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Attorneys for Defendant  
English Channel Holdings, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN JOAQUIN

DORA BERRY, an individual,

Plaintiff,

v.

ENGLISH CHANNEL HOLDINGS, LLC, a  
limited liability company dba Lodi Creek  
Post-Acute; and DOES 1-100, inclusive,

Defendants.

Case No.: STK-CV-UOE-2021-0003989

STIPULATION OF SETTLEMENT UNDER  
PRIVATE ATTORNEYS GENERAL ACT OF  
2004; [PROPOSED] ORDER

The Parties hereto, Plaintiff Dora Berry ("Plaintiff") as a proxy for the Labor and  
Workforce Development Agency ("LWDA"), and Defendant English Channel Holdings, LLC  
("Defendant"), by and through their respective counsel of record, hereby stipulate and agree as  
follows:

8           3.       WHEREAS, Plaintiff subsequently caused to be dismissed, without prejudice, all  
9 causes of action save for that under the PAGA, such that this case is not a class action;

16           5.       WHEREAS, Defendant denies all of Plaintiff's allegations, both on factual and legal  
17 bases.

26           7.       WHEREAS, at mediation the Parties reached agreement on the terms of settlement  
27 regarding the PAGA claims.

9. WHEREAS, Plaintiff and Plaintiff's counsel concluded—after taking into account the sharply disputed factual and legal issues involved in the Action, the risks attending further prosecution, the discovery and investigation conducted to date, and the substantial benefits received and to be received pursuant to the compromise and settlement of the Action, the nature of the claimed violations and the wide discretion of the Court to reduce civil penalties imposed—that settlement on the terms herein set forth is in the best interest of all interested parties, including the Labor and Workforce Development Agency (the “LWDA”), and that the settlement adequately serves the policy purposes of the PAGA.

1           10.       WHEREAS, Plaintiff and Plaintiff's counsel have balanced their evaluation of the  
2       validity and strength of the asserted claims against the problems of proof and the legal standards  
3       governing the claims alleged. Based on the information obtained through discovery, Plaintiff's  
4       counsel estimates that the maximum amount of civil penalties that could be obtained in this action  
5       is in excess of \$150,000. Based on this evaluation, Plaintiff's counsel believes that the settlement  
6       reached satisfies the public policies of PAGA.

11. WHEREAS, similarly, Defendant and Defendant's counsel concluded there were benefits associated with settling. Although Defendant denies the various allegations and challenges the validity of each of the causes of action in the Action, Defendant took into account the sharply disputed factual and legal issues involved in the Action, the risk attending further defense, the expense, time, and burden of protracted litigation, and the desire to put the controversy to rest. Based on these factors, Defendant and Defendant's counsel agreed to this settlement without any admission of fault or liability. Nothing in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued, or used during the course of the negotiations leading to this Agreement, is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any judicial, arbitral, administrative,

1 investigative, or other forum or proceeding as evidence of any violation of any federal, state, or  
2 local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or  
3 in equity, against Defendant or any other Released Party (as defined in paragraph 13, *infra*).

4 12. WHEREAS, the parties hereby agree to settle the PAGA claims at issue in the  
5 Action ("the PAGA Settlement") for a total payment of **\$65,000.00** and dismiss with prejudice the  
6 Sixth Cause of Action under the PAGA.

7 13. WHEREAS, the persons covered by the PAGA Settlement will be Plaintiff and all  
8 other persons who were employed by Defendant in California as nonexempt employees, at any  
9 time from March 1, 2020 to February 10, 2022 (this time period is referred to as the "PAGA  
10 Timeframe"). The Released Parties include Defendant, its parents, predecessors, successors,  
11 related companies, subsidiaries, affiliates, partners, officers, directors, managers, servants, agents,  
12 employees, former employees, future employees, future entities, trusts, employment agencies and  
13 professional employer organizations, and their employees, officers, agents, representatives,  
14 attorneys, past or present, insurers, stockholders, fiduciaries, and other service providers, and their  
15 successors and assigns, and all persons acting under, by, through, or in concert with any of them  
16 (hereinafter collectively referred to as the "Released Parties").

17 14. Upon the Effective Date (the date this order is signed by the Judge), the LWDA and  
18 each of the Other Aggrieved Employees, including Plaintiff, shall fully, finally and forever release,  
19 settle, relinquish and discharge the Released Parties from any and all claims for civil penalties for  
20 those violations of the Labor Code as asserted in the original PAGA Notice filed with the LWDA,  
21 or operative complaint in this action. This release includes any and all claims for civil penalties for  
22 violations of the Labor Code, fees and costs based on the facts and claims asserted in the operative  
23 complaint filed in this Action, including without limitation, failure to properly calculate and pay  
24 overtime; failure to properly calculate and pay sick pay; failure to furnish accurate itemized wage  
25 statements; or any other allegation and claims which are reasonably related to the allegations and  
26 claims asserted in the operative complaint filed in this action, or could have been asserted in the  
27 operative complaint ("PAGA Released Claims"). This release shall apply to claims arising at any

point between March 1, 2020 to February 10, 2022.

15. Neither the Settlement Administrator's distribution of Individual Settlement Payment checks to, nor the use or enjoyment of any Individual Settlement Payment checks by Other Aggrieved Employees shall constitute consideration offered or exchanged for the release of any Other Aggrieved Employees' private rights of action against any person.

16. WHEREAS, the sum of \$65,000 (the "Gross PAGA Settlement Sum") shall be allocated as follows:

- a. \$21,667, representing approximately 33 1/3% of the Gross PAGA Settlement Sum as attorneys' fees incurred for prosecution of the PAGA Claim; and
- b. \$7,482.61 for costs of suit; and
- c. \$2,150 as professional fees and costs of the Settlement Administrator, Phoenix Settlement Administrators.

The Net PAGA Settlement Amount of \$33,700.39 will be further allocated as follows:

- e. \$8,425.10 or 25 percent (25%) of the Net PAGA Settlement Sum will be distributed by Settlement Administrator to Plaintiff and the Other Aggrieved Employees who worked during the PAGA Timeframe. Each employee will receive a proportional share of the net PAGA Settlement Sum based on the number of pay periods he/she was employed during the PAGA Timeframe. Any such employees still employed with or on behalf of Defendant will receive the appropriate credit apart from their regular pay. Settlement Administrator will send each Other Aggrieved Employee their portion of the settlement by mail to the last known address. Settlement checks issued to the Other Aggrieved Employees pursuant to this Agreement shall expire 180 days from the date they are issued. Any unclaimed funds after the 180 days shall be remitted to the LWDA.
- f. \$25,275.29, or 75 percent (75%) of the Net PAGA Settlement Sum shall be paid to the LWDA in accordance with Section 2699(i) of the California Labor Code.

17. WHEREAS, on the condition that the Court approves this Stipulation and enters the attached Order: the PAGA Settlement Sum will be paid as follows:

- a. Within twenty (20) calendar days after the Effective Date, Defendant shall pay the Gross PAGA Settlement Sum to the Settlement Administrator and shall provide the Settlement Administrator with a list of the names and last-known addresses of the Other Aggrieved Employees. Within ten (10) calendar days of receipt of the Gross PAGA Settlement Sum, the Settlement Administrator shall

(1) pay attorney's fees to Mayall Hurley P.C. in the amount of \$21,667, and costs in the amount of \$7,482.61; (2) pay \$25,275.29 to the LWDA; (3) pay the Individual Settlement Payments to the Other Aggrieved Employees; and (4) retain \$2,150 for its fees and costs.

- b. With regard to the Other Aggrieved Employees with the exception of Plaintiff, their Individual Settlement Payments shall be sent to each Other Aggrieved Employee by U.S. First Class mail to the Other Aggrieved Employee's last known address. A letter explaining this Settlement Agreement will be included in the mailing of each Other Aggrieved Employee's check. Plaintiff's payment will be sent with the other consideration provided for resolution of his individual claims. It will be conclusively presumed that any Other Aggrieved Employee's check was received if the payment check has not been returned within thirty (30) days of the original mailing of the payment check.
- c. Settlement checks shall remain valid and negotiable for one hundred eighty (180) calendar days from the date of their issuance. If there are uncashed checks following this period, Settlement Administrator will ensure that uncashed funds shall be forwarded to the State Controller's Unclaimed Property Fund in the name of the Other Aggrieved Employee who did not cash his or her Individual Settlement Payment, if practicable.
- d. The settlement payments set forth above will be reported on IRS Form 1099s. The Parties acknowledge and agree that all settlement payments set forth under this Agreement are attributable as penalties. None are attributable as wages. Accordingly, the parties acknowledge and agree that Defendant is not responsible for any employer-side taxes in connection with any PAGA settlement payments under this Agreement. Plaintiff, Mayall Hurley P.C., and the Other Aggrieved Employees shall be solely responsible for the reporting and payment of their share of any federal, state and/or municipal income or other taxes on payments made pursuant to this Agreement, and shall hold Defendant and Defendant's counsel free and harmless from any claims resulting from treatment of such payments as non-taxable, including the treatment of such payments as not subject to withholding or deduction for payroll and employment taxes. No party has made any representation to any of the other Parties as to the taxability of any payments pursuant to this agreement, including the payments to Plaintiff and the Other Aggrieved Employees, the payments to Plaintiff's counsel, or otherwise as to the tax implications of any provision of this Agreement.

18. The Parties jointly request that the Court approve the penalties sought as part of the PAGA Settlement and approve the dismissal of the PAGA claims in the Complaint attendant therewith.

19. This Stipulation is made for the sole purpose of settling this Action. This

1 Stipulation and the settlement it evidences are made in compromise of disputed claims. Because  
2 this action was pleaded as a PAGA action, this Stipulation must receive approval by the Court.  
3 Accordingly, the Parties enter into this Stipulation and associated settlement on a conditional basis.  
4 If the Court does not enter an order granting approval of this Stipulation, this Stipulation shall be  
5 deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or  
6 utilized for any purpose whatsoever; and the negotiation, terms and entry of the Stipulation shall  
7 remain subject to the provisions of California Evidence Code sections 1119 and 1152, Federal Rule  
8 of Evidence 408, and any other analogous rules of evidence that may be applicable. If the Court  
9 does enter an order granting approval of this Stipulation, the Parties shall file a Request for  
10 Dismissal which includes a dismissal of the PAGA claims in the Complaint.

11 20. The Parties and their counsel agree that they will not issue any press releases,  
12 initiate any contact with the press, respond to any press inquiry or have any communication with  
13 the press about the fact, amount or terms of this Stipulation. In addition, the Parties and their  
14 counsel agree that they will not engage in any advertising or distribute any marketing materials  
15 relating to this Stipulation or this action in any manner that identifies Defendant, including but not  
16 limited to any postings on any websites maintained by Plaintiff's counsel. Neither Plaintiff nor  
17 Plaintiff's Counsel will discuss the terms or the fact of this Agreement with third parties other than  
18 (1) their immediate family members, or (2) their respective accountants or lawyers as necessary for  
19 tax purposes. Plaintiff and Plaintiff's Counsel agree not to publish any of the terms or conditions  
20 of this Stipulation in any manner that identifies Defendant.

21 21. Plaintiff's attorney has calculated the attorneys' fees included in paragraph 16. The  
22 Parties agree that if the Court approves an amount of attorneys' fees less than the amount set forth  
23 in Paragraph 16, the unapproved portion shall revert to the Net PAGA Settlement Amount to be  
24 distributed between the Plaintiff, the Other Aggrieved Employees and the LWDA in the same  
25 percentages as set forth in Paragraph 16.

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IT IS SO STIPULATED.

PLAINTIFF AND PLAINTIFF'S COUNSEL

DATED: 2/28/2022

DocuSigned by:  
  
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Plaintiff Dora Berry

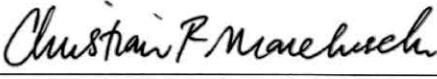
DATED: 2/28/2022

MAYALL HURLEY P.C.  
  
By:   
John P. Briscoe  
Attorneys for Plaintiff Dora Berry

DEFENDANT AND DEFENDANT'S COUNSEL

English Channel Holdings, LLC

DATED: 2/28/2022

By:   
Christian Marcheschi, Lodi Creek Administrator

DATED: 3/2/2022

PAUL, PLEVIN, SULLIVAN &  
CONNAUGHTON LLP

By:   
Sandra L. McDonough  
Eva A. Adel  
Attorneys for Defendant English Channel  
Holdings LLC

**ORDER**

Upon review of the foregoing stipulation entered into by and between the parties in the above-referenced action, and good cause appearing therefor,

**IT IS HEREBY ORDERED** that the foregoing stipulation is hereby approved and the Court approves the Parties' PAGA Settlement pursuant to Labor Code § 2699(l). The parties are ordered to perform their respective duties as stipulated thereto.

**DATED:**

\_\_\_\_\_  
Judge of the Superior Court