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Attorneys for Plaintiff, LEIGH HOERNER

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

LEIGH HOERNER, individually and on behalf of
other similarly situated individuals,

Plaintiff

v.

HOAG MEMORIAL HOSPITAL
PRESBYTERIAN; and DOES 1 through 50,
inclusive,

Defendant(s).

Case No.: 30-2021-01178333-CU-OE-CXC

Judge Assigned: Hon. Randall J. Sherman
Complaint Filed: 1/11/2021

**DECLARATION OF MICHELE M.
VERCOSKI IN SUPPORT OF JOINT
NOTICE OF MOTION AND MOTION FOR
AN ORDER APPROVING SETTLEMENT
OF ACTION BROUGHT PURSUANT TO
THE LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF 2004**

*[Filed concurrently with PAGA Settlement,
Motion for Order Approving Settlement;
[Proposed] Order]]*

Date: October 4, 2024
Time: 10:00 AM
Dept: CX105
Res. No.: **74315312**

I, Michele M. Vercoski, declare:

1. I am an attorney licensed to practice law before all of the courts of the State of California and I am partner at McCune Law Group, counsel of record for Plaintiff in this matter. I make this declaration from my personal knowledge and, if called upon to do so, could and would competently

1 testify to the matters set forth herein in a court of law. I have personally reviewed and have knowledge
2 of the all the Exhibits and its contents attached hereto.

3 2. Pursuant to the Labor Code Private Attorneys General Act of 2004 (PAGA, Labor Code
4 2698 et seq.) (“PAGA”) my office filed an action seeking penalties on behalf of Plaintiff and other
5 allegedly aggrieved employees. Plaintiff worked for Hoag at the Hoag Orthopedic Institute (“HOI”)
6 facility located in Irvine, California as a nurse from 2010 to 2020.

7 3. On November 2020, pursuant to Labor Code Section 2699.3, Plaintiff gave written notice
8 to the Labor and Workforce Development Agency (LWDA) and Hoag of the provisions of the Labor
9 Code Plaintiff alleged Hoag violated, and the facts and theories she claimed supported her allegations.
10 Plaintiff also paid the requisite \$75 LWDA filing fee. The LWDA did not respond within the 65-day
11 notice period, and on January 11, 2021, Plaintiff filed this lawsuit.

12 4. After months of discovery, the Parties engaged in vigorous settlement negotiations based
13 on their respective positions regarding the merits of Plaintiff’s allegations, the strength of Hoag’s
14 defenses, and the manageability hurdles Plaintiff needs to overcome to pursue the Action on a
15 representative basis through trial. The Parties’ discussions continued over several months, and
16 eventually the Parties reached an agreement to settle the entire Action.

17 5. This is an unopposed Motion for Settlement Approval of the \$50,000 Gross PAGA
18 Settlement and application for approval of attorney’s fees and costs, and Judgment thereon, pursuant the
19 agreed terms and conditions of the Settlement Agreement by and between the parties and Counsel
20 (attached herewith as **Exhibit 1**). Declarant is applying for a fee award of \$16,500.00 (33% of the Gross
21 Settlement Amount) and reimbursement for costs not to exceed \$2,500.00. Pursuant to the Labor Code
22 Section 2699, Plaintiff concurrently submitted the Settlement to the LWDA with the filing of this
23 motion. I believe the proposed settlement is fair and reasonable, and the procedures proposed by the
24 Parties are adequate to ensure the opportunity of the PAGA Group Members to receive funding from
25 the settlement.

26 6. Courts have long recognized “contingent risk” as a factor supporting an upward
27 enhancement of the lodestar. (See e.g., *Beasley v. Wells Fargo Bank* (1991) 235 Cal. App.3d 1407,
28 1419.) The simple fact is that, despite the most vigorous and competent efforts, success is never

1 guaranteed. Plaintiff's counsel not only must turn away other income-generating opportunities but must
2 take on a substantial risk of "never receiving compensation at all." (*Amaral v. Cintas Corp.* (2008) 163
3 Cal. App. 4th 1157, 1217-18.) Declarant having significant experience with complex employment
4 litigation cases and regularly litigating such claims justifying comparable fee awards in Orange County
5 and having overcome the obstacles surrounding Plaintiff's claims and having negotiated a settlement,
6 finally should be compensated with a fee award properly reflecting these efforts.

7 7. My firm has been involved with this case in litigation with several defense attorneys from
8 defense counsel's firm. My associate, Yasmin Vahid, and I were the sole attorneys representing Plaintiff
9 in this matter. My office bills out my hourly rate at \$750 per hour, and for Yasmin Vahid, at \$450 per
10 hour.

11 8. Additionally, my firm incurred costs in excess of \$2,500 in advancing costs in filing fees
12 and other costs of litigation. My firm has not received any compensation for representing the aggrieved
13 individual in this Action, as described in the Complaint. Any compensation received is contingent and
14 subject to the terms of the Settlement Agreement as approved by the Court.

15 9. My firm conducted an investigation into both the legal and factual background of the
16 claims and has been continuously engaged in formal litigation in this case. Specifically, we performed
17 significant legal research, reviewed thousands of pages of records, conducted extensive discovery, and
18 took several depositions. Based on the information gathered, the Parties were able to evaluate the
19 strengths and weaknesses of their positions, and I believe they were well-positioned to give a reasoned
20 and intelligent assessment of potential settlement. At all times, the Parties' negotiations were adversarial
21 and non-collusive.

22 10. Absent settlement, Plaintiff would have faced substantial obstacles in proving liability
23 and damages and this litigation would likely have continued for several years with no guarantee, and in
24 fact, very little chance of recovery for Plaintiff. I also recognized the possible likelihood of not
25 succeeding at trial, weighing the facts, fees and the cost of litigating this case. The Defendant were
26 represented by a sophisticated and top-shelf firm that was aggressively defending the claims in this case,
27 and thus, litigation and trial would not be easy, and that fees and costs outweighed any anticipated
28

possible recovery. Defendants consistently denied liability and raised both legal and factual grounds for defending this action on the merits, challenging Plaintiff's ambitious damages.

11. While litigating this case, it became apparent that Plaintiff is the only qualified "aggrieved employee" during the relevant time period of the Complaint. Thus, based on the informal and formal discovery conducted, it became evident that the recovery of compensation from the Settlement for Plaintiff far outweighs the uncertainty of taking this case to trial, and the Settlement achieves a meaningful recovery for Plaintiff that exceeds PAGA settlement amounts often approved by the courts.

12. In light of these realities, I have determined that the amount of \$50,000.00 and agreed upon by the Parties to settle this lawsuit is fair, adequate, and reasonable, especially given the risks and uncertainty known and discussed herein. Despite this uncertainty, Plaintiff and Declarant's office were able to obtain a settlement and recovery of compensation for Plaintiff. The requested fees and costs to Declarant's office, as well as the representative service awards to Plaintiff, are reasonable and appropriate given this result. If this case was not resolved, the costs and fees incurred and to be incurred, far outweighed the amount of provable damages in this case.

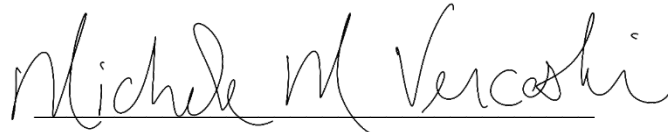
13. Plaintiff also seeks a General Release Payment of \$7,750.00 pursuant to the terms of the Settlement and subject to Court approval, which shall be for Plaintiff's efforts and time as the representative in this PAGA action and Plaintiff's individual damages in consideration for Plaintiff's general release of all claims against Hoag. Any amount not awarded to the General Release Payment will be included in the Net Settlement Sum distributed to the LWDA.

14. In light of the foregoing evidence and all information known to Declarant, the Court should grant approval of the PAGA Settlement and Application for Approval of Attorney's Fees and Costs, Plaintiff's General Release Payment, and Judgment thereon.

15. For reasons set forth in this declaration, I respectfully request that the Court approve and sign the attached Order approving settlement and judgment thereon. I further request that, without affecting the finality of this Final Judgment in any way, the Court retain continuing jurisdiction over the interpretation, implementation and enforcement of the Settlement and Agreement and all orders entered in connection therewith.

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3 I declare under penalty of perjury under the laws of the State of California and the United
4 States of America that the above is true and accurate to the best of my knowledge and that if called
5 upon to do so, I would, and could, so testify.

6 Executed under penalty of perjury this 11th day of June, 2024, at Redlands, California.
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10 Michele M. Vercoski
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1 PROOF OF SERVICE

2 STATE OF CALIFORNIA

3 COUNTY OF ORANGE

4 I am employed in the County of Orange, California. I am over the age of 18 years and not a
5 party to the within action; my business address is 18565 Jamboree Rd., Suite 550
Irvine, CA 92612

6 On June 11, 2024, I served the foregoing document described as **DECLARATION OF**
7 **MICHELE M. VERCOSKI IN SUPPORT OF JOINT NOTICE OF MOTION AND MOTION**
8 **FOR AN ORDER APPROVING SETTLEMENT OF ACTION BROUGHT PURSUANT TO**
9 **THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004; MEMORANDUM**
10 **OF POINTS AND AUTHORITIES** on the interested parties through their respective attorneys of
record in this action, by placing a ☒ true copy or ☐ original thereof enclosed in sealed envelopes
addressed as follows:

11 **Oliver B. Dreger, Esq.**
12 **Farouk G. Mansour, Esq.**
13 **GODES & PREIS, LLP**
14 **300 Spectrum Center Drive, Suite 1420**
15 **Irvine, California 92618**
16 **Telephone: 949.468.0051**
17 **Facsimile: 949.872.2281**
18 **Email: obdreger@gaplegal.com; fmansour@gaplegal.com**

19 **Attorneys for Defendant HOAG MEMORIAL HOSPITAL PRESBYTERIAN**

20 **METHOD OF SERVICE PURSUANT TO CCP SECTION 1013:**

21 [x] **(BY ELECTRONIC MAIL)** By electronically mailing a true and correct copy through
22 McCune Law Group Electronic Mail System from da@mccunewright.com to the Email Address(es)
noted above per Code of Civil Procedure, Section 1010.6 or an agreement by the parties to accept
service by Email. I did not receive, within a reasonable time after transmission, any electronic
message that the Email transmission(s) were unsuccessful.

23 I declare under penalty of perjury under the laws of the State of California that the above is
24 true and correct. Executed on the above-referenced date at Irvine, California.

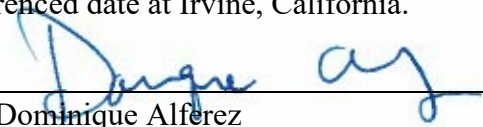
25 
26 Dominique Alferez
27
28

EXHIBIT ‘1’

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

LEIGH HOERNER, individually and on behalf of
other similarly situated individuals,

Plaintiff(s),

v.

HOAG MEMORIAL HOSPITAL
PRESBYTERIAN; and DOES 1 through 50,
inclusive,

Defendant(s).

Case No.: 30-2021-01178333-CU-OE-CXC

Judge Assigned: Hon. Randall J. Sherman
Complaint Filed: 1/11/2021

PAGA SETTLEMENT AGREEMENT

1 This PAGA Settlement Agreement (“Agreement”) is entered into by and between Plaintiff
2 Leigh Hoerner (“Plaintiff”), individually and on behalf of other similarly situated individuals, and
3 Defendant Hoag Memorial Hospital Presbyterian (“Hoag” or “Defendant”), subject to the approval of
4 the Court. In consideration of the promises and mutual covenants and agreements herein contained,
5 Plaintiff and Defendant (collectively, the “Parties”) hereby covenant and agree as follows:

6 **1. RECITALS**

7 1.1 On January 11, 2021, Plaintiff filed a representative action complaint (the “Complaint”)
8 against Defendant alleging causes of action under the Labor Code Private Attorneys
9 General Act of 2004 (“PAGA”), Labor Code Section 2698, et seq., based on violations
10 of Labor Code provisions § 6302(b)(2) (Fraudulent Concealment of Injury) and §
11 6409.1 (Reporting Requirements). She further alleged violations of the California Code
12 of Regulations, Title 8, Sections 3380, 3383, 5141, 5144. Following a series of
13 demurrers and amendment, the sole surviving PAGA claim in this action is the claim
14 that Hoag violated Labor Code § 6409.1 reporting requirements.

15 1.2 On February 24, 2023, Defendant filed its answer to the Amended Complaint, denying
16 the allegations contained in it and asserting a number of affirmative defenses.

17 1.3 As part of their investigation, the Parties engaged in targeted and formal and informal
18 discovery aimed at evaluating the strength and weaknesses of Plaintiff’s PAGA claim
19 and Hoag’s defenses.

20 1.4 Based on their respective investigations and analysis, Plaintiff believes the Action has
21 merit, while Defendant believes the Action is meritless.

22 1.5 After the Parties had completed discovery, the Parties initiated settlement discussions,
23 and eventually, the Parties agreed in principle to a settlement of the entire Action.

24 1.6 The Parties have each considered the uncertainties of continued litigation and the
25 benefits to be obtained under the proposed settlement, and have considered the costs,
26 risks, and delays associated with the continued prosecution of the Action and the likely
27 appeals of any rulings in favor of either Plaintiff or Defendant.
28

1.7 It is the Parties' intention and the objective of this Agreement to avoid the costs of further litigation and trial, and to settle and dispose of, fully and completely and forever, the claims released herein and described below.

2. DEFINITIONS

As used in this Agreement, the terms set forth in this Section 2 shall have the meanings ascribed to them below.

2.1 **Action.** "Action" means the above-captioned action currently pending in the Superior Court of the State of California, County of Orange.

2.2 **Agreement.** "Agreement" means this PAGA Settlement Agreement, including all Exhibits referred to herein and attached hereto.

2.3 **Approval Date.** "Approval Date" means the date on which the Court enters the Order Approving Settlement and Judgment Thereon.

2.4 **Approval Order or Judgment.** "Approval Order" or "Judgment" means the Order Approving Settlement and Judgment Thereon approving the Settlement and this Agreement, which shall substantially conform to Exhibit A hereto.

2.5 **Complaint or FAC.** "Complaint" means the complaint filed by Plaintiff in the Action on January 11, 2021. "FAC" means the first amended complaint filed by Plaintiff in the Action on September 19, 2022.

2.6 **Court.** "Court" means the Superior Court of the State of California, County of Orange.

2.7 **Defendant's Counsel.** "Defendant's Counsel" means the law firm of Godes & Preis, LLP.

2.8 **Effective Date.** "Effective Date" means either (a) the date 60 days from entry of the Approval Order and Judgment, if no motions for reconsideration and no appeals or other efforts to obtain review have been filed, or (b) in the event a motion for reconsideration, an appeal or other effort to obtain review of the Approval Order and Judgment, the date 60 days after such reconsideration, appeal, or review has been

1 finally concluded and is no longer subject to review, whether by appeal, petition for
2 rehearing, petition for review, or otherwise.

3 2.9 **Fee and Expense Award.** “Fee and Expense Award” means such award of attorneys’
4 fees and costs/expenses as the Court may authorize to be paid to Plaintiff’s Counsel for
5 the services they have rendered in the Action.

6 2.10 **General Release Payment.** “General Release Payment” means the payment authorized
7 by the Court to the Plaintiff, separate and apart from any Settlement Payment, to be
8 paid from the Gross Settlement Amount.

9 2.11 **Gross Settlement Amount.** “Gross Settlement Amount” means Fifty Thousand Dollars
10 and No Cents (\$50,000.00), which, together with the Settlement Administration Costs,
11 is the maximum total amount that Defendant shall be required to pay for any and all
12 purposes under this Agreement. This definition shall not be interpreted to suggest that
13 Defendant shall be required to pay any attorneys’ fees or costs other than the Settlement
14 Administration Costs, as defined *infra*.

15 2.12 **LWDA.** “LWDA” means the California Labor and Workforce Development Agency.

16 2.13 **LWDA Payment.** “LWDA Payment” means the portion of the Gross Settlement
17 Amount to be paid to the LWDA under this Agreement, which shall equal 75 percent of
18 the Net Settlement Sum.

19 2.14 **Net Settlement Sum.** “Net Settlement Sum” means the Gross Settlement Amount less
20 the following: (a) Fee and Expense Award and (b) General Release Payment.

21 2.15 **Notice of Settlement.** “Notice of Settlement” means the notice to be mailed to PAGA
22 Group Member with her Settlement Payment.

23 2.16 **PAGA.** “PAGA” means the Labor Code Private Attorneys General Act of 2004, Lab.
24 Code § 2698, et seq.

25 2.17 **PAGA Group.** “PAGA Group” means Plaintiff, who, following investigation and
26 discovery, the Parties concur is the sole potentially “aggrieved” employee, pursuant to
27 the operative PAGA allegation of the Complaint, who was employed by Defendant in
28 California at any time during the PAGA Period.

- 1 2.18 **PAGA Group Members Payment.** “PAGA Group Members Payment” means the
2 aggregate sum of all Settlement Payments that the Settlement Administrator determines
3 are owed to PAGA Group under this Agreement, which shall equal 25 percent of the
4 Net Settlement Sum.
- 5 2.19 **PAGA Period.** “PAGA Period” means the time period from July 13, 2020, to the date
6 the Court approves the Settlement.
- 7 2.20 **Parties.** “Parties” means plaintiff Leigh Hoerner, on behalf of herself, the State of
8 California, and PAGA Group, and Defendant Hoag Memorial Hospital Presbyterian.
- 9 2.21 **Plaintiff.** “Plaintiff” means Plaintiff Leigh Hoerner.
- 10 2.22 **Plaintiff’s Counsel.** “Plaintiff’s Counsel” means the law firm of McCune Law Group,
11 APC.
- 12 2.23 **Plan of Allocation.** “Plan of Allocation” means the manner in which the Net
13 Settlement Sum shall be paid to the LWDA and PAGA Group as set forth in Section
14 4.4, below.
- 15 2.24 **Hoag or Defendant.** “Hoag” or “Defendant” means Defendant Hoag Memorial
16 Hospital Presbyterian.
- 17 2.25 **Released Claims.** “Released Claims” means any and all claims under PAGA that are
18 alleged in the Complaint, or that could have been alleged or asserted in the Complaint.
19 The Released Claims include a release of any and all claims, rights, causes of action,
20 demands, damages, debts, liens, charges, complaints, obligations, or liabilities for
21 penalties, interest, attorneys’ fees, costs, or other relief under PAGA (other than those
22 penalties, costs, and expenses expressly required to be paid pursuant to this
23 Agreement), which have been or could have been asserted against Defendant arising
24 out of or related to any and all claims of any kind for failure to pay minimum or
25 overtime wages, provide meal periods, authorize or permit rest periods, pay premiums
26 for missed meal or rest periods, timely pay wages, keep required records, provide
27 compliant and accurate itemized wage statements, and reimburse business expenses.
28

The Released Claims are released by both the State of California and the PAGA Group as part of this Settlement.

2.26 **Released Parties.** “Released Parties” means defendant Hoag, its present, former or future parents, subsidiaries, affiliates, divisions, corporations in common control, predecessors, successors and assigns, and each of their present, past or future officers, directors, employees, partners (both general and limited), shareholders, agents, attorneys, insurers, and any other successors, assigns, or legal representatives, and any other individual or entity which could be liable for any of the Released Claims.

2.27 **Settlement.** “Settlement” means this Agreement and all actions taken pursuant to and in furtherance of this Agreement.

2.28 **Settlement Administration Costs.** “Settlement Administration Costs” means the amount to be paid to the Settlement Administrator for administration of the Settlement, which will be paid by Defendant separately from the Gross Settlement Amount.

2.29 **Settlement Administrator.** “Settlement Administrator” means the McCune Law Group, which shall be responsible for administering the Settlement pursuant to the terms of this Agreement and the Judgment due to the limited class size.

2.30 **Settlement Payment.** “Settlement Payment” means the amount that the Settlement Administrator determines is owed to the PAGA Group pursuant to the Plan of Allocation described in Section 4.4, below.

2.31 **Settlement Fund.** “Settlement Fund” means the fund established and administered by the Settlement Administrator for the purpose of receiving and disbursing amounts to be paid to the LWDA, the PAGA Group, Plaintiff, and Plaintiff’s Counsel pursuant to this Agreement. The Settlement Fund shall be funded by Defendant following the Effective Date in accordance with Section 4.6.1, below.

2.32 **Settlement Fund Amount.** “Settlement Fund Amount” means the total amount that Defendant shall remit to the Settlement Administrator in accordance with Section 4.6.1, below, which shall consist of the following amounts, the aggregate of which shall not

1 exceed the Gross Settlement Amount: (a) the LWDA Payment, (b) the PAGA Group
2 Payment, (c) the Fee and Expense Award, and (d) the General Release Payment.

3 **3. SETTLEMENT TERMS**

4 3.1 **Motion to Approve Settlements.** Promptly upon the Parties' execution of this
5 Agreement, the Parties shall file a joint motion for an order approving the Settlement,
6 including (without limitation) the payment to the LWDA of 75 percent of the Net
7 Settlement Sum. Concurrently therewith, Plaintiff shall submit a copy of this
8 Agreement to the LWDA, in accordance with Labor Code section 2699, subdivision
9 (l)(2).

10 3.2 **Attorneys' Fees and Costs.** Defendant agrees not to oppose Plaintiff's application for
11 attorneys' fees of \$16,500.00 (33% of the Gross Settlement Amount) and costs not to
12 exceed \$2,500.00, subject to the Court's approval. Defendant shall not be liable for any
13 attorneys' fees or costs in excess of these amounts. The Fee and Expense Award shall
14 represent payment for all claims for Plaintiff's Counsel's attorneys' fees and costs, past
15 and future, arising out of or in any way related to the Action. The Fee and Expense
16 Award shall be paid from the Gross Settlement Amount, and Defendant shall not
17 otherwise be required to pay for any portion of Plaintiff's Counsel's attorneys' fees,
18 costs, or expenses. The Fee and Expense Award shall be paid to Plaintiff's Counsel
19 following the Effective Date, in accordance with Section 4.6.2, below. An award by the
20 Court of attorneys' fees or costs that is less than the amounts applied for will not be
21 grounds for Plaintiff for Plaintiff's counsel to challenge or withdraw from the
22 Settlement, and any amounts not awarded in attorneys' fees or costs will be included in
23 the Net Settlement Sum.

24 3.3 **General Release Payment.** Defendant agrees not to oppose Plaintiff's application for a
25 General Release Payment of \$7,750.00, which shall be for Plaintiff's efforts as
26 representative of the PAGA Group and in consideration of Plaintiff's general release of
27 claims set forth in Section 5.2, below. The General Release Payment shall be reported
28 by the Settlement Administrator on IRS Form 1099-MISC as non-wage income. The

General Release Payment is separate from and in addition to any Settlement Payment to be paid to Plaintiff as the PAGA Group hereunder.

3.4 **Delivery of Settlement Amount by Defendant.** In full settlement of the Released Claims and following the Effective Date, Defendant shall deliver the Settlement Fund Amount to the Settlement Administrator for establishment of the Settlement Fund, in accordance with Section 4.6.1, below.

4. SETTLEMENT PROCEDURES

4.1 **Notification to the LWDA.** Plaintiff shall submit to the LWDA a copy of the Judgment within ten (10) days from its entry, in accordance with Labor Code section 2699, subdivision (1)(3).

4.2 **Information Regarding PAGA Group.** Within ten (10) business days from the Effective Date, Defendant will provide the Settlement Administrator the following information with respect to the PAGA Group: (i) name and (ii) last known residence address. The information Defendant provides to the Settlement Administrator, along with any updated contact information identified by the Settlement Administrator as set forth in Section 4.3, below, shall be used solely to administer the Settlement Payment process described herein, shall be subject to the Stipulation and Protective Order on file in the action, and shall not be disclosed to anyone, except pursuant to the express written authorization of Defendant or the individual in question, by order of the Court, or to the extent necessary to fulfill the Settlement Administrator's reporting obligations hereunder.

4.3 **Settlement Administrator Duties.** The Settlement Administrator's duties shall include, without limitation: (i) taking receipt of and safeguarding the Settlement Fund Amount and establishing the Settlement Fund; (ii) calculating and distributing the LWDA Payment, Settlement Payments to PAGA Group, Fee and Expense Award, and General Release Payment, provided such amounts are approved by the Court.

1 **4.4 Plan of Allocation:** Calculation of Settlement Payments. The Settlement Administrator
2 shall be responsible for the calculation of Settlement Payments to the PAGA Group.

3 The Settlement Payments will be calculated as follows:

4 **4.4.1** Before computing the amounts of the Settlement Payments to be paid to PAGA Group,
5 the Settlement Administrator shall determine the amount of the PAGA Group Members
6 Payment by deducting from the Gross Settlement Amount the following: (a) the LWDA
7 Payment, (b) the Fee and Expense Award, and (c) the General Release Payment.

8 **4.4.2** The Settlement Payment for each PAGA Group shall be equal to the PAGA Group
9 Members Payment divided by the total number of PAGA Group Members.

10 **4.5 Taxes.**

11 **4.5.1 PAGA Group Member Obligations.** Each PAGA Group shall be individually
12 responsible for paying applicable federal, state, and local income taxes, if any, on all
13 amounts such person receives pursuant to this Agreement, and Defendant shall have no
14 liability therefore.

15 **4.5.2 Settlement Administrator Responsibilities Regarding Taxes.** It shall be the
16 responsibility of the Settlement Administrator or its designee to timely and properly
17 prepare and deliver the necessary tax documentation to all necessary parties and to
18 report all necessary information to the applicable government entities as required by
19 law.

20 **4.5.3 No Claims.** No person shall have any claim against Defendant, Defendant's Counsel,
21 Plaintiff, Plaintiff's Counsel, or the Settlement Administrator based on mailings,
22 distributions, and payments made in accordance with or pursuant to this Agreement.

23 **4.6 Distribution of Settlement Payments.** After the Effective Date, the Settlement
24 Payments shall be distributed to PAGA Group in accordance with the procedures set
25 forth below:

26 **4.6.1 Remittance of Settlement Fund Amount.** Within ten (10) business days from the
27 Effective Date, Defendant will remit the Settlement Fund Amount to the Settlement
28 Administrator for the establishment of the Settlement Fund.

1 4.6.2 **Delivery of Payments.** Within ten (10) business days from Defendant's remittance to
2 the Settlement Administrator of the Settlement Fund Amount, the Settlement
3 Administrator shall establish the Settlement Fund and distribute (a) the LWDA
4 Payment, (b) the Settlement Payments to the PAGA Group, (c) the Fee and Expense
5 Award, and (d) the General Release Payment. The Settlement Administration Costs will
6 be paid separately by Defendant directly to the Settlement Administrator. No payments
7 shall be made until the Judgment is final (meaning the right to appeal or otherwise seek
8 review of the Judgment has expired) and on the condition that no appeals from the
9 Judgment have been filed.

10 4.6.3 **Negotiation of Settlement Checks.** Settlement checks tendered to PAGA Group shall
11 remain valid and negotiable for one hundred and twenty (120) days from the date of
12 their issuance and shall thereafter be automatically voided if not cashed by the PAGA
13 Group within that time. Upon the voiding of a PAGA Group's check, the individual's
14 right to recover in the Settlement shall be extinguished, although the individual shall
15 remain among the PAGA Group bound by the Judgment entered in the Action. In the
16 event any checks remain uncashed for any reason after this 120-day period, the
17 Settlement Administrator shall remit to the LWDA the proceeds of all such checks as
18 additional consideration for this Agreement. Administration of the Settlement shall be
19 completed no later than one hundred and eighty (180) days from the Effective Date.

20 4.7 **Discharge of Defendant's Obligations.** Defendant shall fully discharge its obligations
21 to Plaintiff, the LWDA, and the PAGA Group upon providing the information about the
22 PAGA Group to the Settlement Administrator as set forth in Section 4.2, above and
23 remitting the Settlement Fund Amount to the Settlement Administrator as set forth in
24 Section 4.6.1, above, regardless of whether checks representing individual Settlement
25 Payments are actually received and/or negotiated by PAGA Group. Once Defendant
26 has complied with its obligations set forth in Sections 4.2 and 4.6.1, above, it will be
27 deemed to have satisfied all terms and conditions under this Agreement, shall be
28 entitled to all protections afforded to it under the Agreement, and shall have no further

obligations under the terms of the Agreement, regardless of what occurs with respect to the further administration of the Settlement.

4.8 **Notification and Certification by Settlement Administrator.** The Settlement Administrator shall keep Defendant's Counsel apprised of the status of the settlement administration process and its distribution of Settlement Payments. Upon completion of administration of the Settlement, the Settlement Administrator shall provide a detailed, written certification of such completion to the Parties, including the amounts paid to the LWDA, PAGA Group, Plaintiff's Counsel, and Plaintiff.

4.9 **Nullification of Settlement Agreement If Settlement Not Approved.** In the event the Court does not approve the Settlement as provided herein, this Agreement shall be null and void *ab initio* (with the exception of this Section 4.9) and any order or judgment entered by the Court in furtherance of this Settlement shall be treated as withdrawn or vacated by stipulation of the Parties. In such case, the Parties shall be returned to their respective positions that existed before the execution of this Agreement, and no term of this Agreement, or any draft thereof, or the negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have any effect or be admissible as evidence for any purpose in the Action, or in any other proceeding.

5. RELEASE AND WAIVER OF CLAIMS

5.1 **PAGA Release.** Effective upon the Approval Date, the State of California, and the PAGA Group shall be deemed to have, and by operation of the Judgment shall have, expressly released, waived, and discharged the Released Parties from the Released Claims, and they shall be bound by the Approval Order and Judgment and be forever barred from pursuing any of the Released Claims against any of the Released Parties.

5.2 **Plaintiff's General Release.** In addition to her release of the Released Parties from the Released Claims as set forth in Section 5.1, above, effective upon the Approval Date Plaintiff here by expressly releases and waives any and all claims, demands, rights, liabilities, and causes of action she has or has ever had against any of the Released Parties, whether for economic damages, noneconomic damages, exemplary damages,

1 penalties, restitution, injunctive or declaratory relief, interest, attorneys' fees, costs or
2 any other form of monetary or non-monetary relief in any way arising out of or relating
3 to any facts, transactions, events, policies, occurrences, acts, disclosures, statements,
4 omissions or failures to act at any time up to and including the Approval Date,
5 including but not limited to any claims arising from or related to her employment with
6 Defendant or the termination of that employment. This general release by Plaintiff shall
7 become effective upon the Approval Date and includes all statutory claims, common
8 law claims (including but not limited to those sounding in contract, tort, and equity),
9 and claims for compensation to the fullest extent permitted by law. Plaintiff further
10 agrees not to sue or otherwise make a claim against any of the Released Parties for any
11 of the claims that are released pursuant to this Section 5.2.

12 5.3 **Waiver of Civil Code Section 1542.** Plaintiff acknowledges that her general release
13 herein includes potential claims and costs that may not be known or suspected by her to
14 exist, and she hereby expressly and affirmatively waives and relinquishes any and all
15 rights and benefits which she may otherwise have relating to the claims released in
16 Section 5.2, above, pursuant to Civil Code section 1542 and any similar law of any state
17 or territory of the United States. Civil Code section 1542 states as follows:
18

19 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
20 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
21 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
22 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
23 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
24 PARTY.

25 26 **6. ADDITIONAL PROVISIONS**

27 6.1 **No Admission of Liability.** Defendant contends that (a) all of its employment practices
28 comply and at all times have complied with applicable law. Defendant denies any

wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action and believes it has valid defenses to Plaintiff's claims. Defendant specifically denies that the PAGA Group was or is an "aggrieved employee" as that term is defined in Labor Code section 2699, subdivision (c). This Agreement reflects the compromise and settlement of disputed claims between the Parties, and its provisions and any and all drafts, communications, or discussions relating thereto do not constitute, are not intended to constitute, and will not under any circumstances be deemed to constitute an admission by Defendant as to the manageability, merits, validity, or accuracy of any of the allegations or claims in the Action, nor a waiver of any defense.

6.2 **Parties Represented by Counsel.** The Parties hereby acknowledge that they have been represented in negotiations for and in the preparation of this Agreement by independent counsel of their own choosing, they have read this Agreement and have had it fully explained to them by such counsel, and they are fully aware of the contents of this Agreement and of its legal effect.

6.3 **Voluntary Agreement.** This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of either Party, or of any other person, firm or entity. Each Party has made such investigation of the facts pertaining to this Agreement and of all other matters pertaining hereto as she or it deems necessary.

6.4 **No Public Comment.** Unless they first obtain Defendant's express written consent, Plaintiff's Counsel and Plaintiff shall not (a) discuss, reveal, disclose, publicize, or promote the terms of this Settlement, or the negotiations leading to this Settlement, to any third party (including but not limited to the media, the legal community or the public at large), or (b) issue any press releases or initiate any contact with the media regarding the Action or the Settlement, or otherwise advertise or publicize the Action or the Settlement, including but not limited to Plaintiff's Counsel's website. Nothing in this Agreement is intended to prevent Plaintiff or Plaintiff's Counsel from disclosing or discussing the terms of this Settlement with the Court or as otherwise required by law.

6.5 **Authorization.** The Parties hereto represent and warrant that each signatory hereto has the full right and authority to enter into this Agreement and bind the Party or Parties on whose behalf she or it has executed this Agreement.

6.6 **Agreement Binding of Successors in Interest.** This Agreement shall be binding on and inure to the benefit of the respective successors, assigns, heirs, and personal representatives of the Parties.

6.7 **Mutual Full Cooperation.** The Parties agree to cooperate fully with each other to accomplish the terms of this Agreement, including but not limited to execution and delivery of any and all additional papers, documents and other assurances and taking such other action that may be reasonably necessary to implement the terms of this Agreement. The Parties and their counsel shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, to effectuate this Agreement and the terms set forth herein.

6.8 **Entire Agreement.** This Agreement contains the entire agreement between the Parties and constitutes the complete, final, and exclusive embodiment of their agreement with respect to the subject matter hereof. This Agreement is executed without reliance upon any promise, representation, or warranty by either Party or any representative of a Party, other than those expressly set forth herein.

6.9 **Headings.** The various headings used in this Agreement are solely for the convenience of the Parties and shall not be used to interpret this Agreement.

6.10 **No Construction Against Drafter.** This Agreement shall be deemed to have been drafted jointly by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Agreement.

6.11 **Amendment and Modification.** This Agreement may not be amended, altered, or modified except in writing and signed by the Parties hereto, their successors in interest, or their duly authorized representatives, and approved by the Court.

1 6.12 **Governing Law.** This Agreement is entered into in accordance with the laws of the
2 State of California and shall be governed by and interpreted in accordance with those
3 laws.

4 6.13 **Jurisdiction of the Court.** Any dispute regarding the interpretation or validity or
5 otherwise arising out of this Agreement, or relating to the Action or the Released
6 Claims, shall be subject to the exclusive jurisdiction of the Court. Following the
7 Approval Date, the Court shall retain jurisdiction solely with respect to the
8 interpretation, implementation, and enforcement of the terms of this Agreement and all
9 orders and judgments entered in connection therewith, and the Parties submit to the
10 jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the
11 Settlement embodied in this Agreement and all orders and judgments entered in
12 connection therewith.

13 6.14 **Agreement Constitutes a Complete Defense.** To the extent permitted by law, this
14 Agreement may be pleaded as a full and complete defense to any action, suit or other
15 proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to
16 this Agreement.

17 6.15 **Signatures.** Signatures by facsimile or in Portable Document Format (PDF) shall have
18 the same force and effect as original signatures.

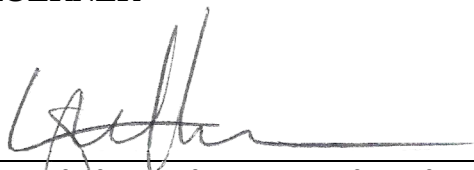
19 6.16 **Execution Date and Execution in Counterparts.** This Agreement shall be deemed
20 executed upon the last date of signature of all of the undersigned. The Parties may
21 execute this Agreement in counterparts, each of which shall constitute an original, but
22 all of which together shall constitute one and the same instrument having the same
23 force and effect as if all Parties had signed the same instrument.

24
25 IN WITNESS WHEREOF, the Parties hereto have so agreed.
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27
28

1 DATED: June _6_, 2024

LEIGH HOERNER

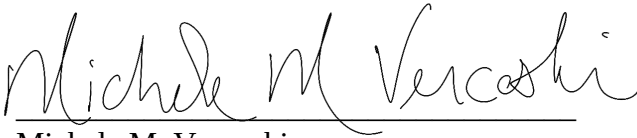
2
3 By:


On behalf of herself, the State of California, and the
PAGA Group

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5
6
7 Dated: May 30, 2024

**MCCUNE LAW GROUP, MCCUNE WRIGHT AREVALO
VERCOSKI KUSEL WECK BRANDT, APC**

8
9
10 By:

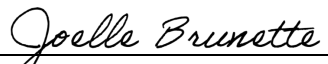


Michele M. Vercoski
Yasmin N. Vahid
Attorneys for Plaintiff

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14 DATED: ~~May~~ June 10, 2024

**HOAG MEMORIAL
HOSPITAL PRESBYTERIAN**

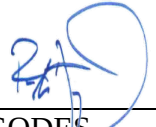
15
16
17 By:


Name: Joelle Brunette
Title: Principal Employee Relations

18
19
20 DATED: ~~May~~ June 10, 2024

GODES & PREIS, LLP

21
22 By:


JAMES N. GODES
OLIVER B. DREGER
RICHARD K. ANGEL
Attorneys for Defendant, HOAG MEMORIAL
HOSPITAL PRESBYTERIAN

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA

3 COUNTY OF ORANGE

4 I am employed in the County of Orange, California. I am over the age of 18 years and not a
5 party to the within action; my business address is 18565 Jamboree Rd., Suite 550
Irvine, CA 92612

6 On June 11 , 2024, I served the foregoing document described as **PAGA SETTLEMENT**
7 **AGREEMENT** on the interested parties through their respective attorneys of record in this action, by
8 placing a ☒ true copy or ☐ original thereof enclosed in sealed envelopes addressed as follows:

9 **GODES & PREIS, LLP**

James N. Godes (SBN 132183)

10 Oliver B. Dreger (SBN 261351)

Richard K. Angel (SBN 339028)

11 300 Spectrum Center Drive, Suite 1420

12 Irvine, California 92618

Telephone: 949.468.0051

13 Facsimile: 949.872.2281

Email: jgodes@gaplegal.com

14 obdreger@gaplegal.com

15 rangel@gaplegal.com

Attorneys for Defendant, HOAG MEMORIAL HOSPITAL PRESBYTERIAN

17 **METHOD OF SERVICE PURSUANT TO CCP SECTION 1013:**

18 [] **(BY MAIL)** I am readily familiar with the firm's business practice for collection and
19 processing of correspondence for mailing. Under that practice, I caused such envelopes with
20 postage thereon fully prepaid to be placed in the United States mail at Irvine, California.

21 [] **(BY FACSIMILE)** I caused such documents to be transmitted by facsimile to the offices of
22 the addressee(s) to the facsimile number(s) listed above.

23 [] **(BY PERSONAL SERVICE)** I caused such envelope(s) to be delivered by hand to the
24 offices of the addressee(s).

25 [] **(BY OVERNIGHT DELIVERY)** I caused such document to be delivered by overnight
26 delivery to the offices of the addressee(s).

27 [x] **(BY ELECTRONIC MAIL)** By electronically mailing a true and correct copy through
28 McCune Law Group Electronic Mail System from da@mccunewright.com to the Email Address(es)
noted above per Code of Civil Procedure, Section 1010.6 or an agreement by the parties to accept

1 service by Email. I did not receive, within a reasonable time after transmission, any electronic
2 message that the Email transmission(s) were unsuccessful.

3 I declare under penalty of perjury under the laws of the State of California that the above is
4 true and correct. Executed on the above-referenced date at Irvine, California,

5 

6 _____
7 Dominique Alferez
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