

LAW OFFICES OF  
**THOMAS M. DIACHENKO, APC**  
ATTORNEYS AT LAW  
1916 Third Avenue  
San Diego, California 92101  
(619) 699-5870

Thomas M. Diachenko, Esq. (SBN 140763)  
Attorneys for Plaintiff, Jamie Thomas

**WILSON, ELSNER, MOSKOWITZ,  
EDELMAN & DICKER, LLP**  
401 West A Street, Suite 1900  
San Diego, CA 92101  
(619) 321-6200

John Clifford, Esq. (SBN 124203)  
Attorneys for Defendants,  
San Diego Youth Services, Walter Phillips,  
Anthony Parham, Kayla Kelly and Steven Jella

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO**

JAMIE THOMAS, individually and on  
behalf of all other aggrieved employees, and  
the state of California

Plaintiff,

v.

SAN DIEGO YOUTH SERVICES, a  
California corporation; WALTER  
PHILLIPS, ANTHONY PARHAM,  
KAYLA KELLY and STEVEN JELLA,  
individuals, and; DOES 1-100 inclusive,

Defendants.

Case Number: 37-2021-00006092-CU-OE-CTL  
(Consolidated with Case No.: 37-2021-  
00040945-CU-OE-CTL)

**JOINT STIPULATION TO APPROVE  
PAGA SETTLEMENT**

Complaint Filed: February 9, 2021  
Judge: Hon. James Mangione  
Department: C-75  
Trial Date: March 29, 2024

AND CONSOLIDATED ACTION

TO THIS COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

JOIN STIPULATION TO APPROVE PAGA SETTLEMENT

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WHEREAS, on February 9, 2021, Plaintiff filed his Action in San Diego Superior Court for his individual claims.

WHEREAS, on June 17, 2021, more than 65 days after the LWDA letter, Plaintiff filed his First Amended Complaint in San Diego Superior Court (Case Number 37-2021-00006092-CU-OE-CTL) (the “ACTION”), which included a PAGA representative tenth cause of action for the aforementioned alleged Labor Code violations against Defendants both as an individual and in his capacity as a private attorney general on behalf of the PAGA Settlement Group Members under the PAGA.

///

1 WHEREAS, the First Amended Complaint also contained causes of action brought by  
2 Plaintiff against Defendant SDYS, in his capacity as an individual and on his own behalf, not on  
3 behalf of the Aggrieved Employees, including causes of action for Retaliation, California  
4 Business & Professions Code Section 17200, et seq., and wrongful termination in violation of  
5 public policy, as well as for violations of the California Labor Code sections 558, 558.1, 1197.1,  
6 1194, 200, 201, 202, 203, 204, 215, 226, 226.2, 226.3, 226.4, 500, 510, 512, 1174, 1198, 1199,  
7 2802, and sections of the IWC Wage Order (the "Individual Claims"). THOMAS's individual  
8 claims were consolidated with the individual claims of WILLIAMS and BRETON. Those  
9 individual non-PAGA claims were settled separately and are subject to a separate Confidential  
10 Individual Settlement & Release. The Parties have agreed that payment of the individual funds is  
11 contingent upon the Court's approval of this PAGA Settlement, the details, and terms of which  
12 are set forth in Exhibit "1", to this stipulation and proposed order.

14 WHEREAS, Plaintiff filed a First Amended Complaint adding a cause of action under the  
15 Private Attorneys General Act (PAGA), Cal. Lab. Code § 2698 et seq. based on the alleged  
16 violations of the Labor Code and Wage Orders. In doing so, Plaintiff, on behalf of the State of  
17 California, sought to represent himself and all other alleged "aggrieved employees" of SDYS  
18 ("PAGA Members") who worked for SDYS from October 31, 2019, through December 31, 2021  
19 ("PAGA Period")

21 WHEREAS, the Parties and their respective Counsel have diligently pursued an  
22 investigation of the PAGA Settlement Group Members' PAGA penalty claims against Defendants.  
23 The Parties engaged in a substantial exchange of information through discovery concerning the  
24 Professional Therapeutic Foster Parent ("PTFP") program.

25 WHEREAS, the Parties disagree on whether Defendants violated any of the Labor Code  
26 provisions alleged by Plaintiff, and Defendants deny all allegations asserted in the ACTION and  
27 maintain that they are not liable for any penalties under PAGA.  
28

JOIN STIPULATION TO APPROVE PAGA SETTLEMENT

1 WHEREAS, the Parties wish to avoid the uncertainties and expense of trial by settling  
2 these disputed claims. The Parties recognize that the issues presented in this matter are likely only  
3 to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation  
4 will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the  
5 potential benefits of litigation.

6 WHEREAS, The Parties have arrived at the settlement after extensive, arms-length  
7 negotiations, taking into account all relevant factors, present and potential. On May 2, 2023, the  
8 Parties engaged in a one-day private mediation session. The Parties made some progress but  
9 determined that additional discovery needed to be performed. Thereafter, the Parties engaged in  
10 additional discovery along with supplemental settlement discussions and reached an arms-length  
11 Settlement on November 21, 2023.

12 WHEREAS, based on their own independent investigations and evaluations, the Parties  
13 and their respective counsel believe and agree that this Agreement, the settlement for the  
14 consideration, and on the terms set forth in this Agreement, is not “unjust, arbitrary and oppressive,  
15 or confiscatory” as required by Labor Code section 2699 (e)(2), and is in the best interests of the  
16 Plaintiff, the PAGA Settlement Group Members and Defendants in light of all known facts and  
17 circumstances and the risks inherent in litigation, including the potential appellate issues.

18 WHEREAS attached hereto as Exhibit “1” is the fully executed PAGA Settlement  
19 Agreement ("PAGA Settlement," or "PAGA Agreement") setting forth the terms of the settlement.

20 WHEREAS the Total PAGA Settlement Amount agreed to in the PAGA Settlement is  
21 \$25,000 (“Settlement Payment”); Attorneys' fees and cost of \$5,000 when deducted from \$25,000  
22 from the Settlement Payment will be referred to as the “Net PAGA Settlement” totaling \$20,000  
23 in PAGA civil penalties. A total of seventy-five percent (75%), or \$15,000, of the Net PAGA  
24 Settlement shall be paid to the Labor and Workforce Development Agency (“LWDA”). The  
25 remaining twenty-five percent (25%), or \$5,000, of the Net PAGA Settlement shall be payable to  
26 the PAGA Members as set forth in the PAGA Settlement (Exhibit 1), the pertinent details of  
27 which are as follows:  
28

JOIN STIPULATION TO APPROVE PAGA SETTLEMENT

1 The payment of the Settlement Sum shall be made within sixty (60) business days  
2 of the Effective Date as follows:

3 (3) Defendants shall deliver a check to the LWDA as and for the LWDA  
4 Penalty Payment, in the amount calculated pursuant to the terms of this  
5 Agreement in the amount of Fifteen Thousand and 00/100 Dollars (\$15,000).

6 (4) Defendants shall deliver a check for Five Thousand (\$5,000) made  
7 payable to the "Law Offices of Thomas Diachenko, APC" delivered via  
8 certified/registered mail to Plaintiff's Counsel at 1916 Third Ave, San Diego, CA  
9 92101.

10 (5) Defendants shall deliver four (4) Net Individual Penalty Payments  
11 of One Thousand Two Hundred Fifty (\$1,250) apiece to each PAGA Settlement  
12 Group Member. Three of those four payments shall be delivered to the Law  
13 Offices of Thomas M. Diachenko, APC" at 1916 3<sup>rd</sup> Avenue, San Diego, CA,  
14 92101 for THOMAS, WILLIAMS, and BRETON and the fourth check to the  
15 last known physical address on file with Defendants in its regularly maintained  
16 records for Gladys/Chris Whitehead. Should the check not be negotiated by the  
17 Whiteheads within 60 days of issuance, Defendants shall re-issue it to the  
18 California LWDA. These checks shall be delivered with the attached proposed  
19 distribution letter attached as Exhibit A to The PAGA Settlement Agreement  
20 (Exhibit 1).

21 The "Effective Date", is defined as the date which this Court approves the PAGA Settlement  
22 and enters an order approving this PAGA Settlement. This first PAGA payments are not due  
23 until 60 days after the Effective Date (date of approval) and 60 days are allotted in the event any  
24 checks are not negotiated within 60 days, it will be re-issued to the LWDA.

25 WHEREAS, pursuant to Labor Code section 2699 (1)(2) the "proposed settlement" is  
26 being "submitted to the agency [LWDA] at the same time that it is submitted to the court."  
27 Plaintiff is providing notice of the PAGA Settlement to the LWDA as set forth in the attached  
28 proof of service. Attached hereto as Exhibit 2 is the e-mail confirmation from the LWDA  
regarding the submission of this Stipulation, Proposed Order and PAGA Settlement & Release  
Agreement.

WHEREAS, the Parties also submit the following additional information by category:  
(1) Pertinent PAGA Case Features, and; (2) The PAGA Procedural Requirements Being  
Satisfied, for the Court's consideration, as needed:

JOIN STIPULATION TO APPROVE PAGA SETTLEMENT

1           1.     **Pertinent PAGA Case Features:** There are several aspects of this case which  
2 are deemed pertinent to the Court's approval of the PAGA Settlement:

3           (a)     Short PAGA Period:

4           Plaintiff submitted his PAGA claim notice to the LWDA on February 24, 2021, which  
5 provides a PAGA period start date of October 31, 2019, if we consider Covid Emergency Rule  
6 9, (which pushes the start date to August 20, 2019), and the PTFP's work start date. The PAGA  
7 period ends on December 31, 2021, only 26 months after it begins, for three of the PTFPs, 7  
8 months for THOMAS, who ceased being a PTFP after May of 2020.

9           (b)     Limited Pay Periods at Issue:

10           The short PAGA period and limited number of PAGA Group Members provides a total  
11 of only, 85 pay periods for all four PTFPs at issue. (SDYS paid the PTFPs monthly.)  
12

13           (c)     Maximum & Minimum Exposure:

14           PAGA penalties are typically determined per pay-period, not how much is owed to the  
15 aggrieved employees for their individual claims. *Lab. Code* § 2699 (f). PAGA penalties are  
16 limited to *civil* penalties. *Arias v. Superior Court* (2009) 46 Cal.4<sup>th</sup> 969, 986-987. The allotment  
17 of \$100 in PAGA penalties for all four PTFPs for every paid period would be \$8,500. Penalties  
18 in the amount of \$20,000 would equate to \$235.29 per pay period. The range of penalties should  
19 this case proceed to trial could range from zero to over double that amount.  
20

21           (d)     The Purpose of the PAGA Not Applicable to a Defendants Currently:

22           The PAGA was enacted in 2004 to allow private enforcement, which was not being  
23 adequately addressed by the California state agencies, "to achieve maximum compliance with  
24 state labor laws". *Arias v. Superior Court*, supra 46 Cal.4<sup>th</sup> at 980. The PAGA "is designed to  
25 protect the public, and the potential impact on remedies other than civil penalties is ancillary to  
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1 the actions primary objective”. *Id.* at 987. The civil penalties are intended to “remediate present  
2 violations and deter future ones.” *Williams v. Superior Court* (2017) 3 Cal.5<sup>th</sup> 531, 546. PAGA  
3 penalties are *civil* (not statutory) penalties. In general, “civil penalties, like punitive damages,  
4 are intended to punish the wrongdoer and to deter future misconduct”. *Kim v. Reins*  
5 *International California, Inc.* (2020) 9 Cal.5<sup>th</sup> 73, 86.  
6

7 None of the PAGA Members were working for SDYS longer than 26 months (after  
8 December 31, 2021, when SDYS ended the PTFP program). Plaintiff has no direct evidence  
9 that Defendant engaged in Labor Code violations against other employees. Accordingly, the  
10 goals of “achieving compliance”, to “deter future misconduct”, to “remediate present violations  
11 and deter future ones” don’t apply here any longer.  
12

13 (e) Discretion Afforded by the PAGA:

14 The “PAGA penalty provisions are subject to a variety of equitable factors which...call  
15 for ‘the type of qualitative evaluation and weighing of a variety of factors that is typically  
16 undertaken by a court, not a jury.’ [Citations]”. (*LaFace v. Ralph’s Grocery Co.*, (2022) 75  
17 Cal.App.5<sup>th</sup> 388, 401.) The court (not a jury) determines PAGA liability, and the amount of  
18 penalties based upon amounts stated in the specific Labor Code sections which are not “unjust,  
19 arbitrary and oppressive, or confiscatory” *Id.*; Labor Code § 2699 (e) (2). “As we have  
20 explained, they are mandatory, not discretionary. Accordingly, section 2699, subdivision (e)(2)  
21 describes the conditions under which a trial court may exercise its discretion to reduce penalties.  
22 It does not specify guidelines for exercising discretion in general with regard to the amount of  
23 penalties, because the amount is fixed by statute. *Cintas* correctly points out that judicial  
24 discretion must be exercised within the confines of the statute that grants the discretion  
25 [citation.], but what this principle means in the context of section 2699, subdivision (e)(2) is that  
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1 a court can only exercise its discretion to award lesser penalties based on the enumerated  
2 considerations.” *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4<sup>th</sup> 1157, 1213.

3 (f) The Other “Aggrieved Employees” Can Pursue Their Own Individual Claims:

4 This is not a class action lawsuit involving wages. Although the law prior to 2018  
5 allowed for recovery of wages in PAGA claims See *Thurman v. Bayshore* (2012) 203  
6 Cal.App.4<sup>th</sup> 1112. Since 2019, the caselaw has been clear that PAGA claims alone no longer  
7 allow for recovery of wages for aggrieved employees. See *ZB N.A. v. Superior Court* (2019) 8  
9 Cal.5<sup>th</sup> 175. “PAGA does not make other potentially aggrieved employees parties or clients of  
10 plaintiff’s counsel, does not impose on a plaintiff or counsel any express fiduciary  
11 obligations...” *Williams, supra*, 3 Cal.5<sup>th</sup> at 546-547.

12 (g) Company Wide Policies Were Compliant with Labor Code:

13 Defendant has had company-wide policies in place (including Defendant’s Employee  
14 Handbook) which were generally compliant with the Labor Code. Liability could not be  
15 established with a company-wide policy but was limited to analysis of the pay practices for  
16 PAGA Members who are no longer providing services as PTFP’s as the PTFP program ended  
17 effective December 31, 2021.

18 (h) Expense of Continued Litigation:

19 The expense of litigating and trying the PAGA claims will be significant based upon  
20 experience and judgment of all counsel. The hours spent *exclusively* on settling these PAGA  
21 claims is more than the \$5,000 being apportioned to attorney fees. Expenses and fees dealing  
22 exclusively with the PAGA claims (as opposed to expenses and time spent on both individual  
23 and PAGA claims which are necessary to establish standing, See *Adolf v. Uber Technologies*  
24 (July 17, 2023), Cal. Supreme Court, S274671. However, should this case proceed to trial  
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1 attorney fees exclusively on representative PAGA claims are likely be hundreds of thousands of  
2 dollars for all counsel involved without any guarantee that liability will be established for the  
3 other alleged “aggrieved employee”. (Diachenko Dec. ¶¶ 5 and 6)

4         At the time of this writing, counsel for Plaintiff has spent ~10 hours *exclusively* working  
5 on the PAGA representative claims. This time does not include to time spent on individual non-  
6 PAGA penalty claims, some of which are necessary to establish liability and standing for the  
7 PAGA claims, while others involved individual claims with no relationship to the PAGA. The  
8 undersigned’s hourly rate for thirty-five years of litigation and trial experience is currently  
9 \$900/hour. Although there is no known jurisdictional basis for the court to approve any  
10 associated attorney fee allotment, Plaintiff’s counsel has chosen to do so for informational  
11 purposes and to the extent that the court may deem it relevant to its PAGA approval criteria.  
12 (See Diachenko Dec. ¶¶ 5-6). In that context, it should be noted that approval of PAGA claims,  
13 should not be based on class action criteria. As the California Supreme Court has recently  
14 reiterated, in *Estrada v. Royalty Carpet Mills, Inc.* (January 18, 2024), Cal. Supreme Court,  
15 S274340:  
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19         “PAGA suits exhibit virtually none of the procedural characteristics of class  
20 actions”. [Citations]... “A class-action plaintiff...represents a multitude of absent  
21 individuals; a PAGA plaintiff, by contrast, represents a single principal,  
22 the...LWDA...[Citations] Thus, because PAGA actions do not adjudicate  
23 individually held claims, the due process rights of third parties are not paramount.  
24 [Citation.] ...[I]n a PAGA action, nonparty employees are not bound with respect  
25 to “remedies other than civil penalties” [Citation.] “PAGA does not make other  
26 potentially aggrieved employees parties or clients of plaintiff’s counsel, does not  
27 impose on a plaintiff or counsel any express fiduciary duty obligations...”

## 28         **2. The PAGA Procedural Requirements Being Satisfied**

       The PAGA procedural requirement of providing notice of this settlement to the LWDA is  
satisfied with the proof of service and Exhibit 2. Plaintiff will also provide the LWDA with the  
Court’s Order approving the PAGA Settlement as required by the statute. The details of how to

1 carry out the requirements and intend of the applicable statute when the statute is silent, was  
2 explained in the recent California Supreme Court decision, stated as follows: "[T]rial courts have  
3 numerous tools that can be used to manage complex cases generally..., and the trial of complex  
4 cases, including cases involving PAGA claims." *Estrada v. Royalty Carpet Mills, Inc.*, *supra* at  
5 pp. 40-41.

6 To that end, the Parties (1) propose the Employee Notice set forth in Exhibit "A" to the  
7 attached PAGA Settlement in Exhibit 1 as the cover letter for Individual Settlement Checks to the  
8 aggrieved PAGA Group Member, and (2) request that this Court maintain jurisdiction over this  
9 matter until the Parties, through their respective counsel file a stipulation with the Court verifying  
10 compliance and set a PAGA Settlement Compliance Hearing Date at least 120 days after the  
11 Court enters an Order approving the PAGA Settlement.

12 **IT IS SO STIPULATED.**

13  
14 DATE: 1/29/2024

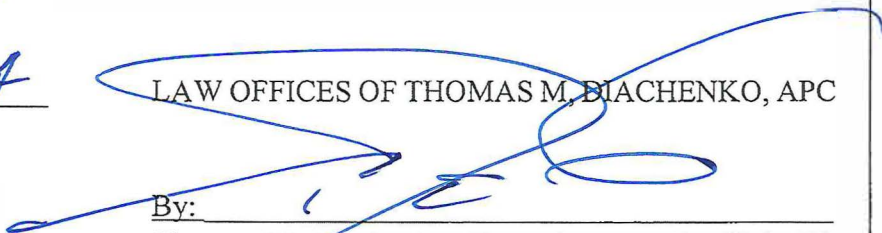
WILSON ELSEY MOSKOWITZ EDELMAN &  
DICKER LLP

15  
16 By: 

17 John R. Clifford, Esq., Attorney for Defendants,  
18 San Diego Youth Services, Walter Phillips, Anthony  
Parham, Kayla Kelly, and Steven Jella

19  
20  
21 DATE: 1/29/24

LAW OFFICES OF THOMAS M. DIACHENKO, APC

22  
23 By: 

24 Thomas M. Diachenko, Esq., Attorney for Plaintiffs  
25 Jamie Thomas, Ellen Williams, and Alicia Breton  
26 individually, and on behalf of all aggrieved employees,  
27 and the state of California  
28

JOIN STIPULATION TO APPROVE PAGA SETTLEMENT

**EXHIBIT 1**

## PAGA SETTLEMENT & RELEASE AGREEMENT

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Jaime Thomas ("Plaintiff"), for himself and on behalf of the State of California and all alleged "aggrieved employees" (aka "Group Members") pursuant to the Private Attorneys General Act ("PAGA") on the one hand, and Defendants San Diego Youth Services ("SDYS"), Walter Philips, Anthony Parham, Kayla Kelly and Steven Jella (hereinafter collectively referred to as the "Defendants"), on the other (collectively, the "Parties"), subject to the approval of the Court in accordance with California Labor Code section 2699(1)(2), that the Settlement of this Action shall be effectuated upon and subject to the following terms and conditions.

### **I. DEFINITIONS**

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

(a) "PAGA Action" means the tenth cause of action pled in the civil action filed in San Diego County Superior Court by Plaintiff against Defendants (Case Number 37-2021-00006092-CU-OE-CTL), in which Plaintiff asserts a representative PAGA claim for PAGA penalties against Defendants.

(b) "Agreement" means this PAGA Settlement & Release Agreement.

(c) "Court" means the Superior Court for the State of California, County of San Diego.

(d) "Defendants" means the Defendants in this Action, San Diego Youth Services, Walter Philips, Anthony Parham, Kayla Kelly and Steven Jella.

(e) "Defense Counsel" or "Counsel for Defendant" means:

John R. Clifford (SBN124203)  
Wilson Elser Moskowitz Edelman & Dicker LLP  
401 West A Street, Suite 1900  
San Diego, CA 92101  
Telephone: 619.881.3317  
Fax No.: 619.321.6201  
Email: [John.Clifford@wilsonelser.com](mailto:John.Clifford@wilsonelser.com)

(f) "Effective Date" means the date by which the Court has entered the Order approving the Joint Stipulation to approve the Settlement Sum in the Agreement which will be sought by the Parties.

(g) "Order" means: (1) the Court order entered approving this Agreement and all of its terms, which will be sought by the Parties through a Joint Stipulation of the Parties for purposes of approval of the Settlement Sum in the Agreement; (2) the Court adopting and approving this Agreement (and the terms of Settlement described herein) under the specific terms requested; and (3) the Court retaining jurisdiction over the enforcement, implementation, construction, administration, and interpretation of the Settlement.

(h) "LWDA" means the State of California Labor and Workforce Development Agency.

(i) "Named Plaintiff" or "Plaintiff" means Jaime Thomas.

(j) “PAGA” means the Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq.*

(k) “PAGA Claim” means Plaintiff’s claim for PAGA penalties that: (1) arose or may be alleged to have arisen at any time from October 31, 2019 until December 31, 2021, and (2) are based on or arise from alleged violations of the following Labor Code provisions including but not limited to : 201, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 245, 246, 510, 512, 552, 558 *et seq.*, 1174, 1175, 1194, 1197, 1198, 1199, 2751, and 2802, and the Industrial Welfare the Industrial Welfare Commission’s Wage Orders.

(l) “PAGA Settlement Group Members” means Plaintiff, and all Professional Therapeutic Foster Parents (hereinafter “PTFP’s”) which contracted with SDYS between October 31, 2019 and December 31, 2021 as a part of the PTFP program which SDYS operated pursuant to a grant from the California Governor’s Office of Emergency Services (Cal OES) which includes the following four alleged “aggrieved employees”: Jamie Thomas, Ellen Williams, Alicia Breton (all plaintiffs in the Consolidated Case, the settlement terms of which are subject to a separate confidential settlement agreement which expressly excludes the settlement of the PAGA Action) and Gladys/Christopher Whitehead.

(m) “Plaintiff’s Counsel” or “PAGA Counsel” means:

Thomas M. Diachenko (SBN 140763)  
Law Offices of Thomas M. Diachenko, APC  
1916 Third Avenue  
San Diego, CA 92101  
Telephone: (619) 699-5870  
Email: thom@diachenkolaw.com

(n) “Released Parties” means Defendants San Diego Youth Services, Walter Philips, Anthony Parham, Kayla Kelly and Steven Jella.

(o) “Settlement” means the Parties’ agreement, as detailed herein, to dispose of the PAGA Action, which includes all civil penalties, related costs and fees as asserted therein, including but limited to all claims, demands, actions, suits, causes of action, administration costs, fines, interest, compensation and liabilities alleged in, arising from or related to the PAGA Claim.

(p) “Settlement Sum” means the total gross settlement amount of Twenty Five Thousand Dollars and Zero Cents (\$25,000.00) to be paid by Defendants as provided by this Agreement to fully and finally settle, resolve and conclude this PAGA Action as provided under this Agreement, without any admission of fault or liability.

## **II. FACTUAL BACKGROUND**

(a) On or about February 24, 2021, Plaintiff submitted a letter to the LWDA and Defendants (“PAGA Notice Letter”), in accordance with the requirements of Labor Code section 2699.3(a), to notify the LWDA of alleged violations of the California Labor Code by Defendants arising from Plaintiff’s business relationship with SDYS. The February 24, 2021, Letter alleged that Defendants had violated California Labor Code sections 98.6, 201-204, 210, 216, 223, 225.5, 226, 226.3, 226.6, 226.7, 226.8, 227, 510, 512, 558, 558.1, 1102.5, 1174, 1174.1, 1175, 1194, 1194.2, 1197.1, 1198, 1199, 2753, 2802 and 2810.5, and also alleged violations of the Industrial Welfare Commissions Wage Order 2-2001. Because the LWDA failed to respond to the PAGA Notice Letter within the 65 day time limit, the state lost its authority to proceed or interfere with the PAGA prosecution by Plaintiff and his counsel.

To the date of signing this agreement, the LWDA has not advised Plaintiff or his counsel of any investigation of the alleged violations or any interest to investigate, even if it did have the authority to do so after ceding it to Plaintiff and his counsel.

(b) On February 9, 2021, prior to sending the LWDA Letter, Plaintiff filed his Action in San Diego Superior Court. On June 17, 2021, more than 65 days after the LWDA letter, Plaintiff filed his First Amended Complaint in San Diego Superior Court (Case Number 37-2021-00006092-CU-OE-CTL), which included a PAGA representative tenth cause of action for the aforementioned alleged Labor Code violations against Defendants both as an individual and in his capacity as a private attorney general on behalf of the PAGA Settlement Group Members under PAGA (the "PAGA Claim").

(d) The June 17, 2021 First Amended Complaint also contained causes of action brought by Plaintiff against Defendant SDYS, in his capacity as an individual and on his own behalf, not on behalf of the Aggrieved Employees, including causes of action for Retaliation, California Business & Professions Code Section 17200, et seq., and wrongful termination in violation of public policy, as well as for violations of the California Labor Code sections 558, 558.1, 1197.1, 1194, 200, 201, 202, 203, 204, 215, 226, 226.2, 226.3, 226.4, 500, 510, 512, 1174, 1198, 1199, 2802, and sections of the IWC Wage Order (the "Individual Claims"). THOMAS'S individual claims were consolidated with the individual claims of WILLIAMS and BRETON. Those individual non-PAGA claims were settled separately and are subject to a separate Confidential Individual Settlement & Release. The Parties have agreed that payment of the individual funds is contingent upon the Court's approval of this PAGA Settlement.

(e) This Agreement sets forth the terms and conditions solely of the resolution of PAGA Claims asserted in the tenth cause of action, on behalf of the State of California and the PAGA Settlement Group Members, which includes THOMAS.

(f) The Parties recognize that the issues presented in this matter are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. The Parties have taken into account the risk and uncertainty of the outcome inherent in any litigation.

(g) The Parties and their respective Counsel have diligently pursued an investigation of the PAGA Settlement Group Members' PAGA penalty claims against Defendants. The Parties engaged in a substantial exchange of information through discovery concerning the PTFP program.

(h) The Parties have arrived at the settlement after extensive, arms-length negotiations, taking into account all relevant factors, present and potential. On May 2, 2023, the Parties engaged in a one-day private mediation session at Judicate West. The Parties made some progress but determined that additional discovery needed to be performed. Thereafter, the Parties engaged in additional discovery along with supplemental settlement discussions and reached an arms-length Settlement on November 21, 2023.

(i) Based on their own independent investigations and evaluations, the Parties and their respective counsel believe and agree that this Agreement, the settlement for the consideration, and on the terms set forth in this Agreement, is not "unjust, arbitrary and oppressive, or confiscatory" as required by Labor Code section 2699 (e)(2), and is in the best interests of the Plaintiff, the PAGA Settlement Group Members and Defendants in light of all known facts and circumstances and the risks inherent in litigation, including potential appellate issues.

(j) The Parties reached this Settlement only after depositions, written discovery, and investigation were performed.

(k) The Settlement embodied in this Agreement includes (i) issuance by the Court of an Order approving the Settlement; (ii) entry of the an Order enforcing the terms of the Settlement, and retaining jurisdiction to ensure compliance with the Court's Order and the terms of the Agreement; (iii) discharge of Defendants and the Released Parties from liability for the PAGA Claim released by this Agreement; (iv) release of the PAGA Claim released by this Agreement against the Released Parties by Plaintiff, the State of California and all PAGA Settlement Group Members; (v) submission of the Court's Order by Plaintiff's Counsel to the LWDA within ten (10) days of entry of the order pursuant to the California Labor Code §2699 (1)(3); (vi) all parties bearing their respective fees and costs except as expressly provided in this Agreement; (vii) the disbursement of all settlement funds pursuant to this Agreement' and (viii) Plaintiff's filing of a Request for Dismissal with Prejudice in this PAGA Action.

(l) Defendants dispute and deny Plaintiff's allegations and various causes of action asserted in the PAGA letters, including, without limitation, the PAGA Claims asserted in Plaintiffs tenth cause of action that are being resolved by this Agreement.

### **III. APPROVAL AND IMPLEMENTATION OF SETTLEMENT**

#### **A. Cooperation**

The Parties will cooperate in seeking approval of the Settlement described in this Agreement, including by drafting and filing the Joint Stipulation and Order, as referenced in this section. The Parties further agree to fully and promptly cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, and shall take all steps that may be requested by the Court relating to the approval and implementation of the Settlement described in this Agreement.

Within fifteen (15) calendar days of the parties' execution of this Agreement, the Parties agree to file the Joint Stipulation and Order, in San Diego County Superior Court, for the sole purpose of obtaining the Court's approval of this settlement.

#### **B. Court Approval**

Because this Action includes a PAGA claim, this Agreement requires review and approval by the Court. See Cal. Lab. Code § 2699(1)(2). However, as explained in *Arias v. Superior Court* (2009) 46 Cal.4th 969, the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore, need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. Also, unlike a class action, neither the state nor a PAGA Settlement Group Member has standing to object to the PAGA settlement. Instead, in order to comply with the requirements of Labor Code section 2699, the Parties shall submit a joint stipulation to the Court identifying the terms of the settlement and requesting that the Court approve the Settlement. Accordingly, the Parties enter into this Agreement on a conditional basis. This Agreement is expressly contingent upon the Court's approval of this Settlement and the terms and material conditions of this Agreement (including, but not limited to, issuance of the Order, and entry of the Order in accordance therewith).

If the Court does not grant the Parties' request for approval of the Settlement and issue the Order, under the specific terms requested, the Parties agree to request leave and work jointly to attempt to remedy the

PAGA settlement in order to obtain the Court's approval, including to meet and confer within seven (7) calendar days of the Court's order and to work cooperatively to address the Court's concerns and determine whether resolution of the PAGA Claim can be obtained in a manner consistent with the Court's concerns. The Parties agree to be bound by the Court's allocation between the PAGA settlement and the settlement of the individual claims (should the Court have such authority to do so, which Plaintiff contends, it does not) and the parties agree that the settlement reached herein is binding on all the signatories.

Plaintiff shall submit a copy of the Order in this Action and a copy of any other order providing for or denying an award of civil penalties to the LWDA within 10 days after entry of the Order, in compliance with section 2699(l)(3) of the California Labor Code.

### **C. Settlement Sum Payment Procedures**

#### **(a) Settlement Sum**

In exchange for Plaintiff's and the PAGA Settlement Group Members' release of any and all claims for civil penalties asserted or that could have been asserted under California Labor Code Sections 2698, et seq. (including PAGA penalties payable in part to the State of California) against Defendants and the Released Parties, as well as the obligations and promises set forth in this Agreement (and subject to the terms and conditions in this Agreement, Defendants agree to pay the Settlement Sum. The Settlement Sum shall be allocated as follows:

- (1) Attorneys' Fees and Costs: Five Thousand Dollars (\$5,000) for fees and costs which are unique and distinct from the fees and costs incurred for prosecution of the individual claims.
- (2) Payment of PAGA Penalties: The total sum available for payment of PAGA penalties shall be Twenty-Thousand Dollars (\$20,000) (the "Net Settlement Amount"). Seventy-five percent (75%) of the Net Settlement Amount (\$15,000) shall be distributed to the LWDA (the "LWDA Penalty Payment") and the remaining twenty-five percent (25%) (\$5,000) shall be distributed to the PAGA Settlement Group Members (the "Net Individual Penalty Payments"), shall be distributed to the PAGA Settlement Group Members, i.e., all PTFP's which provided services to SDYS between October 31, 2019, and December 31, 2021. ("PAGA Settlement Group Members"). The Net Individual Penalty Payments for each PAGA Settlement Group Member will be equally divided between THOMAS, WILLIAMS, BRETON and Gladys/Chris Whitehead in the amount of \$1,250 apiece.

#### **(b) Funding and Distribution Process**

The payment of the Settlement Sum shall be made within sixty (60) business days of the Effective Date as follows:

- (3) Defendants shall deliver a check to the LWDA as and for the LWDA Penalty Payment, in the amount calculated pursuant to the terms of this Agreement in the amount of Fifteen Thousand and 00/100 Dollars (\$15,000).
- (4) Defendants shall deliver a check for Five Thousand (\$5,000) made payable to the "Law Offices of Thomas Diachenko, APC" delivered via certified/registered mail to Plaintiff's Counsel at 1916 Third Avenue, San Diego, CA 92101.
- (5) Defendants shall deliver four (4) Net Individual Penalty Payments of One Thousand Two

Hundred Fifty (\$1,250) apiece to each PAGA Settlement Group Member. Three of those four payments shall be delivered to the Law Offices of Thomas M. Diachenko, APC" at 1916 3<sup>rd</sup> Avenue, San Diego, CA, 92101 for THOMAS, WILLIAMS and BRETON and the fourth check to the last known physical address on file with Defendants in its regularly maintained records for Gladys/Chris Whitehead. Should the check not be negotiated by the Whiteheads within 60 days of issuance, Defendants shall re-issue it to the California LWDA. These checks shall be delivered with the attached proposed distribution letter attached as Exhibit A to this Agreement.

(c) Tax Indemnity

The Net Individual Penalty Payments are penalties, shall be reported on an IRS Form 1099 (to the extent required by law), and will not be subject to local, state or federal tax withholdings. Plaintiff and each PAGA Settlement Group Member will be responsible for paying all applicable state, local and federal income taxes on all amounts received pursuant to this Settlement, if any, and they shall not seek any indemnification from the Released Parties in this regard.

Plaintiff and his agents shall cooperate with Defendants and provide documentation to the extent possible and as reasonably requested to demonstrate any payment of taxes made by Plaintiff should any taxing authority challenge the allocation of the Net Individual Penalty Payments.

In the event any taxing authority asserts that the characterization of Plaintiff's Settlement Payments hereunder are inappropriate and/or Plaintiff fails to pay any tax liability resulting from the payments made hereunder, and Defendants are made to pay any taxes, settlements, interest, penalties, and/or other sums (hereinafter collectively referred to as "Tax Payments") to a taxing authority as a result of the payments made to Plaintiff, Plaintiff shall fully indemnify and reimburse Defendants for any and all such Tax Payments upon demand and reasonable verification of sums paid.

**IV. DISMISSAL OF ACTION WITH PREJUDICE**

Plaintiff will serve an executed Request for Dismissal with Prejudice of the PAGA Action to the Court within ten (10) calendar days of: (i) the conclusion of the disbursement of settlement pursuant to Section III.C of this Agreement.

**V. LIMITATIONS ON USE OF THIS SETTLEMENT**

**A. No Admission**

Defendants dispute that Plaintiff or any PAGA Settlement Group Member are entitled to any penalties other than those already paid and/or any penalties and dispute the allegations and each and every cause of action in the PAGA Action. This Agreement is entered into solely for the purpose of compromising disputed claims. This Agreement and the payment of the Settlement Sum and the other considerations recited herein represent the compromise of disputed claims. Nothing in this Agreement is intended as or may be construed as an admission of liability, unlawful conduct, or wrongdoing by Defendants (and/or any of the Released Parties) in any way, shape or form, and Defendants and the Released Parties deny any such liability or wrongdoing.

## **VI. RELEASE AND WAIVER OF CLAIMS**

### **A. Section 1542 Waiver by Plaintiff**

It is the intention of the Parties in executing this instrument that it shall be effective as a bar to each and every Claim specified in this Agreement except for Plaintiff's non-PAGA individual claims which are governed by a separate agreement. In furtherance of this intention, Plaintiff hereby waives the provisions of Section 1542 of the California Civil Code, which 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.**

### **B. PAGA Settlement Group Member Release**

Upon entry of the Order, Plaintiff, all PAGA Settlement Group Members on behalf of themselves and their respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, successors and assigns, and the State of California shall be deemed to have fully, finally, and forever waived, released, relinquished, and discharged Defendants and each and all of the Released Parties from the PAGA Claims as defined herein that arose or may be alleged to have arisen at any time from October 31, 2019 up to and including December 31, 2023. Specifically, in exchange for the payments described above, Plaintiff, on behalf of himself, the State of California, and the PAGA Settlement Group Members, will release Defendants from liability for any and all claims for civil penalties under the PAGA Claim related to the alleged Labor Code violations that may be brought under the PAGA. To the extent an alleged PAGA violation arises directly from the operative facts pled in the PAGA Letter and implicates the same primary rights and defenses being settled here except for Plaintiff's non-PAGA, individual claims, those claims are settled and released to the fullest extent permitted under applicable law.

### **C. No Additional Attorneys' Fees or Costs**

The Parties agree to bear their own attorneys' fees and costs related to this PAGA Action except as specifically provided above with respect to the amount allocated for fees and costs and for Plaintiff's non-PAGA, individual claims (which are settled and released in a separate settlement agreement, and the Parties waive any and all rights to attorneys' fees and costs in connection with the PAGA Claim except to enforce this Agreement or Settlement.

## **VII. MISCELLANEOUS PROVISIONS**

### **A. LWDA Notice**

The LWDA will be given notice of this Settlement pursuant to the 2016 amendments to the PAGA. Cal. Lab. Code § 2699(1)(2). Plaintiff will serve a copy of the Settlement to the LWDA on the same day the Settlement is filed with the Court along with the proposed Order and Joint Stipulation.

Additionally, a copy of the Court's Order approving the PAGA Settlement will be submitted to the LWDA within ten (10) days after entry of the Order, pursuant to California Labor Code § 2699(1)(3).

**B. Voluntariness**

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm, or other entity.

**C. Amendments**

The terms and provisions of this Agreement may be amended or modified only by an express written agreement that is signed by the Plaintiff and an authorized representative of Defendants.

**D. Assignment**

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, PAGA Settlement Group Member, the State of California, Plaintiff's Counsel, or Defense Counsel without the express written consent of each Party unless otherwise required by law. Plaintiff expressly warrants that he has not transferred to any person or entity any right or cause of action, or claim released by this Agreement.

**E. Representation and Warranties**

Plaintiff represents and warrants to Defendants that there are no attorneys beyond those named as Plaintiff's Counsel who have claims for fees arising out of the PAGA Action or the Settlement contemplated hereby.

**F. Governing Law**

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.

**G. Waiver of Compliance**

A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

**H. Counterparts**

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or its/their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. A fax, electronic, or PDF signature on this Agreement shall be as valid as an original signature.

**I. Meet and Confer Regarding Dispute(s)**

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, Plaintiff's Counsel and Defense Counsel shall meet and confer within seven (7) calendar days of such dispute(s) in an attempt to resolve such dispute(s) prior to

submitting such disputes to the Court.

**J. Agreement Binding on Successors**

This Agreement shall bind and inure to the benefit of the Parties hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

**K. Cooperation in Drafting**

The Parties have cooperated in the negotiation and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this Agreement.

**L. Fair Settlement**

Plaintiff, Defendants, Plaintiff's Counsel, and Defense Counsel believe that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms' length negotiation, taking into account all relevant factors, current and potential, and is consistent with public policy, and fully complies with applicable provisions of law.

**M. Continuing Jurisdiction**

The Parties agree that upon the occurrence of the Order pursuant to the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code of Civil Procedure section 664.6 and the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties and the PAGA Settlement Group Members to the fullest extent to interpret, enforce and effectuate the terms, conditions, intents and obligations of the Agreement.

**N. No Reliance on Representations**

The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other Parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Agreement, or with respect to any such matters. No representations, warranties, or inducements have been made to any Party concerning this Agreement.

**O. Confidentiality/Public Statements**

This PAGA Settlement & Release Agreement shall remain confidential in every respect until the Parties Joint Stipulation is filed with the Court. The Parties acknowledge that the provisions of this paragraph create no liability for disclosures made after the Joint Stipulation is filed with the Court or as otherwise compelled by law or as otherwise specified in this Agreement.

Prior to filing the Joint Stipulation the Parties and their agents will not (a) issue any press or other media release, (b) initiate any contact with the press, other media (including social media), or any third party, (c) respond to any inquiry from the press, or media, or (d) have any communication with the press or other media about the PAGA Action. The Parties and their agents agree to keep the terms of the Settlement Confidential, except as reasonably necessary to obtain judicial approval of the Settlement.

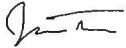
Notwithstanding, nothing in this paragraph is intended to restrict either Party or its agents from disclosing any provision of this Agreement to the Court or any taxing authority or to any tax advisor to such party or to Plaintiff's spouse or attorney.

**P. No Collateral Attack**

The Parties agree that this Agreement may not be subject to collateral attack by any PAGA Settlement Group Member or the State of California prior to or after entry of the Order, to the fullest extent permitted by law.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the date set forth below.

**APPROVED AND ACCEPTED.**

Dated: 1/19/2024   
Jaime Thomas, Plaintiff and PAGA Representative

Dated: \_\_\_\_\_ San Diego Youth Services

By \_\_\_\_\_  
Its \_\_\_\_\_

Dated: \_\_\_\_\_  
Walter Philips, Defendant, on his own behalf

Dated: \_\_\_\_\_  
Anthony Parham, Defendant, on his own behalf

Dated: \_\_\_\_\_  
Kayla Kelly, Defendant on her own behalf

Dated: \_\_\_\_\_  
Steven Jella, Defendant on his own behalf

Notwithstanding, nothing in this paragraph is intended to restrict either Party or its agents from disclosing any provision of this Agreement to the Court or any taxing authority or to any tax advisor to such party or to Plaintiff's spouse or attorney.

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IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth below.

**APPROVED AND ACCEPTED.**

Dated: \_\_\_\_\_  
Jaime Thomas, Plaintiff and PAGA Representative

Dated: 1/22/2024 San Diego Youth Services

By Walter Philips  
Its CEO

Dated: 1/22/2024 Walter Philips  
Walter Philips, Defendant; on his own behalf

Dated: \_\_\_\_\_  
Anthony Parham, Defendant, on his own behalf

Dated: \_\_\_\_\_  
Kayla Kelly, Defendant on her own behalf

Dated: \_\_\_\_\_  
Steven Jella, Defendant on his own behalf

Notwithstanding, nothing in this paragraph is intended to restrict either Party or its agents from disclosing any provision of this Agreement to the Court or any taxing authority or to any tax advisor to such party or to Plaintiff's spouse or attorney.

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**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the date set forth below.

**APPROVED AND ACCEPTED.**

Dated: \_\_\_\_\_  
Jaime Thomas, Plaintiff and PAGA Representative

Dated: \_\_\_\_\_ San Diego Youth Services

By \_\_\_\_\_  
Its \_\_\_\_\_

Dated: \_\_\_\_\_  
Walter Philips, Defendant, on his own behalf

Dated: 1/23/2024  
\_\_\_\_\_  
Anthony Parham, Defendant, on his own behalf

Dated: \_\_\_\_\_  
Kayla Kelly, Defendant on her own behalf

Dated: \_\_\_\_\_  
Steven Jella, Defendant on his own behalf

Notwithstanding, nothing in this paragraph is intended to restrict either Party or its agents from disclosing any provision of this Agreement to the Court or any taxing authority or to any tax advisor to such party or to Plaintiff's spouse or attorney.

**P. No Collateral Attack**

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**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the date set forth below.

**APPROVED AND ACCEPTED.**

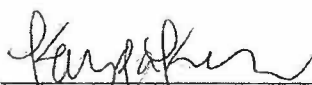
Dated: \_\_\_\_\_  
Jaime Thomas, Plaintiff and PAGA Representative

Dated: \_\_\_\_\_ San Diego Youth Services

By \_\_\_\_\_  
Its \_\_\_\_\_

Dated: \_\_\_\_\_  
Walter Philips, Defendant, on his own behalf

Dated: \_\_\_\_\_  
Anthony Parham, Defendant, on his own behalf

Dated: 1/22/24   
Kayla Kelly, Defendant on her own behalf

Dated: \_\_\_\_\_  
Steven Jella, Defendant on his own behalf

Notwithstanding, nothing in this paragraph is intended to restrict either Party or its agents from disclosing any provision of this Agreement to the Court or any taxing authority or to any tax advisor to such party or to Plaintiff's spouse or attorney.

**P. No Collateral Attack**

The Parties agree that this Agreement may not be subject to collateral attack by any PAGA Settlement Group Member or the State of California prior to or after entry of the Order, to the fullest extent permitted by law.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the date set forth below.

**APPROVED AND ACCEPTED.**

Dated: \_\_\_\_\_  
Jaime Thomas, Plaintiff and PAGA Representative

Dated: \_\_\_\_\_ San Diego Youth Services

By \_\_\_\_\_  
Its \_\_\_\_\_

Dated: \_\_\_\_\_  
Walter Philips, Defendant, on his own behalf

Dated: \_\_\_\_\_  
Anthony Parham, Defendant, on his own behalf

Dated: \_\_\_\_\_  
Kayla Kelly, Defendant on her own behalf

Dated: 1.25.24 \_\_\_\_\_  
Steven Jella, Defendant on his own behalf

## EXHIBIT A

## Exhibit A

<<Mailing Date>>

To: <<First Name>><<Last Name>>  
<<Address>>  
<<City>> <<State>> <<Zip>>

Re: PAGA Settlement Payment for the case of: *Jamie Thomas, et. al. v. San Diego Youth Services, et al.*,  
Case No. 37-2021-00006092-CU-OE-CTL (consolidated with 37-2021-00040945-CU-OE-CTL).

Dear <<First Name>><<Last Name>>:

Please find enclosed a check in the amount of **\$1,250** ("PAGA Settlement Check"). This check is your portion of payment from the settlement of the PAGA claims asserted in the lawsuit entitled, filed on xxx ("PAGA Action"), pending in the Superior Court of California for the County of San Diego ("Court").

The lawsuit was filed by Jamie Thomas ("Plaintiff"), a former Professional Therapeutic Foster Parent ("PTFP") of Defendant San Diego Youth Services, on behalf of the State of California with respect to him and other alleged "aggrieved employees", to seek recovery of civil penalties pursuant to the California Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* ("PAGA"). Plaintiff alleged that Defendants violated the California Labor Code and Industrial Welfare Commission Wage Orders by failing to properly classify the PTFPs as employees to pay all wages owed, provide accurate itemized wage statements, indemnify the PTFPs for all work related expenses, and timely pay all wages owed during employment and upon separation of employment. Defendants deny these allegations and deny any wrongdoing of any kind associated with these allegations.

A settlement was reached between Plaintiff and Defendant, on behalf of Plaintiff, the State of California, and the following "aggrieved employees": all current and former non-exempt employees who worked for San Diego Youth Services between October 31, 2019, through December 31, 2021 (PAGA Group Members").

On <<Approval Date>>, the PAGA settlement was approved by the Court, with a portion to be paid to the State of California and a portion to be paid to the PAGA Group Members. You are receiving a portion of the settlement (the enclosed Individual Settlement Check) because you have been identified as a PAGA Group Members. Your Individual Settlement Check is based on the total number of pay periods that you worked as a PAGA Group members during the period between October 31, 2019 through December 31, 2021 ("PAGA Period"). The Individual Settlement Check is considered to be 100% penalties, which will be reported on an IRS Form 1099. You are responsible for paying any and all taxes that may be due as a result of any payment issued to you under the settlement and should consult a tax advisor regarding the tax consequences of such payment.

By way of this PAGA settlement, you are deemed to fully release and forever discharge the Released Parties from the Released Claims. The "Released Parties" means Defendants and each of their past, present, and future officers, employees, attorneys, agents, assigns, insurers, representatives, counsel, benefit plan administrators, other administrators, successors, parent companies, subsidiaries, related entities, shareholders, and/or directors. The "Released Claims" means and refers to claims for civil penalties under the PAGA, California Labor Code § 2698, *et seq.*, that are based upon or arise from the factual allegations in the operative Complaint in the Action and/or Plaintiff's PAGA notice to the California Labor and Workforce Development Agency ("LWDA"), arising during the PAGA Period, including penalties for the failure to properly pay all minimum wages, overtime wages, provide lawful meal periods or compensation in lieu thereof, authorize or permit lawful rest breaks or provide compensation in lieu thereof, provide accurate itemized wage statements, indemnify the PTFPs for all work related expenses and timely pay all wages during employment and upon separation of employment, and for violation of and/or based California Labor Code §§ 200, 201, 202, 203, 204, 210, 218, 223, 226, 500, 510, 512, 552, 558, 1174, 1175, 1194, 1197, 1198, 1199, 2751, 2753 and 2802;

Notwithstanding the proceeding provisions, no claims for unpaid or underpaid wages or any other individual claims which may exist are included in the PAGA Settlement. Therefore, no such claims are waived as this

## **Exhibit A**

PAGA Settlement is without prejudice to the pursuit of any such claims.

Your PAGA Settlement Check is valid for 60 calendar days from the date of issuance, and if you do not cash, deposit, or otherwise negotiate the check within the - 60 day timeframe, your PAGA Settlement Check will be cancelled and the funds will be transmitted to the LWDA. **Do not call or write the Court or Office of the Clerk of the Court to ask questions about the settlement.**