inc. (“CPT Group”), the
19 settlement administrator selected by the Parties, and which will be responsible for the
20 administration of the Maximum Settlement Amount, as defined below, and all related matters. The
21 Parties each represent that they do not have any financial interest in the Settlement Administrator
22 or otherwise have a relationship with the Settlement Administrator that could create a conflict of
23 interest.

24 **V. “Settlement Class Member”** means a Class Member who does not submit a timely
25 and valid Request for Exclusion.

26 **W. “Workweeks”** mean the number of weeks that a Class Member worked for
27 Defendant as an hourly-paid or non-exempt employee in California during the Class Period (based
28 on the number of workweeks in the Class List that Defendant provides to the Settlement

1 Administrator). Each Class Member will be credited with at least one (1) Workweek. A Workweek
2 includes any week in which a Class Member had a time worked entry in Defendant's timekeeping
3 system.

4 **II. BACKGROUND**

5 **A.** On November 12, 2020, Plaintiff sent a letter to the California Labor and Workforce
6 Development Agency ("LWDA"), pursuant to California Labor Code section 2699.3, providing
7 notice of her intent to seek civil penalties under the Private Attorneys General Act, California Labor
8 Code section 2698, *et seq.*, for Defendant's alleged violations of California Labor Code sections
9 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800
10 and 2802, and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Orders 4-
11 2001, and 5-2001 ("LWDA Letter").

12 **B.** On December 30, 2020, Plaintiff filed a Class Action Complaint for Damages (the
13 "Class Action Complaint"), Case No. CIVSB2029495, in San Bernardino County Superior Court.
14 In the class action case, Plaintiff alleged, *inter alia*, on behalf of herself and all others similarly
15 situated, that Defendant violated California state wage and hour laws and California Business and
16 Professions Code section 17200, *et seq.* as a result of Defendant's California wage and hour policies
17 and practices. Specifically, Plaintiff alleged that Defendant violated the following provisions of
18 the California Labor Code: (1) California Labor Code sections 510 and 1198 (failure to pay
19 overtime); (2) California Labor Code sections 226.7 and 512(a) (failure to provide compliant meal
20 periods and associated premiums); (3) California Labor Code section 226.7 (failure to provide rest
21 periods and associated premiums); (4) California Labor Code sections 1194, 1197, and 1197.1
22 (failure to pay minimum wages); (5) California Labor Code sections 201-203 (failure to timely pay
23 final wages); (6) California Labor Code section 204 (failure to timely pay wages during
24 employment); (7) California Labor Code section 226(a) (failure to provide accurate wage
25 statements); (8) California Labor Code section 1174(d) (failure to keep requisite payroll records);
26 (9) California Labor Code sections 2800 and 2802 (failure to reimburse necessary business
27 expenses); and (10) California Business and Professions Code section 17200, *et seq.*

28 **C.** On January 22, 2021, Plaintiff filed a Complaint for Enforcement Under the Private

1 Attorneys General Act, California Labor Code § 2698, Et Seq. (the “PAGA Complaint”), Case No.
2 CIVSB2102827, in San Bernardino County Superior Court, alleging a single representative cause
3 of action against Defendant under the Private Attorneys General Act, California Labor Code section
4 2698, *et seq.* (“PAGA”).

5 **D.** Class Counsel conducted extensive investigation, discovery, review and analysis of
6 data and documents, and evaluation concerning the claims set forth in the Litigation.

7 **E.** Plaintiff and Class Counsel have engaged in good faith, arm’s-length negotiations
8 with Defendant concerning possible settlement of the claims asserted in the Litigation. These good
9 faith, arm’s-length negotiations resulted in settlement of the Litigation memorialized in this
10 Settlement Agreement after extensive negotiations about the terms and conditions of the
11 Settlement.

12 **F.** Class Counsel has conducted an investigation of the law and facts relating to the
13 claims asserted in the Litigation and has concluded, taking into account the sharply contested issues
14 involved, the defenses asserted by Defendant, the expense and time necessary to pursue the
15 Litigation through trial and any appeals, the risks and costs of further prosecution of the Litigation,
16 the risk of an adverse outcome, the uncertainties of complex litigation, and the substantial benefits
17 to be received by Plaintiff and the members of the Class and State of California pursuant to this
18 Agreement, that a settlement with Defendant on the terms and conditions set forth herein is fair,
19 reasonable, adequate, and in the best interests of the Class and State of California. Plaintiff, on her
20 own behalf, on behalf of the Class, and as a private attorney general on behalf of the State of
21 California with respect to PAGA Group Members, has agreed to settle the Litigation with
22 Defendant on the terms set forth herein.

23 **G.** Defendant has concluded that, because of the substantial expense of defending
24 against the Litigation, the length of time necessary to resolve the issues presented herein, the
25 inconvenience involved, and the concomitant disruption to its business operations, it is in
26 Defendant’s best interests to accept the terms of this Agreement. Defendant denies each of the
27 allegations and claims asserted against it in the Litigation. However, Defendant nevertheless
28 desires to settle the Litigation for the purpose of avoiding the burden, expense and uncertainty of

1 continuing litigation and for the purpose of putting to rest the controversies engendered by the
2 Litigation.

3 **H.** This Agreement is intended to and does effectuate the full, final and complete
4 settlement of the allegations and claims set forth in Paragraph II.A-C.

5 **III. JURISDICTION**

6 The Court has jurisdiction over the Parties and the subject matter of this Litigation. The
7 Litigation includes claims that, while Defendant denies them in their entirety, would, if proven,
8 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted
9 final approval of the Settlement and after the Court has ordered the entry of judgment, pursuant to
10 California Code of Civil Procedure section 664.6 the Court shall retain jurisdiction of the Litigation
11 solely for the purpose of interpreting, implementing, and enforcing this Settlement consistent with
12 the terms set forth herein.

13 **IV. AMENDMENT OF THE PLEADINGS**

14 As part of the Settlement embodied in this Agreement, the Parties stipulate to Plaintiff
15 seeking and being granted leave to file the contemplated First Amended Consolidated Class Action
16 Complaint for Damages and Enforcement Under the Private Attorneys General Act, California
17 Labor Code § 2698, Et Seq. (i.e., Operative Complaint), consolidating the Class Action Complaint
18 and the PAGA Complaint.

19 **V. STIPULATION OF CLASS CERTIFICATION**

20 **A.** The Parties stipulate to the certification of the Class for purposes of settlement only.
21 This stipulation is contingent upon preliminary and final approval and certification of the Class
22 only for purposes of settlement. Should the Settlement not become final, for whatever reason, the
23 fact that the Parties were willing to stipulate provisionally to class certification as part of the
24 Settlement shall have no bearing on, and shall not be admissible in connection with, the issue of
25 whether a class should be certified in a non-settlement context in the Litigation. Defendant
26 expressly reserves the right to oppose class certification and/or proactively move to deny
27 certification should this Settlement be modified or reversed on appeal or otherwise not become
28 final.

1 **B.** The Parties agree that class certification pursuant to California Code of Civil
2 Procedure section 382 under the terms of this Agreement is for settlement purposes only. Nothing
3 in this Agreement will be construed as an admission or acknowledgement of any kind that any class
4 should be certified or given collective treatment in the Litigation or in any other action or
5 proceeding. Further, neither this Agreement nor the Court's actions with regard to this Agreement
6 will be admissible in any court or other tribunal regarding the propriety of class certification or
7 collective treatment. In the event that this Agreement is not approved by the Court or any appellate
8 court, is terminated, or otherwise fails to be enforceable, Plaintiff will not be deemed to have
9 waived, limited, or affected in any way any claims, rights, or remedies in the Litigation, and
10 Defendant will not be deemed to have waived, limited, or affected in any way any of its objections
11 or defenses in the Litigation.

12 **VI. MOTION FOR PRELIMINARY APPROVAL**

13 **A.** Plaintiff will bring a motion before the Court for an order preliminarily approving
14 the Settlement including the Notice of Class Action Settlement ("Class Notice"), which is attached
15 hereto as "**Exhibit A**," and including certification of the Class for settlement purposes only.

16 **B.** The date that the Court enters an order granting preliminary approval of the
17 Settlement will be the "Preliminary Approval Date."

18 **C.** Class Counsel will prepare the motion for preliminary approval of the Settlement
19 and will provide Defendant's counsel the opportunity to review it and provide input before it is
20 filed. Defendant agrees that it will not oppose Plaintiff's Motion for Preliminary Approval, nor
21 shall it seek to delay the hearing on this motion for more than thirty (30) days from the date obtained
22 by Plaintiff. This is a material term of the Settlement and any delay or opposition by Defendant
23 will be grounds for Plaintiff to withdraw from the Settlement.

24 **VII. STATEMENT OF NO ADMISSION**

25 **A.** Defendant denies liability for any claim or cause of action asserted in the LWDA
26 Letter and the Litigation. This Agreement does not constitute, and is not intended to constitute, an
27 admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims
28 made against it in the LWDA Letter and the Litigation.

1 **B.** Nothing in this Agreement, nor any action taken in implementation thereof, nor any
2 statements, discussions or communications, nor any materials prepared, exchanged, issued or used
3 during the course of the negotiations leading to this Agreement or the Settlement, is intended by
4 the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be
5 admissible in any way in this case or any other judicial, arbitral, administrative, investigative or
6 other forum or proceeding as evidence of any violation of any federal, state, or local law, statute,
7 ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. The
8 Parties themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in
9 this case or any other judicial, arbitral, administrative, investigative, or other forum or proceeding,
10 as purported evidence of any violation of any federal, state, or local law, statute, ordinance,
11 regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other
12 purpose. Notwithstanding the foregoing, this Agreement may be used and filed in any proceeding
13 before the Court that has as its purpose the interpretation, implementation, or enforcement of this
14 Agreement or any orders or judgments of the Court entered in connection with implementation of
15 this Agreement and/or the Settlement.

16 **C.** None of the documents produced or created by Plaintiff or the Class in connection
17 with settlement procedures constitute, and they are not intended to constitute, an admission by
18 either Plaintiff or Defendant regarding whether or not any violation of any federal, state, or local
19 law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in
20 equity has occurred.

21 **VIII. WAIVER, RELEASE AND CONFIDENTIALITY**

22 **A. Release As to All Settlement Class Members.**

23 Upon full funding of the Maximum Settlement Amount, Plaintiff and all Settlement Class
24 Members shall waive, release, and discharge Defendant, and its divisions, affiliates, predecessors,
25 successors, shareholders, past, present or future officers, directors and employees, members, agents,
26 investment bankers, accountants, attorneys, trustees, representatives, administrators, fiduciaries,
27 assigns, subrogees, executors, partners, parents, subsidiaries, joint employers, insurers, reinsurers,
28 clients, customers, suppliers, vendors, and related corporations (collectively, "Released Parties")

1 of any and all wage-related claims that were alleged in or which could have been alleged in the
2 Operative Complaint based on the factual allegations in the Operative Complaint, arising during
3 the Class Period, including the following claims, under any legal theory of liability for the: (1)
4 alleged failure to pay overtime wages pursuant to California Labor Code sections 510, 1194, and
5 1198 and the IWC Wage Orders; (2) alleged failure to provide meal periods and associated
6 premiums pursuant to California Labor Code sections 226.7 and 512 and the IWC Wage Orders;
7 (3) alleged failure to provide rest periods and associated premiums pursuant to California Labor
8 Code sections 226.7 and 512 and the IWC Wage Orders; (4) alleged failure to pay all minimum
9 wages owed pursuant to California Labor Code sections 1194, 1194.2, 1197, and 1197.1 and the
10 IWC Wage Orders; (5) alleged failure to pay all wages owed upon termination pursuant to
11 California Labor Code sections 201-203 and the IWC Wage Orders; (6) alleged failure to pay all
12 wages in a timely manner during employment pursuant to California Labor Code section 204 and
13 the IWC Wage Orders; (7) alleged failure to furnish accurate itemized wage statements pursuant to
14 California Labor Code section 226 and the IWC Wage Orders; (8) alleged failure to maintain
15 adequate payroll records pursuant to California Labor Code section 1174 and the IWC Wage
16 Orders; (9) alleged failure to reimburse all necessary business expenses pursuant to California
17 Labor Code sections 2800 and 2802 and the IWC Wage Orders; and (10) alleged violations of
18 California Business and Professions Code section 17200, *et seq.* (collectively, “Released Class
19 Claims”).

20 **B. Release as to State of California and PAGA Group Members.**

21 Upon full funding of the Maximum Settlement Amount, Plaintiff, the State of California,
22 and PAGA Group Members shall waive, release, and discharge the Released Parties of any and all
23 claims, actions, and causes of action for civil penalties under the Private Attorneys General Act,
24 California Labor Code section 2698, *et seq.*, arising during the PAGA Period, based on the factual
25 allegations and legal theories in the LWDA Letter and the Operative Complaint, for alleged
26 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551,
27 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and Industrial Welfare Commission Wage
28 Orders, including *inter alia*, Wage Orders 4-2001, and 5-2001 (collectively, “Released PAGA

Claims”).

C. General Release by Plaintiff Only.

In addition to the releases made in Paragraph VIII.A-B, Plaintiff makes the additional following general release of all claims, known or unknown. Plaintiff releases the Released Parties from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule or regulation arising out of, relating to, or in connection with Plaintiff’s relationship with Defendant as well as any and all acts or omissions by or on the part of Defendant, excluding only claims that, by law, may not be privately released. (The release set forth in Paragraph VIII.C shall be referred to as the “General Release”).

With respect to the General Release, Plaintiff stipulates and agrees that, upon full funding of the Maximum Settlement Amount, Plaintiff shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

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.

This release specifically excludes claims for unemployment insurance, disability, social security, and workers compensation (with the exception of claims arising pursuant to California Labor Code Sections 132(a) and 4553). Accordingly, if the facts relating in any manner to this Settlement are found hereafter to be other than or different from the facts now believed to be true, the release of claims contained herein shall be effective as to all unknown claims.

IX. MONETARY CONSIDERATION FOR SETTLEMENT

A. Consideration for This Agreement.

As consideration for this Agreement, Defendant will make a payment that totals the Maximum Settlement Amount of \$1,300,000.00. The payment of the Maximum Settlement

1 Amount represents full and complete settlement of this matter. The Maximum Settlement Amount
2 includes all Attorneys' Fees to Class Counsel, Litigation Costs to Class Counsel, Administration
3 Costs to the Settlement Administrator, Enhancement Payment to Plaintiff, and PAGA Penalties.
4 The balance of the Maximum Settlement Amount, after deduction of Attorneys' Fees to Class
5 Counsel, Litigation Costs to Class Counsel, Administration Costs to the Settlement Administrator,
6 Enhancement Payment to Plaintiff, and PAGA Penalties will be the Net Settlement Amount.
7 Defendant's employer payroll taxes and contributions in connection with the wages portion of the
8 Settlement ("Employer Taxes") shall be paid separately and in addition to the Maximum Settlement
9 Amount.

10 **B. Potential Increase to the Settlement Amount.**

11 Defendant represented that there were approximately 40,000 Workweeks during the period from
12 December 30, 2016 through October 22, 2021. If the actual number of Workweeks during this time
13 period is more than 10% higher than 40,000, i.e., there are more than 44,000 Workweeks for the
14 referenced time period ("Workweeks Threshold"), the Maximum Settlement Amount will increase
15 on a *pro rata* basis to the extent the Workweeks Threshold is exceeded. For example, if the
16 Workweeks for the referenced time period exceed the Workweeks Threshold by 1%, then the
17 Maximum Settlement Amount will be increased by 1%.

18 **X. SETTLEMENT ADMINISTRATOR AND ADMINISTRATION COSTS**

19 Plaintiff and Defendant, through their respective counsel, have selected CPT Group, Inc. as
20 the Settlement Administrator to administer the Settlement, which includes but is not limited to,
21 distributing and responding to inquiries about the Class Notice, determining the timeliness, validity,
22 and/or completion of any objections, Requests for Exclusion, and/or Workweeks Disputes, and
23 calculating all amounts to be paid from the Net Settlement Amount. Charges and expenses of the
24 Settlement Administrator, which is currently estimated not to exceed Seventeen Thousand Dollars
25 (\$17,000.00), will be paid from the Maximum Settlement Amount. If the actual Administration
26 Costs awarded are less than the amount provided herein, the difference will be part of the Net
27 Settlement Amount. The Parties agree that this Agreement may be provided to the Settlement
28 Administrator to effectuate its implementation of the settlement procedures herein.

1 **XI. NOTICE, OBJECTIONS AND EXCLUSION RIGHTS**

2 **A. Notice to the Class.**

3 Plaintiff and Defendant, through their respective attorneys, have jointly prepared the Class
4 Notice, which in substance will be provided to the Class Members as follows:

5 1. As soon as practicable following preliminary approval of the Settlement, but
6 no later than twenty-one (21) calendar days after the Preliminary Approval Date, Defendant will
7 provide to the Settlement Administrator the following information for each Class Member: (1) full
8 name; (2) last known address; (3) last known telephone number; (4) number of Workweeks worked
9 during the Class Period; (5) number of Workweeks worked during the PAGA Period; (6) Social
10 Security number; and (7) last known email address (collectively, "Class List"). Defendant further
11 agrees to consult with the Settlement Administrator prior to the production date to ensure that the
12 format will be acceptable to the Settlement Administrator.

13 2. The Settlement Administrator shall run all the addresses provided through
14 the United States Postal Service NCOA database (which provides updated addresses for any
15 individual who has moved in the previous four years who has notified the U.S. Postal Service of a
16 forwarding address) to obtain current address information, and shall mail the Class Notice to the
17 Class Members via first-class U.S. Mail using the most current mailing address information
18 available, within ten (10) calendar days of the receipt of the Class List from Defendant.

19 3. The Class Notice will include information regarding the nature of the
20 Litigation; a summary of the terms of the Settlement; the definition of the Class; a statement that
21 the Court has preliminarily approved the Settlement; the nature and scope of the claims being
22 released; the procedure and time period for objecting to the Class Settlement, the date and location
23 of the Final Approval Hearing; information regarding the procedure for opting out of the Class
24 Settlement; the number of Workweeks credited to each Class Member and the procedure for
25 disputing the number of Workweeks credited; and the estimated Individual Settlement Share for
26 the Class Member.

27 4. If a Class Notice is returned as undeliverable within thirty (30) calendar days
28 after the initial mailing, the Settlement Administrator will perform a skip trace in an attempt to

1 locate a more current address within three (3) business days of receipt of the returned mail. If the
2 Settlement Administrator is successful in locating an updated address, it will re-mail the Class
3 Notice to the Class Member as soon as possible. Further, any Class Notices returned with a
4 forwarding address to the Settlement Administrator before the Response Deadline, shall be re-
5 mailed to the forwarding address affixed thereto.

6 5. Class Members will be given forty-five (45) calendar days after the Class
7 Notice is initially mailed to the Class Members, to submit Workweeks Disputes, Requests for
8 Exclusion, and/or written objections (“Response Deadline”). With respect to any Class Notice that
9 is re-mailed, the Response Deadline for the Class Member whose Class Notice is re-mailed will be
10 extended an additional fifteen (15) calendar days from the original Response Deadline.

11 6. No later than twenty-five (25) calendar days before the Final Approval
12 Hearing, the Settlement Administrator shall provide counsel for Defendant and Class Counsel with
13 a declaration attesting to the completion of the settlement notice administration process, including
14 the number of attempts to obtain valid mailing addresses for and re-sending of any returned Class
15 Notices, as well as the number of Workweeks Disputes, Requests for Exclusion, and objections
16 received.

17 **B. Objections.**

18 Class Members who do not submit a Request for Exclusion may object to the Class
19 Settlement. To object to the Class Settlement, a Settlement Class Member may send a written
20 objection to the Settlement Administrator or appear at the Final Approval Hearing with or without
21 submitting a written objection to the Class Settlement. The Settlement Class Member may appear
22 personally or through an attorney, at his or her own expense, at the Final Approval Hearing to
23 present his or her objection directly to the Court. However, any attorney who will represent an
24 objector must file a notice of appearance with the Court and serve Class Counsel and Defendant’s
25 counsel no later than the Response Deadline. A written objection to the Class Settlement must: (1)
26 contain the case name and number of the Litigation; (2) contain the Settlement Class Member’s full
27 name, address, telephone number, signature, and last four digits of his or her Social Security
28 number; (3) clearly state the grounds for the objection; (4) state whether the Settlement Class

1 Member intends to appear at the Final Approval Hearing; and (5) be mailed to the Settlement
2 Administrator, postmarked no later than the Response Deadline. If a Class Member objects to the
3 Class Settlement, the Class Member will remain a Settlement Class Member and if the Court
4 approves this Agreement, the Settlement Class Member will be bound by the terms of the Class
5 Settlement in the same way and to the same extent as a Settlement Class Member who does not
6 object to the Class Settlement. The date of mailing of the Class Notice to the objecting Settlement
7 Class Member shall be conclusively determined according to the records of the Settlement
8 Administrator. The Court retains final authority with respect to the consideration and admissibility
9 of any objections to the Class Settlement from Settlement Class Members. The Class Notice shall
10 contain instructions on how to object to the Class Settlement.

11 **C. Opportunity to Be Excluded from the Class Settlement and Defendant's Opt-**
12 **Out Threshold.**

13 1. In order for any Class Member to validly exclude himself or herself from the
14 Class Settlement (i.e., to validly opt out of the Class Settlement), a written request for exclusion
15 from the Class Settlement ("Request for Exclusion") must: (1) contain the case name and number
16 of the Litigation; (2) contain the Class Member's full name, address, telephone number, and last
17 four digits of his or her Social Security number; (3) be signed by the Class Member or his or her
18 authorized representative; (4) contain a clear statement that the Class Member requests to be
19 excluded from the Class Settlement; and (5) be mailed to the Settlement Administrator, postmarked
20 no later than the Response Deadline. The Class Notice shall contain instructions on how to opt out.

21 2. The date of the initial mailing of the Class Notice, and the date the signed
22 Request for Exclusion was postmarked, shall be conclusively determined according to the records
23 of the Settlement Administrator. Any Class Member who timely and validly submits a Request for
24 Exclusion will not be entitled to an Individual Settlement Payment, will not be bound by the Class
25 Settlement, and will not have any right to object, appeal, or comment thereon.

26 3. Any Class Member who does not submit a timely and valid Request for
27 Exclusion to the Settlement Administrator will be deemed bound to the Class Settlement in
28

1 accordance with this Settlement. All PAGA Group Members shall be bound to the PAGA
2 Settlement regardless of their decision to participate in the Class Settlement.

3 **4.** In the event that more than five percent (5%) of the Class Members exercise
4 their right to exclude themselves and opt out of the Class Settlement, Defendant retains the
5 exclusive right, but not the obligation, to withdraw from and terminate the Settlement and return
6 all Parties back to their respective positions before the Settlement was reached and the Settlement
7 Agreement was entered into. In the event that Defendant exercises such rights under this Paragraph,
8 Plaintiff and Defendant shall resume the Litigation. Defendant must notify Class Counsel and the
9 Court in writing of such a decision to withdraw and terminate the Settlement no later than five (5)
10 business days after receiving written notice from the Settlement Administrator that the number of
11 opt outs exceed 5% of the Class. In the event of Defendant's withdrawal, no Party may use the fact
12 that the Parties agreed to the Settlement for any reason, and Defendant shall pay all administration
13 expenses incurred through the date of its termination of the Settlement.

14 **D. Cooperation.**

15 The Parties and their respective counsel agree not to encourage members of the Class to opt
16 out of the Class Settlement or to object to the Class Settlement, directly or indirectly, through any
17 means. However, if a Class Member contacts Class Counsel, Class Counsel may discuss the terms
18 of the Settlement and the Class Member's options with respect to the Settlement.

19 **XII. WORKWEEKS DISPUTE PROCEDURE**

20 **A.** If a Class Member and/or PAGA Group Member disputes the number of Workweeks
21 credited to him or her for the Class Period and/or PAGA Period, which will be set forth in the Class
22 Notice, he or she must submit a written dispute ("Workweeks Dispute") that: (a) contains the case
23 name and number of the Litigation; (b) contains the Class Member's full name, address, telephone
24 number, signature, and last four digits of his or her Social Security number; (c) contains a statement
25 setting forth the number of Workweeks during the Class Period and/or PAGA Period that he or she
26 contends is correct and attaches any relevant documentation in support thereof; and (d) is mailed
27 to the Settlement Administrator, postmarked no later than the Response Deadline. If a Class
28 Member and/or PAGA Group Member does not dispute his or her number of Workweeks, the

1 number of Workweeks set forth in the Class Notice will govern the Individual Settlement Payment
2 to the Class Member and/or the Individual PAGA Payment to the PAGA Group Member, such
3 individual need not take further action to participate in the Settlement.

4 **B.** Upon timely receipt of any such challenge, the Settlement Administrator, in
5 consultation with Class Counsel and counsel for Defendant, will review the pertinent records
6 showing the dates the Class Member worked for Defendant in California and the number of
7 Workweeks worked, which records Defendant agrees to make available to the Settlement
8 Administrator and Class Counsel.

9 **C.** After consulting with Class Counsel and counsel for Defendant, the Settlement
10 Administrator shall compute the number of Workweeks to be used in computing the Class
11 Member's *pro rata* share of the Net Settlement Amount and the PAGA Group Member's *pro rata*
12 share of the Employee PAGA Amount. In the event that there is a disparity between the number
13 of Workweeks a Class Member claims he or she worked during the Class Period and/or number of
14 Workweeks a PAGA Group Member claims he or she worked during the PAGA Period and the
15 number of Workweeks indicated by Defendant's records, Defendant's records will control unless
16 inconsistent with records provided by the Class Member and/or PAGA Group Member (or bona
17 fide copies thereof), in which case the records provided by the Class Member and/or PAGA Group
18 Member will control. The Settlement Administrator's decision as to the number of Workweeks to
19 be credited to a Class Member and/or PAGA Group Member shall be final and non-appealable.
20 The Settlement Administrator shall send written notice of the decision on any such dispute to the
21 Class Member and/or PAGA Group Member, to Class Counsel, and counsel for Defendant within
22 ten (10) calendar days of receipt of the Workweeks Dispute.

23 **XIII. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

24 **A. Formula for Calculating Individual Settlement Shares.**

25 Settlement Class Members (i.e., Class Members who do not submit a timely and valid
26 Request for Exclusion) will receive payment as good and valuable consideration for the waiver and
27 release of Released Class Claims set forth in Paragraph VIII.A, above, in an amount determined by
28

the Settlement Administrator in accordance with the provisions of this Agreement. Each Settlement Class Member's Individual Settlement Share will be determined as follows:

1. Defendant will calculate the number of Workweeks of each Settlement Class Member during the Class Period and include this information in the Class List.

2. The value of each Workweek shall be determined by the Settlement Administrator by dividing the Net Settlement Amount by the total number of Workweeks of all Settlement Class Members ("Class Workweek Point Value").

3. Each Settlement Class Member's individual Workweeks will be multiplied by the Class Workweek Point Value to arrive at his or her Individual Settlement Share. Individual Settlement Shares for each Settlement Class Member will be reduced by any required legal deductions for the employee's share of taxes and withholdings on the wages portion of the Individual Settlement Share, which will result in an Individual Settlement Payment (i.e., payment of the employee's Individual Settlement Share less taxes and withholdings).

B. Formula for Calculating Individual PAGA Payments.

PAGA Group Members will receive payment as good and valuable consideration for the waiver and release of Released PAGA Claims set forth in Paragraph VIII.B, above, in an amount determined by the Settlement Administrator in accordance with the provisions of this Agreement. Each PAGA Group Member's Individual PAGA Payment will be determined as follows:

1. Defendant will calculate the number of Workweeks of each PAGA Group Member during the PAGA Period ("PAGA Workweeks") and include this information in the Class List.

2. The value of each PAGA Workweek shall be determined by the Settlement Administrator by dividing the Employee PAGA Amount by the total number of PAGA Workweeks of all PAGA Group Members ("PAGA Workweek Point Value").

3. Each PAGA Group Member's individual PAGA Workweeks will be multiplied by the PAGA Workweek Point Value to arrive at his or her Individual PAGA Payment.

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1 **C. Funding of Settlement and Time for Distribution.**

2 **1.** Within twenty-one (21) calendar days following the Effective Date (the
3 “Initial Funding Date”), Defendant will make an initial deposit (the “First Installment”) of one-
4 third of the Maximum Settlement Amount into an interest-bearing account established by the
5 Settlement Administrator for administration of the Settlement. Within one year of the Initial
6 Funding Date (the “Second Funding Date”), Defendant will make a second deposit (the “Second
7 Installment”) of one-third of the Maximum Settlement Amount into the account established by the
8 Settlement Administrator for administration of the Settlement. Within one year of the Second
9 Funding Date (the “Third Funding Date”) Defendant will make a third and final deposit (the “Third
10 Installment”) of one-third of the Maximum Settlement Amount into the account established by the
11 Settlement Administrator for administration of the Settlement.

12 **2.** The Settlement Administrator will distribute funds as follows in the following
13 order of priority:

14 **i.** Within fourteen (14) calendar days of the Initial Funding Date, any
15 available funds shall be distributed by the Settlement Administrator in the following order: (1)
16 payment of the Employee PAGA Amount to PAGA Group Members; (2) payment to Plaintiff of the
17 Court-approved Enhancement Payment; (3) payment to the LWDA of the LWDA Payment; and (4)
18 payment of one-half of the Settlement Administration Costs to the Settlement Administrator (to the
19 extent available). Any funds remaining after this distribution shall be retained in the account
20 established by the Settlement Administrator to be distributed after the Second Funding Date.

21 **ii.** Within fourteen (14) calendar days of the Second Funding Date, the
22 Settlement Administrator shall distribute the funds as follows: (1) the Individual Settlement
23 Payments to Settlement Class Members; (2) remaining payment of one-half of the Settlement
24 Administration Costs to the Settlement Administrator; and (3) payment of Court-approved Litigation
25 Costs to Class Counsel (to the extent available).

26 **iii.** Within fourteen (14) calendar days of the Third Funding Date, the
27 Settlement Administrator shall distribute the funds as follows: (1) payment of Court-approved
28 Attorneys’ Fees to Class Counsel.

1 3. If an Individual Settlement Payment and/or Individual PAGA Payment check
2 is returned to the Settlement Administrator as undeliverable within thirty (30) calendar days of the
3 mailing of the check, the Settlement Administrator shall promptly attempt to obtain a valid mailing
4 address by performing a skip trace search and, if another address is identified, shall mail the check
5 to the newly identified address. The Settlement Administrator may, at its discretion, distribute the
6 Individual Settlement Payment and Individual PAGA Payment by way of a single check that
7 combines both payments (if applicable).

8 4. Any checks issued by the Settlement Administrator to Settlement Class
9 Members and PAGA Group Members will be valid and negotiable for one hundred and eighty (180)
10 days after issuance, and thereafter, the checks will be cancelled. The funds remaining and
11 associated with cancelled Individual Settlement Payment and/or Individual PAGA Payment checks
12 will be paid to Legal Aid at Work, after the Court enters an order approving the Parties' stipulation
13 to amend the judgment, which they shall prepare and file in accordance with California Code of
14 Civil Procedure section 384.5, *et seq.* The Parties each represent that they do not have any financial
15 interest in Legal Aid at Work or otherwise have a relationship with Legal Aid at Work that could
16 create a conflict of interest.

17 **XIV. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

18 The amounts paid under this Agreement do not represent a modification of any previously
19 credited hours of service under any employee benefit plan, policy, or bonus program sponsored by
20 Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or
21 any other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendant,
22 policies or bonus programs. Any payments made under the terms of this Settlement shall not be
23 applied retroactively, currently or on a going forward basis as salary, earnings, wages, or any other
24 form of compensation for the purposes of Defendant's benefit plan, policy or bonus program.
25 Defendant retains the right to modify the language of its benefit plan, policies and bonus programs
26 to effect this intent and to make clear that any amounts paid pursuant to this Settlement are not for
27 "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by
28 applicable plans, policies and bonus programs for the purpose of eligibility, vesting, benefit accrual,

1 or any other purpose, and that additional contributions or benefits are not required by this
2 Settlement.

3 **XV. CLASS COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS**

4 Defendant shall not oppose an application by Class Counsel for an amount up to thirty-five
5 percent (35%) of the Maximum Settlement Amount (i.e., \$455,000.00, if the Maximum Settlement
6 Amount is \$1,300,000.00) for all past and future attorneys' fees necessary to prosecute, settle, and
7 administer the Litigation and this Settlement ("Attorneys' Fees"). Additionally, Defendant shall
8 not oppose an application by Class Counsel for an amount up to \$35,000.00 for all past and future
9 litigation costs and expenses necessary to prosecute, settle, and administer the Litigation and this
10 Settlement ("Litigation Costs"). Any Attorneys' Fees or Litigation Costs awarded to Class Counsel
11 by the Court as part of the Settlement shall be deducted from the Maximum Settlement Amount for
12 the purpose of determining the Net Settlement Amount. The "future" aspect of these amounts
13 includes, without limitation, all time and expenses expended by Class Counsel in implementing the
14 Settlement and securing preliminary and final approval (including any appeals therein). There will
15 be no additional consideration paid by Defendant for such work; although such work may cause
16 Class Counsel's lodestar to increase, Class Counsel will be limited to the Attorneys' Fees and
17 Litigation Costs provided for under the Settlement. The Attorneys' Fees and Litigation Costs shall
18 include all attorneys' fees, litigation costs, and expenses for which Plaintiff and Class Counsel
19 could claim under any legal theory whatsoever with respect to the Litigation. Should the Court
20 approve a lesser percentage or amount of Attorneys' Fees and/or Litigation Costs than the amount
21 that Class Counsel ultimately seeks, then any such unapproved portion or portions shall be part of
22 the Net Settlement Amount to be distributed to Settlement Class Members on a *pro rata* basis.

23 **XVI. ENHANCEMENT PAYMENT TO PLAINTIFF**

24 Defendant shall not oppose an application by Plaintiff, and Plaintiff shall not seek or receive
25 an amount in excess of \$9,000.00 for her participation in and assistance with the Litigation
26 ("Enhancement Payment"). Any Enhancement Payment awarded to Plaintiff by the Court as part
27 of the Settlement shall be deducted from the Maximum Settlement Amount for the purpose of
28 determining the Net Settlement Amount, and shall be reported on IRS Form 1099. If the Court

1 approves an Enhancement Payment of less than \$9,000.00 to Plaintiff, then the unapproved portion
2 or portions shall be part of the Net Settlement Amount to be distributed to Settlement Class
3 Members on a *pro rata* basis.

4 **XVII. TAXATION AND ALLOCATION**

5 **A.** The Parties agree that all employees' share of employment taxes and other legally
6 required withholdings will be withheld from payments to the Settlement Class Members and
7 Plaintiff based on the Parties' stipulated allocation of the Net Settlement Amount as provided for
8 in this Paragraph.

9 **B.** In Defendant's sole discretion, and to which Plaintiff and Class Counsel do not
10 object, the amount of federal income tax withholding will be based upon a flat withholding rate for
11 supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or
12 supplemented. Income tax withholdings will also be made pursuant to applicable state and/or local
13 withholding codes or regulations.

14 **C.** For withholding tax characterization purposes and payment of taxes, the Individual
15 Settlement Shares to Settlement Class Members shall be deemed twenty percent (20%) wages and
16 eighty percent (80%) penalties, interest, and non-wage damages.

17 **D.** For withholding tax characterization purposes and payment of taxes, the Individual
18 PAGA Payments to PAGA Group Members shall be deemed one hundred percent (100%) penalties.

19 **E.** Forms W-2 and/or Forms 1099 will be distributed at times and in the manner
20 required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement,
21 by the Settlement Administrator. If the Code, the regulations promulgated thereunder, or other
22 applicable tax law, is changed after the date of this Agreement, the processes set forth in this
23 Paragraph may be modified in a manner to bring Defendant into compliance with any such changes.

24 **F.** The employer's share of payroll taxes and contributions on the wages portion of
25 Individual Settlement Payments will be paid by Defendant in addition to and not as a deduction
26 from the Maximum Settlement Amount.

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1 **XVIII. PAGA ALLOCATION**

2 In order to implement the terms of this Settlement and to settle claims alleged under the
3 Private Attorneys General Act, California Labor Code section 2698 *et seq.*, the Parties agree to
4 allocate \$260,000 from the Maximum Settlement Amount as penalties authorized by the PAGA
5 (“PAGA Penalties”). Seventy-five percent (75%), which is \$195,000.00 of the PAGA Penalties,
6 will be distributed to the LWDA, and twenty-five percent (25%), which is \$65,000.00 of the PAGA
7 Penalties, will be distributed on a *pro-rata* basis to the PAGA Group Members. Plaintiff’s Counsel
8 will provide notice to the LWDA of the fact that the Settlement has been approved by the Court
9 along with a copy of the Final Approval Order through the appropriate LWDA/DIR website.
10 PAGA Group Members will be issued their Individual PAGA Payments regardless of their decision
11 to opt-out of the Class Settlement.

12 **XIX. COURT APPROVAL**

13 **A.** This Agreement and the Settlement is contingent upon final approval by the Court
14 and entry of judgment. Plaintiff and Defendant agree to take all steps as may be reasonably
15 necessary to secure both preliminary approval and final approval of the Settlement, to the extent
16 not inconsistent with the terms of this Agreement, and will not take any action adverse to each other
17 in obtaining approval by the Court, and, if necessary, appellate approval, of the Settlement in all
18 respects. Plaintiff and Defendant expressly agree that they will not file any objection to the terms
19 of the Settlement or assist or encourage any person or entity to file any such objection.

20 **B.** In the event it becomes impossible to secure approval of the Settlement, the Parties
21 shall be restored to their respective positions in the Litigation, as of the date on which the Settlement
22 was reached, except as otherwise provided in Paragraph XX, below.

23 **XX. MISCELLANEOUS PROVISIONS**

24 **A. Interim Stay of Litigation.**

25 Plaintiff and Defendant agree to the stay of all proceedings in the Litigation, including with
26 respect to California Code of Civil Procedure section 583.310, except such proceedings necessary
27 to implement and complete the Settlement, pending final approval of the Settlement by the Court.

28 ///

1 **B. Interpretation of the Agreement.**

2 This Agreement constitutes the entire agreement between Plaintiff and Defendant. Except
3 as expressly provided herein, this Agreement has not been executed in reliance upon any other
4 written or oral representations or terms, and no such extrinsic oral or written representations or
5 terms shall modify, vary from or contradict its terms. In entering into this Agreement, the Parties
6 agree that this Agreement is to be construed according to its terms and may not be varied or
7 contradicted by extrinsic evidence. The Agreement will be interpreted and enforced under the laws
8 of the State of California, both in its procedural and substantive aspects, without regard to its
9 conflict of laws provisions. Any claim arising out of or relating to the Agreement, or the subject
10 matter hereof, will be resolved solely and exclusively in the Superior Court of the State of California
11 for the County of San Bernardino, and Plaintiff and Defendant hereby consent to the personal
12 jurisdiction of the Court over them solely in connection therewith. Plaintiff, on her own behalf, on
13 behalf of the Class, and on behalf of the State of California pursuant to PAGA, and Defendant, on
14 its own behalf, participated in the negotiation and drafting of this Agreement and had available to
15 them the advice and assistance of independent counsel. As such, neither Plaintiff nor Defendant
16 may claim that any ambiguity in this Agreement should be construed against the other. The terms
17 and conditions of this Agreement constitute the exclusive and final understanding and expression
18 of all agreements between Plaintiff and Defendant with respect to the Settlement.

19 **C. Further Cooperation.**

20 Plaintiff and Defendant and their respective attorneys shall proceed diligently to prepare
21 and execute all documents, to seek the necessary approvals from the Court, and to do all things
22 reasonably necessary or convenient to consummate the Agreement as expeditiously as possible.

23 **D. Confidentiality of Documents and Information.**

24 Plaintiff, the Settlement Administrator, and Class Counsel shall maintain the confidentiality
25 of all documents and other information obtained in the Litigation that were specifically designated
26 as confidential at the time they were produced (formally or informally) in the Litigation, unless
27 ordered to be disclosed by the Court or by a subpoena.

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1 **E. Neutral Employment Reference.**

2 Defendant agrees that it will adopt a neutral reporting policy regarding any future
3 employment references related to Plaintiff. In the event that any potential or future employers of
4 Plaintiff request a reference regarding Defendant's employment of Plaintiff, Defendant shall only
5 provide the requested Plaintiff's dates of employment and job titles during employment. Defendant
6 shall not refer to the Litigation or this Settlement.

7 **F. Counterparts.**

8 The Agreement may be executed in one or more actual or non-original counterparts, either
9 through a physical original, facsimile, electronic, or e-mail signature, all of which will be
10 considered one and the same instrument and all of which will be considered duplicate originals.

11 **G. Authority.**

12 Each individual signing below warrants that he or she has the authority to execute this
13 Agreement on behalf of the Party for whom or which that individual signs.

14 **H. No Third-Party Beneficiaries.**

15 Plaintiff, Settlement Class Members, PAGA Group Members, the LWDA, Defendant, and
16 Released Parties are intended beneficiaries of this Agreement, and there are no other third-party
17 beneficiaries.

18 **I. Modification.**

19 Before this Agreement has been submitted to the Court in connection with seeking
20 preliminary approval of the Settlement, it may not be changed, altered, or modified, except in a
21 writing signed by the counsel for the Parties. After this Agreement has been submitted to the Court
22 in connection with seeking preliminary approval of the Settlement, it may not be changed, altered,
23 or modified, except in a writing signed by the counsel for the Parties, subject to approval by the
24 Court. Notwithstanding the forgoing, the Parties agree that any dates contained or contemplated in
25 this Agreement may be modified by agreement of counsel for the Parties in writing without
26 approval by the Court if the Parties agree and cause exists for such modification. This Agreement
27 may not be discharged except by performance in accordance with its terms or by a writing signed
28 by the Parties.

1 **J. Deadlines Falling on Weekends or Holidays.**

2 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or
3 legal holiday, that deadline shall be continued to the following business day.

4 **K. California Law Governs.**

5 All terms of this Settlement Agreement and Exhibits hereto will be governed and interpreted
6 according to the laws of the State of California.

7 **L. Severability.**

8 In the event that one or more of the provisions contained in this Agreement shall for any
9 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
10 unenforceability shall in no way effect any other provision if Defendant's counsel and Class
11 Counsel, on behalf of the Parties, the Settlement Class, State of California, and PAGA Group
12 Members, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision
13 had never been included in this Agreement.

14 **M. Binding on Successors and Assigns.**

15 This Settlement Agreement will be binding upon, and inure to the benefit of, the successors
16 or assigns of the Parties hereto, as previously defined.

17 **N. Waiver.**

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

21 **O. Representation by Counsel.**

22 The Parties acknowledge that they have been represented by counsel throughout all
23 negotiations that preceded the execution of this Agreement, and that this Agreement has been
24 executed with the consent and advice of counsel and reviewed in full. Further, Plaintiff and Class
25 Counsel warrant and represent that there are no liens on the Agreement.

26 **P. Binding Agreement.**

27 The Parties warrant that they understand and have full authority to enter into this Settlement,
28 and further intend that this Settlement Agreement will be fully enforceable and binding on all

Parties subject to Court approval, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any settlement confidentiality provisions that otherwise might apply under federal or state law.

IT IS SO AGREED:

Date: 09/26/2022, 2022

Electronically Signed: 2022-09-27 01:25:01 UTC - 47.149.97.16
THERESA BINGHAM, Plaintiff

Date: _____, 2022

HERITAGE HEALTH CARE, INC.,
Defendant
Name:
Position:

APPROVED AS TO FORM:

Date: September 27, 2022

LAWYERS for JUSTICE, PC



Edwin Aiwanian
Attorneys for Plaintiff and
Proposed Class Counsel

Date: _____, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP

John L. Barber
Rachel J. Lee
Alison M. Miceli
Attorneys for Heritage Health Care, Inc.

1 Parties subject to Court approval, and agree that it will be admissible and subject to disclosure in
2 any proceeding to enforce its terms, notwithstanding any settlement confidentiality provisions that
3 otherwise might apply under federal or state law.

4
5 **IT IS SO AGREED:**

6 Date: _____, 2022

THERESA BINGHAM, *Plaintiff*

7
8 Date: 9/30, 2022

Cathy West
HERITAGE HEALTH CARE, INC.,
Defendant
Name: *Cathy West*
Position: *Director of QA & RM*

9
10
11
12 **APPROVED AS TO FORM:**

13 Date: _____, 2022

LAWYERS for JUSTICE, PC

14
15
16

Edwin Aiwanian
Attorneys for Plaintiff and
Proposed Class Counsel

17 Date: September 30, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP

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19
20

John L. Barber
Rachel J. Lee
Alison M. Miceli
Attorneys for Heritage Health Care, Inc.

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

Bingham v. Heritage Health Care, Inc.
Superior Court of California for the County of San Bernardino
Case Nos. CIVSB2029495 and CIVSB2102827

PLEASE READ THIS CLASS NOTICE CAREFULLY.

You have received this Class Notice because Defendant's records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced cases.

You do not need to take any action to receive a settlement payment and, unless you request to be excluded from the settlement, your legal rights may be affected.

This Class Notice is designed to advise you of your rights and options, and how you can request to be excluded from the settlement, object to the settlement, and/or dispute the number of Workweeks that you are credited with, if you so choose.

YOU ARE NOTIFIED THAT: A class and representative action settlement has been reached between Plaintiff Theresa Bingham ("Plaintiff") and Defendant Heritage Health Care, Inc. ("Defendant") (Plaintiff and Defendant are collectively referred to as the "Parties") in the class action case entitled *Bingham v. Heritage Health Care, Inc.*, San Bernardino County Superior Court, Case No. CIVSB2029495 and the representative action case entitled *Bingham v. Heritage Health Care, Inc.*, San Bernardino County Superior Court, Case No. CIVSB2102827 (together, the "Litigation"), which may affect your legal rights. On [date of Preliminary Approval], the Court granted preliminary approval of the settlement and scheduled a hearing on [hearing date] at [hearing time] ("Final Approval Hearing") to determine whether or not the Court should grant final approval of the settlement.

I. IMPORTANT DEFINITIONS

"Class" means all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the Class Period.

"Class Member" means a member of the Class.

"Class Period" means the time period from December 30, 2016 through January 24, 2022.

"Class Settlement" means the settlement and release of Released Class Claims (described in Section III.D below).

"PAGA Group Members" mean all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time during the PAGA Period.

"PAGA Settlement" means the settlement and release of Released PAGA Claims (described in Section III.D below).

"PAGA Period" means the time period from November 12, 2019 through January 24, 2022.

II. BACKGROUND OF THE LITIGATION

On November 12, 2020, Plaintiff provided written notice to the Labor and Workforce Development Agency ("LWDA") and Defendant of the specific provisions of the California Labor Code that she contends were violated ("LWDA Letter"). On December 30, 2020, Plaintiff filed a Class Action Complaint for Damages ("Class Action Complaint") in the San Bernardino County Superior Court, Case No. CIVSB2029495 ("Action"). On January 22, 2021, Plaintiff filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. ("PAGA Complaint") in the San Bernardino County Superior Court, Case No. CIVSB2102827 ("PAGA Action").

On [date], Plaintiff filed a First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. in the Action ("Operative Complaint"), consolidating the Action and the PAGA Action.

Plaintiff alleges that Defendant failed to properly pay minimum and overtime wages, provide compliant meal and rest breaks and associated premiums, timely pay wages during employment and upon termination of employment and associated waiting-time penalties, provide compliant wage statements, keep requisite payroll records, reimburse business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.*, and conduct that gives rise to civil penalties under California Labor Code section 2698, *et seq.* (“PAGA”). Plaintiff seeks, among other things, recovery of unpaid wages and meal and rest period premiums, unreimbursed business expenses, restitution, penalties, interest, and attorneys’ fees and costs.

Defendant denies all of the allegations in the Litigation and denies that it violated any laws.

After investigation and analysis of the claims, the Parties engaged in good faith, arm’s-length negotiations, and, as a result, the Parties reached a settlement. The Parties have since entered into the Joint Stipulation of Class Action and PAGA Settlement (“Settlement” or “Settlement Agreement”).

On [date of Preliminary Approval], the Court entered an order preliminarily approving the Settlement. The Court has appointed CPT Group, Inc. as the administrator of the Settlement (“Settlement Administrator”), Plaintiff Theresa Bingham as representative of the Class (“Class Representative”), and the following counsel as counsel for the Class (“Class Counsel”):

Edwin Aiwazian, Esq.
Arby Aiwazian, Esq.
Joanna Ghosh, Esq.
Lawyers for Justice, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020 / Fax: (818) 265-1021

If you are a Class Member, you do not need to take any action to receive an Individual Settlement Payment, but you have the opportunity to request exclusion from the Class Settlement (in which case you will not receive an Individual Settlement Payment), object to the Class Settlement, and/or dispute the Workweeks credited to you, if you so choose, as explained more fully in Sections III and IV below. If you are a PAGA Group Member, you do not need to take any action to receive an Individual PAGA Payment; you will not have the opportunity to object to or seek exclusion from the PAGA Settlement; all PAGA Group Members will be bound by the PAGA Settlement if the Court grants final approval of the Settlement.

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended to or will be construed as an admission by Defendant that the claims in the Litigation have merit or that Defendant has any liability to Plaintiff, Class Members, the State of California, and/or PAGA Group Members. Plaintiff and Defendant, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the Settlement is fair, reasonable, and adequate, and is in the best interests of the Class Members, PAGA Group Members, and the State of California. The Court has made no ruling on the merits of the claims asserted in the Litigation and has determined only that certification of the Class for settlement purposes is appropriate under California law.

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Settlement Formula

The total maximum settlement amount is One Million Three Hundred Thousand Dollars (\$1,300,000) (the “Maximum Settlement Amount”). The portion of the Maximum Settlement Amount that is available for payment to Class Members is referred to as the “Net Settlement Amount.” The Net Settlement Amount will be the Maximum Settlement Amount less the following payments, which are subject to approval by the Court: (1) attorneys’ fees in an amount not to exceed 35% of the Maximum Settlement Amount (i.e., \$455,000) (“Attorneys’ Fees”) and reimbursement of litigation costs and expenses in an amount not to exceed Thirty-Five Thousand Dollars (\$35,000) (“Litigation Costs”) to Class Counsel; (2) Enhancement Payment in an amount not to exceed Nine Thousand Dollars (\$9,000) to Plaintiff for her services in the Litigation; (3) Administration Costs in an amount not to exceed Seventeen Thousand Dollars (\$17,000) to the Settlement Administrator; and (4) the amount of Two Hundred Sixty Thousand Dollars (\$260,000) allocated toward civil penalties under the Private Attorneys General Act (“PAGA Penalties”). The PAGA Penalties will be distributed 75% (\$195,000) to the LWDA (“LWDA Payment”) and the remaining 25% (i.e., \$65,000) will be distributed to PAGA Group Members (“Employee PAGA Amount”).

Class Members are entitled to receive payment under the Class Settlement of their *pro rata* share of the Net Settlement Amount (“Individual Settlement Share”) based on the number of weeks each Class Member worked for Defendant as an hourly-paid or non-exempt employee in California during the Class Period (“Workweeks”). The Settlement Administrator will determine each Class Member’s individual Workweeks.

The Settlement Administrator has divided the Net Settlement Amount by the total number of Workweeks of all Class Members (“Class Workweek Point Value”) and multiplied each Class Member’s individual Workweeks by the Class Workweek Point Value to arrive at his or her Individual Settlement Share that he or she may be eligible to receive under the Class Settlement (which is listed in Section III.C below). Class Members who do not submit a timely and valid Request for Exclusion (“Settlement Class Members”) will be issued their payment of their final Individual Settlement Share.

Each Individual Settlement Share will be allocated as twenty percent (20%) wages, which will be reported on an IRS Form W-2, and eighty percent (80%) penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099, if applicable. Each Individual Settlement Share shall be subject to reduction for the employee’s share of payroll taxes due on the wages portion of the Individual Settlement Share. The employer’s share of payroll taxes and contributions in connection with the wages portion of the Individual Settlement Shares (“Employer Taxes”) will be paid by Defendant separately and in addition to the Maximum Settlement Amount.

PAGA Group Members are eligible to receive payment under the PAGA Settlement of their *pro rata* share of the Employee PAGA Amount (“Individual PAGA Payment”), based on the number of Workweeks of each PAGA Group Member during the PAGA Period (“PAGA Workweeks”). The Settlement Administrator has divided the Employee PAGA Amount by the total number of PAGA Workweeks of all PAGA Group Members (“PAGA Workweek Point Value”) and multiplied each PAGA Group Member’s individual PAGA Workweeks by the PAGA Workweek Point Value to arrive at his or her Individual PAGA Payment that he or she may be eligible to receive under the PAGA Settlement (which is listed in Section III.C below).

Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties, will be reported on an IRS Form 1099 (if applicable), and payment thereof will be issued to PAGA Group Members without any reduction for taxes and withholdings.

If the Court grants final approval of the Settlement, upon the occurrence of the Effective Date, Defendant will fund the Maximum Settlement Amount over the course of several years by way of three (3) installments:

- Within twenty-one (21) calendar days following the Effective Date (the “Initial Funding Date”), Defendant will make an initial deposit (the “First Installment”) of one-third (1/3) of the Maximum Settlement Amount (i.e., Four Hundred Thirty-Three Thousand Three Hundred Thirty-Three Dollars (\$433,333) into an interest-bearing account established by the Settlement Administrator for administration of the Settlement;
- Within one (1) year of the Initial Funding Date (the “Second Funding Date”), Defendant will make a second deposit (the “Second Installment”) of one-third (1/3) of the Maximum Settlement Amount (i.e., Four Hundred Thirty-Three Thousand Three Hundred Thirty-Three Dollars (\$433,333) into the account established by the Settlement Administrator for administration of the Settlement; and
- Within one (1) year of the Second Funding Date (the “Third Funding Date”), Defendant will make a third and final deposit (the “Third Installment”) of one-third (1/3) of the Maximum Settlement Amount (i.e., Four Hundred Thirty-Three Thousand Three Hundred Thirty-Three Dollars (\$433,333) into the account established by the Settlement Administrator for administration of the Settlement.

The timing of the distribution of payments will depend on the date of Final Approval of the Settlement and the date on which Defendant funds the installments.

Individual Settlement Payments will be mailed to Settlement Class Members and Individual PAGA Payments will be mailed to PAGA Group Members at the address that is on file with the Settlement Administrator by way of check. **If the address to which this Class Notice was mailed is not correct, or if you move after you receive this Class Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure your receipt of payment that you may be entitled to under the Settlement.**

B. Your Workweeks Based on Defendant's Records

According to Defendant's records:

From December 30, 2016 through January 24, 2022 (i.e., Class Period), you are credited as having worked [REDACTED] Workweeks.

From November 12, 2019 through January 24, 2022 (i.e., PAGA Period), you are credited as having worked [REDACTED] Workweeks.

If you wish to dispute the Workweeks credited to you, you must submit a written dispute ("Workweeks Dispute") that: (1) contains the case name and number of the Litigation (*Theresa Bingham v. Heritage Health Care, Inc.*, CIVSB2029495/CIVSB2102827); (2) contains your full name, address, telephone number, signature, and last four digits of your Social Security number; (3) contains a statement setting forth the number of Workweeks during the Class Period and/or PAGA Period that you contend is correct and attach any relevant documentation in support thereof; and (d) is mailed to the Settlement Administrator at the specified address listed in Section IV.B below, postmarked **no later than [Response Deadline]**.

C. Your Estimated Individual Settlement Payment and/or Individual PAGA Payment

As explained above, your estimated Individual Settlement Payment and/or Individual PAGA Payment is based on the number of Workweeks credited to you.

Under the terms of the Settlement, your Individual Settlement Share is estimated to be \$ [REDACTED]. The Individual Settlement Share is subject to reduction for the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share.

Under the terms of the Settlement, your Individual PAGA Payment is estimated to be \$ [REDACTED].

The settlement approval process may take multiple months. Your Individual Settlement Payment and/or Individual PAGA Payment (if applicable) reflected in this Class Notice is only an estimate. Your actual Individual Settlement Payment and/or Individual PAGA Payment (if applicable) may be higher or lower. Payments will be distributed only after the Court grants final approval of the Settlement, and after the Settlement goes into effect.

D. Released Claims

Upon full funding of the Maximum Settlement Amount, Plaintiff and all Class Members who have not submitted a timely and valid Request for Exclusion (i.e., Settlement Class Members) waive, release, and discharge the Released Parties of any and all Released Class Claims.

Upon full funding of the Maximum Settlement Amount, Plaintiff, the State of California, and PAGA Group Members, waive, release, and discharge the Released Parties of any and all Released PAGA Claims.

"Released Class Claims" mean any and all wage-related claims that were alleged in or which could have been alleged in the Operative Complaint based on the factual allegations in the Operative Complaint, arising during the Class Period, including the following claims, under any legal theory of liability, for the: (1) alleged failure to pay overtime wages pursuant to California Labor Code sections 510, 1194, and 1198 and the IWC Wage Orders; (2) alleged failure to provide meal periods and associated premiums pursuant to California Labor Code sections 226.7 and 512 and the IWC Wage Orders; (3) alleged failure to provide rest periods and associated premiums pursuant to California Labor Code sections 226.7 and 512 and the IWC Wage Orders; (4) alleged failure to pay all minimum wages owed pursuant to California Labor Code sections 1194, 1194.2, 1197, and 1197.1 and the IWC Wage Orders; (5) alleged failure to pay all wages owed upon termination pursuant to California Labor Code sections 201-203 and the IWC Wage Orders; (6) alleged failure to pay all wages in a timely manner during employment pursuant to California Labor Code section 204 and the IWC Wage Orders; (7) alleged failure to furnish accurate itemized wage statements pursuant to California Labor Code section 226 and the IWC Wage Orders; (8) alleged failure to maintain adequate payroll records pursuant to California Labor Code section 1174 and the IWC Wage Orders; (9) alleged failure to reimburse all necessary business expenses pursuant to California Labor Code sections 2800 and 2802 and the IWC Wage Orders; and (10) alleged violations of California Business and Professions Code section 17200, *et seq.*

“Released PAGA Claims” mean any and all claims, actions, and causes of action for civil penalties under the Private Attorneys General Act, California Labor Code section 2698, et seq., arising during the PAGA Period, based on the factual allegations and legal theories in the LWDA Letter and Operative Complaint, for alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Orders 4-2001, and 5- 2001.

“Released Parties” mean Defendant, and its divisions, affiliates, predecessors, successors, shareholders, past, present or future officers, directors and employees, members, agents, investment bankers, accountants, attorneys, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, joint employers, insurers, reinsurers, clients, customers, suppliers, vendors, and related corporations.

E. Attorneys’ Fees and Litigation Costs to Class Counsel

Class Counsel will seek attorneys’ fees in an amount of up to thirty-five percent (35%) of the Maximum Settlement Amount (i.e., an amount of up to \$455,000, if the Maximum Settlement Amount is \$1,300,000) (“Attorneys’ Fees”) and reimbursement of litigation costs and expenses in an amount of up to Thirty-Five Thousand Dollars (\$35,000) (“Litigation Costs”), subject to approval by the Court. All Attorneys’ Fees and Litigation Costs granted by the Court will be paid from the Maximum Settlement Amount. Class Counsel has been prosecuting the Litigation on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.

F. Enhancement Payment to Plaintiff

Plaintiff will seek the amount of Nine Thousand Dollars (\$9,000) (“Enhancement Payment”), in recognition of her services in connection with the Litigation. The Enhancement Payment will be paid from the Maximum Settlement Amount, subject to approval by the Court, and, if awarded, will be paid to Plaintiff in addition to her Individual Settlement Payment and Individual PAGA Payment (if applicable) that she is entitled to under the Settlement.

G. Administration Costs to Settlement Administrator

Payment to the Settlement Administrator is estimated not to exceed Seventeen Thousand Dollars (\$17,000) (“Administration Costs”) for the costs of the notice and settlement administration process, including but not limited to, the expense of notifying the Class Members of the Settlement, processing Requests for Exclusion, objections, and Workweeks Disputes, calculating Individual Settlement Shares and Individual PAGA Payments, and distributing payments and tax forms under the Settlement, and shall be paid from the Maximum Settlement Amount, subject to approval by the Court.

IV. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?

A. Participate in the Class Settlement

If you want to participate in the Class Settlement and receive money from the Class Settlement, you do not have to do anything. You will automatically be included in the Class Settlement and issued your Individual Settlement Payment unless you decide to exclude yourself from the Class Settlement.

Unless you elect to exclude yourself from the Class Settlement, you will be bound by the terms of the Class Settlement and any judgment that may be entered by the Court based thereon, and you will be deemed to have released the Released Class Claims described in Section III.D above.

If you are a PAGA Group Member, you will automatically be included in the PAGA Settlement and issued your Individual PAGA Payment. This means you will be bound by the terms of the PAGA Settlement and any judgment that may be entered by the Court based thereon, and you will release the Released PAGA Claims described in Section III.D above.

As a Class Member and/or PAGA Group Member, you will not be separately responsible for the payment of attorney’s fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorney’s fees and expenses.

B. Request Exclusion from the Class Settlement

If you do not wish to participate in the Class Settlement, you must submit a written request (“Request for Exclusion”), that

must: (1) contain the case name and number of the Litigation (*Theresa Bingham v. Heritage Health Care, Inc.*, CIVSB2029495/CIVSB2102827); (2) contain your full name, address, telephone number, and last four digits of your Social Security number; (3) be signed by you or your authorized representative; (4) contain a clear statement that you request to be excluded from the Class Settlement; and (5) be mailed to the Settlement Administrator, postmarked **no later than [Response Deadline]** at the following address:

[Settlement Administrator]

[Address]

If the Court grants final approval of the Settlement, any Class Member who submits a timely and valid Request for Exclusion from the Class Settlement will not be entitled to receive an Individual Settlement Payment from the Class Settlement, will not be bound by the Class Settlement (and the release of Released Class Claims described in Section III.D above), and will not have any right to object to, appeal, or comment on the Class Settlement. Class Members who do not submit a Request for Exclusion will be deemed Settlement Class Members and will be bound by all terms of the Settlement, including those pertaining to the release of Released Claims described in Section III.D above, as well as the contemplated judgment to be entered by the Court (as it pertains to the Class Settlement), if the Court grants final approval of the Settlement. However, consistent with applicable law, PAGA Group Members may not exclude themselves from the PAGA Settlement and will be bound by all terms of the PAGA Settlement, including those pertaining to the release of Released PAGA Claims described in Section III.D above, and any judgment that may be entered by the Court (as it pertains to the PAGA Settlement), if the Court grants approval of the Settlement.

C. Object to the Class Settlement

You can object to the terms of the Class Settlement as long as you have not submitted a Request for Exclusion from the Class Settlement, by submitting a written objection to the Settlement Administrator or presenting your objection at the Final Approval Hearing.

A written objection must: (1) contain the case name and number of the Litigation (*Theresa Bingham v. Heritage Health Care, Inc.*, CIVSB2029495/CIVSB2102827); (2) contain your full name, address, telephone number, signature, and last four digits of your Social Security number; (3) clearly state the grounds for your objection; (4) state whether you intend to appear at the Final Approval Hearing; and (5) be mailed to the Settlement Administrator at the address listed in Section IV.B above, postmarked **no later than [Response Deadline]**.

V. FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing in Department S26 of the San Bernardino County Superior Court, located at San Bernardino Justice Center, 247 West Third Street, San Bernardino, California 92415, on **[date]** at **[time]**, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve and award Attorneys' Fees and Litigation Costs to Class Counsel, Enhancement Payment to Plaintiff, and Administration Costs to the Settlement Administrator.

The hearing may be continued without further notice to the Class Members. It is not necessary for you to appear at the Final Approval Hearing, although you may appear if you wish to.

Please note, due to COVID-19, there are limitations on personal appearances, but telephonic appearances are available. You can visit the Court's website for the most up-to-date information regarding the impact of COVID-19 on the operations of the Court and any requirements that may apply for accessing Court facilities: <https://www.sb-court.org/>. Please note, there may be deadlines to reserve a remote appearance and reservation fees or charges may apply.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you should review the detailed Settlement Agreement and other papers which are on file with the Court.

You may view the Settlement Agreement and documents filed in the Litigation for a fee by visiting the civil clerk's office, located at 247 West Third Street, San Bernardino, California 92415, during business hours, or online by visiting the following website: <https://www.sb-court.org/divisions/civil-general-information/court-case-information-and-document-sales>, clicking "Accept (Civil/Appels)", clicking "Click here to access the Portal," clicking "Smart Search," and typing in

the Court Case Number “CIVSB2029495” and/or “CIVSB2102827.”

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.

IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: [INSERT], OR YOU MAY ALSO CONTACT CLASS COUNSEL.

EXHIBIT B

Edwin Aiwarzian (SBN 232943)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

THERESA BINGHAM, individually, and on
behalf of other members of the general public
similarly situated, and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiff,

vs.

HERITAGE HEALTH CARE, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case Nos.: CIVSB2029495 & CIVSB2102827

Honorable David Cohn
Dept. S26

**FIRST AMENDED CONSOLIDATED
CLASS ACTION COMPLAINT FOR
DAMAGES AND ENFORCEMENT
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT, CALIFORNIA LABOR
CODE §§ 2698, ET SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment);
- (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records);
- (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);

- (10) Violation of California Business & Professions Code §§ 17200, et seq.; and
(11) Violation of California Labor Code §§ 2698, et seq. (California Labor Code Private Attorneys General Act of 2004)

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff THERESA BINGHAM (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act (“PAGA”), and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendant HERITAGE HEALTH CARE, INC. (“Defendant”) because, upon information and belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendant maintains offices, has agents, employs individuals, and/or transacts business in the State of California, County of San Bernardino. The majority of acts and omissions alleged herein relating to Plaintiff and the other class members took place in the State of California, including the County of San Bernardino. At all relevant times, Defendant maintained its headquarters/“nerve center” within the State of California, County of San Bernardino.

PARTIES

5. Plaintiff THERESA BINGHAM is an individual residing in the State of California, County of San Bernardino.

6. Defendant HERITAGE HEALTH CARE, INC., at all times herein mentioned, was and is, upon information and belief, a California corporation and, at all times herein mentioned, an employer whose employees are engaged throughout the State of California, including the County of San Bernardino.

7. At all relevant times, Defendant HERITAGE HEALTH CARE, INC. was the “employer” of Plaintiff within the meaning of all applicable California laws and statutes.

8. At all times herein relevant, Defendants HERITAGE HEALTH CARE, INC., and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-conspirators and/or assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, joint employers, representatives, servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization and/or consent of each defendant designated as a DOE herein.

9. The true names and capacities, whether corporate, associate, individual or otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sue said defendants by such fictitious names. Plaintiff is informed and believes, and based on that information and belief alleges, that each of the defendants designated as a DOE is legally responsible for the events and happenings referred to in this Complaint, and unlawfully caused the injuries and damages to Plaintiff and the other class members as alleged in this Complaint. Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities when the same have been ascertained.

10. Defendant HERITAGE HEALTH CARE, INC. and DOES 1 through 100 will hereinafter collectively be referred to as “Defendants.”

11. Plaintiff further alleges that Defendants directly or indirectly controlled or

1 affected the working conditions, wages, working hours, and conditions of employment of
2 Plaintiff, the other class members, and the other aggrieved employees, so as to make each of said
3 Defendants employers liable under the statutory provisions set forth herein.

4 **CLASS ACTION ALLEGATIONS**

5 12. Plaintiff brings this action on her own behalf and on behalf of all other members
6 of the general public similarly situated, and, thus, seeks class certification under California Code
7 of Civil Procedure section 382.

8 13. The proposed class is defined as follows:

9 All current and former hourly-paid or non-exempt employees who worked for any
10 of the Defendants within the State of California at any time during the period from
11 December 30, 2016 to final judgment and who reside in California.

12 14. Plaintiff reserves the right to establish subclasses as appropriate.

13 15. The class is ascertainable and there is a well-defined community of interest in the
14 litigation:

15 a. Numerosity: The class members are so numerous that joinder of all class
16 members is impracticable. The membership of the entire class is unknown
17 to Plaintiff at this time; however, the class is estimated to be greater than
18 fifty (50) individuals and the identity of such membership is readily
19 ascertainable by inspection of Defendants' employment records.

20 b. Typicality: Plaintiff's claims are typical of all other class members' as
21 demonstrated herein. Plaintiff will fairly and adequately protect the
22 interests of the other class members with whom she has a well-defined
23 community of interest.

24 c. Adequacy: Plaintiff will fairly and adequately protect the interests of each
25 class member, with whom she has a well-defined community of interest
26 and typicality of claims, as demonstrated herein. Plaintiff has no interest
27 that is antagonistic to the other class members. Plaintiff's attorneys, the
28 proposed class counsel, are versed in the rules governing class action

discovery, certification, and settlement. Plaintiff has incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

d. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all class members is impractical.

e. Public Policy Considerations: Certification of this lawsuit as a class action will advance public policy objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are not named in the complaint anonymity that allows for the vindication of their rights.

16. There are common questions of law and fact as to the class members that predominate over questions affecting only individual members. The following common questions of law or fact, among others, exist as to the members of the class:

- a. Whether Defendants' failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;
- b. Whether Defendants' had a corporate policy and practice of failing to pay their hourly-paid or non-exempt employees within the State of California for all hours worked and missed (short, late, interrupted, and/or missed altogether) meal periods and rest breaks in violation of California law;
- c. Whether Defendants required Plaintiff and the other class members to work over eight (8) hours per day, over forty (40) hours per week, and/or six (6) days per workweek and failed to pay the legally required overtime compensation to Plaintiff and the other class members;
- d. Whether Defendants deprived Plaintiff and the other class members of meal and/or rest periods or required Plaintiff and the other class members

1 to work during meal and/or rest periods without compensation;

2 e. Whether Defendants failed to pay minimum wages to Plaintiff and the
3 other class members for all hours worked;

4 f. Whether Defendants failed to pay all wages due to Plaintiff and the other
5 class members within the required time upon their discharge or
6 resignation;

7 g. Whether Defendants failed to timely pay all wages due to Plaintiff and the
8 other class members during their employment;

9 h. Whether Defendants complied with wage reporting as required by the
10 California Labor Code, including, *inter alia*, section 226;

11 i. Whether Defendants kept complete and accurate payroll records as
12 required by the California Labor Code, including, *inter alia*, section
13 1174(d);

14 j. Whether Defendants failed to reimburse Plaintiff and the other class
15 members for necessary business-related expenses and costs;

16 k. Whether Defendants' conduct was willful or reckless;

17 l. Whether Defendants engaged in unfair business practices in violation of
18 California Business and Professions Code section 17200, et seq.;

19 m. The appropriate amount of damages, restitution, and/or monetary penalties
20 resulting from Defendants' violation of California law; and

21 n. Whether Plaintiff and the other class members are entitled to
22 compensatory damages pursuant to the California Labor Code.

23 **PAGA ALLEGATIONS**

24 17. At all times herein set forth, PAGA was applicable to Plaintiff's employment by
25 Defendants.

26 18. At all times herein set forth, PAGA provides that any provision of law under the
27 California Labor Code that provides for a civil penalty, including unpaid wages and premium
28 wages, to be assessed and collected by the Labor and Workforce Development Agency (LWDA)

1 for violations of the California Labor Code may, as an alternative, be recovered through a civil
2 action brought by an aggrieved employee on behalf of herself and other current or former
3 employees pursuant to procedures outlined in California Labor Code section 2699.3.

4 19. Pursuant to PAGA, a civil action under PAGA may be brought by an “aggrieved
5 employee,” who is any person that was employed by the alleged violator and against whom one
6 or more of the alleged violations was committed.

7 20. Plaintiff was employed by Defendants and the alleged violation was committed
8 against her during her time of employment and she is, therefore, an aggrieved employee.
9 Plaintiff and the other employees are “aggrieved employees” as defined by California Labor
10 Code section 2699(c) in that they are all current or former employees of Defendants, and one
11 or more of the alleged violations was committed against them.

12 21. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
13 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
14 requirements have been met:

- 15 a. The aggrieved employee shall give written notice by online submission
16 (hereinafter “Employee’s Notice”) to the LWDA and the employer of the
17 specific provisions of the California Labor Code alleged to have been
18 violated, including the facts and theories to support the alleged violations.
- 19 b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
20 employer and the aggrieved employee by certified mail that it does not
21 intend to investigate the alleged violation within sixty (60) calendar days
22 of the postmark date of the Employee’s Notice. Upon receipt of the
23 LWDA Notice, or if the LWDA Notice is not provided within sixty-five
24 (65) calendar days of the postmark date of the Employee’s Notice, the
25 aggrieved employee may commence a civil action pursuant to California
26 Labor Code section 2699 to recover civil penalties in addition to any other
27 penalties to which the employee may be entitled.

28 22. On November 12, 2020, Plaintiff provided written notice by online submission to

the LWDA and by U.S. Certified Mail to Defendant HERITAGE HEALTH CARE, INC. of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Plaintiff has not received a LWDA Notice within sixty-five (65) calendar days of the date of Plaintiff's notice.

23. Therefore, Plaintiff has satisfied the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and Industrial Welfare Commission Wage Orders including, *inter alia*, Wage Orders 2-2001, 4-2001, and 5-2001.

GENERAL ALLEGATIONS

24. At all relevant times set forth herein, Defendants employed Plaintiff and other persons as hourly-paid or non-exempt employees within the State of California, including the County of San Bernardino.

25. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-exempt employee, from approximately March 2019 to approximately April 2020, in the State of California, County of San Bernardino.

26. Defendants hired Plaintiff and the other class members, classified them as hourly-paid or non-exempt employees, and failed to compensate them for all hours worked and missed, short, late, and/or interrupted meal periods and/or rest breaks.

27. Defendants had the authority to hire and terminate Plaintiff and the other class members, to set work rules and conditions governing Plaintiff's and the other class members' employment, and to supervise their daily employment activities.

28. Defendants exercised sufficient authority over the terms and conditions of Plaintiff's and the other class members' employment for them to be joint employers of Plaintiff and the other class members.

29. Defendants directly hired and paid wages and benefits to Plaintiff and the other class members.

30. Defendants continue to employ hourly-paid or non-exempt employees within the State of California.

31. Plaintiff and the other class members worked over eight (8) hours in a day, forty (40) hours in a week, and/or over six (6) days in a workweek during their employment with Defendants.

32. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid or non-exempt employees within the State of California. This scheme involved, *inter alia*, failing to pay them for all hours worked and non-compliant meal periods and rest breaks in violation of California law.

33. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to receive certain wages for overtime compensation and that they were not receiving accurate overtime compensation for all overtime hours worked. The deficiencies included, *inter alia*, requiring Plaintiff and the other class members to perform work off-the-clock and the failure to include earned commissions, non-discretionary forms of pay such as awards and bonuses, and/or monetary and non-monetary incentives to calculate the regular rate of pay used to calculate the overtime rate.

34. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to provide Plaintiff and the other class members with all required rest and meal periods during the relevant time period as required under the Industrial Welfare Commission Wage Orders and thus they are entitled to any and all applicable premium wages. Defendants' failure included, *inter alia*, failing to provide uninterrupted ten (10) minute rest periods and timely, uninterrupted thirty (30) minute meal periods to Plaintiff and the other class members. Plaintiff and the other class members were required to perform work during meal periods and rest periods, and Defendants incentivized Plaintiff and the other class members to forego statutorily required meal periods and rest periods.

35. Plaintiff is informed and believes, and based thereon alleges, that Defendants

1 failed to relieve Plaintiff and the other class members of all duties, failed to relinquish control
2 over Plaintiff and the other class members' activities, failed to permit Plaintiff and the other
3 class members a reasonable opportunity to take, and impeded or discouraged them from taking
4 thirty (30) minute uninterrupted meal breaks no later than the end of their fifth hour of work for
5 shifts lasting at least six (6) hours in length, and/or to take second thirty (30) minute
6 uninterrupted meal breaks no later than the end of their tenth hour of work for shifts lasting more
7 than ten (10) hours in length.

8 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 knew or should have known that Plaintiff and the other class members were entitled to receive
10 all meal periods or payment of one additional hour of pay at Plaintiff's and the other class
11 members' regular rate of pay when a meal period was missed, and they did not receive all meal
12 periods or payment of one additional hour of pay at Plaintiff's and the other class members'
13 regular rate of pay when a meal period was missed, short, late, and/or interrupted.

14 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 failed to provide, authorize, and permit Plaintiff and the other class members to take full,
16 uninterrupted, off-duty rest periods for every shift lasting three and one-half (3.5) to six (6) hours
17 in length and/or two full, uninterrupted, off-duty rest periods for every shift lasting six (6) to ten
18 (10) hours in length, and failed to make a good faith effort to authorize, permit, and provide such
19 rest breaks in the middle of each work period. Defendants also required Plaintiff and the other
20 class members to remain on the premises during rest periods.

21 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
22 knew or should have known that Plaintiff and the other class members were entitled to receive
23 all rest periods or payment of one additional hour of pay at Plaintiff's and the other class
24 members' regular rate of pay when a rest period was missed, short, late, and/or interrupted, and
25 they did not receive all rest periods or payment of one additional hour of pay at Plaintiff's and
26 the other class members' regular rate of pay when a rest period was missed, short, late, and/or
27 interrupted.

28 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants

1 knew or should have known that Plaintiff and the other class members were entitled to receive
2 at least minimum wages for compensation and that they were not receiving at least minimum
3 wages for all hours worked.

4 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants
5 knew or should have known that Plaintiff and the other class members were entitled to receive
6 all wages owed to them upon discharge or resignation, including earned but unpaid overtime
7 wages, minimum wages and meal and rest period premiums, and they did not, in fact, receive all
8 such wages owed to them at the time of their discharge or resignation.

9 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 knew or should have known that Plaintiff and the other class members were entitled to receive
11 all wages owed to them during their employment. Plaintiff and the other class members did not
12 receive payment of all wages, including overtime and minimum wages and meal and rest period
13 premiums, within any time permissible under California Labor Code section 204.

14 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 knew or should have known that Plaintiff and the other class members were entitled to receive
16 complete and accurate wage statements in accordance with California law, but, in fact, they did
17 not receive complete and accurate wage statements from Defendants. The deficiencies included,
18 *inter alia*, the failure to include the total number of hours worked by Plaintiff and the other class
19 members.

20 43. Plaintiff is informed and believes, and based thereon alleges, that Defendants
21 knew or should have known that Defendants had to keep complete and accurate payroll records
22 for Plaintiff and the other class members in accordance with California law, but, in fact, did not
23 keep complete and accurate payroll records.

24 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 knew or should have known that Plaintiff and the other class members were entitled to
26 reimbursement for necessary business-related expenses.

27 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants
28 knew or should have known that they had a duty to compensate Plaintiff and the other class

1 members pursuant to California law, and that Defendants had the financial ability to pay such
2 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented
3 to Plaintiff and the other class members that they were properly denied wages, all in order to
4 increase Defendants' profits.

5 46. During the relevant time period, Defendants failed to pay overtime wages to
6 Plaintiff and the other class members for all overtime hours worked. Plaintiff and the other class
7 members did not receive overtime compensation at one-and-one-half times the regular rate of
8 compensation for all hours spent performing job duties in excess of eight (8) hours per day, forty
9 (40) hours per week, and/or for the first eight (8) hours worked on the seventh day of work in a
10 workweek without overtime compensation for all overtime hours worked.

11 47. During the relevant time period, Defendants failed to provide all requisite
12 uninterrupted meal and rest periods to Plaintiff and the other class members.

13 48. During the relevant time period, Defendants failed to pay Plaintiff and the other
14 class members at least minimum wages for all hours worked.

15 49. During the relevant time period, Defendants failed to pay Plaintiff and the other
16 class members all wages owed to them upon discharge or resignation.

17 50. During the relevant time period, Defendants failed to pay Plaintiff and the other
18 class members all wages within any time permissible under California law, including, *inter alia*,
19 California Labor Code section 204.

20 51. During the relevant time period, Defendants failed to provide complete or
21 accurate wage statements to Plaintiff and the other class members.

22 52. During the relevant time period, Defendants failed to keep complete or accurate
23 payroll records for Plaintiff and the other class members.

24 53. During the relevant time period, Defendants failed to reimburse Plaintiff and the
25 other class members for all necessary business-related expenses and costs.

26 54. During the relevant time period, Defendants failed to properly compensate
27 Plaintiff and the other class members pursuant to California law in order to increase Defendants'
28 profits.

55. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to him [or her] under this article.”

FIRST CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against HERITAGE HEALTH CARE, INC. and DOES 1 through 100)

56. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 55, and each and every part thereof with the same force and effect as though fully set forth herein.

57. California Labor Code section 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

58. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and the other class members employed by Defendants, and working more than eight (8) hours in a day, more than forty (40) hours in a week, and/or more than six (6) consecutive days in a workweek, at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a week, or the first eight (8) hours worked on the seventh day of work in a workweek.

59. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and the other class members overtime compensation at a rate of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

60. California Labor Code section 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

61. During the relevant time period, Plaintiff and the other class members worked in

1 excess of eight (8) hours in a day, in excess of forty (40) hours in a week, and/or for the first
2 eight (8) hours worked on the seventh day of work in a workweek.

3 62. During the relevant time period, Defendants intentionally and willfully failed to
4 pay overtime wages owed to Plaintiff and the other class members.

5 63. Defendants' failure to pay Plaintiff and the other class members the unpaid
6 balance of overtime compensation, as required by California law, violates the provisions of
7 California Labor Code sections 510 and 1198, and is therefore unlawful.

8 64. Pursuant to California Labor Code section 1194, Plaintiff and the other class
9 members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
10 attorneys' fees.

11 **SECOND CAUSE OF ACTION**

12 **(Violation of California Labor Code §§ 226.7 and 512(a))**

13 **(Against HERITAGE HEALTH CARE, INC. and DOES 1 through 100)**

14 65. Plaintiff incorporates by reference the allegations contained in paragraphs 1
15 through 64, and each and every part thereof with the same force and effect as though fully set
16 forth herein.

17 66. At all relevant times, the IWC Wage Order and California Labor Code sections
18 226.7 and 512(a) were applicable to Plaintiff's and the other class members' employment by
19 Defendants.

20 67. At all relevant times, California Labor Code section 226.7 provides that no
21 employer shall require an employee to work during any meal or rest period mandated by an
22 applicable order of the California IWC.

23 68. At all relevant times, the applicable IWC Wage Order and California Labor Code
24 section 512(a) provide that an employer may not require, cause or permit an employee to work
25 for a work period of more than five (5) hours per day without providing the employee with a
26 meal period of not less than thirty (30) minutes, except that if the total work period per day of the
27 employee is no more than six (6) hours, the meal period may be waived by mutual consent of
28 both the employer and employee.

69. At all relevant times, the applicable IWC Wage Order and California Labor Code section 512(a) further provide that an employer may not require, cause or permit an employee to work for a work period of more than ten (10) hours per day without providing the employee with a second uninterrupted meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

70. During the relevant time period, Plaintiff and the other class members who were scheduled to work for a period of time no longer than six (6) hours, and who did not waive their legally-mandated meal periods by mutual consent, were required to work for periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or rest period.

71. During the relevant time period, Plaintiff's and the other class members' meal periods were missed, shortened, late, and/or interrupted because Defendants required them to perform and complete work duties, even when it resulted in missed, shortened, late, or interrupted meal periods. Defendants interrupted Plaintiff and the other class members during purported meal periods with questions regarding patient status or assigned tasks and required Plaintiff and other class members to complete all assigned tasks, such as assisting patients with showering, feeding, and grooming, by a specific time, before taking their meal periods.

72. As a result, Defendants failed to relieve Plaintiff and the other class members of all duties, failed to relinquish control over Plaintiff's and the other class members' activities, failed to permit Plaintiff and the other class members a reasonable opportunity to take, and impeded or discouraged them from taking thirty (30) minute uninterrupted meal periods no later than the end of their fifth hour of work for shifts lasting at least six (6) hours in length, and/or to take second thirty (30) minute uninterrupted meal periods no later than their tenth hour of work for shifts lasting more than ten (10) hours in length.

73. During the relevant time period, Plaintiff and the other class members who were scheduled to work for a period of time in excess of six (6) hours were required to work for periods longer than five (5) hours without an uninterrupted meal period of not less than thirty

1 (30) minutes and/or rest period.

2 74. During the relevant time period, Defendants intentionally and willfully required
3 Plaintiff and the other class members to work during meal periods and failed to compensate
4 Plaintiff and the other class members the full meal period premium for work performed during
5 meal periods.

6 75. During the relevant time period, Defendants failed to pay Plaintiff and the other
7 class members the full meal period premium due pursuant to California Labor Code section
8 226.7.

9 76. Defendants' conduct violates the applicable IWC Wage Order and California
10 Labor Code sections 226.7 and 512(a).

11 77. Pursuant to the applicable IWC Wage Order and California Labor Code section
12 226.7(b), Plaintiff and the other class members are entitled to recover from Defendants one
13 additional hour of pay at the employee's regular rate of compensation for each work day that the
14 meal or rest period was not provided.

15 **THIRD CAUSE OF ACTION**

16 **(Violation of California Labor Code § 226.7)**

17 **(Against HERITAGE HEALTH CARE, INC. and DOES 1 through 100)**

18 78. Plaintiff incorporates by reference the allegations contained in paragraphs 1
19 through 77, and each and every part thereof with the same force and effect as though fully set
20 forth herein.

21 79. At all times herein set forth, the applicable IWC Wage Order and California Labor
22 Code section 226.7 were applicable to Plaintiff's and the other class members' employment by
23 Defendants.

24 80. At all relevant times, California Labor Code section 226.7 provides that no
25 employer shall require an employee to work during any rest period mandated by an applicable
26 order of the California IWC.

27 81. At all relevant times, the applicable IWC Wage Order provides that "[e]very
28 employer shall authorize and permit all employees to take rest periods, which insofar as

practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

82. During the relevant time period, Defendants required Plaintiff and the other class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour or major fraction thereof period worked.

83. During the relevant time period, Defendants willfully required Plaintiff and the other class members to work during rest periods and failed to pay Plaintiff and the other class members the full rest period premium for work performed during rest periods.

84. During the relevant time period, Defendants failed to pay Plaintiff and the other class members the full rest period premium pursuant to California Labor Code section 226.7

85. Defendants’ conduct violates applicable IWC Wage Orders and California Labor Code section 226.7.

86. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(c), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at the employees’ regular hourly rate of compensation for each work day that the rest period was not provided.

FOURTH CAUSE OF ACTION

(Violation of California Labor Code §§ 1194, 1197, and 1197.1)

(Against HERITAGE HEALTH CARE, INC. and DOES 1 through 100)

87. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 86, and each and every part thereof with the same force and effect as though fully set forth herein.

88. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide that the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

89. During the relevant time period, Defendants failed to pay minimum wage to

Plaintiff and the other class members as required, pursuant to California Labor Code sections 1194, 1197, and 1197.1. Defendants' failure to pay minimum wages included, *inter alia*, Defendants' effective payment of zero dollars per hour for hours Plaintiff and the other class members worked off-the-clock performing work duties.

90. Defendants' failure to pay Plaintiff and the other class members the minimum wage as required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections Plaintiff and the other class members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

91. Pursuant to California Labor Code section 1197.1, Plaintiff and the other class members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to pay each employee minimum wages.

92. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

FIFTH CAUSE OF ACTION

(Violation of California Labor Code §§ 201 and 202)

(Against HERITAGE HEALTH CARE, INC. and DOES 1 through 100)

93. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 92, and each and every part thereof with the same force and effect as though fully set forth herein.

94. At all relevant times herein set forth, California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

95. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members who are no longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ. Plaintiff and the other class members were not paid at the time of their discharge wages earned and unpaid throughout their employment, including, but not limited to, minimum wages for time worked off-the-clock to perform work duties and for meal and rest period premiums.

96. Defendants' failure to pay Plaintiff and the other class members who are no longer employed by Defendants' their wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

97. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

98. Plaintiff and the other class members are entitled to recover from Defendants the statutory penalty of wages for each day they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 204)

(Against HERITAGE HEALTH CARE, INC. and DOES 1 through 100)

99. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 98, and each and every part thereof with the same force and effect as though fully set forth herein.

100. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed.

101. At all times herein set forth, California Labor Code section 204 provides that all wages earned by any person in any employment between the 16th and the last day, inclusive,

of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

102. At all times herein set forth, California Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

103. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and the other class members all wages due to them, within any time period permissible under California Labor Code section 204.

104. Plaintiff and the other class members are entitled to recover all remedies available for violations of California Labor Code section 204.

SEVENTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against HERITAGE HEALTH CARE, INC. and DOES 1 through 100)

105. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 104, and each and every part thereof with the same force and effect as though fully set forth herein.

106. At all material times set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the

1 employer for at least three years at the place of employment or at a central location within the
2 State of California.

3 107. Defendants have intentionally and willfully failed to provide Plaintiff and the
4 other class members with complete and accurate wage statements. The deficiencies include, but
5 are not limited to: the failure to include the total number of hours worked by Plaintiff and the
6 other class members.

7 108. As a result of Defendants' violation of California Labor Code section 226(a),
8 Plaintiff and the other class members have suffered injury and damage to their statutorily-
9 protected rights.

10 109. More specifically, Plaintiff and the other class members have been injured by
11 Defendants' intentional and willful violation of California Labor Code section 226(a) because
12 they were denied both their legal right to receive, and their protected interest in receiving,
13 accurate and itemized wage statements pursuant to California Labor Code section 226(a).

14 110. Plaintiff and the other class members are entitled to recover from Defendants the
15 greater of their actual damages caused by Defendants' failure to comply with California Labor
16 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

17 111. Plaintiff and the other class members are also entitled to injunctive relief to ensure
18 compliance with this section, pursuant to California Labor Code section 226(h).

19 **EIGHTH CAUSE OF ACTION**

20 **(Violation of California Labor Code § 1174(d))**

21 **(Against HERITAGE HEALTH CARE, INC. and DOES 1 through 100)**

22 112. Plaintiff incorporates by reference the allegations contained in paragraphs 1
23 through 111, and each and every part thereof with the same force and effect as though fully set
24 forth herein.

25 113. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a
26 central location in the state or at the plants or establishments at which employees are employed,
27 payroll records showing the hours worked daily by and the wages paid to, and the number of
28 piece-rate units earned by and any applicable piece rate paid to, employees employed at the

1 respective plants or establishments. These records shall be kept in accordance with rules
2 established for this purpose by the commission, but in any case shall be kept on file for not less
3 than two years.

4 114. Defendants have intentionally and willfully failed to keep accurate and complete
5 payroll records showing the hours worked daily and the wages paid to Plaintiff and the other
6 class members.

7 115. As a result of Defendants' violation of California Labor Code section 1174(d),
8 Plaintiff and the other class members have suffered injury and damage to their statutorily-
9 protected rights.

10 116. More specifically, Plaintiff and the other class members have been injured by
11 Defendants' intentional and willful violation of California Labor Code section 1174(d) because
12 they were denied both their legal right and protected interest, in having available, accurate and
13 complete payroll records pursuant to California Labor Code section 1174(d).

14 **NINTH CAUSE OF ACTION**

15 **(Violation of California Labor Code §§ 2800 and 2802)**

16 **(Against HERITAGE HEALTH CARE, INC. and DOES 1 through 100)**

17 117. Plaintiff incorporates by reference the allegations contained in paragraphs 1
18 through 116, and each and every part thereof with the same force and effect as though fully set
19 forth herein.

20 118. Pursuant to California Labor Code sections 2800 and 2802, an employer must
21 reimburse its employee for all necessary expenditures incurred by the employee in direct
22 consequence of the discharge of his or her job duties or in direct consequence of his or her
23 obedience to the directions of the employer.

24 119. Plaintiff and the other class members incurred necessary business-related
25 expenses and costs that were not fully reimbursed by Defendants.

26 120. Defendants have intentionally and willfully failed to reimburse Plaintiff and the
27 other class members for all necessary business-related expenses and costs.

28 121. Plaintiff and the other class members are entitled to recover from Defendants their

business-related expenses and costs incurred during the course and scope of their employment, plus interest accrued from the date on which the employee incurred the necessary expenditures at the same rate as judgments in civil actions in the State of California.

TENTH CAUSE OF ACTION

(Violation of California Business & Professions Code §§ 17200, et seq.)

(Against HERITAGE HEALTH CARE, INC. and DOES 1 through 100)

122. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 121, and each and every part thereof with the same force and effect as though fully set forth herein.

123. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants' competitors. Accordingly, Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

124. Defendants' activities as alleged herein are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code section 17200, et seq.

125. A violation of California Business and Professions Code section 17200, et seq. may be predicated on the violation of any state or federal law. In this case, Defendants' policies and practices of requiring employees, including Plaintiff and the other class members, to work overtime without paying them proper compensation violate California Labor Code sections 510 and 1198. Additionally, Defendants' policies and practices of requiring employees, including Plaintiff and the other class members, to work through their meal and rest periods without paying them proper compensation violate California Labor Code sections 226.7 and 512(a). Defendants' policies and practices of failing to pay minimum wages violate California Labor Code sections 1194, 1197, and 1197.1. Moreover, Defendants' policies and practices of failing to timely pay wages to Plaintiff and the other class members violate California Labor Code sections 201, 202, and 204. Defendants also violated California Labor Code sections 226(a), 1174(d), 2800, and 2802.

126. As a result of the herein described violations of California law, Defendants unlawfully gained an unfair advantage over other businesses.

127. Plaintiff and the other class members have been personally injured by Defendants' unlawful business acts and practices as alleged herein, including, but not necessarily limited to, the loss of money and/or property.

128. Pursuant to California Business and Professions Code sections 17200, et seq., Plaintiff and the other class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years preceding the filing of this Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws; and an award of costs.

ELEVENTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2698, et seq.)

(Against HERITAGE HEALTH CARE, INC. and DOES 1 through 100)

129. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 128, and each and every part thereof with the same force and effect as though fully set forth herein.

130. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

131. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

132. Plaintiff and the other hourly-paid or non-exempt employees are "aggrieved employees" as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed

1 against them.

2 **Failure to Pay Overtime**

3 133. Defendants' failure to pay legally required overtime wages to Plaintiff and the
4 other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair
5 activity prohibited by California Labor Code sections 510 and 1198.

6 **Failure to Provide Meal Periods**

7 134. Defendants' failure to provide legally required meal periods to Plaintiff and the
8 other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair
9 activity prohibited by California Labor Code sections 226.7 and 512(a).

10 **Failure to Provide Rest Periods**

11 135. Defendants' failure to provide legally required rest periods to Plaintiff and the
12 other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair
13 activity prohibited by California Labor Code section 226.7.

14 **Failure to Pay Minimum Wages**

15 136. Defendants' failure to pay legally required minimum wages to Plaintiff and the
16 other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair
17 activity prohibited by California Labor Code sections 1194, 1197, and 1197.1.

18 **Failure to Timely Pay Wages Upon Termination**

19 137. Defendants' failure to timely pay wages to Plaintiff and the other aggrieved
20 employees upon termination in accordance with Labor Code sections 201 and 202 constitutes
21 unlawful and/or unfair activity prohibited by California Labor Code sections 201 and 202.

22 **Failure to Timely Pay Wages During Employment**

23 138. Defendants' failure to timely pay wages to Plaintiff and the other aggrieved
24 employees during employment in accordance with Labor Code section 204 constitutes unlawful
25 and/or unfair activity prohibited by California Labor Code section 204.

26 **Failure to Provide Complete and Accurate Wage Statements**

27 139. Defendants' failure to provide complete and accurate wage statements to Plaintiff
28 and the other aggrieved employees in accordance with Labor Code section 226(a) constitutes

unlawful and/or unfair activity prohibited by California Labor Code section 226(a).

Failure to Keep Complete and Accurate Payroll Records

140. Defendants' failure to keep complete and accurate payroll records relating to Plaintiff and the other aggrieved employees in accordance with California Labor Code section 1174(d) constitutes unlawful and/or unfair activity prohibited by California Labor Code section 1174(d).

Failure to Reimburse Necessary Business-Related Expenses and Costs

141. Defendants' failure to reimburse Plaintiff and the other aggrieved employees for necessary business-related expenses and costs in accordance with California Labor Code sections 2800 and 2802 constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 2800 and 2802.

142. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on behalf of all aggrieved employees, requests and is entitled to recover from Defendants and each of them, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all penalties pursuant to PAGA against Defendants, and each of them, including, but not limited to:

- a. Penalties under California Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under California Code of Regulations Title 8 section 11010, et seq. in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each

subsequent violation; and

d. Any and all additional penalties and sums as provided by the California Labor Code and/or other statutes.

143. Pursuant to California Labor Code section 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the LWDA for the enforcement of labor laws and education of employers and employees about their rights and responsibilities, and twenty-five percent (25%) to the aggrieved employees.

144. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 210, 218.5, and 2699 and any other applicable statute.

DEMAND FOR JURY TRIAL

Plaintiff, individually, and on behalf of other members of the general public similarly situated requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of other members of the general public similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action as to the first 10 causes of action;
2. That Plaintiff be appointed as the representative of the Class as to the first 10 causes of action;
3. That counsel for Plaintiff be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current/last known contact information (address, e-mail and telephone numbers) of all class members.

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As to the First Cause of Action

5. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and the other class members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;

8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and

9. For such other and further relief as the Court may deem just and proper.

As to the Second Cause of Action

10. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and the other class members;

11. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

12. For all actual, consequential, and incidental losses and damages, according to proof;

13. For premium wages pursuant to California Labor Code section 226.7(c);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

and

15. For such other and further relief as the Court may deem just and proper.

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As to the Third Cause of Action

1 16. That the Court declare, adjudge, and decree that Defendants violated California
2 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all
3 rest periods to Plaintiff and the other class members;

4 17. That the Court make an award to Plaintiff and the other class members of one (1)
5 hour of pay at each employee's regular rate of compensation for each workday that a rest period
6 was not provided;

7 18. For all actual, consequential, and incidental losses and damages, according to
8 proof;

9 19. For premium wages pursuant to California Labor Code section 226.7(c);

10 20. For pre-judgment interest on any unpaid wages from the date such amounts were
11 due; and

12 21. For such other and further relief as the Court may deem just and proper.

13 **As to the Fourth Cause of Action**

14 22. That the Court declare, adjudge, and decree that Defendants violated California
15 Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to
16 Plaintiff and the other class members;

17 23. For general unpaid wages and such general and special damages as may be
18 appropriate;

19 24. For statutory wage penalties pursuant to California Labor Code section 1197.1 for
20 Plaintiff and the other class members in the amount as may be established according to proof at
21 trial;

22 25. For pre-judgment interest on any unpaid compensation from the date such
23 amounts were due;

24 26. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
25 California Labor Code section 1194(a);

26 27. For liquidated damages pursuant to California Labor Code section 1194.2; and

27 28. For such other and further relief as the Court may deem just and proper.

28 **As to the Fifth Cause of Action**

29. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of employment of Plaintiff and the other class members no longer employed by Defendants;

30. For all actual, consequential, and incidental losses and damages, according to proof;

31. For statutory wage penalties pursuant to California Labor Code section 203 for Plaintiff and the other class members who have left Defendants' employ;

32. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

33. For such other and further relief as the Court may deem just and proper.

As to the Sixth Cause of Action

34. That the Court declare, adjudge, and decree that Defendants violated California Labor Code section 204 by willfully failing to pay all compensation owed at the time required by California Labor Code section 204 to Plaintiff and the other class members;

35. For all actual, consequential, and incidental losses and damages, according to proof;

36. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

37. For such other and further relief as the Court may deem just and proper.

As to the Seventh Cause of Action

38. That the Court declare, adjudge, and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and the other class members, and willfully failed to provide accurate itemized wage statements thereto;

39. For actual, consequential, and incidental losses and damages, according to proof;

40. For statutory penalties pursuant to California Labor Code section 226(e);

41. For injunctive relief to ensure compliance with this section, pursuant to California

1 Labor Code section 226(h); and

2 42. For such other and further relief as the Court may deem just and proper.

3 **As to the Eighth Cause of Action**

4 43. That the Court declare, adjudge, and decree that Defendants violated California
5 Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records
6 for Plaintiff and the other class members as required by California Labor Code section 1174(d);

7 44. For actual, consequential, and incidental losses and damages, according to proof;

8 45. For statutory penalties pursuant to California Labor Code section 1174.5; and

9 46. For such other and further relief as the Court may deem just and proper.

10 **As to the Ninth Cause of Action**

11 47. That the Court declare, adjudge, and decree that Defendants violated California
12 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiff and the other class
13 members for all necessary business-related expenses as required by California Labor Code
14 sections 2800 and 2802;

15 48. For actual, consequential, and incidental losses and damages, according to proof;

16 49. For the imposition of civil penalties and/or statutory penalties;

17 50. For reasonable attorneys' fees and costs of suit incurred herein; and

18 51. For such other and further relief as the Court may deem just and proper.

19 **As to the Tenth Cause of Action**

20 52. That the Court declare, adjudge, and decree that Defendants violated California
21 Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the
22 other class members all overtime compensation due to them, failing to provide all meal and rest
23 periods to Plaintiff and the other class members, failing to pay at least minimum wages to
24 Plaintiff and the other class members, failing to pay Plaintiff's and the other class members'
25 wages timely as required by California Labor Code sections 201, 202, and 204 and by violating
26 California Labor Code sections 226(a), 1174(d), 2800, and 2802.

27 53. For restitution of unpaid wages to Plaintiff and the other class members and all
28 pre-judgment interest from the day such amounts were due and payable;

54. For the appointment of a receiver to receive, manage, and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violation of California Business and Professions Code sections 17200, et seq.;

55. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

56. For injunctive relief to ensure compliance with this section, pursuant to California Business and Professions Code sections 17200, et seq.; and

57. For such other and further relief as the Court may deem just and proper.

WHEREFORE, Plaintiff, individually, and on behalf of other aggrieved employees pursuant to the PAGA, prays for relief and judgment against Defendants, jointly and severally, as follows:

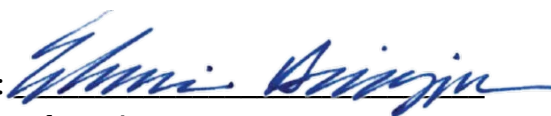
As to the Eleventh Cause of Action

58. For civil penalties pursuant to California Labor Code sections 2699(a), (f) and (g), costs/expenses and attorneys' fees for violation of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802; and

59. For such other and further relief as the Court may deem just and proper.

Dated: September 30, 2022

LAWYERS for JUSTICE, PC

By: 
Edwin Aiwanian
Attorneys for Plaintiff