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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO – JUSTICE CENTER

CHRISTINA FLORES, an individual, Plaintiff, vs. OSO HOME CARE, INC., RANDY BOHART, and DOES 1 through 25, inclusive, Defendants.	CASE NO. CIVSB2110068 *Assigned for All Purposes to the Hon. David Cohn, Complex Litigation Program, Dept. S-26* **UNLIMITED JURISDICTION** **NOTICE OF UNOPPOSED MOTION AND MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004, AWARDING ATTORNEYS' FEES, COSTS, ENHANCEMENT PAYMENT, AND REIMBURSEMENT OF SETTLEMENT ADMINISTRATION EXPENSES, AND DISMISSING ACTION WITH PREJUDICE; MEMORANDUM OF POINTS AND AUTHORITIES** Date: May 6, 2022 Time: 10:00 a.m. Dept.: S-26 Complaint Filed: April 7, 2021

PLEASE TAKE NOTICE THAT on May 6, 2022 at 10:00 a.m., or as soon thereafter as the matter may be heard, in Department S-26 of the above-entitled Court, located at 247 W 3rd St, San Bernardino, CA 92415, Plaintiff Christina Flores will and hereby does move unopposed for

an Order: (1) granting approval, pursuant to California Labor Code § 2698 *et seq.*, subpart l, of the proposed settlement of claims brought pursuant to the Private Attorneys General Act of 2004 (Cal. Labor Code § 2698 *et seq.*) set forth in the parties' Private Attorneys General Act (Labor Code § 2698 *et seq.*) Settlement Agreement; (2) approving the Parties' mutually agreed upon Administrator as the Settlement Administrator and approving payment of its fees not to exceed a reasonable amount from the Settlement Sum; (3) directing disbursement of the Settlement Sum pursuant to the terms of the Settlement Agreement; (4) directing payment of attorneys' fees not to exceed $116,666.67 and costs in the amount of $5,500 from the Settlement Sum; (5) directing payment of an enhancement payment from the Settlement Sum in the amount of $5,000 to Plaintiff Christina Flores; and (6) dismissing this action with prejudice.

This motion will be based on this Notice, the supporting memorandum of points and authorities, the parties' Settlement Agreement (the "Settlement Agreement"), the Declaration of Parham Barkhordar, Esq., the documents and records on file in this matter, and such additional arguments, authorities, and evidence and other matters as may be presented by the parties hereafter.

DATED: March 17, 2022

Respectfully submitted,

TAYLOR LABOR LAW, P.C.

By: Parham Barkhordar
Parham Barkhordar
Attorneys for Plaintiff, CHRISTINA FLORES, Other Aggrieved Employees, and the General Public

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I. INTRODUCTION

Plaintiff Christina Flores ("Plaintiff") and aggrieved employees under the Labor Code's Private Attorneys General Act of 2004 (PAGA) respectfully move this Court for an Order granting approval of the proposed Settlement of the above-captioned Lawsuit against Defendants OSO HOME CARE, INC. ("Defendant" or "Oso Home Care") and RANDY BOHART (**"**Defendant**"** or **"**Mr. Bohart**"**). The proposed Settlement will dispose of the Released Claims asserted on behalf of Plaintiff and all other non-exempt nurses and pharmacists who worked at least one pay period for Defendants in California from January 13, 2020 through the date the Court enters an Order Granting Final Approval of the Settlement Agreement, whichever is earlier (the "Release Period") (the "Aggrieved Employees"[1]).

This case addresses claimed violations of significant employee protections embodied in the California Labor Code and penalties stemming therefrom for violation of PAGA. More specifically, Plaintiff alleges Defendants failed to: pay them minimum and overtime wages. Plaintiff also alleges a derivate claim for failure to provide accurate itemized wage statements. As a result of Defendant**'**s alleged violations of the Labor Code, approximately 100 employees are claimed to have suffered Labor Code violations for an aggregate 3,535 pay periods. Defendant's maximum theoretical exposure - without stacking - in this action totals approximately $355,300, computed by multiplying 3,553 aggregate pay periods by $100 each. Declaration of Parham Barkhordar (**"**Barkhordar Decl.**"**) at ¶ ¶ 8, 15.

In deciding whether to grant approval of the proposed Settlement, the primary issue to be decided is whether the Settlement is fair, adequate, and reasonable. As set forth herein, the proposed Settlement embodies all of the features of a settlement that is fair, reasonable, and adequate, as it is the product of (1) arms-length negotiations, (2) negotiated by attorneys experienced in wage and hour issues, (3) subsequent to undertaking sufficient investigation necessary to evaluate the relative strength and value of the PAGA claim, and (4) it reflects a

[1] The individuals identified as "Aggrieved Employees" are "Aggrieved" solely for the purposes of this settlement only.

reasoned compromise based directly on the relative strength and value of the PAGA claim, as well as the risks, expense, complexity and likely duration of further litigation.

The value achieved by the Settlement may be gleaned from the fact that the LWDA and the Aggrieved Employees encompassed by the Settlement will receive approximately $220,000 under the terms of the Settlement, which, pursuant to the operative statute, shall be allocated "75 percent to the Labor and Workforce Development Agency . . . and 25 percent to the aggrieved employees." *See Cal. Lab. Code* § 2699(i). This is a reasonable recovery, not only because further litigation may have resulted in a lesser recovery based on the defenses asserted by Defendant, but because the amount secured by Plaintiff is sizable and in line with similar settlements of these types of claims under PAGA. It is also important to underscore that all penalty amounts paid to Aggrieved Employees will be an unexpected windfall, as employees typically do not bring individual lawsuits asserting only PAGA penalties. Barkhordar Decl. at ¶ ¶19-20.

For these reasons, as set forth more fully herein, Plaintiff respectfully requests that this Court enter the Order submitted herewith.

II. STATEMENT OF THE CASE AND THE SETTLEMENT

A. The Parties

Defendant Oso Home Care, Inc. is a California Corporation, which is a privately owned company founded by owners Randy Bohart and Bonnie Bohart and provides an array of home infusion services to its patients in California. Barkhordar Decl. at ¶ 6.

Plaintiff Christina Flores is a former Licensed Vocational Nurse ("LVN") for Oso Home Care and worked for Defendant beginning in or around May 2016 to in or about January 2021. The Aggrieved Employees were employed by Defendant in California between January 13, 2020 through the date the Court enters an Order Granting Final Approval of the Settlement Agreement. Barkhordar Decl. at ¶ 7.

B. The Claims Asserted

Plaintiff alleged and asserted a singular claim under California Private Attorneys General Act ("PAGA") for civil penalties based on the underlying Labor Code violations: Failure to

provide prompt payment of wages to employees (Labor Code §§ 201, 202, 203); Failure to pay employees all earned wages (Labor Code §§ 206, 208, 215, 216, 226); Failure to furnish wage and hour statements (Labor Code § 226, 226.3); Failure to Pay Overtime Compensation (Labor Code § 1194); and Retaliation against employees for reporting violations of local, state and/or federal laws, regulations, and/or statutes (Labor Code § 1102.5). Barkhordar Decl. at ¶ 8.

C. Procedural Posture

On January 13, 2021, pursuant to Labor Code § 2699.3, Plaintiff Christina Flores gave written notice to the Labor and Workforce Development Agency ("LWDA") and by certified mail to Defendant of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violation. On April 7, 2021 – after the LWDA declined to take action within the statutorily permissible time with respect to Plaintiff's January 13, 2021 letter– Plaintiff filed the action entitled *Christina Flores v. Oso Home Care, Inc. and Randy Bohart, Case No. CIVSB2110068* in the Superior Court of California for the County of San Bernardino, alleging the causes of action as set forth in her January 13, 2021 letter to the LWDA for PAGA penalties premised on violations of Labor Code §§ 201, 202, 203, 204, 206, 207, 215, 216, 226 et seq., 232.5, 1102.5 et seq., and 1194. Barkhordar Decl., at ¶ 3, **Exhibit A**.

The parties early on in the litigation agreed to explore resolution by scheduling a private mediation with highly esteemed PAGA-savvy mediator, Kelly A. Knight of Judicate West. The parties attended mediation on December 14, 2021, which resulted in an agreement to settle this action. Barkhordar Decl., at ¶ 4.

Despite agreement on the basic terms of the settlement, and the execution of a Memorandum of Understanding, the parties continued to discuss the overall structure of the settlement agreement. The settlement, as discussed more fully hereinbelow, was largely based on the parties interest in diverting funds to the Aggrieved Employees. The parties were in receipt of a fully executed settlement agreement on March 17, 2022. Plaintiff submitted the Settlement Agreement, this Motion, and all supporting documents to the LWDA via online upload on March 17, 2022 concurrently with the filing of this Motion.

D. Plaintiff's Counsel's Investigation

Counsel for Plaintiff engaged in targeted, informal discovery of Defendant's alleged Labor Code violations, which specifically targeted evaluating the strength and value of the PAGA claims in preparation for a resolution of this Action. Barkhordar Decl. at ¶ 9.

Plaintiff's Counsel obtained and reviewed multiple documents, including (i) Plaintiff's employee file and wage statements, (ii) a random sampling of time and wage records intended and agreed upon by the parties to be representative of the PAGA class, (iii) policy documents relating to the employment of Plaintiff and other aggrieved employees, and (iv) data relating to the number of alleged violations and the value of the recoverable penalties. Barkhordar Decl. at ¶ 10.

Based on the information received, as well as through discussions with Defendant's Counsel, Plaintiff's Counsel was able to (i) determine the total number of distinct individuals falling within the definition of "Aggrieved Employee" for the relevant statutory period, (ii) determine the total number of pay periods falling within the relevant PAGA limitations period, and (iii) construct a damage model that calculated the maximum realistic amount of PAGA penalties that could be levied against Defendant within the Release Period. Barkhordar Decl. at ¶ 11. Defendant, however, disputed Plaintiff's claims and disputed both the existence of and extent of liability as alleged by Plaintiff. *Id*.

Based on Plaintiff's Counsel's experience in litigating similar wage and hour claims, the degree of investigation that was conducted, and the amount of data that was obtained, was sufficient to determine the potential value of the PAGA claim, and to evaluate the strengths and weaknesses of their claims for purposes of settlement. Barkhordar Decl. at ¶¶ 1-2.

E. Settlement Negotiations

On December 14, 2021, the Parties participated in mediation session with respected mediator Kelly A. Knight of Judicate West. During the mediation, the parties engaged in arm's-length negotiations and were able to reach a resolution of the PAGA claims asserted in the action. The basic terms of their settlement agreement were reached by way of an executed Memorandum of Understanding. The parties were in receipt of a fully executed settlement agreement on March

17, 2022. Barkhordar Decl. at ¶ 5.

F. The Proposed Settlement

The Parties jointly prepared and executed the PAGA Settlement Agreement. Barkhordar Decl., at ¶ 4-5, **Exhibit B** (the "Settlement Agreement"). The Settlement Agreement sets forth the terms of the Settlement reached by the Parties, including the following key points:

1. Defendant agrees to settle this matter for the payment of Four Hundred and Fifteen Thousand Dollars ($415,000) (hereinafter the "Maximum Settlement Amount"), allocating (a) Sixty-Five Thousand Dollars ($65,000) to the settlement of Plaintiff's individual claims, and (b) the remaining Three Hundred and Fifty Thousand Dollars ($350,000) to the settlement of the PAGA claim.

2. As it relates solely to the PAGA claim, Defendant agrees to settle this matter for the payment of Three Hundred and Fifty ($350,000) (hereinafter the "PAGA Fund"), which shall be all inclusive, encompassing (i) all payments to the Labor and Workforce Development Agency and Aggrieved Employees, (ii) any and all costs of third-party administration of the settlement, (iii) Plaintiff's Counsel's attorneys' fees and costs of suit, and (iv) a modest service payment to the named Plaintiff. *See* Settlement Agreement, at § I(10).

3. The total sum available for payment of PAGA penalties shall be calculated by deducting an amount not to exceed $116,666.67 for the payment of Plaintiff's Counsel's fees and $5,500.00 for costs, $5,000 for the payment of Plaintiff's Enhancement Payment, and the costs of administration, not to exceed a reasonable amount [ie. $3,000], from the $350,000 PAGA Fund, yielding approximately $219,833.33. Seventy-five percent (75%) of this amount, or $164,874.99, shall be distributed to the LWDA and the remaining twenty-five percent (25%) of this amount, or $54,958.33, shall be distributed to the Aggrieved Employees. *See* Settlement Agreement, at § III(3), III(4), and III(5).

4. All non-exempt nurses and pharmacists who worked at least one pay period for Defendant at any time during the Release Period will receive a fixed proportional amount of the Net Settlement Amount per pay period. *See* Settlement Agreement, at § I(2); *See* Barkhordar

Decl., at ¶ 18. Although these calculations will not be made until after approval, a rough estimation of the value to the 100 individuals falling within the definition of "Aggrieved Employee" may be gleaned from the fact that an equal division would provide about $550 to each Aggrieved Employee, net of payments to the LWDA, to the Settlement Administrator, attorney's fees and costs. The LWDA will be paid $164,874.99. *See* Barkhordar Decl. at ¶ 18.

5. In exchange for the above settlement consideration, Defendant shall be entitled to the following release from each and every Aggrieved Employee, including Plaintiff[2]:

> "all claims, rights, demands, liabilities and causes of action for civil penalties under the PAGA claim asserted, or that could have been asserted in the Operative Complaint or could have arisen out of the allegations made in the Operative Complaint ("Released Claims"). Additionally, Plaintiff will fully and finally release and discharge Released Parties from all claims, rights, demands, liabilities and causes of action pursuant to California *Civil Code* § 1542."

See Settlement Agreement, at ¶ 8.

6. Settlement Administration, which is to be paid from the Settlement Sum, will not exceed a reasonable amount. The Parties have met and conferred and selected Simpluris, a well-known administrator.

7. As detailed herein, Plaintiff's Counsel seek an award of attorneys' fees not to exceed $116,666.67, litigation costs not to exceed $5,500 and Plaintiff seeks an enhancement payment of $5,000 for her services and for executing a General Release and a waiver of her rights under California Civil Code § 1542.

III. LEGAL ARGUMENT

A. Standards for Approval Of A PAGA Settlement

The settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute, which states that the "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part." *See Labor Code* § 2699(l)(2).

As with any settlement, the Court must be mindful in conducting its inquiry that

[2] This comports with settled California Supreme Court authority. *See Arias v. Superior Court* (2009) 46 Cal. 4th 969, 986 (concluding that "with respect to the recovery of civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under the act . . . .").

"[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in litigating further." *See In re TD Ameritrade Account Holder Litig.*, 2011 U.S. Dist. LEXIS 103222, 24 (N.D. Cal. Sept. 12, 2011). Indeed, "the very essence of a settlement is … 'a yielding of absolutes and an abandoning of highest hopes'" [*Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 624 (9th Cir., 1982)], as "it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." *See id.*, at 625. As such, "the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits" or "judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *See id.*

Although the operative PAGA statute does not set forth the criteria on which a PAGA settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors for review of a class action settlement under Fed. R. Civ. P. 23 ("Rule 23"), C.C.P. § 382 and Rule 3.769, Cal. Rules of Court, as courts within California have approved settlements of PAGA claims encompassed within class action settlements using Rule 23 criteria.[3] However, it is important to underscore that not all Rule 23 factors can be applied, as "a PAGA claim asserted on a non-class representative basis . . . is not considered a class action but a law enforcement action, and therefore does not have to meet the requirements of Rule 23." *See Casida v. Sears Holdings Corp.*, 2012 U.S. Dist. LEXIS 9302, 8 (E.D. Cal. Jan. 25, 2012); *Thomas v. Aetna Health of Cal., Inc.*, 2011 U.S. Dist. LEXIS 59377 (E.D. Cal. June 2, 2011); *Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist. LEXIS 66454 (E.D. Cal. June 30, 2010). Based thereon, a court's review of a PAGA settlement necessarily implicates the following unique features that render the approval process completely distinct from approval of a class action settlement under Rule 23 or C.C.P. § 382 and Rule 3.769,

[3] As held by the Ninth Circuit, evaluation of a class action settlement under Rule 23 "[involves] a balancing of several factors which may include, among others, some or all of the following: [1] the strength of Plaintiffs' case; [2] the risk, expense, complexity, and likely duration of further litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered in settlement; [5] the extent of discovery completed, and the stage of the proceedings; [6] the experience and views of counsel; [7] the presence of a governmental participant; and [8] the reaction of the class members to the proposed settlement." *See Linney v. Cellular Alaska P'ship, 151* F.3d 1234, 1242 (9th Cir., 1998). "Not all of these factors will apply to every class action settlement" and "[u]nder certain circumstances, one factor alone may prove determinative in finding sufficient grounds for court approval." *See Nat'l Rural Telcoms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525-526 (C.D. Cal. 2004).

Cal. Rules of Court.

First, in evaluating the adequacy of the settlement amount, the Court's focus is not concerned with the amount which "aggrieved employees" are to receive, but rather, must focus on the total settlement amount in achieving PAGA's objective.

While "'[a PAGA] action is … designed to protect the public and penalize the employer for past illegal conduct" [*Mendez*, 2010 U.S. Dist. LEXIS 66454, at 11], a reviewing Court must take into account the fact that settlement of a PAGA claim – like any settlement – involves a "compromise" that stops short of rendering findings of liability and damages. Moreover, the Court must not lose sight of the fact that "[u]nlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies." *See Ochoa-Hernandez*, 2010 U.S. Dist. LEXIS 32774, at 12. *See also Kim v. Reins Int'l California, Inc.*, 9 Cal. 5t h 73, 86 (2020) (civil penalties are intended to "remediate present violations and deter future ones, *not* to redress employees' injuries" (emphasis in original) (international quotation marks omitted)).

B. <u>The Settlement Meets All The Criteria For Approval</u>

Applying the Rule 23 fairness factors – limited to those compatible with the unique PAGA considerations detailed above – the proposed Settlement embodies all of the key features of a settlement that is fair, reasonable, adequate, and as such, meets all the criteria necessary for approval.

1. <u>The Factors Giving Rise to a Presumption of Fairness Exist</u>

In conducting a review of a settlement, it is generally recognized that an "agreement … reached through arms-length negotiation between experienced parties . . . is entitled to a presumption of fairness." *See Anderson v. Nextel Retail Stores, LLC*, 2010 U.S. Dist. LEXIS 43377, 44 (C.D. Cal. Apr. 12, 2010).

A presumption of fairness exists here, as the proposed Settlement (1) is the product of arms-length negotiations [Barkhordar Decl. at ¶¶ 19-20], (2) that was negotiated by Counsel with

significant experience in similar wage and hour litigation [*see id.*, at ¶¶ 1-2 of Barkhordar Decl.], (3) which occurred after Counsel had conducted sufficient investigation to evaluate the strength and potential value of the PAGA claims, as well as evaluating the risks of litigating this claim through trial. *See id.*, at ¶¶ 11-14. Based thereon, the court should give considerable weight to the competency and integrity of counsel in assuring itself that the Settlement Agreement represents an arm's-length transaction entered without self-dealing or other potential misconduct.

2. The Relative Strength Of The PAGA Claim, And the Realistic Range of Outcomes In The Litigation, Strongly Favor Approval of the Settlement

The relative strength of the PAGA claim brought by Plaintiff weighs in favor of the Court finding that the settlement is fair, adequate, and reasonable, as Defendant maintained numerous defenses to the theories of penalty-liability put forward by Plaintiff which, if successful, had the potential to completely eliminate any recovery.

This case addresses violations of important employee protections embodied in the California Labor Code – namely, Defendant's: Failure to provide prompt payment of wages to employees (Labor Code §§ 201, 202, 203); Failure to pay employees all earned wages (Labor Code §§ 206, 208, 215, 216, 226); Failure to furnish wage and hour statements (Labor Code § 226, 226.3); Failure to Pay Overtime Compensation (Labor Code § 1194); and Retaliation against employees for reporting violations of local, state and/or federal laws, regulations, and/or statutes (Labor Code § 1102.5).

As a result of Defendant's alleged violations of the Labor Code, approximately 100 employees are claimed to have suffered the Labor Code violations alleged during the Release Period. Defendant's maximum theoretical exposure - without stacking - in this action totals approximately $355,300, computed by multiplying 3,553 aggregate pay periods by $100 each. *See* Barkhordar Decl., at ¶ 15.

Defendant contends it acted within the requirements of California law at all times as to all Aggrieved Employees. Furthermore, Defendant maintained that even if the Court did award penalties, the Court could and would substantially reduce the penalties awarded based on the

discretionary factors contained in Labor Code § 2699(e)(2) ("In action by an aggrieved employee . . . , a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."). *See* Barkhordar Decl. at ¶ 13.

While the Parties reached a tentative agreement to resolve their dispute on December 14, 2021, the Parties thereafter spent weeks finalizing the terms of the Settlement. *See* Barkhordar Decl. at ¶ 14.

Based on these disputes and the range of realistic "litigation outcomes" on the Plaintiff's PAGA claim, the Settlement achieves a significant benefit. As such, this factor weighs very heavily in favor of resolution by way of the compromise set forth in the Settlement. Barkhordar Decl. at ¶¶ 11-14, 19.

3. <u>The Risk, Expense, and Complexity of Further Litigation Balances Strongly in Favor of Approval of the Settlement</u>

Approval of the proposed Settlement is also appropriate in light of the risk, expense, and complexity of further litigation. As discussed above, the proposed Settlement takes into consideration the specific factual, legal and "real-world" hurdles faced by the Plaintiff in establishing Defendant's penalty-liability in this case. These risks – when balanced with the fact that the settlement achieved a significant recovery (as demonstrated), and that further litigation posed a risk of diminishing such recovery by increasing litigation expenses – weigh strongly in favor of Settlement approval.

4. <u>The Benefits Conferred by the Settlement Balance in Favor of Approval</u>

The Settlement provides a significant monetary benefit that falls well within "the range of an acceptable settlement" under the circumstances, which is the standard on which the instant Settlement must be judged. As held by the Ninth Circuit, a settlement may be fair and reasonable even where it only provides a fraction of what could have been obtained at trial:

> The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d at

> 625 (emphasis in original). Thus, "the very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Id.* at 624 (citations omitted). As the Second Circuit has pointed out: "The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 & n.2 (2nd Cir. 1974).

See Linney, 151 F.3d at 1242.

Here, after all deductions are made for administration, a service payment, attorneys' fees and costs, an estimated $219,833.33 will be paid out [Barkhordar Decl., at ¶ 16], of which $164,874.998, will go to the LWDA, and $54,958.33 (i.e. 25%) will go to the Aggrieved Employees, as required by Labor Code § 2699(i) ("civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency . . . and 25 percent to the aggrieved employees.").

This result is exceptional, as settlements of PAGA claims impacting thousands of individuals have been approved as reasonable for amounts far less than the payment in this case. *See Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, 41-42 (E.D. Cal. Nov. 27, 2012) ("Defendant has agreed to pay $10,000 as civil penalties pursuant to the PAGA . . . . Of the $10,000, 75 percent ($7,500) will be paid to the State of California, and the remainder ($2,500) will benefit the class . . . . The Court finds that the PAGA payment is set at a reasonable amount, and it shall be approved."); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, 21-22 (E.D. Cal. Oct. 29, 2012) ("GTI agrees to allocate $10,000 to Plaintiff's PAGA claims, and will pay $7,500 to the LWDA, and $2,500 to participating Class Members on a pro-rata basis. This comports with settlement approval of PAGA awards in other cases. . . . Therefore, the Court will approve the allocation of the Settlement to Plaintiffs' PAGA claim."); *Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776, 40 (E.D. Cal. June 11, 2012) ("Pursuant to the Settlement Agreement, the parties have agreed to pay $7,500 to the California Labor and Workforce Development Agency . . . . The Court finds that the PAGA Payment is set at a reasonable amount, and recommends that it be approved."); *Gong-Chun v. Aetna Inc.*, 2012 U.S. Dist. LEXIS 96828, 45-46 (E.D. Cal. July 11, 2012) ("Pursuant to the Settlement Agreement, Defendant has agreed to

pay $15,000 to the California Labor and Workforce Development Agency . . . . The Court finds that the PAGA payment is set at a reasonable amount, and it shall be approved.").[4]

Thus, notwithstanding the existence of issues having the potential to significantly reduce recovery on the PAGA claim, the Settlement not only achieves a recovery that exceeds typical PAGA awards routinely approved by the courts, it recovers monies for Aggrieved Employees which they otherwise would not receive. As such, this factor balances strongly in favor of approval of the Settlement. Barkhordar Decl., at ¶ 20.

5. The Scope of the Release is Narrowly Tailored

As discussed above, the California Supreme Court has concluded that in the context of PAGA "the nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties." *See Arias*, 46 Cal. 4th, at 987. Thus, the scope of the release provided in exchange for the foregoing consideration is limited to the civil penalties asserted in the Action under Labor Code §§ 2698 *et seq.* See Settlement Agreement, at ¶ 8. As such, this factor balances strongly in favor of approval of the Settlement.

6. The Experience and Views of Plaintiff's Counsel Favor Approval of the Settlement

Plaintiff's Counsel has a significant degree of experience in complex wage and hour litigation. *See* Barkhordar Decl. at ¶¶ 1-2. In the view of Plaintiff's Counsel, the benefit conferred by the proposed Settlement is fair, reasonable, and adequate under the circumstances, as it reflects a reasoned compromise which takes into consideration the risks inherent in this case which had the potential to completely eliminate recovery. Barkhordar Decl. at ¶¶ 11-14. As such, this factor balances in favor of approval of the Settlement.

7. The Extent Of Discovery Completed And The Stage Of The Proceedings

[4] Significantly, each of the above-cited actions involved substantially more "aggrieved employees" than the approximately 129 aggrieved employees in the instant Lawsuit. *See Franco*, 2012 U.S. Dist. LEXIS 169057, 14 ("2,055 Class Members were ultimately identified"); *Garcia*, 2012 U.S. Dist. LEXIS 160052, at 12 (class comprised of "approximately 1,869 individuals"); *Schiller*, 2012 U.S. Dist. LEXIS 80776, 16 ("3,327 California Class members were ultimately identified"); *Gong-Chun*, 2012 U.S. Dist. LEXIS 96828, 18 ("2,051 California Class Members were ultimately identified").

Favor Approval of the Settlement

In evaluating this element, the Court should be mindful that "'formal discovery is not a necessary ticket to the bargaining table'" [*Linney*, 151 F.3d at 1239], as the relevant consideration is "whether 'the parties have sufficient information to make an informed decision about settlement.'" *See Sandoval v. Roadlink United States Pac., Inc.*, 2011 U.S. Dist. LEXIS 130378, at 26 (C.D. Cal. Nov. 9, 2011).

Here, the extent of discovery conducted was sufficient to enable Plaintiff's Counsel to evaluate the strength and value of the claim for purposes of settlement. Barkhordar Decl. at ¶¶ 11-14. As discussed above, Plaintiff's Counsel's investigation was sufficient to, among other things, tabulate with precision the total number of alleged Labor Code violations at issue during the PAGA Period, and identify the total number of individuals falling within the definition of "Aggrieved Employee" for the Settlement Period. Barkhordar Decl. at ¶¶ 19-20.

Based on Plaintiff's Counsel's experience litigating wage and hour claims, such investigation was sufficient to determine the potential value of the PAGA claim, and to evaluate the strength of this claim for purposes of settlement. *See* Barkhordar Decl. at ¶ 1-2, 11-14.

8. Additional Factors Weigh In Favor Of Finding The Terms Of The Proposed Settlement To Be Fair, Adequate, And Reasonable

In addition to the factors presented above, the proposed Settlement does not possess any obvious deficiencies.

Plaintiff has complied with PAGA's notice requirements [*see Labor Code* § 2699(l)(2)]; they transmitted the Settlement Agreement to the LWDA by online submission concurrently with its submission to the Court on March 17, 2022. *See* Barkhordar Decl. at ¶ 5.

In sum, under the applicable standards for approval of PAGA settlements in California, the settlement in this case meets the standards for approval.

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IV. PLAINTIFF'S COUNSEL ARE ENTITLED TO RECOVER THEIR

REASONABLE FEES AND COSTS

Pursuant to the terms of the Settlement, Plaintiff's Counsel seeks attorneys' fees not to exceed $116,666.67 and costs not to exceed $5,500. *See* Settlement Agreement, at ¶ 7. Plaintiff's Counsel's entitlement to an award of attorneys' fees and costs is warranted on multiple independent grounds. Further, the amount of fees requested falls well within the range of reasonableness under applicable standards, as the amount requested constitutes a "percentage of the fund" deemed reasonable in similar wage and hour settlements of this size and approved by California courts, which is not only warranted based on the contingency risk Plaintiff's Counsel have agreed to incur for the benefit of the State of California and Aggrieved Employees, but also based on the results achieved, as the Settlement obtains a recovery above the range approved as reasonable by California state and federal courts. Based thereon, Plaintiff's Counsel respectfully requests that the Court enter an order approving the fee and cost amounts requested.

A. Plaintiff's Counsel Are Entitled To Recover Their Reasonable Fees And Costs As A Matter Of Right

Plaintiff's Counsel are entitled to recover attorneys' fees and costs under the "common fund" doctrine as a matter of right. As held by the U.S. Supreme Court, "a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *See Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478.

Courts have long recognized the "common fund" or "common benefit'" doctrine, under which attorneys who create a common fund or benefit for a group of persons may be awarded their fees and costs to be paid out of the fund. *Serrano v. Priest* ("*Serrano III"*) (1977) 20 Cal.3d 25, 34, quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1; *Glendale City Employees' Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19; *Quinn v. State of California* (1995) 15 Cal.3d 162, 167; *see also Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Mills v. Electric Auto-Lite Co*. (1970) 396 U.S. 375, 391-392.

The California Supreme Court has held that, "when a number of persons are entitled in

common to a specific fund, and an action brought by a Plaintiff or Plaintiffs for the benefit of all results in the creation or preservation of that fund, such Plaintiff or Plaintiffs may be awarded attorneys' fees out of the fund." *Serrano III*, *supra*, 20 Cal.3d at 34, quoting *D'Amico*, 11 Cal.3d 1; *see also Boeing*, *supra*, 444 U.S. at 478 ("[A] lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole."); *Mills*, *supra*, 396 U.S. at 391-392 (United States Supreme Court endorsing the common fund approach in class actions). California Practice Guide: Civil Trials and Evidence (The Rutter Group) at § 17:172.3 explains the common fund doctrine as follows:

> Where the lawsuit results in the recovery of a fund or property benefiting others as well as Plaintiffs (e.g., a class action), the court has inherent equitable power to order Plaintiffs' attorney fees paid out of the common fund or property [citations]. Such fee spreading assures that all of those benefited by the litigation pay their fair share of obtaining the recovery.

The percentage-of-the-fund approach appears to be the preferred method of awarding fees in traditional common fund cases, such as this case. Where the settlement amount is a "certain or easily calculable sum of money," use of the percentage-of-the-fund method is appropriate. *Serrano III*, 20 Cal. 3d at 35.

In *Glendale City Employees' Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19, the California Supreme Court upheld an attorneys' fee award based on a percentage of the common benefit obtained in a lawsuit by a city employees' association for retroactive wages:

> It is not necessary to find this suit a proper class action in order to uphold the portion of the judgment awarding counsel for Plaintiffs 25 percent of all retroactive salaries and wages received. That award may be sustained under the rule that a litigant who creates a fund in which others enjoy beneficial rights may require those beneficiaries to pay their fair share of the expense of litigation. (*See Sprague v. Ticonic National Bank* (1939) 307 U.S. 161, 159; *Estate of Stauffer* (1959) 53 Cal.2d 124, 132).

In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the California Supreme Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation

costs." Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-111, the California Supreme Court recognized that the common benefit doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share."

Numerous appellate courts have similarly found. *See e.g.*, *Knoff v. City and County of San Francisco* (1969) 1 Cal.App.3d 184, 203-204 (court upheld a "contingent percentage" award of attorneys' fees in a representative action as the proper exercise of the court's broad equitable powers); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1423 (attorneys' fees and expenses properly awarded from common benefit composed of illegally imposed sales and use tax); *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit created by action compelling state to claim dormant bank accounts); *Parker v. Los Angeles* (1974) 44 Cal.App.3d 556, 567-568 (court upheld fee award equal to one-third of the damages to owners of residential property in an inverse condemnation action).

Moreover, at least eight federal courts of appeal-the First, Third, Sixth, Seventh, Ninth, Tenth, Eleventh and the D.C. Circuit-have endorsed the "percentage fee" method for determining reasonable attorneys' fees in common benefit cases. *See e.g.*, *In re Sumitomo Copper Litig.* (S.D.N.Y. 1999) 74 F. Supp. 2d 393, 396-398 (describing the overwhelming weight of federal authority in favor of the percentage fee method); *see also*, *Lealao*, *supra*, 82 Cal.App.4th at 30-31 (describing same).

Thus, as Plaintiff's Counsel has expended a significant amount of time and money to secure a $219,833.33 settlement fund for the LWDA and Aggrieved Employees [*Schiller*, 2012 U.S. Dist. LEXIS 80776, at 43 ("A common fund results when 'the activities of the party awarded fees have resulted in the preservation or recovery of a certain or easily calculable sum of money-out of which sum or 'fund' the fees are to be paid.'")], and in doing so, have exclusively borne the risk of loss for such expenditures of time and expenses (as the LWDA elected not to take the case after receiving the PAGA Notice), Plaintiff's Counsel is entitled to claim reasonable fees from that fund

under applicable precedent.[5]

B. The Fee Amount Requested Is Reasonable

In addition to the forgoing, Plaintiff's Counsel's request for attorneys' fees in the amount not to exceed $116,666.67 of the $350,000.00 PAGA Fund falls well within the "zone of reasonableness."

It is important to highlight at the outset that the fee amount presently sought is not extraordinary, but actually falls at the "average" fee deemed reasonable under California State court authority, as it is recognized that "courts may award attorney's fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under $10 million." *See e.g. Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011).

Moreover, taking into account the contingency risk Plaintiff's Counsel agreed to incur for the benefit of the State of California (which elected not to take the case after receiving the PAGA Notice), and the significant results achieved – facts which justify the requested fee – Plaintiff's Counsel's requested fee is reasonable under all applicable standards.

C. The Fee Amount Allocated By The Settlement Agreement Is Within the Zone of Reasonableness Under the "Percentage of the Fund" Method

The amount of fees requested by Plaintiffs' Counsel – approximately 33% of the Settlement Sum – is reasonable based on standards applicable to the "percentage of the fund" method. "When assessing whether the percentage requested is reasonable, courts look to factors such as: (a) the results achieved; (b) the risk of litigation; (c) the skill required, (d) the quality of work; (e) the contingent nature of the fee and the financial burden; and (f) the awards made in similar cases."

[5] Plaintiff's Counsel is also entitled to recover attorney's fees and costs as a matter of right under the PAGA statute [*Labor Code* § 2699(g)(1) ("Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs.")], and under *C.C.P.* § 1021.5, as the instant PAGA action was by definition "for the public benefit" and secured monetary awards for approximately 188 aggrieved employees. *See e.g. Estrada v. FedEx Ground Package System, Inc.* (2007) 154 Cal. App. 4th 1, 16-17 (2007) ("Estrada's personal motivation does not diminish the fact that he pursued this public interest class action not only for himself but on behalf of a class comprised of FedEx's past and present drivers and ultimately obtained awards for 209 drivers. [] No more is required to satisfy the 'significant benefit,' 'public interest,' and 'large class of persons' requirements of Code of Civil Procedure section 1021.5.").

See Vasquez v. Coast Valley Roofing, Inc., 266 F.R.D. 482, 492 (E.D. Cal. 2010).

First, the results achieved by Plaintiff's Counsel are commendable, as Defendant has agreed to pay $415,000 as the "Maximum Settlement Amount" under the Settlement, which amounts to $65,000 for the settlement of Plaintiff's individual claims and $350,000 for the settlement of Plaintiff's PAGA cause of action. This is a reasonable recovery as the settlement of PAGA claims impacting much higher numbers of individuals have been approved as reasonable.

Second, such results were achieved in the face of significant risks. As explained above, Defendant maintained serious defenses to Plaintiffs' PAGA claims, and if this case were litigated through to trial funds that could have benefited Aggrieved Employees would continue to be exhausted litigating this matter.

Third, notwithstanding this risk of loss, Plaintiff's Counsel undertook representation of the instant PAGA claim for the benefit of the State of California on a contingency basis. *See* Barkhordar Decl. at ¶ 21. This not only required Plaintiff's Counsel to personally assume the risk of nonpayment in securing the very substantial financial benefit the State of California stands to receive, but constitutes a "loan" on Plaintiff's Counsel services – both of which are factors warranting fee enhancement under applicable California Supreme Court authority:

> One of the most common fee enhancers … is for contingency risk. We reaffirmed the propriety of a contingency risk enhancement in *Ketchum*: "The economic rationale for fee enhancement in contingency cases has been explained as follows: 'A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans.' (Posner, Economic Analysis of Law (4th ed. 1992) pp. 534, 567.) 'A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.' "

Graham v. DaimlerChrysler Corp. (2004) 34 Cal. 4th 553, 579-580.

Finally, the percentage requested by Plaintiff's Counsel falls within a typical range,

particularly in light of the relatively modest settlement size. *Martin, supra,* 2011 U.S. Dist. LEXIS 61796, 23 ("[C]ourts may award attorney's fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under $10 million." *See also Crandall v. U-Haul International, Inc*., LASC Case No. BC178775 (awarding attorneys' fees of 40% of a common fund).

Attorneys' fee awards in the amount sought here are well-established by California law and practice. Accordingly, Plaintiff's Counsel's fee request is fair and reasonable and is consistent with the awards in California and the Ninth Circuit. It is also reasonable given the history of this action and the results obtained.

D. Plaintiff's Counsel's Request for Costs is Reasonable

In the course of this litigation, Plaintiff's Counsel had to incur out-of-pocket costs of $5,500. *See* Barkhordar Decl. at ¶ 21.

As demonstrated in the Barkhordar Declaration submitted herewith, the incurred costs included filing fees, mediation fees, photocopy charges, service of process fees, travel expenses, research expenses, and mailing charges. *See* Barkhordar Decl., ¶ 21. Such costs are appropriate for cost reimbursement in these types of cases. *See e.g.*, *In re United Energy Corp. Sec. Litig.* (C.D. Cal. 1989) 1989 WL 7321 1, *6 (quoting *Newberg*, Attorney Fee Awards, § 2.19 (1987)); *see also*, *In re GNC Shareholder Litigation* (W.D. Pa. 1987) 668 F. Supp. 450, 452.

The costs incurred by Plaintiff's Counsel in this litigation benefited Plaintiff, Aggrieved Employees, and the State. In light of the litigation costs that Plaintiff's Counsel was required to incur to prosecute this action, Plaintiff's cost request is reasonable and should be granted.

V. THE ENHANCEMENT PAYMENT SOUGHT BY THE NAMED PLAINTIFF IS REASONABLE

Plaintiff seeks an enhancement payment in the amount of $5,000. This payment is intended to both recognize the time and effort that Plaintiff spent on behalf of other Aggrieved Employees and the State.

Case law supports the award of incentive payments in private attorney general actions. The

Ninth Circuit has recognized that a named Plaintiff's "willingness to act as a private attorney general" may justify the award of an incentive payment. *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 959 (9th Cir. 2009). In *Kinney v Harvest AL Management Sub LLC*, no. 2:12-CV-02716-TLN-CKD (E.D. Cal., Sep. 6, 2013), the United States District Court for the Eastern District of California approved a similar PAGA-only settlement and awarded a service payment to the representative Plaintiff in recognition of her efforts.

The traditional bases for awarding incentive awards in class settlements support the award of incentive awards in PAGA settlements. In *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-806, the Court of Appeal traced back the case law history of incentive awards and held that "the rationale for making enhancement or incentive awards to named Plaintiffs is that he or she should be compensated for the expense or risk he has incurred in conferring a benefit" on others. *Id.* at 806. This rationale applies in this Action exactly the same it would in a traditional class action.

Without Plaintiff's efforts, there would be no recovery at all. An incentive award is appropriate to compensate Ms. Flores for the risk and expense she incurred in conferring a benefit on other of Defendant's employees and the State of California.

As a result of the named Plaintiff's efforts, Aggrieved Employees will receive monetary settlement payments and the State of California will receive $164,874.99 to be put toward education about and enforcement of California's labor laws.

In this case, the named Plaintiff performed the following tasks, among others: (1) assisted Counsel in investigating and substantiating the claims alleged in this action, including multiple interviews with counsel to review facts, documents, and Defendant's policies; (2) assisted in the preparation of the complaint in this action; (3) produced evidentiary documents to Counsel; and (4) assisted in the settlement of this litigation. Moreover, as with any Plaintiff who files a civil action, the named Plaintiff undertook the financial risk that, in the event of a judgment in favor of Defendant in this action, she could have been personally responsible for any attorneys' fees and costs awarded in its favor.

The award of such payment to the named Plaintiff is especially warranted in a case like this one. It is necessary to ensure that employees, like Plaintiff, continue to bring claims like those brought here to enforce the rights of their fellow employees. Individuals like the named Plaintiff (and most Aggrieved Employees) would have little, if any, recourse without the class action or representative device. Plaintiff must be commended for pursuing her claims; modest enhancement payments like those sought here are an appropriate means of doing so.

VI. CONCLUSION

As shown herein, the Settlement Agreement is fair, adequate, and reasonable, as it represents a reasoned compromise obtained through arms-length negotiations. For all the reasons set forth above, Plaintiff respectfully requests that this Court, as set forth in the proposed Order Approving Settlement, do the following:

1. Grant approval of the Settlement Agreement, pursuant to California Labor Code § 2699, subpart l;

2. Approve the Parties' mutually agreed upon Administrator (Simpluris) as the Settlement Administrator and

approve payment of its fees not to exceed a reasonable amount from the Settlement Sum;

3. Direct disbursement of the Settlement Sum pursuant to the terms of the Settlement Agreement;

4. Approve the award of attorneys' fees and costs to Plaintiff's Counsel in the amount not to exceed $116,666.67, payment of which shall come from the Settlement Sum; and

5. Approve the award of an enhancement payment to Plaintiff Christina Flores in the amount of $5,000 from the Settlement Sum.

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Dated: March 17, 2022

Respectfully submitted,

TAYLOR LABOR LAW, P.C.

By: *Parham Barkhordar*
CHRISTOPHER W. TAYLOR
PARHAM BARKHORDAR
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EXHIBIT A

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
APR 07 2021
BY [illegible] DEPUTY

By Fax

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO – JUSTICE CENTER

CHRISTINA FLORES, an individual,

Plaintiff,

vs.

OSO HOME CARE, INC., RANDY BOHART, and DOES 1 through 25, inclusive,

Defendants.

Case Number: CIV SB 2110068

COMPLAINT FOR:

1. Failure to Pay Earned Wages (Labor Code §§204, 206, 218.5, and 218.6)
2. ~~Failure to Furnish Wage and Hour Statements~~ (Labor Code §§ 226 and 226.3)
3. Failure to Pay ~~Overtime~~ Wages (Labor Code §§203, 204, 1194, 1198)
4. Violation of Cal. Labor Code §232.5
5. Violation of Cal. Labor Code §1102.5
6. Violation of Cal. Labor Code §232
7. Waiting Time Penalties (Labor Codes §§201, 202, and 203)
8. Unfair Business Practices in Violation of Business and Professions Code § 17200 *et seq*
9. Wrongful Termination (Constructive Discharge) in Violation of Public Policy
10. Violation of the Private Attorneys General Act ("PAGA")

DEMAND FOR JURY TRIAL

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Plaintiff CHRISTINA FLORES hereby brings a complaint against the above-named Defendants and states and alleges as follows:

PRELIMINARY ALLEGATIONS

1. At all times material herein, Plaintiff CHRISTINA FLORES (hereinafter referred to as "Plaintiff") was and is a resident of the State of California, County of SAN BERNARDINO.

2. Plaintiff is informed and believes and thereon alleges that Defendant, OSO HOME CARE, INC., (hereinafter referred to as "Oso Home Care" or collectively as "Defendants") is a California corporation, is at all times mentioned in this complaint duly licensed to do business, were and are doing business, under and by virtue of the laws of the State of California, in the County of SAN BERNARDINO.

3. Plaintiff is informed and believes and thereon alleges that Defendant, RANDY BOHART, (hereinafter referred to as "Bohart" or collectively as "Defendants") is the principal of Oso Home Care, Inc., and is at all times mentioned in this complaint a resident of the State of California, County of SAN BERNARDINO.

4. Defendants DOES 1 through 25, inclusive, at all times, were under the direct supervision, employ, and control of Defendants. In doing the acts alleged herein, defendants DOES 1 through 25 were acting within the course and scope of their employment and agency with Defendants. The true names and capacities of defendants named herein as DOES 1 through 25, inclusive, are unknown to plaintiffs who therefore sue such defendants by such fictitious names pursuant to California Code of Civil Procedure § 474. Plaintiffs are informed and believe that the DOE defendants are California residents. Plaintiffs will amend this Complaint to show true names and capacities when they have been determined. Plaintiffs are informed and believe, and on the basis of such information and belief allege, that each defendant DOE herein is in some manner responsible for the claims and damages herein alleged.

5. The true names and capacities, whether individual, corporate, associate or otherwise of DOES 1 through 25 are unknown to plaintiff who therefore sues these defendants under said fictitious names. Plaintiff is informed and believes that each of the defendants named as a Doe defendant is legally responsible in some manner for the events referred to in this complaint, either negligently, willfully, wantonly, recklessly, tortiously, strictly liable, statutorily

liable or otherwise, for the injuries and damages described below to this Plaintiff. Plaintiff will in the future seek leave of this court to show the true names and capacities of these Doe defendants when it has been ascertained.

6. Plaintiff is informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent to this action as the agent of the other defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendants.

7. Hereinafter in this Complaint, unless otherwise specified, reference to a Defendant or Defendants shall refer to all Defendants, and each of them.

FACTUAL ALLEGATIONS

8. Plaintiff Christina Flores began working for Defendant Oso Home Care, Inc. in or about May 2016. Defendant Oso Home Care, Inc. is a privately owned company founded by owners Randy Bohart and Bonnie Bohart. Defendant markets itself as a forerunner in the "infusion care" world, providing an array of different home infusion services to its patients in California. Defendant also provides infusion therapy in a clinic setting. Plaintiff worked out of Defendant's satellite office in Redlands, CA.

9. Plaintiff worked as a Licensed Vocational Nurse ("LVN") for Defendant, providing care and/or services to patients in their homes. Plaintiff came onboard in 2016 as a "per diem" LVN. Plaintiff was interviewed by manager Denise Babyak prior to being offered a position as a "per diem" LVN. During her interview, Ms. Flores was told there would be "plenty" of opportunities for Plaintiff to work as many hours as she wished to. And, indeed, this was the case. Plaintiff worked as a "per diem" nurse from approximately May 2016 through April 2019 at which point Ms. Flores started working a "full-time" schedule of Monday through Friday, from approximately 8:00 a.m. to 4:30 p.m. During the same time frame, from approximately April 2018 through her separation, Ms. Flores regularly worked overtime hours beyond her regularly-scheduled hours.

10. Upon information and belief, Plaintiff was one of approximately one-hundred-and-fifty (150) nurses on Defendant's payroll. Plaintiff reported to Denise Babyak and Bonnie Bohart throughout her employment. Ms. Flores was paid an hourly wage for her work. At the time of her separation, Plaintiff earned approximately $30 per hour.

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11. The California Industrial Welfare Commission (IWC) Wage Orders regulate wages, hours, and working conditions. Employers, including Defendant, must comply with the IWC Wage Order and California and Federal labor laws applicable to their business or industry. Given the nature of Defendant's work (i.e., nursing home), IWC Wage Order 5 ("Public Housekeeping Industry) applied to Defendant. IWC Order 5 delineates regulations on topics such as: minimum wages, alternative workweeks, overtime wages, meal periods, rest periods, and reporting time pay, among other regulations.

12. As reflected in IWC Order 5, employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1.5) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

13. In addition to IWC Order 5, various California Labor Codes imposed certain obligations on Defendant to ensure Plaintiff was paid appropriately, including overtime compensation (Labor Code §§510, 1194), and was furnished with full, timely, and accurate wage and hour statements. (Labor Code §226)

14. Plaintiff began to regularly work overtime hours in or around April 2018 when she was transitioned into a "full-time" LVN. Shortly after April 2019, Ms. Flores came to learn that working overtime hours on a regular basis was a common occurrence and/ask by Defendant. In fact, Ms. Flores commonly logged in anywhere between one-hundred-fifteen (115) hours to sometimes two-hundred-and-fifty (250) hours in any pay period, i.e., during a two-week period, between April 2018 and February 2020.

15. Initially, Ms. Flores suspected she may have been entitled to overtime compensation. Nevertheless, she did not wish to rock the boat and was content with picking up

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additional hours, which, for Ms. Flores, meant an ability to make more money to provide for her family. As time passed, Ms. Flores had an inkling she was not being paid appropriately, particularly given she never received overtime compensation despite putting in anywhere between one-hundred-fifteen (115) hours to sometimes two-hundred-and-fifty (250) hours in any pay period. Ms. Flores noticed her paycheck did not reflect any overtime compensation despite her working many overtime hours.

16. Plaintiff's gut feeling came to fruition in or around January 2020 when Ms. Flores came to notice she was being paid differently. Wondering what had developed, Ms. Flores reached out to manager Denise Babyak regarding her wages. In response, Denise Babyak advised Plaintiff it had "come to Defendant's attention" Oso Home Care was not compensating its nurses appropriately pursuant to California laws and guidelines for hours worked up and until January 2020. Puzzled, Plaintiff inquired whether Defendant would be correcting Ms. Flores' pay retroactively, i.e., compensating her for all overtime hours worked in 2018, 2019, and any in 2020 for which Plaintiff was not paid for. Defendant, including Denise Babyak, responded: "we are working on that."

17. Despite Defendant promising to "look into it" and make up any wages earned yet not paid, Oso Home Care never honored its promise, nor its obligation pursuant to California laws to compensate its employees, including Plaintiff, appropriately. Instead, Defendant reasoned implementing a change in Plaintiff's (and other nurses' schedule) would alleviate any distrust employees would have in not being paid appropriately. Starting in or about February 2020, Plaintiff, and, upon information and belief, others, were specifically instructed not to work beyond forty (40) hours per week, i.e., so that Defendant would not incur overtime compensation. Still, Defendant made no effort to retroactively compensate Plaintiff for all hours worked.

18. Plaintiff felt cheated by Defendant's unlawful conduct of swindling money that belonged to her. So much as that as time went on, it became harder for Ms. Flores to tolerate being underpaid. As result, starting in or about February 2020, Plaintiff raised the issue of overtime compensation and/or he wages with several supervisors, including Denise Babyak, Bonnie Bohart, and others. Ms. Flores continuously raised concerns she was entitled to overtime compensation. Denise Babyak always told Plaintiff she "would look into it," but never did. To

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make Plaintiff feel better about being shorted on her pay for the past 1-2 years, Denise Babyak offered to "make things right" by making Plaintiff eligible to receive a "salary" so that Plaintiff would not have to "take" a severe cut on her pay with Defendant's new policy that nurses were not to work overtime hours beyond a 40-hour schedule. Denise Babyak and/or other managers advised Plaintiff they would speak with owners Randy Bohart and Bonnie Bohart regarding Plaintiff's concerns. Of course, Defendant had no intention of rectifying its unlawful conduct by retroactively compensating Plaintiff (and other nurses) for all hours worked.

19. Instead, in or about July 2020, Plaintiff was given a "raise." The message was clear: Defendants had hoped that by providing a "raise" to Plaintiff, Ms. Flores would relent any desire to be paid for hours worked. This was not to be, however. Plaintiff could not sit idle and accept being underpaid, particularly given that she occasionally logged in overtime hours beyond her normal schedule after February 2020 for which she was also not paid.

20. It became clear to Plaintiff Defendant had no intention of paying her for all hours worked. As a result, not wanting to tolerate being underpaid, Plaintiff had no choice to leave her job in January 2021. Plaintiff was constructively discharged as a result of Defendant creating an intolerable working environment by not paying Plaintiff her rightful wages earned. Any reasonable person would have made the same decision to seek employment elsewhere and be appropriately, as Plaintiff did here.

21. Plaintiff was not paid all vested and/or earned wages due at the time of her separation.

FIRST CAUSE OF ACTION

FAILURE TO PAY EARNED WAGES

(LABOR CODE §§204, 206, 216, 218.5, 218.6)

(Against All Defendants and DOES 1 – 25)

22. Plaintiff hereby incorporates by reference as though fully set forth herein each and every preceding paragraph.

23. In the last four years past, DEFENDANTS failed and refused to pay Plaintiff all the wages that she earned working for them as required by the Labor Code and other applicable laws and regulations.

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24. At all times, DEFENDANTS had the ability to pay Plaintiff all wages due but willfully refused to pay Plaintiff her wages due after Plaintiff's demand. DEFENDANTS falsely denied the amount or validity of wages due to Plaintiff. DEFENDANTS did this with the intent to secure for himself, herself and itself a discount on its indebtedness and/or with intent to annoy harass, oppress, hinder, delay and/or defraud Plaintiff.

25. Plaintiff has been deprived of her rightfully earned wages as a direct and proximate result of DEFENDANTS' failure and refusal to pay said compensation.

26. Plaintiff is entitled to recover such amounts, plus interest thereon, attorney's fees and costs and applicable civil and statutory penalties.

SECOND CAUSE OF ACTION

FAILURE TO FURNISH WAGE AND HOUR STATEMENTS

(LABOR CODE §§226. And 226.3

(Against All Defendants and DOES 1 – 25)

27. Plaintiff hereby incorporates by reference as though fully set forth herein each and every preceding paragraph.

28. DEFENDANTS failed to provide Plaintiff with timely and accurate wage and hour statements showing gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity employing her, all applicable hourly rates in effect during each pay period, and the corresponding number of hours worked at each hourly rate.

29. DEFENDANTS are liable for statutory penalties and civil penalties pursuant to Labor Code §§ 226, 226.3 and 558 and the other applicable laws and regulations.

THIRD CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(LABOR CODE §§203, 204, 215, 216, 226, 226.6, 510(a), 558, 1194, 1198 and/or 1199)

(Against All Defendants and DOES 1 – 25)

30. Plaintiff hereby incorporates by reference as though fully set forth herein each and every preceding paragraph.

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31. Pursuant to Labor Code sections 203, 204, 215, 216, 226, 226.6, 510(a), 558, 1194, 1198, and 1199, it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission ("IWC") or under conditions prohibited by the applicable wage orders, including but not limited to, failing to keep records of and correctly report hours worked.

32. DEFENDANTS routinely required Plaintiff to work more than eight hours per day. DEFENDANTS routinely required Plaintiff to work more than forty (40) hours per week. DEFENDANTS failed and refused to pay Plaintiff the overtime compensation required by the Labor Code and other applicable laws and regulations.

33. Plaintiff has been deprived of her rightfully earned and legally required overtime compensation as a direct and proximate result of DEFENDANTS' failure and refusal to pay said compensation. Plaintiff is entitled to recover such amounts, plus interest thereon, attorney's fees and costs.

34. Based on DEFENDANTS' conduct as alleged herein, DEFENDANTS are liable for civil penalties pursuant to Labor Code § 558 and other applicable provisions of the Labor Code and other applicable laws and regulations.

FOURTH CAUSE OF ACTION

VIOLATION OF CAL. LABOR CODE §232.5

(Against Defendant OSO HOME CARE, INC., and DOES 1 – 25 ONLY)

35. Plaintiff hereby incorporates by reference as though fully set forth herein each and every preceding paragraph.

36. An employer may not require, as a condition of employment, that an employee refrain from disclosing information about the employer's working conditions. (Cal. Labor Code § 232.5(a)).

37. Defendant unlawfully failed to compensate Plaintiff for all hours she worked, including overtime compensation. Defendants further constructively discharged Plaintiff's employment in violation of law due to Plaintiff's disclosing of the employer's working conditions to said employer. Specifically, Defendant constructively discharged Plaintiff for raising concerns Defendant's working conditions were intolerable in light of the fact Plaintiff was being shorted on her paychecks for the last several years.

38. As a proximate result of the aforesaid acts of Defendants, and each of them, Plaintiff has suffered actual, consequential and incidental financial losses, including without limitation, loss of salary and benefits, and the intangible loss of employment related opportunities in her field and damage to her professional reputation, all in an amount subject to proof at the time of trial. Plaintiff claims such amounts as damages pursuant to Civil Code section 3287 and/or section 3288 and/or any other provision of law providing for prejudgment interest.

39. As a proximate result of the wrongful acts of Defendants, and each of them, Plaintiff has suffered and continues to suffer emotional distress, humiliation, mental anguish and embarrassment, as well as the manifestation of physical symptoms. Plaintiff is informed and believes and thereupon alleges that she will continue to experience said physical and emotional suffering for a period in the future not presently ascertainable, all in an amount subject to proof at the time of trial.

40. The acts taken toward Plaintiff were carried out by Defendants' officers, directors, and/or managing agents acting in a despicable, oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner and in conscious disregard for the rights and safety of Plaintiff, and in direct violation of California law, thereby justifying an award of punitive damages in a sum appropriate to punish and make an example of Defendants, and each of them.

41. Defendants had in place policies and procedures that specifically prohibited discrimination, retaliation, and harassment against and upon employees of Defendants, based on the disclosing of the employer's working conditions by Defendants' employees and required Defendants' managers, officers, and agents to prevent discrimination, retaliation, and harassment against and upon employees of Defendants, based on the disclosing of the employer's working conditions by Defendants' employees. Defendants' perpetrators were managers, officers, and/or agents of Defendants and were aware of Defendants' policies and procedures prohibiting discrimination, harassment, retaliation based on the disclosing of the employer's working conditions by Defendants' employees and also requiring Defendants' managers, officers, and agents to prevent, and investigate discrimination, retaliation, and harassment against and upon employees of Defendants, based on the disclosing of the employer's working conditions by

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Defendants' employees. Furthermore, Defendants maintained broad discretionary powers regarding staffing, managing, hiring, firing, contracting, supervising, assessing and establishing of corporate policy and practice in the Defendants' facilities. However, Defendants chose to consciously and willfully ignore said policies and procedures and therefore, their outrageous conduct was fraudulent, malicious, oppressive, and was done in wanton disregard for the rights of Plaintiff and the rights and duties owed by each Defendant to Plaintiff. Each Defendant aided, abetted, participated in, authorized, ratified, and/or conspired to engage in the wrongful conduct alleged above. Plaintiff should, therefore, be awarded exemplary and punitive damages against each Defendant in an amount to be established that is appropriate to punish each Defendant and deter others from engaging in such conduct.

FIFTH CAUSE OF ACTION

VIOLATION OF CAL. LABOR CODE §1102.5

(Against Defendant OSO HOME CARE, INC., and DOES 1 – 25 ONLY)

42. Plaintiff hereby incorporates by reference as though fully set forth herein each and every preceding paragraph.

43. Cal. Labor Code § 1102.5(a) prohibits an employer, or any person acting on behalf of the employer, from making, adopting, or enforcing any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, or from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

44. Cal. Labor Code § 1102.5(b) states an employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation,

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hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

45. Cal. Labor Code § 1102.5(c) prohibits an employer, or any person acting on behalf of the employer, from retaliating against an employee for refusing to participate in a n activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.

46. Defendants unlawfully constructively discharged Plaintiff's employment when Plaintiff raised concerns over Defendant's intolerable working environment, to wit, Plaintiff being shorted on her pay.

47. Defendants retaliated against Plaintiff by constructively discharging her because she reported conduct she reasonably believed to be illegal and in violation of local, state or federal rules, regulations or laws. Defendant also believed Plaintiff intended to report this unlawful activity to one or more outside government agencies.

48. As a proximate result of the aforesaid acts of Defendants, and each of them, Plaintiff has suffered actual, consequential and incidental financial losses, including without limitation, loss of salary and benefits, and the intangible loss of employment related opportunities in her field and damage to her professional reputation, all in an amount subject to proof at the time of trial. Plaintiff claims such amounts as damages pursuant to Civil Code section 3287 and/or section 3288 and/or any other provision of law providing for prejudgment interest.

49. As a proximate result of the wrongful acts of Defendants, and each of them, Plaintiff has suffered and continues to suffer emotional distress, humiliation, mental anguish and embarrassment, as well as the manifestation of physical symptoms. Plaintiff is informed and believes and thereupon alleges that she will continue to experience said physical and emotional suffering for a period in the future not presently ascertainable, all in an amount subject to proof at the time of trial.

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50. The acts taken toward Plaintiff were carried out by Defendants' officers, directors, and/or managing agents acting in a despicable, oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner and in conscious disregard for the rights and safety of Plaintiff, and in direct violation of California law, thereby justifying an award of punitive damages in a sum appropriate to punish and make an example of Defendants, and each of them.

51. Defendants had in place policies and procedures that specifically prohibited discrimination, retaliation, and harassment against and upon employees of Defendants, based on employees' refusal to participate in an activity that would result in a violation of state of federal statute, employees and required Defendants' managers, officers, and agents to prevent discrimination, retaliation, and harassment against and upon employees of Defendants, based on employees' refusal to participate in an activity that would result in a violation of state of federal statute. Defendants' perpetrators were managers, officers, and/or agents of Defendants and were aware of Defendants' policies and procedures prohibiting discrimination, harassment, retaliation based on employees' refusal to participate in an activity that would result in a violation of state of federal statute and also requiring Defendants' managers, officers, and agents to prevent, and investigate discrimination, retaliation, and harassment against and upon employees of Defendants, based on employees' refusal to participate in an activity that would result in a violation of state of federal statute. Furthermore, Defendants maintained broad discretionary powers regarding staffing, managing, hiring, firing, contracting, supervising, assessing and establishing of corporate policy and practice in the defendant's facilities. However, Defendants chose to consciously and willfully ignore said policies and procedures and therefore, their outrageous conduct was fraudulent, malicious, oppressive, and was done in wanton disregard for the rights of Plaintiff and the rights and duties owed by each Defendant to Plaintiff. Each Defendant aided, abetted, participated in, authorized, ratified, and/or conspired to engage in the wrongful conduct alleged above. Plaintiff should, therefore, be awarded exemplary and punitive damages against each Defendant in an amount to be established that is appropriate to punish each Defendant and deter others from engaging in such conduct.

52. Plaintiff will also seek a $10,000 civil penalty pursuant to California Labor Code section 1102.5(f).

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53. Plaintiff is also entitled to recover civil penalties pursuant to various Labor Codes and other applicable laws and regulations, plus interest thereon, attorney's fees and costs.

SIXTH CAUSE OF ACTION

VIOLATION OF CAL. LABOR CODE § 232

(Against Defendant OSO HOME CARE, INC., and DOES 1 – 25 ONLY)

54. Plaintiff hereby incorporates by reference as though fully set forth herein each and every preceding paragraph.

55. Cal. Labor Code § 232(a) prohibits, as a condition of employment, an employer requiring an employee from refraining to disclose the amount of his or her wages.

56. Cal. Labor Code § 232(b) prohibits an employer from discharging, disciplining or otherwise discriminating against an employee who discloses the amount of his or her wage.

57. Defendant unlawfully constructively discharged Plaintiff's employment in violation Cal. Labor Code § 232(a) due to Plaintiff's discussing her wages, namely her inquiry about not being paid for all hours worked, including overtime compensation.

58. As a proximate result of the aforesaid acts of Defendants, and each of them, Plaintiff has suffered actual, consequential and incidental financial losses, including without limitation, loss of salary and benefits, and the intangible loss of employment related opportunities in her field and damage to her professional reputation, all in an amount subject to proof at the time of trial. Plaintiff claims such amounts as damages pursuant to Civil Code section 3287 and/or section 3288 and/or any other provision of law providing for prejudgment interest.

59. As a proximate result of the wrongful acts of Defendants, and each of them, Plaintiff has suffered and continues to suffer emotional distress, humiliation, mental anguish and embarrassment, as well as the manifestation of physical symptoms. Plaintiff is informed and believes and thereupon alleges that she will continue to experience said physical and emotional suffering for a period in the future not presently ascertainable, all in an amount subject to proof at the time of trial.

60. The acts taken toward Plaintiff were carried out by Defendants' officers, directors, and/or managing agents acting in a despicable, oppressive, fraudulent, malicious,

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deliberate, egregious, and inexcusable manner and in conscious disregard for the rights and safety of Plaintiff, and in direct violation of California law, thereby justifying an award of punitive damages in a sum appropriate to punish and make an example of Defendants, and each of them.

61. Defendants maintained broad discretionary powers regarding staffing, managing, hiring, firing, contracting, supervising, assessing and establishing of corporate policy and practice in the defendant's facilities. However, Defendants chose to consciously and willfully ignore said policies and procedures and therefore, their outrageous conduct was fraudulent, malicious, oppressive, and was done in wanton disregard for the rights of Plaintiff and the rights and duties owed by each Defendant to Plaintiff. Each Defendant aided, abetted, participated in, authorized, ratified, and/or conspired to engage in the wrongful conduct alleged above. Plaintiff should, therefore, be awarded exemplary and punitive damages against each Defendant in an amount to be established that is appropriate to punish each Defendant and deter others from engaging in such conduct.

SEVENTH CAUSE OF ACTION

WAITING TIME PENALTIES (LABOR CODE §§201, 202, and 203)

(Against All Defendants and DOES 1 – 25)

62. Plaintiff hereby incorporates by reference as though fully set forth herein each and every preceding paragraph.

63. Cal. Labor Code § 203(a) states, in pertinent parts: If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, 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 therefor is commenced; but the wages shall not continue for more than 30 days.

64. Defendants willfully failed to Plaintiff accrued wages and other compensation owed to her at the time of her separation from Defendant. Defendant's failure to pay Plaintiff all wages and compensation owed has continued over 30 days since her separation.

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65. Defendants are liable for statutory and civil waiting time penalties of up to 30 days of pay pursuant to Labor Code § 203 and other applicable laws and regulations.

EIGHTH CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES

IN VIOLATION OF

BUSINESS AND PROFESSIONS CODE SECTION 17200, *et seq.*

(Against Defendant OSO HOME CARE, INC., and DOES 1 – 25 ONLY)

66. Plaintiff hereby incorporates by reference as though fully set forth herein each and every preceding paragraph.

67. Defendants' violations of the Labor Codes §203, 204, 215, 216, 221, 223, 226, 226.6, 510(a), 558, 1194, 1198, 1199, violations of Cal. Govt. Code §§ 12940, seq., and other laws and regulations as alleged by this complaint, within the last four years, including Defendants' failure and refusal to pay overtime wages to Plaintiff, failure to furnish wage and hour statements, Defendants' failure to pay compensation due to Plaintiff in a timely manner during her employment, and Defendants' wrongful withholding of wages and compensation due to Plaintiff, constitute unfair business practices in violation of the Unfair Competition Law, Business & Professions Code § 17200, et seq.

68. Each of the directors, officers and/or agents of OSO HOME CARE, INC. are equally responsible for the acts of the others as set forth in Business and Professions Code Section 17095. Defendant's directors and officers, including, without limitation, Randy Bohart and Bonnie Bohart, misappropriated and converted to themselves for their individual advantage the unpaid wages and other monies owed to Plaintiff, and other aggrieved employees, as alleged throughout this complaint.

69. Defendants knowingly made fraudulent statements regarding Plaintiff's, and other aggrieved employees' eligibility to receive overtime compensation for hours worked beyond their ordinary forty-hour schedule. Defendant's fraudulent and/or negligent misrepresentation constitute unlawful, unfair, or fraudulent l business actions and practices in violation of Business and Professions code §§17200 et seq.

70. Pursuant to Business and Professions Code §§17200 et seq., Plaintiff is entitled to restitution.

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71. Pursuant to Business and Professions Code section 17203, Plaintiffs, on behalf of themselves and all class members, request restitution and/or disgorgement of all wages wrongfully retained by Defendant in violation of Business and Professions Code sections 17000 et seq. and 17200 et seq.

NINTH CAUSE OF ACTION

WRONGFUL CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY

(Against Defendant OSO HOME CARE, INC., and DOES 1 – 25 ONLY)

72. Plaintiff hereby incorporates by reference as though fully set forth herein each and every preceding paragraph.

73. Under California law, no employee, whether an at-will employee or employee under a written or other employment contract, can be discriminated against, harassed, retaliated against and/or be forced to endure intolerable working conditions for a reason that is in violation of a fundamental public policy. In recent years, the California courts have interpreted a fundamental public policy to be any particularly constitutional or statutory provision, or regulation that is concerned with a manner affecting society at large rather than a purely personal or proprietary interest of the employee or employer. Moreover, said public policy is fundamental, substantial, and well established at the time of Plaintiff's discharge.

74. At all times mentioned, the public policy of the State of California, as codified, expressed and mandated in California Labor Codes sections 232, 232.5, 200, 201, 204, and 1102.5, et seq., is to prohibit employers from creating intolerable working conditions for an employee, prohibit employers from creating an intolerable working environment in response to an employee who engaged in the protected activity of raising concerns about being shorted on her pay. This public policy of the State of California is designed to protect all employees and to promote the welfare and well-being of the community at large.

75. At all times mentioned, the public policy of the State of California, as codified, expressed, and mandated in Business and Professions Code section 17200 is to prohibit employers from misrepresenting what is rightfully vested, earned wages to employees, including Plaintiff and violating Business and Professions Code. This public policy of the State of California is designed to protect all employees and to promote the welfare and well-being of the community at large.

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76. Accordingly, the actions of Defendants, and each of them, in creating intolerable working conditions as to force Plaintiff out of her job on the grounds alleged and described herein were wrongful and in contravention of the express public policy of the State of California, to wit, the policy set forth in Labor Codes §§ 98.6, 232, 200 et seq., and 1102.5 and the laws and regulations promulgated thereunder.

77. Accordingly, the actions of Defendants, and each of them, in intentionally and/or knowingly creating an intolerable working environment, thereby constructive discharging Plaintiff on the grounds alleged and described herein were wrongful and in contravention of the express public policy of the State of California, to wit, the policy set forth in Business and Professions Code § 17200 and the laws and regulations promulgated thereunder.

78. As a proximate result of the aforesaid acts of Defendants, and each of them, Plaintiff has suffered actual, consequential and incidental financial losses, including without limitation, loss of salary and benefits, and the intangible loss of employment related opportunities in her field and damage to her professional reputation, all in an amount subject to proof at the time of trial. Plaintiff claims such amounts as damages pursuant to Civil Code section 3287 and/or section 3288 and/or any other provision of law providing for prejudgment interest.

79. As a proximate result of the wrongful acts of Defendants, and each of them, Plaintiff has suffered and continues to suffer emotional distress, humiliation, mental anguish and embarrassment, as well as the manifestation of physical symptoms. Plaintiff is informed and believes and thereupon alleges that she will continue to experience said physical and emotional suffering for a period in the future not presently ascertainable, all in an amount subject to proof at the time of trial.

80. The acts taken toward Plaintiff were carried out by Defendants' officers, directors, and/or managing agents acting in a despicable, oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner and in conscious disregard for the rights and safety of Plaintiff, and in direct violation of California law, thereby justifying an award of punitive damages in a sum appropriate to punish and make an example of Defendants, and each of them.

81. Defendants had in place policies and procedures that specifically prohibited and required Defendants' managers, officers, and agents to prevent the violation of California Labor

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Codes, against and upon employees of Defendants, based on the protected classes identified in the California Labor Codes §§ 98.6, 232, 200 et seq., and 2751.

82. Defendants had in place policies and procedures that specifically prohibited and required Defendants' managers, officers, and agents to prevent the violation of California Labor Codes, against and upon employees of Defendants, based on the protected classes identified in the California Business and Professions Code § 17200.

83. Defendants' perpetrators were managers, officers, and/or agents of Defendants and were aware of Defendants' policies and procedures requiring Defendants' managers, officers, and agents to prevent, and investigate discrimination, retaliation, and harassment against and upon employees of Defendants, based on the protected classes identified in the California Fair Employment Housing Act.

84. Furthermore, Defendants' perpetrators maintained broad discretionary powers regarding staffing, managing, hiring, firing, contracting, supervising, assessing and establishing of corporate policy and practice in the defendant's facilities.

85. However, Defendants' perpetrators chose to consciously and willfully ignore said policies and procedures and therefore, their outrageous conduct was fraudulent, malicious, oppressive, and was done in wanton disregard for the rights of Plaintiff and the rights and duties owed by each Defendant to Plaintiff.

86. Each Defendant aided, abetted, participated in, authorized, ratified, and/or conspired to engage in the wrongful conduct alleged above. Plaintiff should therefore be awarded exemplary and punitive damages against each Defendant in an amount to be established that is appropriate to punish each Defendant and deter others from engaging in such conduct.

TENTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT ("PAGA")

(California Labor Code §2699 et seq.)

(Against Defendant OSO HOME CARE, INC., and DOES 1 – 25 ONLY)

87. Plaintiff hereby incorporates by reference as though fully set forth herein each and every preceding paragraph.

88. Plaintiffs are "aggrieved employees" under PAGA, as they were employed by Defendant Oso Home Care, Inc. during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, they seek to recover on behalf of

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themselves and all other current and formed aggrieved employees of Oso Home Care, Inc., the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

89. Plaintiffs seek to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior court* (2009) 46 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

90. Plaintiffs seek civil penalties pursuant to PAGA for violations of the following Labor Code provisions:

(a) Failure to provide prompt payment of wages to employees upon termination and/or resignation in violation of Labor Code §§201, 202, 203.

(b) Failure to pay employees all earned wages in violation of Labor Code §§206, 208, 215, 216, and 226 et seq.

(c) Failure to furnish wage and hour statements in violation of Labor Code §226 and 2226.3

(d) Failure to pay overtime compensation in violation of Labor Code §1194; and

(e) Retaliation against employees for reporting violations of local, state and/or federal laws, regulations, and/or statutes in violation of Labor Code §1102.5 and retaliation for disclosure of working conditions in violation of Labor Code §232.5

91. With respect to violations of Labor Code §1102.5, Labor Code §1102.5(f) imposes a civil penalty in addition to any other penalty provided by law of ten thousand dollars ($10,000) for each violation of Labor Code §1102.5.

92. Labor Code §2699 et seq. imposes a civil penalty of one hundred dollars ($100) per pay period, per aggrieved employee for initial violations, and two hundred dollars ($200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided, including Labor Code §§201, 202, 203, 206, 208, 226 et seq., 232 and 232.5.

TAYLOR LABOR LAW, P.C.
80 S. Lake Avenue, Suite 860
Pasadena, California 91101
(626) 219-6008 Office
(626) 219-6009 Facsimile

WHEREFORE, Plaintiff prays for judgment as follows:

1. For all actual, consequential and incidental financial losses, including, but not limited to, loss of earnings and employee benefits, according to proof;
2. For injunctive relief;
3. For statutory penalties, according to proof;
4. For general damages, according to proof;
5. For special damages, according to proof;
6. For attorney's fees, according to proof;
7. For prejudgment interest, according to proof;
8. For punitive and exemplary damages, according to proof;
9. For costs of suit incurred herein;
10. For declaratory relief; and,
11. For such other relief that the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: April 7, 2021

TAYLOR LABOR LAW, P.C.

By: Parham Barkhordar

Christopher W. Taylor
Parham Barkhordar
Taylor H. White
Attorneys for Plaintiff
CHRISTINA FLORES

TAYLOR LABOR LAW, P.C.
80 S. Lake Avenue, Suite 860
Pasadena, California 91101
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EXHIBIT B

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

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties, subject to the approval of the Court, that the Action and PAGA Released Claims shall be settled and resolved subject to the following terms and conditions set forth in this Private Attorneys General Act (Cal. Lab. Code § 2698, *et seq*.) Settlement Agreement ("Settlement Agreement"), entered by and between Plaintiff Christina Flores ("Plaintiff"), for herself and on behalf of the State of California and other Aggrieved Employees pursuant to the California Private Attorneys General Act, and Defendants OSO Home Care, Inc. and Randy Bohart ("Defendants") (collectively, the "Parties").

This Settlement Agreement shall be effective upon the date the Court executes the order approving the Settlement Agreement (the "Effective Date").

I. DEFINITIONS

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

1. "Action" means the matter entitled *Christina Flores v. OSO Home Care, Inc., Randy Bohart* San Bernardino Superior Court Case No. CVSB2110068.

2. "Aggrieved Employees" mean all current and former hourly-paid or non-exempt nurses and pharmacists who worked at least one pay period for Defendants in the State of California during the PAGA Period, i.e., from January 13, 2020 through Court Approval of the Settlement Agreement.

3. "LWDA" means the California Labor and Workforce Development Agency.

4. "Complaint" means the claims and allegations set forth in Plaintiff's first correspondence to the California Labor and Workforce Development Agency dated January 13, 2021 and Plaintiff's second correspondence to the California Labor and Workforce Development Agency dated December 2, 2021 ("LWDA Letters") and the Complaint ("Operative Complaint") filed on April 7, 2021.

5. "Court" or "San Bernardino Superior Court" means the Superior Court of California for the County of San Bernardino.

6. "Defendants" mean OSO Home Care, Inc. and Randy Bohart.

7. "Defense Counsel" or "Counsel for Defendants" means Katherine C. Den Bleyker and Michael P. Witczak of Lewis Brisbois Bisgaard & Smith LLP, 633 West 5th Street, Suite 4000, Los Angeles, California 90071.

8. "Employee PAGA Portion" is the amount to be distributed to the Aggrieved

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Employees, which shall consist of 25% of the PAGA Penalties Amount, as provided in Section III.3 herein.

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

10. "Gross Settlement Amount" is the sum of Three Hundred Fifty Thousand Dollars and Zero Cents ($350,000.00), which represents the total amount payable under this Settlement Agreement by Defendants, and includes the Employee PAGA Portion payable to Aggrieved Employees, LWDA Payment payable to the LWDA, Court-Awarded Attorneys' Fees (not to exceed $116,666.67) to Plaintiff's Counsel, Court-awarded Litigation Costs (not to exceed $15,000.00) to Plaintiff's Counsel, Court-Awarded Payment to the Settlement Administrator for Settlement Administration Costs (not to exceed $15,000).

11. "Plaintiff's Counsel" means Parham Barkhordar, Esq. of Taylor Labor Law, APC 80 S Lake Ave Suite 860, Pasadena, CA 91101.

12. "Net Settlement Amount" is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts are subtracted from the Gross Settlement Amount: (a) Attorneys' Fees to Plaintiff's Counsel; (b) Litigation Costs to Plaintiff's Counsel; and (d) Settlement Administration Costs to Settlement Administrator.

13. "PAGA" means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

14. "LWDA Payment" means the amount to be paid to the LWDA, which is seventy-five percent (75%) of the Other PAGA Penalties Amount as set forth in Section III.3 herein.

15. "PAGA Period" means the time period from January 13, 2020 through Court Approval of the Settlement Agreement.

16. "PAGA Released Claims" mean any and all claims, rights, demands, liabilities and causes of action for civil penalties under the PAGA asserted, or that could have been asserted in the Complaint, including, but not limited to, those under California *Labor Code* §§ 201, 202, 203, 204, 208, 215, 216, 226, 226.3, 1194, 1198, 1102.5, 232, 232.5, 206, 208, 232, Wage Order sections 12 and a California *Civil Code* § 1542 release as to those sections, that arose during the PAGA Period, based on the factual allegations pled in the operative complaint in the Action.

17. "Released Parties" mean Randy Bohart and OSO Home Care, Inc., and their former, present and future owners, parents, and subsidiaries, and all of their current, former and future spouse(s), children, officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, predecessors, successors, assigns, accountants, reinsurers, insurers, or legal representatives.

18. "Settlement Administrator" means Simpluris, Inc. a third-party administrator who shall administer the Settlement, subject to approval by the Court, in accordance with this

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Settlement Agreement, and whose costs and expenses to administer the Settlement are currently estimated not to exceed $15,000 ("Settlement Administration Costs").

II. RECITALS

1. Plaintiff filed her Operative Complaint against Defendants on April 7, 2021. Plaintiff's Complaint alleged the individual causes of action on behalf of herself and civil penalties on behalf of himself and a PAGA group of all current and former hourly employees of Defendants: (1) failure to pay earned wages pursuant to California Labor Code sections 204, 206, 218.5, and 218.6 and the applicable IWC Wage Order; (2) failure to furnish wage and hour statements pursuant to California Labor Code sections 226 and 226.3; (3) failure to pay overtime wages pursuant to California Labor Code sections 203, 204, 1194, and 1198 and the applicable IWC wage order; (4) violation of Labor Code section 232.5; (5) violation of Labor Code section 1102.5; (6) violation of Labor Code section 232; (7) waiting time penalties pursuant to Labor Code sections 201, 202, and 203; (8) unfair business practices in violation of Business and Professions Code section 17200 et seq.; (9) wrongful termination (constructive discharge) in violation of public policy; and (10) violation of the Private Attorneys General Act ("PAGA").

2. On December 14, 2021, the Parties participated in mediation before mediator Kelly Knight, Esq, after undertaking investigation and exchange of information and documents via formal discovery pertaining to Plaintiff and the Aggrieved Employees.

3. On December 14, 2021, the Parties agreed to fully and finally resolve the Action and the PAGA Released Claims as to Plaintiff, the State of California, and the Aggrieved Employees.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

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

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2. **Gross Settlement Amount**. Defendants shall pay $350,000.00 as the Gross Settlement Amount. Defendants will not pay more than the Gross Settlement Amount.

3. **Net Settlement Amount**. The Parties agree that the Net Settlement Amount shall be distributed to the LWDA and Aggrieved Employees as follows: Seventy-five percent (75%) of the Net Settlement Amount shall be distributed to the LWDA (i.e., the LWDA Payment) and twenty-five percent (25%) of the Net Settlement Amount shall be distributed to the Aggrieved Employees on a *pro rata* basis, based on their respective number of pay periods worked for Defendants during the PAGA Period. Payments to Aggrieved Employees of their share of the Other PAGA Penalties Amount shall be referred to as "PAGA Penalty Payment(s)." Each Aggrieved Employee will be paid a non-wage check for the PAGA Penalty Payment, and will receive an IRS Form 1099 for said payment.

4. **Attorneys' Fees Payment and Litigation Costs Payment**. Defendants will not oppose Plaintiff's request for an award of attorneys' fees in the amount up to $116,666.67 ("Attorneys' Fees") and litigation costs and expenses in the amount up to $15,000.00 incurred in prosecuting this Action ("Litigation Costs"), to Plaintiff's Counsel. In the event the Court approves a payment of less than $116,666.67 for Attorneys' Fees and/or less than $15,000.00 for Litigation Costs to Plaintiff's Counsel, the difference will be a part of the Net Settlement Amount. The Attorneys' Fees and Litigation Costs payments will be reported on an IRS Form 1099 issued to Plaintiff's Counsel.

5. **Settlement Administration Costs**. Defendants will not oppose Plaintiff's request for payment in the amount up to $15,000 to the Settlement Administrator for administering the Settlement. In the event the Court approves a payment of less than $15,000 or Settlement Administration Costs, the difference will be a part of the Net Settlement Amount. Settlement Administration Costs will be reported on an IRS Form 1099 issued to the Settlement Administrator.

6. **Plaintiff's Release of Claims and Waiver of California Civil Code section 1542**. In consideration of payment under the Settlement, and upon the funding of the Settlement by Defendants, Plaintiff shall be deemed to release the Released Parties from any and all PAGA Released Claims and any other claims that he may have against the Released Parties, including and not limited to, all complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including attorneys' fees and costs actually incurred, other than as otherwise provided herein) of any nature whatsoever, known or unknown, suspected or unsuspected, including, but not limited to, any claim for damages related to Plaintiff's employment with Defendants, the separation of her employment, rights arising out of alleged violations of any contracts, express or implied, any covenant of good faith and fair dealing, express or implied, or any tort including defamation, any claim of wrongful termination, retaliation, or wage and hour violations, or any legal restrictions of Defendants' right to terminate employees, or any federal, state or other governmental statute, regulation or ordinance, including, without limitation: (1) the Civil Rights Act of 1964, as amended; (2) 42 U.S.C. § 1981; (3) the California Government Code; (4) section 503 of the Rehabilitation Act of 1973; (5) the Americans with Disabilities Act; (6) the Fair Labor Standards Act (including the Equal Pay Act); (7) the California Constitution; and (8) the California

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Labor Code, which Plaintiff now has, owns or holds, or claims to have, own or hold, or which Plaintiff at any time heretofore had, owned or held, or claimed to have owned or held against any of the Released Parties relating to any conduct occurring prior to and including the date of execution of this Settlement Agreement (collectively, "Plaintiff's Released Claims"). Plaintiff represents that she is not aware of any claims he may have against the Released Parties other than the PAGA Released Claims and Individual Claims asserted in the same Action, resolved by separate agreement. As a material inducement for Defendants to enter into this Settlement, Plaintiff waives any and all rights and benefits conferred by the provisions of section 1542 of the California Civil Code and any similar law of any state or territory of the United States or other jurisdiction. Section 1542 of the California Civil Code provides as follows:

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

Plaintiff understands and acknowledges that this Settlement Agreement is meant to include, to the fullest extent, all PAGA Released Claims and other claims which Plaintiff does not know or suspect to exist in her favor against the Released Parties.

7. **PAGA Released Claims**. Upon the funding of the Settlement by Defendants, Plaintiff, Aggrieved Employees, and the State of California will be forever barred from pursuing any and all PAGA Released Claims defined in Section I.16 herein. This release of claims only covers those civil penalties which are recoverable under PAGA, and does not otherwise cover individual, underlying claims or causes of action that Aggrieved Employees may have under the law against Released Parties for violations of the California Labor Code.

8. **Covenants and Representations by Plaintiff and Plaintiff's Counsel**. Plaintiff represents and warrants that she has not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement Agreement.

Plaintiff acknowledges that she has read this Settlement Agreement, that she fully understands his rights, privileges, and duties under the Settlement Agreement, and enters into this Settlement Agreement freely and voluntarily. Plaintiff further acknowledges that she has had the opportunity to consult with her attorneys to explain the terms of this Settlement Agreement and the consequences of signing this Settlement Agreement.

9. **Limited Disclosure and No Publicity**. Except as provided below, to the extent necessary to effectuate the Settlement or as required by the PAGA statute, a court of law, or legal process, neither Defendants, Defense Counsel, Plaintiff, nor Plaintiff's Counsel will publicize the terms of this Settlement Agreement or issue a press release, hold a press conference, publish information about the Settlement on any website or through any social media, or otherwise publicize the Settlement or communicate its terms in public or in private, unless ordered by the

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Court. Any breach of disclosure will result in a payment of liquidated damages in the amount of 2% of the Settlement by the breaching party to the non-breaching party.

10. **Filing of Motion for Approval of Settlement by Plaintiff's Counsel.** Plaintiff's Counsel shall be responsible for preparing the Motion for Approval of the Settlement ("Motion") and providing Defense Counsel with an opportunity to propose revisions to the Motion prior to filing. Plaintiff's Counsel will file the Motion, which is mutually agreed to by the Parties, as soon as practicable. Plaintiff's Counsel will serve the Motion on Defendants' Counsel and submit it to the LWDA. Pursuant to California Labor Code section 2698, *et seq.*, Plaintiff's Counsel shall undertake all required submissions and disclosures to the LWDA and the Court to obtain approval of the Settlement.

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

12. **Dismissal**. The Settlement Administrator will provide the Parties with a declaration confirming that distribution of payments has been completed in accordance with the Settlement Agreement and the Court's orders within ten (10) business days of distributing all payments under the Settlement. Plaintiff's Counsel will file the declaration with the Court and required dismissal papers (i.e., a Request for Dismissal of the Action with prejudice) within ten (10) business days of receipt or as otherwise ordered by the Court. This Settlement Agreement is expressly conditioned upon the Court entering the dismissal of the Action in its entirety. The dismissal will not release or bar any claims other than all claims as to Plaintiff pursuant to Cal. Code Civ. Proc. Section 1542, and the PAGA Released Claims as to Plaintiff, Aggrieved Employees, and State of California.

IV. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator**. The Parties have mutually selected Simpluris, Inc. to handle the administration of this Settlement, subject to approval by the Court.

2. **Notice to Aggrieved Employees**.

a. No later than twenty-one (21) business days after the Effective Date, Defendants shall provide the Settlement Administrator with a list of the Aggrieved Employees (the "Aggrieved Employees List"). The Aggrieved Employees List shall include each Aggrieved Employee's full name, last known mailing address, start and end date(s) of employment or total

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pay periods worked for Defendants in California during the PAGA Period, and Social Security number, to the extent available from Defendants' records. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and shall only access and use the list to administer the Settlement in conformity with the Court's orders. Defendants will in good faith compile from its records the Aggrieved Employees List and provide it to the Settlement Administrator in a computer-readable format, such as a Microsoft Excel spreadsheet.

b. No later than twenty-one (21) calendar days after receipt of the Gross Settlement Amount from Defendants, the Settlement Administrator will mail the Employee Payments under cover letter, substantially in the form attached hereto as "**Exhibit A**" ("Cover Letter"), to each of the Aggrieved Employees identified on the Aggrieved Employees List. Prior to mailing the Cover Letter, the Settlement Administrator shall check the addresses provided in the Aggrieved Employees List using the United States Postal Service's National Change of Address database and update the addresses for known address changes. Should any of the mailings to the Aggrieved Employees of their Cover Letter and Employee Payments be returned as undeliverable within thirty (30) calendar days of mailing, the Settlement Administrator will have five (5) calendar days after it receives the returned undeliverable mail to search for a more current address for the Aggrieved Employee (via a skip trace or other reasonable method) and re-mail the Cover Letter and Employee Payments to any alternative or updated address obtained by the Settlement Administrator.

3. **Deposit and Distribution of Gross Settlement Amount**.

a. No later than thirty (30) business days from the Effective Date ("Funding Date"), Defendants shall fund the Gross Settlement Amount into an account established by the Settlement Administrator, for administration and distribution in accordance with this Settlement Agreement and the Court's orders.

b. The Settlement Administrator shall distribute payments for the Attorneys' Fees, the Litigation Costs, the Settlement Administration Costs, the Employee Payments, and the LWDA Payment within twenty-one (21) calendar days after receipt of the Gross Settlement Amount from Defendants. All payments provided for by this Settlement Agreement shall be made by the Settlement Administrator in accordance with this Settlement Agreement and the Court's order approving this Settlement.

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

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V. MISCELLANEOUS PROVISIONS

1. **No Impact on Employee Benefit Plans**. Neither the Settlement Agreement nor any amounts paid to Plaintiff, any Aggrieved Employee, or the LWDA under the Settlement will modify any previously credited hours or service under any employee benefit plan, policy, or bonus program sponsored by Defendants. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Defendants' sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement Agreement shall not be applied retroactively, currently, or on a going-forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any Defendants' benefit plan, policy, or bonus program. Defendants retain the right, if necessary, to modify the language of their benefit plans, policies, and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement Agreement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies, and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

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

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

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

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

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enforce the terms, conditions, and obligations of the Settlement Agreement.

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

7. **Authorization to Enter into Binding Settlement Agreement**. Defendants represent and warrant that the undersigned has the authority to act on behalf of Randy Bohart and OSO Home Care, Inc. and to bind Randy Bohart and OSO Home Care, Inc. to the terms of this Settlement Agreement. Plaintiff represents and warrants that he has the capacity to act on his own behalf and on behalf of all who might claim through him to bind him to the terms and conditions of this Settlement Agreement. Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any Settlement and/or mediation privileges and/or confidentiality provisions that otherwise might apply under federal or state law.

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

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

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

11. **Invalidity of Any Provision**. Before declaring any provision of this Settlement

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Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Settlement Agreement valid and enforceable.

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

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

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

IN WITNESS THEREOF, the Parties each acknowledge that they have read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement, and hereby executes it voluntarily and with full understanding of its consequences.

PLAINTIFF:

Dated: March 8, 2022 | 4:05:39 PM PST

By: DocuSigned by: 0A7656F2B6E34CA...
Christina Flores

DEFENDANT OSO HOME CARE, INC.

Dated: _____

By: _____
Randy Bohart

DEFENDANT RANDY BOHART

Dated: _____

By: _____
Randy Bohart

Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Settlement Agreement valid and enforceable.

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

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

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

IN WITNESS THEREOF, the Parties each acknowledge that they have read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement, and hereby executes it voluntarily and with full understanding of its consequences.

PLAINTIFF:

Dated: _____ By: _____
Christina Flores

DEFENDANT OSO HOME CARE, INC.

Dated: 3/7/2022 By: _____
Randy Bohart

DEFENDANT RANDY BOHART

Dated: 3/7/2022 By: _____
Randy Bohart

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APPROVED AS TO FORM AND CONTENT:

TAYLOR LABOR LAW, PC

Dated: March 8, 2022 | 10:02:26 AM PST

By: DocuSigned by: Parham Barkhordar 3EE1C713E8CB4D3...

Parham Barkhordar, Esq.
Attorneys for Plaintiff
Christina Flores

LEWIS BRISBOIS BISGAARD & SMITH LLP

Dated: _____

By: _____

Katherine C. Den Bleyker
Michael P. Witczak
Attorneys for Defendants
Randy Bohart and OSO Home Care, Inc.

APPROVED AS TO FORM AND CONTENT:

TAYLOR LABOR LAW, PC

Dated: _____

By: _____
Parham Barkhordar, Esq.
Attorneys for Plaintiff
Christina Flores

LEWIS BRISBOIS BISGAARD & SMITH LLP

Dated: 3/17/22

By: _____
Katherine C. Den Bleyker
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