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individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SUTTER

RITA ELSALAYMEH, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

TRI-COUNTY RESPITE CARE SERVICE, a
California Corporation; JOY M. SCOTT, an
Individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. CVCS21-0000579

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA SETTLEMENT**

Date: June 13, 2022

Time: 9:00 a.m.

Dept.: 1

Judge: Hon. Perry Parker

Filed: April 7, 2021

FAC Filed: June 8, 2021

Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

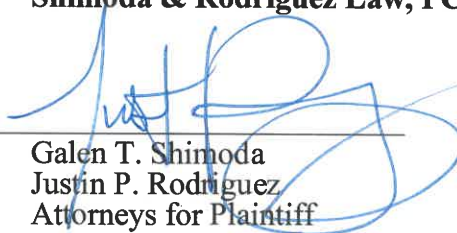
2 PLEASE TAKE NOTICE that on June 13, 2022, at 9:00 a.m., or as soon thereafter as the matter
3 may be heard in Department 1 of the above-entitled Court, Plaintiff Rita Elsalaymeh, individually and
4 on behalf of all other similarly situated individuals, hereby move for entry of an Order for the following:

- 5 1. Certifying the proposed class herein for purposes of settlement;
 - 6 2. Appointing Plaintiff Rita Elsalaymeh as class representative for purposes of settlement;
 - 7 3. Appointing Shimoda & Rodriguez Law, PC as Class Counsel for purposes of settlement;
 - 8 4. Approving the proposed class action settlement, in the amount of \$300,000, which is
9 incorporated herein by reference;
 - 10 5. Approving the application for payment to Class Counsel of attorneys' fees in the amount of
11 \$105,000 (35% of the Gross Settlement Amount);
 - 12 6. Approving the application for payment to class counsel of reasonable costs in the amount of
13 \$12,084.73;
 - 14 7. Approving the Class Representative Enhancement Payment of \$15,000 to Plaintiff Rita
15 Elsalaymeh;
 - 16 8. Approving the appointment of Simpluris, Inc. as the Claims Administrator and for payment
17 to Simpluris, Inc., for administering said class action settlement in the amount of \$5,000;
 - 18 9. Approving the settlement of claims under the Private Attorneys General Act for the total
19 amount of \$10,000, 75% of which will be paid to the Labor and Workforce Development
20 Agency and 25% of which will be paid to Aggrieved Employees;
 - 21 10. Determining that the class notification procedures and process complied with Class
22 Members' due process rights;
 - 23 11. Directing that any residue from settlement checks that were not cashed by the check cashing
24 deadline be donated 50/50, to Capital Pro Bono, Inc. and the Center for Workers Rights
25 under the doctrine of *cy pres*;
 - 26 12. Approving and adopting the Proposed Order and its implementation schedule, which is filed
27 herewith and incorporated by reference.
- 28

1 This motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section
2 2699(1), and California Rule of Court 3.769 and 3.764, on the grounds that the proposed class action and
3 Private Attorneys General Act settlement is fair, reasonable, and adequate as to all class members and
4 should be given final approval by the Court. This motion will be based on the notice of motion,
5 memorandum of points and authorities, the Declaration of Justin P. Rodriguez, the Declaration of
6 Lindsay Kline, exhibits, the record and files of this case, and any further oral or documentary evidence
7 introduced at the hearing of this motion.

8
9 Dated: May 12, 2022

Shimoda & Rodriguez Law, PC

10
11 By: 

Galen T. Shimoda
Justin P. Rodriguez
Attorneys for Plaintiff

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8 Attorneys for Plaintiff RITA ELSALAYMEH
9 individually and on behalf of similarly situated employees

10
11 **SUPERIOR COURT OF CALIFORNIA**
12
13 **FOR THE COUNTY OF SUTTER**

14 RITA ELSALAYMEH, individually and on
15 behalf of all other similarly situated
16 employees,

17 Plaintiff,

18 vs.

19 TRI-COUNTY RESPITE CARE SERVICE, a
20 California Corporation; JOY M. SCOTT, an
21 Individual; and DOES 1 to 100, inclusive,

22 Defendants.

Case No. CVCS21-0000579

CLASS ACTION

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

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1 **I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT**

2 This Motion is brought seeking final approval of a wage and hour class action settlement in the
3 gross amount of \$300,000. *See generally* Exhibit A (Joint Stipulation Regarding Class Action and
4 PAGA Settlement and Release). Plaintiff Rita Elsalaymeh (“Plaintiff”) brought this class action
5 individually and on behalf of other similarly situated employees employed by Defendants Tri-County
6 Respite Care Service, and Joy M. Scott, (“Defendants”). Plaintiff worked for Defendants in California
7 from approximately February 1, 2005, to November 24, 2020, and was subject to all the same policies
8 and practices that are alleged to be unlawful in this litigation. *See generally* Exhibit B (Plaintiff’s
9 Operative Complaint).

10 Plaintiff has alleged that Defendants 1) failed to pay overtime wages; 2) failed to pay minimum
11 wages; 3) committed rest and meal period violations; 4) committed wage statement violations; 5)
12 waiting time penalties; 6) failed to reimburse expenses; and 7) engaged in unfair competition. *See*
13 *generally* Exhibit B. Plaintiff has also alleged Defendants are liable for civil penalties under the Private
14 Attorneys General Act (“PAGA”) based on these violations. *See id.*; Exhibit C (Plaintiff’s Ltr. to the
15 LWDA Regarding PAGA Claims). These violations primarily stem from Plaintiff’s allegations that
16 Defendants violated California law by 1) failing to pay employees earned overtime wages; 2) failing to
17 pay all minimum wages owed due to Defendants’ rounding policy and required off the clock work; 3)
18 failing to provide duty-free meal and rest periods and pay premiums in lieu thereof; 4) failing to pay
19 sufficient reimbursement for work-related cell phone use; 5) failing to accurately itemize the hours and
20 wages earned on paystubs issued to class members. *See* Exhibit B. Plaintiff has contended that this is a
21 meritorious class action lawsuit and that this case is appropriate for class certification for settlement
22 purposes as the requisites for class certification in this case can be satisfied. *See* Exhibit B.

23 Defendants have denied all of Plaintiff’s allegations in their entirety and any liability or
24 wrongdoing of any kind. *See* Declaration of Justin P. Rodriguez (“Decl. Rodriguez”), ¶ 5. Defendants
25 have denied that this case is appropriate for class certification other than for purposes of settlement and
26 that Plaintiff would have difficulty proving class certification is proper here. *See id.* However, subject
27 to approval by the Court, the parties have been able to compromise and settle all asserted claims for
28 monetary compensation as a result of extensive investigations, informal document and data exchanges,

1 and extended negotiations relating to all aspects of the asserted claims. *See* Exhibit A. Plaintiff's
2 counsel is convinced that the proposed settlement is in the best interest of the putative class based on
3 the discovery, investigations, negotiations, and a detailed knowledge of the issues in this case. *See*
4 Decl. Rodriguez, ¶¶ 3, 6-10. The prospect of potential class certification issues and the uncertainty of
5 class certification, difficulties of complex litigation, the lengthy process of establishing specific
6 damages and various possible delays and appeals were carefully considered by Plaintiff and Plaintiff's
7 counsel in agreeing to the proposed settlement. *See id.*

8 It is well within the discretion of this Court to grant final approval of the Agreement, which
9 satisfies all of the criteria for final settlement approval under California law. Accordingly, Plaintiff
10 requests that the Court: (1) certify the proposed settlement class; (2) grant final approval of the
11 proposed Agreement (Exhibit A); and (3) adopt the implementation schedule contained in the proposed
12 order.

13 **II. PROCEDURAL AND LITIGATION HISTORY**

14 Plaintiff filed a class action complaint on approximately April 7, 2021, in Sutter County
15 Superior Court against Defendants. Plaintiff exhausted administrative remedies under the PAGA by
16 providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code § 2699.3(a),
17 (c); Decl. Rodriguez, ¶ 3. Then, Plaintiff filed a First Amended Class Action Complaint on
18 approximately June 8, 2021, to include a PAGA claim. *See id.*; Exhibit B. There is no date set for a
19 motion for certification or trial in this matter. *See* Decl. Rodriguez, ¶ 4.

20 **III. INVESTIGATION AND DISCOVERY CONDUCTED**

21 Plaintiff thoroughly investigated issues affecting certification, the merits of the class claims, and
22 potential damages for such claims. *See id.* at ¶¶ 6-10. Plaintiff worked during the time all of
23 Defendants' policies and practices at issue in the Complaint were in effect and provided information
24 regarding these policies and practices, enabling pre-filing investigations to take place. *See* Exhibit B.
25 The parties engaged in informal discovery and exchange of documents, including a representative
26 sampling of employee data, such as timecards, paystubs, payroll data and relevant policies for the
27 entirety of the statute of limitations applicable to the alleged claims. The discovery covered all aspects
28 of the asserted claims, including certification issues, merits issues, damages, the scope and

1 configuration of Class Members, the content and implementation of the wage and hour policies at issue,
2 issues relating to manageability concerns at trial, among other relevant areas. *See* Decl. Rodriguez, ¶ 7.
3 The information allowed Plaintiff to determine the extent and frequency of any violations in accordance
4 with Plaintiff's contentions and create an accurate damages model to assess the reasonableness of any
5 settlement. *See id.*

6 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

7 **a. Plaintiff and Defendants Engaged in Extensive Arm's Length Negotiations**

8 The final settlement occurred only after extended, and sometimes contentious, arm's length
9 negotiations. Over the course of approximately ten (10) months, Plaintiff has been investigating the
10 claims and discussing with Defendants' counsel the merits of the claims and certification issues present
11 in this case. *See id.* at ¶¶ 6-10. The parties exchanged substantial amounts of information and legal
12 analysis regarding the asserted claims. *See id.* Then, only after nearly ten (10) months of litigation and
13 a full day of mediation with Louis Marlin, were the parties able to reach a mutually agreeable
14 settlement. *See id.* at ¶ 8. In light of the claims and defenses at issue, the parties agreed to a Gross
15 Settlement Amount of \$300,000. *See* Exhibit A.

16 **b. The Terms of the Settlement**

17 Under the settlement agreement, Defendants have agreed to the following:

- 18 1. The following groups of individuals are covered by the Settlement (*See* Exhibit A, ¶¶
19 1.2, 1.8, 1.9, 1.26):
 - 20 all non-exempt employees who have or continue to work for Defendants
21 in California from March 29, 2020 to either (1) the Preliminary Approval
Date, or (2) November 29, 2021, whichever is earlier (PAGA Members)
 - 22 all non-exempt employees who have or continue to work for Defendants
23 in California from April 7, 2021 to either (1) the Preliminary Approval
Date, or (2) November 29, 2021, whichever is earlier (Class Members)
- 24 2. Pay Gross Settlement Amount of \$300,000, exclusive of the employer's share of payroll
25 taxes, to resolve and release the claims alleged in the Complaint. *See id.* at ¶¶ 5.1, 5.2. No portion of
26 the Gross Settlement Amount will revert to Defendants. *See id.* at ¶ 5.6. Aggrieved Employees will
27 still be paid their share of the PAGA Payment regardless of whether they opt out of being Class
28

1 Members. *See id.* at 7.5.1.

2 3. The parties agree that up to \$15,000 for Plaintiff Rita Elsalaymeh will be paid as a Class
3 Representative Enhancement Payment. This amount will be in addition to any amount Plaintiff may be
4 entitled to under the terms of the Agreement. *See id.* at ¶ 5.4.

5 4. The parties agree that the cost of administering this class action settlement shall be paid
6 from the settlement proceeds. Subject to Court approval, the parties have selected Simpluris, Inc. to act
7 as the class action claims administrator, who has provided a final cost estimate of \$5,000 to administer
8 the class settlement. *See* Declaration of Lindsay Kline (“Decl. Kline”), ¶ 17. The difference between
9 the actual administration costs and the \$7,500 originally allocated under the Agreement will be paid to
10 Class Members on a pro rata basis. *See* Decl. Rodriguez, ¶ 19.

11 5. The parties agree that \$10,00 of the Gross Settlement Amount shall be allocated to
12 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to
13 the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. *See* Exhibit A, ¶
14 5.5.

15 6. The parties agree that up to thirty five percent (35%) of the Gross Settlement Amount
16 (\$105,000) will be paid for Plaintiff’s attorneys’ fees incurred in the litigation of this case. Defendants
17 will not oppose any application for attorneys’ fees so long as it is within this threshold. *See id.* at ¶ 5.2.
18 Additionally, the parties agree that Plaintiff will also be entitled to the actual litigation costs, which are
19 \$12,084.73. *See id.* The difference between the actual costs and the \$15,000 originally allocated will
20 be redistributed to Class Members on a pro rata basis. *See* Exhibit A, ¶ 5.2. The Notice of Settlement
21 sent to Class Members stated this information. *See* Decl. Kline, Exh. A.

22 7. Any Claims Administrator Costs, any amounts paid for attorneys’ fees and costs, the
23 Class Representative Enhancement Payment, and PAGA Payment will be paid out from the Gross
24 Settlement Amount, not in addition to the Gross Settlement Amount. *See* Exhibit A, ¶¶ 5.1-5.5.

25 8. In consideration for the value received in the Agreement, Class Members who fail to
26 timely opt-out of this settlement will waive all Qualified Claimant’s Released Claims as set forth in the
27 Agreement. *See* Exhibit A, ¶¶ 1.30-1.31, 6.1. Aggrieved Employees will waive all Released PAGA
28

1 Claims as set forth in the Agreement regardless of whether they opt out of being a Class Member. *See*
2 *id.* at 1.33, 6.2, 7.5.1.

3 9. For any portion of the Net Settlement Sum or PAGA Payment allocated to Qualified
4 Claimants and/or Aggrieved Employees that is not claimed by them by cashing their respective
5 settlement checks within 120 days, the remaining amount shall be paid 50/50 to Capital Pro Bono, Inc.
6 and the Center for Workers Rights under the doctrine of *cy pres*. *See* Exhibit A, at ¶ 5.6.

7 **c. Allocation of Settlement Funds**

8 Payment to Qualified Claimants and Aggrieved Employees of their Claim Amount will not
9 require the submission of a claim form. A Net Settlement Amount will be determined by subtracting
10 from the Gross Settlement Amount any amounts for approved attorneys' fees and costs, any
11 Enhancement Payment to the Class Representative, the Claims Administrator Costs, and the PAGA
12 Payment. Each Class Member's share will be determined by dividing their total weeks worked within
13 the Class Period by the total weeks worked by all Class Members within the Class Period. That
14 fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's
15 individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion
16 of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA
17 Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period.
18 That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the
19 Aggrieved Employee's individual share. *See* Exhibit A, at ¶ 5.8.

20 **V. PRELIMINARY APPROVAL OF THE CLASS ACTION AND PAGA SETTLEMENT**
21 **AND THE SUBSEQUENT CLASS ACTION ADMINISTRATION**

22 Plaintiff's motion for preliminary approval of the class action settlement was approved by the
23 Court, in its entirety, on February 14, 2022. To comply with the Class Members' due process rights,
24 the parties enlisted an exhaustive method to ensure the best practical means possible was used to
25 provide notice to the class. The parties provided the Claims Administrator the names, last known
26 address, and social security numbers for the class. The Claims Administrator then updated this
27 information by doing an address trace for each individual using this information. *See* Decl. Kline, ¶¶ 5-
28 7. If the Notice Packets were returned as undeliverable, further investigation was performed and they

1 were re-mailed using updated information. *See id.* at ¶ 9. Of the 206 Notice of Settlements sent, only 1
2 was undeliverable after use of these methods. *See id.* The Notice of Settlement included information
3 regarding the requested attorneys' fees, costs, payment to the LWDA, administration costs, and tax
4 allocations. *See Decl. Kline, Exh. A.*

5 The average distribution to participating class members is approximately \$754.44, the highest
6 distribution is approximately \$2,111.36. *See id.* at ¶ 16. No objections to the proposed settlement have
7 been received and only one class member (0.5%) opted out. *See Decl. Kline, ¶¶ 11-12.* The individual
8 who opted out will not be considered a class member for the purpose of this settlement. *See id.*
9 However, the individual is still an Aggrieved Employee and will still receive her share of the PAGA
10 Payment. *See id.* at ¶ 14.

11 VI. ARGUMENT

12 a. Class Action Settlements are Subject to Court Review and Approval Under the 13 California Rules of Court

14 A class action may not be dismissed, compromised, or settled without Court approval and the
15 decision to approve or reject a settlement is committed to the Court's sound discretion. *See Cal. Rules*
16 *of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)*¹; *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th
17 224, 234-35 (2001); *see also Cal. Lab. Code § 2699(l)(2)* (requiring Court review of PAGA
18 settlements). However, courts should give "proper deference to the private consensual decision of the
19 parties," since "the court's intrusion upon what is otherwise a private consensual agreement negotiated
20 between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment
21 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
22 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned."
23 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). Where a settlement is reached on terms
24 agreeable to all parties, a court should disapprove of the settlement "only with considerable
25 circumspection." *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481 (E.D. Pa. 1975). The law favors
26 settlement of lawsuits, particularly class actions and other complex cases where substantial resources
27

28 ¹The California Supreme Court has authorized California's trial courts to rely on these federal resources to decide class certification issues. *See Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

1 can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v. Regents of*
2 *Univ. of Cal.*, 3 Cal.4th 273, 277-81 (1992).

3 **b. The Terms of The Settlement Are Fair and Within the Range of Reasonableness**

4 The purpose of the Court's final evaluation of a proposed class action settlement is to determine
5 only whether the proposed settlement is within the range of reasonableness. *See Wershba*, 91 Cal. App.
6 4th at 234-35. If the Court finds a proposed settlement falls within "the range of reasonableness," it
7 should grant final approval of the class action settlement. *See, e.g., North County Contr. 's Assn., Inc. v.*
8 *Touchstone Ins. Svcs.*, 27 Cal.App.4th 1085, 1089-90 (1994). To make the fairness determination, the
9 Court must consider several factors, including:

10 the strength of the Plaintiff's case, the risk, expense, complexity and likely
11 duration of further litigation, the risk of maintaining class action status
12 through trial, the amount offered in settlement, the extent of discovery
13 completed and the stage of the proceedings, the experience and views of
counsel, the presence of a governmental participant, and the reaction of the
class members to the proposed settlement.

14 *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). However, this Court should begin its
15 analysis with a presumption that the settlement is fair. "A presumption of fairness exists where: (1) the
16 settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to
17 allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4)
18 the percentage of objectors is small." *Id.* at 1802.

19 **i. The Settlement is a Result of Extensive, Non-Collusive Arm's Length**
20 **Negotiations Between the Parties**

21 Settlement in this case was reached only after litigation and extensive arm's length negotiations
22 lasting nearly ten (10) months, which included a full day mediation with Louis Marlin. *See Decl.*
23 *Rodriguez*, ¶¶ 6-10. At all times, the negotiations were adversarial and contentious, although still
24 professional in nature. *See id.* Further, while Plaintiff contends she would ultimately prevail on the
25 claims and the issue of certification, this is not a certainty and there is substantial risk in proceeding to
26 further litigation. *See id.* at ¶¶ 6-10. The ability to secure a guaranteed settlement now and ensure class
27 members receive some compensation, rather than proceed to further litigation and potentially recover
28 nothing, was a motivating factor in reaching this settlement. *See id.*

1 **ii. The Extent of Investigation and Discovery Completed Provided Ample**
2 **Information to Enter Into an Informed and Reasonable Settlement**

3 The parties were in possession of all necessary information during the negotiations. The parties
4 engaged in substantial informal discovery and exchange of documents, including a representative
5 sampling of employee data, such as timecards, paystubs, payroll data and relevant policies for the
6 entirety of the statute of limitations applicable to the alleged claims, which covered all aspects of the
7 class claims and helped thoroughly vet the extent of Plaintiff's claims against Defendants and create an
8 accurate damages model. *See id.* at ¶ 6-10. Plaintiff was in possession of this information prior to
9 calculating the potential damages in this case. *See id.* As a result, Plaintiff was able to make a
10 reasonable estimation of Defendants' potential liability. *See id.* For these reasons, the settlement now
11 before the Court was reached at a stage where "the parties certainly have a clear view of the strengths
12 and weaknesses of their cases" sufficient to support the settlement. *Boyd v. Bechtel Corp.*, 485 F.Supp.
13 610, 617 (N.D. Cal. 1979).

14 **iii. Plaintiff's Counsel is Experienced in Similar Litigation and No Class Member**
15 **Made Objections to the Settlement**

16 Plaintiff's counsel has considerable experience in class actions and wage and hour litigation.
17 Plaintiff's counsel has brought and is currently bringing several wage and hour class and/or PAGA
18 actions. Thus, Plaintiff's counsel is qualified to evaluate the class claims, value of settlement versus
19 moving for certification and going to trial, and the viability of possible affirmative defenses. *See Decl.*
20 *Rodriguez*, ¶¶ 11-17. Plaintiff's counsel believes that the settlement is fair and reasonable in light of the
21 complexities of the case, the uncertainties of class certification and litigation, and the secured benefit to
22 the class. *See id.* at ¶ 6. This belief is bolstered by the fact that no objections to the settlement have
23 been made by class members and only one class member (0.5%) opted out. *See Decl. Kline*, ¶¶ 11-12.

24 **iv. The Settlement is Fair and Reasonable Based on the Strength of Plaintiff's Case**
25 **and the Risks and Costs of Further Litigation**

26 A review of the Agreement's terms does not give rise to any doubts about its fairness. Based on
27 the records and facts of this case, Plaintiff has secured a gross recovery of approximately 8.6 % and a
28 net recovery of approximately 4.5% of the claims' maximum likely value. *See Decl. Rodriguez*, ¶¶ 9-
10. Additionally, the average net award per class member is approximately \$754.44 and the highest

1 recovery is 2,111.36. *See* Decl. Kline, ¶ 16. This settlement is a reasonable compromise of the class
2 and PAGA claims, and is within the percentile ranges of the total available damages that have been
3 approved in other class settlements. *See Wershba*, 91 Cal.App.4th at 246, 250; *Rebney v. Wells Fargo*
4 *Bank*, 220 Cal.App.3d 1117, 1139 (1990); *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615,
5 628 (9th Cir. 1982); *see also In re Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007)
6 (noting that certainty of recovery in settlement of 6% of maximum potential recovery after reduction
7 for attorney's fees was higher than median percentage for recoveries in shareholder class action
8 settlements, averaging 2.2%-3% from 2000 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017 U.S.
9 Dist. LEXIS 77714 (C.D. Cal. 2017) (approving a settlement where the net recovery to class members
10 was approximately 7.5% of the projected maximum recovery amount); *Avila v. Cold Spring Granite*
11 *Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal. 2017): (approving a settlement with a gross recovery of
12 11% of the projected maximum damages available and a net recovery of approximately 6.7% of the
13 projected maximum recovery); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245 (N.D. Cal 2015)
14 (approving a settlement where the gross recovery was approximately 8.5% of the projected maximum
15 recovery).

16 **v. The Proposed Settlement is a Reasonable Compromise of Claims**

17 The case of *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008) requires additional
18 information be presented to the Court, acting as a fiduciary for the absent class members “to ensure that
19 the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims
20 being released, discounted by the risks and expenses of attempting to establish and collect on those
21 claims by pursuing the litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los*
22 *Angeles*, 186 Cal.App.4th 399 (2010), clarified that a *Kullar* showing does not require the parties to
23 submit an illusory prediction of the outer reaches of exposure without taking into account the actual
24 risks of certification, decertification, dispositive motions, and trial. *Kullar* also does not require an
25 explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its
26 claims provided there is a record that allows “an understanding of the amount that is in controversy and
27 the realistic range of outcomes of the litigation.” *Id.* at 409. The *Munoz* Court found that the record
28 before the trial court was sufficient, having included the number of class members, payroll data,

1 declarations describing hours and overtime worked, as well as variances in duties and rest and meal
2 period experience, and a companion action alleging less than \$5,000,000 in damages. This information
3 constituted “an adequate basis from which to garner a reasonably adequate understanding of the amount
4 that is in controversy within the meaning of *Kullar*.” *Id.*

5 Plaintiff similarly relied upon payroll data and Class Members data to determine the realistic
6 potential damages suffered by the class as a whole. *See Decl. Rodriguez*, ¶¶ 6-10. This analysis
7 allowed Plaintiff to determine the extent and frequency of potential violations on all claims as to all
8 Class Members. *See id.* Ultimately, Plaintiff secured a percentage of the total demand for the putative
9 class that is within the range of what has been found to be sufficient in several other cases. *See, supra*,
10 Section V.c.iv; *see also, e.g., In re Omnivision Technologies, Inc.*, 559 F.Supp.2d at 1042; *Reed v. 1-*
11 *800 Contacts, Inc.*, 2014 U.S. Dist. LEXIS 255 (S.D. Cal. 2014) (approving a settlement of \$11.7
12 million where the maximum range of damages was \$5,000 for each of the alleged 300,000 instances of
13 unlawful recording violations (\$1.5 billion), equaling approximately .78% of the total demand and
14 approximately \$800 per class member). This settlement represents a reasonable compromise given the
15 percentage of the total demand that was secured, the average recovery per class member, the Court’s
16 ability and discretion to cut PAGA penalties, and the uncertainty of class certification. *See Decl.*
17 *Rodriguez*, ¶¶ 9-10.

18 **vi. The Enhancement Payment to the Named Plaintiff for Plaintiff's Services to the**
19 **Putative Class Is Reasonable and Routinely Awarded by Courts**

20 The Enhancement Payment to the named Plaintiff is intended to recognize the time and effort
21 expended on behalf of the class. Indeed, Courts routinely approve enhancement payments to
22 compensate named plaintiffs for the services they provide and the risks they incurred during the course
23 of the class action litigation. *See Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001).
24 In *Ingram*, the Court approved enhancement payments of \$300,000.00 to each named plaintiff in
25 recognition of the services they provided to the class by responding to discovery, participating in the
26 mediation process, and taking the risk of stepping forward on behalf of the class. *See Id.* at 694; *see*
27 *also Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00
28 enhancement payment).

1 In this case, Plaintiff provided and explained documents, being available at all times to discuss
2 the case with Plaintiff's counsel. *See* Decl. Rodriguez, ¶ 7. Plaintiff spent a significant amount of time
3 pursuing this litigation for the benefit of all Class Members. *See id.* Plaintiff brought this action
4 knowing there would be a delay in any payment as the litigation progressed, rather than proceeding on
5 individual claims in front of the California Labor Commissioner. *See id.* Payment of \$15,000 to
6 Plaintiff is appropriate given the risk, assistance, time required in bringing this case and resolution of
7 this case.

8 **vii. Awarding Attorneys' Fees as a Percentage of the Common Fund Is Reasonable**
9 **and Customarily Approved by Courts**

10 California state and federal courts have recognized that when a litigant's efforts create or
11 preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally
12 among all the beneficiaries to compensate those who created the fund. *See Boeing Co. v. Van Gemert*,
13 444 U.S. 472, 477-478 (1980) ("A lawyer who recovers a common fund for the benefit of persons other
14 than . . . her client is entitled to a reasonable attorney's fee from the fund as a whole."); *Vincent v.*
15 *Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375
16 (1970); *Waters v. Intern. Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999); *see also Serrano v.*
17 *Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016).
18 The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation
19 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
20 burden alone." *Vincent*, 557 F.2d at 769; *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026,
21 1027 (9th Cir. 1977). California state courts have approved use of a percentage of the fund to calculate
22 reasonable attorney fee awards where the amount of the settlement is certain or is an easily calculable
23 sum of money. *See Dunk*, 48 Cal.App.4th at 1808.

24 The Ninth Circuit has also held that the common fund doctrine applies when: (1) the class of
25 beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the fee can be
26 shifted with some exactitude to those benefitting. *See Paul, Johnson, Alston & Hunt v. Grawlty*, 886
27 F.2d 268, 271 (9th Cir. 1989). These criteria are "easily met" when "each member of a certified class
28 has an undisputed and mathematically ascertainable claim to part of a lump-sum settlement recovered

1 on her behalf.” *Id.* at 271 (citations omitted). Under the three (3) factors set forth in *Paul, Johnson,*
2 *Alston & Hunt*, the common fund doctrine applies in this case because there is a sufficiently identifiable
3 class of beneficiaries (e.g. the settlement class), the benefits can be accurately traced to the settlement
4 Plaintiff and Plaintiff’s counsel were able to negotiate on behalf of the class, and the fee can be shifted
5 with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the common
6 fund. As set forth in the fee award examples provided below for the Court’s reference, it is an accepted
7 practice in wage and hour class action settlements to award attorneys’ fees based on a percentage of the
8 common fund. *See, e.g., Staton v. Boeing Co.*, 327 F.3d 938, 967-972 (9th Cir. 2003); *Sanders v. City*
9 *of Los Angeles*, 3 Cal.3d 252, 261, 263 (1970); *Wershba*, 91 Cal.App.4th at 254; *Bell v. Farmers Ins.*
10 *Exchange*, 115 Cal.App.4th 715, 726, 765 (2004).

11 Historically, attorneys’ fee awards in common fund cases in general range from 20% to 50% of
12 the fund, depending on the circumstances of the case. *See Newberg on Class Actions*, (3rd Ed.), 1992,
13 §14.03 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are
14 generally approved as reasonable in wage and hour settlements below \$10 million:

15 More particularly, courts may award attorneys fees in the 30-40% range in wage and hour
16 class actions that result in recovery of a common fund under \$10 million. *See Vasquez v.*
17 *Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-492 (E.D. Ca. 2010) (citing to five
18 recent wage and hour class actions where federal district courts approved attorney fee
19 awards ranging from 30 to 33%); *Singer v. Becton Dickenson and Co.*, 2010 U.S. Dist.
20 LEXIS 53416, 2010 WL 2196104, *8 (S.D. Ca. June 1, 2010) (approving attorney fee
award of 33.33% of the common fund and holding that award was similar to awards in
three other wage and hour class action cases where fees ranged from 33% to 40%);
Romero v. Producers Dairy Foods, Inc., 2007 U.S. Dist. LEXIS 86270, 2007 WL
3492841 (E.D. Ca. Nov. 14, 2007).

21 *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796 at *22-23 (S.D. Cal. 2011). Plaintiff’s
22 request of thirty five percent (35%) of the settlement sum for attorneys’ fees is within established rates
23 for fee awards in class settlements pursuant to the common fund doctrine, especially in light of the
24 excellent results achieved in this case. *See In re Activision Sec. Litigation*, 723 F.Supp. 1373, 1379
25 (N.D. Cal. 1989); *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-cv-00634;
26 *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745; *Green, et al. v.*
27 *Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069; *Benitez et al. v.*
28 *Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122; *Chavez et al. v. Petrisans et al.*, USDC

1 Eastern District, Case No. 1:08-cv-00122; *Willis et al. v. Cal-Western Transport*, USDC Eastern
2 District, Case No. 1:00-cv-05695. To determine whether a percentage is reasonable, a court should
3 consider: (1) the percentage that would likely be negotiated between parties in a similar case; (2) the
4 percentage applied in other class actions; (3) the quality of class counsel; (4) the size of the award; and
5 (5) whether there are any objections by class members. *See In re Ikon Office Solutions, Inc. Secur.*
6 *Litig.*, 194 F.R.D. 166, 193 (E.D. Pa. 2000); *In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555,
7 71 (C.D. Cal. 2005) (“the absence of objections or disapproval by class members to class counsel’s fee
8 request further supports finding the fee request reasonable”).

9 These factors support Plaintiff’s request for reasonable attorneys’ fees. The typical percentage
10 negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual litigation
11 depending on the complexity of the case. In class action litigation, the typical percentage negotiated
12 between parties ranges from thirty to forty percent (30% to 40%) based on the same factors. Plaintiff’s
13 request of 35% falls within these typical fee arrangements. *See Decl. Rodriguez*, ¶ 18. The quality of
14 counsel and the average size of settlement payments to Class Members and Aggrieved Employees
15 (\$754.44) also support the fee request when compared to other settlements courts have considered as
16 good results. *See Schiller v. David’s Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal.
17 2012) (“Class Members will receive an average of approximately \$198.70, with the highest payment to
18 a Class Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is
19 highlighted by the fact that there was no objection to the settlement amount or the attorneys’ fees
20 requested.”); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) (“the
21 results achieved in this case were very favorable. Class members are provided with immediate
22 monetary relief, with an average award of around several hundred dollars and a minimum award of
23 \$50”). Furthermore, no objections to the settlement have been made by Class Members and only one
24 individual (0.5%) opted out. *See Decl. Kline* ¶¶ 11-12.

25 **c. Certification of the Class is Appropriate**

26 Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-
27 defined community of interest in the questions of law and fact involved affecting the parties to be
28 represented.” *Dunk*, 48 Cal.App.4th at 1806. The “community of interest” element “embodies three

factors: (1) common questions of law or fact predominate; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.* Here, the parties agree that, for the purposes of settlement, these prerequisites are met. *See* Exhibit A.

i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous

The proposed settlement class is ascertainable because all putative class members can be readily identified through employee personnel and payroll files. *See Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are 206 individuals who fall within the definition of Class Member, which makes joinder of all members impracticable. *See Gay v. Waiters’ & Dairy Lunchmen’s Union*, 489 F.Supp. 282 (N.D. Cal. 1980), *aff’d* 694 F.2d 531 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal.App.3d 1017, 1030 (1972) (noting no set minimum to meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is acceptable). Thus, these requirements are satisfied.

ii. The Commonality, Predominance, and Typicality Requirements are Met

The commonality requirement is met when there are questions of law or fact regarding the class as a whole. *See Hanlon*, 150 F.3d at 1019. Commonality requires only that some common legal or factual questions exist; Plaintiff need not show that all issues in the litigation are identical. *See Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d 447, 460 (1974). Common questions of law or fact must also predominate over individual questions and class-wide treatment of a dispute must be superior to individual litigation.² *See Richmond*, 29 Cal.3d at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication by representation. *See Hanlon*, 150 F.3d at 1022. The typicality requirement is met when claims of the named representative are typical of those of the class, though “they need not be substantially identical.” *Id.* at 1020; *Classen v. Weller*, 145 Cal.App.3d 27, 46-47 (1983).

The common questions of law and fact in this case stem from Plaintiff’s contention that Defendants 1) failed to pay employees earned overtime wages; 2) failed to pay all minimum wages

²When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

owed due to Defendants' rounding policy and required off the clock work; 3) failed to provide duty-free meal and rest periods and pay premiums in lieu thereof; 4) failed to pay sufficient reimbursement for work-related cell phone use; 5) failed to accurately itemize the hours and wages earned on paystubs issued to class members. *See* Exhibit B. The waiting time penalties, unfair competition, and PAGA claims are derivative of these violations. *See id.* Plaintiff and the Class Members seek the same remedies under state law. Under these specific circumstances, the commonality and predominance requirements are satisfied. Regarding the typicality requirement, Plaintiff contends she suffered from the same unlawful policies, treatment, and circumstances as Class Members did, will request the same remedies, and will rely on the same methods of proof to establish liability and damages. *See id.* Thus, the typicality requirement is also satisfied for settlement purposes.

iii. The Adequacy Requirement is Met

The adequacy of representation requirement is met if the named representative and counsel have no interests adverse to those of the putative class members and are committed to vigorously prosecuting the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60 Cal.App.3d 442, 450-51 (1976). Those standards are met here. Under the preliminarily approved settlement, Plaintiff and the putative class members will receive a pro rata share of the settlement based on the number of workweeks they worked for Defendants. *See* Exhibit A. Finally, any Class Member who wanted to opt-out of the settlement was able to do so, and he or she was also able to dispute the number of workweeks stated in the Notice of Settlement.

There is no conflict of interest between Plaintiff and Class Members. Plaintiff and Plaintiff's counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class. Plaintiff's counsel, with Plaintiff's assistance, thoroughly investigated the claims made in this case by speaking with Plaintiff and reviewing substantial amounts of documents. Plaintiff's counsel thereafter engaged Defendants' counsel in settlement discussions over the course of approximately ten (10) months. Moreover, Plaintiff's counsel has experience defending and bringing wage and hour claims. Because Plaintiff's counsel has vigorously pursued Plaintiff's and the class members' claims, the adequacy requirement is met. *See generally* Decl. Rodriguez.

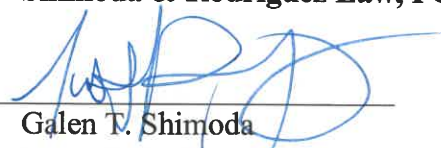
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1 **VII. CONCLUSION**

2 For all of the foregoing reasons, Plaintiff respectfully requests that this Court certify the class
3 for settlement purposes; grant final approval to the proposed settlement, including the Plaintiff's Class
4 Representative Enhancement Payment, the payment to the LWDA under PAGA, and Class Counsel's
5 application for reasonable attorneys' fees and costs; find that the Notice of Settlement and
6 administration process satisfied Class Members' due process rights; and approve the proposed
7 submitted concurrently herewith.
8

9 Dated: May 12, 2022

Shimoda & Rodriguez Law, PC

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11 By: 

Galen T. Shimoda
Justin P. Rodriguez
Attorneys for Plaintiff
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8 Attorneys for Plaintiff RITA ELSALAYMEH
9 individually and on behalf of similarly situated employees

10
11 **SUPERIOR COURT OF CALIFORNIA**
12
13 **FOR THE COUNTY OF SUTTER**

14 RITA ELSALAYMEH, individually and on
15 behalf of all other similarly situated
16 employees,

17 Plaintiff,

18 vs.

19 TRI-COUNTY RESPITE CARE SERVICE, a
20 California Corporation; JOY M. SCOTT, an
21 Individual; and DOES 1 to 100, inclusive,

22 Defendants.

Case No. CVCS21-0000579

CLASS ACTION

**DECLARATION OF JUSTIN P.
RODRIGUEZ IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: June 13, 2022

Time: 9:00 a.m.

Dept.: 1

Judge: Hon. Perry Parker

Filed: April 7, 2021

FAC Filed: June 8, 2021

Trial Date: None Set

1 I, Justin P. Rodriguez, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiff Rita Elsalaymeh ("Plaintiff") herein. I am making this
4 declaration on behalf of the named Plaintiff, the putative class members, and in support of Plaintiff's
5 Motion for Final Approval of Class Action and PAGA Settlement ("Motion"). A true and correct copy
6 of the Joint Stipulation Regarding Class Action and PAGA Settlement and Release ("Agreement") in
7 this matter is filed with this Motion as Exhibit A.

8 2. This case was brought as a wage and hour class action based on Plaintiff's contention
9 that Defendants Tri-County Respite Care Service, and Joy M. Scott, ("Defendants") 1) failed to pay
10 overtime wages; 2) failed to pay minimum wages; 3) committed rest and meal period violations; 4)
11 committed wage statement violations; 5) waiting time penalties; 6) failed to reimburse expenses; and 7)
12 engaged in unfair competition. Plaintiff also alleged liability for civil penalties under the Private
13 Attorneys General Act ("PAGA"). These claims were based on allegations that Defendants violated
14 California law by 1) failing to pay employees earned overtime wages; 2) failing to pay all minimum
15 wages owed due to Defendants' rounding policy and required off the clock work; 3) failing to provide
16 duty-free meal and rest periods and pay premiums in lieu thereof; 4) failing to pay sufficient
17 reimbursement for work-related cell phone use; 5) failing to accurately itemize the hours and wages
18 earned on paystubs issued to class members. The PAGA, waiting time penalty, wage statement
19 violation, and unfair competition claims also derive from these violations.

20 3. Plaintiff is the only named representative in this matter. From our initial investigations
21 of Plaintiff's claims and documents, we believed these claims had merit and could be maintained as a
22 class action. We filed the action on or about April 7, 2021. Plaintiff exhausted administrative remedies
23 through the Labor and Workforce Development Agency ("LWDA") prior to amending the Complaint
24 to add a PAGA claim. Plaintiff filed a notice with the LWDA on March 29, 2021, setting forth the
25 facts and theories of liability. A true and correct copy of the notice filed with the LWDA is being filed
26 with this Motion as Exhibit C. A copy of the notice was also sent to Defendants via certified mail and
27 the \$75.00 filing fee was remitted to the LWDA at that time. There was no response by the LWDA
28 regarding its intent to investigate the claims alleged in Plaintiff's notice for more than 65 days. As

1 such, Plaintiff became authorized to commence a civil action under the PAGA and filed a First
2 Amended Complaint on June 8, 2021. A true and correct copy of Plaintiff's operative Complaint is
3 filed with this Motion as Exhibit B. A copy of the complaint was uploaded to the LWDA on July 15,
4 2021, after we received an endorsed copy back from Court.

5 4. Currently, there is no date set for a motion to certify the class and there is no trial date.

6 5. Defendants are represented in this matter by Kathleen Carter and Jeff Gillette of
7 Messner Reeves LLP. From the beginning, Defendants have contested the merits of this case, the
8 suitability of the case for class action or representative treatment, the manageability of the case at trial,
9 and Plaintiff's ability to prove a violation in each pay period for each employee among other defenses
10 and contentions they made challenging the propriety of this action. Defendants further contended that,
11 even assuming there was a finding supporting the imposition of PAGA penalties, the Court would
12 likely exercise its discretion to substantially reduce any such penalties owed based on evidence of good
13 faith attempts to comply with Labor Code obligations by Defendants. Notwithstanding its agreement to
14 settle this matter, Defendants believe the practices Plaintiff is contending are unlawful either do not
15 exist or, to the extent they do exist, fully comply with all state and federal employment laws with
16 respect to Plaintiff and Class Members. Also, Defendants have contended that this matter is not
17 appropriate for class certification outside of this proposed class settlement.

18 6. Based on the expected testimony from Plaintiff and Class Members, a review of
19 Defendants' policies and procedures and other documents relating to the alleged claims, information on
20 the number of Class Members, Class Members' dates of employment, and a representative sample of
21 Class Members' payroll data, the scope of the potential damages to Plaintiff and Class Members in light
22 of the claims alleged, the uncertainty in the law with regard to certification, and the negotiations that
23 have taken place, I am convinced that the proposed settlement is in the best interest of the class. The
24 length and risks of trial and other normal perils of litigation that impact the value of the claims were also
25 considered and weighed in reaching the Agreement. In addition, I carefully considered the prospect of
26 potential class certification issues as well as the uncertainty of class certification, the difficulties of
27 complex litigation, and the lengthy process of establishing specific damages and various possible delays
28 and appeals in agreeing to the proposed settlement. I further considered the fact that penalties under the

1 PAGA could be substantially cut at the discretion of the Court even if Plaintiff was successful on
2 proving those claims and there was risk that a Court could find no willfulness in the failure to pay wages
3 at separation, which would eliminate the value of the waiting time penalty entirely. Overall, I believe it
4 is more beneficial to secure a guaranteed benefit to the class now rather than to proceed with litigation
5 and potentially obtain zero funds to the class due to legal or factual issues in the case.

6 7. My office, including my partner, Galen T. Shimoda, my paralegals, and myself, along
7 with Plaintiff's assistance, thoroughly investigated the merits of the claims and potential damages for
8 such claims. The parties engaged in informal discovery and exchange of documents, including a
9 representative sampling of employee data, such as timecards, paystubs, payroll data and relevant policies
10 for the entirety of the statute of limitations applicable to the alleged claims. The discovery covered all
11 aspects of the asserted claims, including certification issues, merits issues, damages, the scope and
12 configuration of Class Members, the content and implementation of the wage and hour policies at issue,
13 issues relating to manageability concerns at trial, among other relevant areas. From this production we
14 were able to determine information critical to a reliable damages analysis such as the average hourly
15 rate, average daily hours worked, average number of workweeks and pay periods that had potential
16 violations based on the asserted claims, the frequency with which violations occurred in a given week
17 and/or pay period, and the number for former employees. This information allowed my office to assess
18 both liability and damages and create an accurate damages model. Plaintiff assisted in all aspects of this
19 litigation including providing factual information relating to Plaintiff's and similarly situated employees'
20 employment conditions, providing a substantial number of documents, and answering questions
21 regarding Defendants' factual contentions in this matter. This was important because it directly related
22 to our ability to maintain this case as a class action and our ability to obtain a favorable settlement for
23 the class.

24 8. Throughout this litigation our office had numerous communications with Defendants'
25 Counsel discussing our respective positions. The parties engaged in mediation on September 30, 2021,
26 using an experienced mediator, Louis Marlin. It was only after approximately ten (10) months of
27 extensive, arm's length negotiations that the parties were able to reach a settlement, which only occurred
28

1 after a full-day mediation. The negotiations were at all times contentious and adversarial, though still
2 professional in nature.

3 9. The parties reviewed and analyzed substantial amounts of data regarding the class
4 claims. Based on our analysis and review of all relevant documents and Class Member information, I
5 have determined that the maximum damages for the asserted class claims is approximately
6 \$5,851,186.54 which includes civil penalties under the PAGA. The likely exposure for PAGA
7 penalties is approximately \$2,878,200 based on the counts alleged to the LWDA and the class data.
8 Based on our research, we did not find any prior Labor Commissioner or court decisions that stated
9 Defendants' practices and/or policies were improper. As such, a "subsequent violation" may not be
10 found for penalty calculation purposes and the exposure analysis here is based on an "initial violation"
11 valuation being adopted by any fact finder if this matter went to trial.

12 10. I believe the PAGA penalties in this case may be reduced however due to the fact that
13 the penalties would be in addition to amounts owed for substantive violations and much of the penalties
14 are based on violations due to technical non-compliance with the Labor Code. Furthermore,
15 Defendants produced a substantial number of documents that a Court may find demonstrates a good
16 faith attempt at compliance that merits the reduction of civil penalties. Courts regularly cut civil
17 penalties on PAGA claims where statutory penalties for the same violations are assessed as well. The
18 statutorily authorized discretion that Courts have used to reduce penalties ranges substantially. *See*
19 *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction);
20 *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction).
21 Thus, civil penalties may be cut to approximately \$513,213.58 (82% reduction) or lower given the
22 derivative recovery. Taking this into account, the likely recovery if Plaintiff was successful at trial on
23 proving all the substantive class damages plus civil penalties after a reduction of the PAGA penalties
24 would be approximately \$3,486,200. Taking this into account, Plaintiff's \$300,000 gross recovery
25 under the Agreement represents approximately 8.6% of the maximum likely value in this matter. After
26 deducting from the Gross Settlement Amount the proposed allocations for attorneys' fees and costs,
27 any Enhancement Payment to the Class Representative, Claims Administrator Costs, and the 75%
28 portion of the PAGA Payment to the LWDA, the net recovery under the Agreement represents

1 approximately 4.5% of the maximum likely value in this matter. As set out in the declaration of
2 Lindsay Kline, the average net award is approximately \$754.44 and the highest award is \$2,111.36. I
3 believe the Agreement represents a reasonable compromise of claims based on the legal and factual
4 disputes in this case. The ability to secure a guaranteed settlement now and ensure Class Members
5 receive some compensation, rather than proceed to further litigation and potentially recover nothing,
6 was a motivating factor in reaching this Agreement.

7 11. I am a Shareholder at Shimoda Law Corp. In agreeing to represent Plaintiff and take on
8 the case for all Class Members, I agreed to take this case on a contingency basis, meaning that I would
9 take a percentage of any settlement or judgment should we recover a monetary amount. I took a risk
10 that we would not recover any money in this matter if we were unsuccessful at trial. I also took on the
11 risk that the case may not be certified as a class action and/or be subject to an unfavorable summary
12 judgment ruling. However, I believe it is important to make sure employees are able to find affordable
13 representation in order to ensure that employers are complying with all their legal obligations towards
14 employees and paying employees all their hard-earned wages.

15 12. My law firm is a boutique law practice that focuses primarily in employment litigation,
16 emphasizing wage and hour litigation. I attended and graduated college from U.C. Davis, receiving a
17 Bachelor of Arts in Philosophy and the Departmental Citation for Academic Achievement in the
18 Philosophy program. I was one of only two recipients of this award out of the entire Philosophy
19 Department. After U.C. Davis, I attended the University of the Pacific, McGeorge School of Law,
20 graduating in 2011 and receiving a Juris Doctorate. I graduated in the top 20% of my class and was a
21 member of the Traynor Honor Society at McGeorge. Other academic achievements of mine include
22 receiving a Witkin Award (top grade) in my legal research and writing course, a Witkin Award in
23 complex civil litigation, being a member of the Dean's List from 2008 to 2011, being a Legislative
24 Staff Writer for the *McGeorge Law Review* from 2009–2010, being an Associate Comment Editor for
25 the *Pacific McGeorge Global Business & Development Law Journal* from 2010–2011, and being
26 selected as a Sacramento County Bar Association Diversity Fellow in 2009. I was also a member of
27 the Employment and Labor Law Society and an officer for the Latino Law Students Association from
28 2009 to 2010.

13. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Since 2017, I have received an AV Preeminent rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to present, I have been recognized as a Super Lawyer (Rising Star). In September 2018, I was a panel speaker for the Sacramento County Bar Association Labor and Employment Law Section's presentation of "*Epic Systems*, PAGA, and the Future of Employment Arbitration in California." In July 2020, I was a panel speaker for the Association of Defense Counsel of Northern California & Nevada presentation of "Class Actions and PAGA Claims." My practice focuses on complex civil litigation, including wage and hour class actions, PAGA claims, and Fair Labor Standards Act ("FLSA") claims. I am actively involved in most all of the complex litigation handled by our firm. Class and/or PAGA actions I have litigated or am currently litigating, including the instant case, includes, but is not limited to, the following:

- *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- *Adams-Anguy v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080 (San Joaquin Sup. Ct.);
- *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup. Ct.);
- *Barkhousen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- *Bershell v. Dignity Health Methodist Hospital Sacramento, et al.*, Case No. 34-2017-0222269 (Sac. Sup. Ct.);

- 1 • *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-
2 00271174 (Sac. Sup. Ct.);
- 3 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
4 Ct.);
- 5 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac.
6 Sup. Ct.);
- 7 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880
8 (Sac. Sup. Ct.);
- 9 • *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- 10 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
11 Ct.);
- 12 • *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 13 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
14 00209613 (Sac. Sup. Ct.);
- 15 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 16 • *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-
17 2017-00222101 (Sac. Sup. Ct.);
- 18 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- 19 • *Ferreira v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup.
20 Ct.);
- 21 • *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- 22 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 23 • *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup.
24 Ct.);
- 25 • *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac.
26 Sup. Ct.);
- 27 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 28 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);

- 1 • *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- 2 • *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup.
- 3 Ct.);
- 4 • *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- 5 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup.
- 6 Ct.);
- 7 • *Hellum v. AI Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup.
- 8 Ct.);
- 9 • *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- 10 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- 11 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 12 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 13 • *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- 14 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 15 • *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- 16 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 17 • *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-
- 18 KJM-EFB (E.D. Cal.);
- 19 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- 20 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 21 • *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 22 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-
- 23 00082201 (Sac Sup. Ct.);
- 24 • *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- 25 • *Salmon v. Ovarions Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.) ;
- 26 • *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.) ;
- 27 • *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- 28 • *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);

- 1 • *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- 2 • *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. 34-2017-00211553 (Sac.
- 3 Sup. Ct.);
- 4 • *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- 5 • *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

6 14. The preceding list does not include those cases where, for various reasons, the case was
7 filed as a class action and/or PAGA action, but did not maintain that status through the end of the case.

8 15. My partner, Galen T. Shimoda, Esq., also worked with me on this matter and was
9 critical in assisting with all aspects of the litigation of this case. Mr. Shimoda and I are some of only a
10 handful of plaintiff attorneys located in Sacramento who handle wage and hour class actions. Mr.
11 Shimoda attended and graduated from the University of Utah in 2000 with a B.S. in Business
12 Management and a B.A. in Asian Studies, with a minor in Japanese language. He then attended and
13 graduated from the University of the Pacific, McGeorge School of Law and received his J.D. degree in
14 2003. He graduated from McGeorge in the top 5% of his class and was a member of the Order of the
15 Coif and Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a
16 number of employment law articles for journals and our firm regularly publishes articles on our firm's
17 website. Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar)
18 Employment Review seminars from 2014 to the present. His speaking engagements include the
19 following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual
20 Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the
21 Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in
22 Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6)
23 CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law
24 Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class
25 Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21,
26 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the
27 Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour
28 Panel and AB 1825 Training: Updates on California's New Wage Laws and Manager Compliance

1 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
2 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
3 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
4 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
5 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
6 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);
7 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
8 Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,
9 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized
10 as a Super Lawyer from 2014 to present.

11 16. Mr. Shimoda has practiced law in California since being admitted to the State Bar in
12 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases.
13 Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington &
14 Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is
15 in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and
16 Federal Courts, including up to certification, settlement, preliminary and final approval, and
17 disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel.
18 Some of the class action and/or PAGA cases Mr. Shimoda is litigating and/or has litigated as lead or
19 co-counsel include the following:

- 20 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 21 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 22 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 23 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 24 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 25 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 26 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 27 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 28 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.

- Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
 - *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
 - *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
 - *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);
 - *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
 - *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
 - *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
 - *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
 - *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
 - *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
 - *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
 - *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
 - *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
 - *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac. Sup. Ct.);
 - *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
 - *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
 - *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac. Sup. Ct.);
 - *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
 - *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);

- 1 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 2 • *Hernandez et al. v. MP Nexlevel, LLC et al.*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- 3 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- 4 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 5 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 6 • *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- 7 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 8 • *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- 9 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 10 • *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- 11 • *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac.
12 Sup. Ct.);
- 13 • *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- 14 • *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- 15 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- 16 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 17 • *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- 18 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-
19 00082201 (Sac Sup. Ct.);
- 20 • *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac.
21 Sup. Ct.);
- 22 • *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- 23 • *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- 24 • *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- 25 • *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac.
26 Sup. Ct.);
- 27 • *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- 28 • *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);

- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

17. The preceding list of cases does not include those where, for a variety of reasons, the case was initially filed as a class and/or PAGA action, but did not maintain that status through the end of the case.

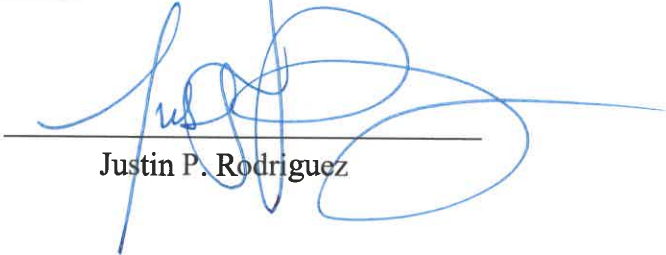
18. I am requesting attorneys' fees and costs pursuant to the common fund doctrine as I believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977), *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989). Plaintiff and our firm have been able to secure an identifiable benefit on behalf of the class and equity counsels that the cost of the representation should be born equally amongst all class members receiving these benefits. The settlement recovery provides an excellent result and is the product of substantial time and effort in analyzing the facts and law applicable to this case. I agreed to take this case on a contingency and as a class action with the possibility that I would not receive any compensation for my time and efforts due to issues regarding the merits and/or certification and have carried that risk over the course of the case. I have reviewed fee arrangements and Court ordered fee awards in similar class cases and I believe that the thirty five percent (35%) fee request is within the accepted ranges. In my experience with contingency cases in employment law cases, the typical percentage negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual litigation. In class action litigation, my experience in my own firm and working with several other firms has been that the typical percentage negotiated between parties and approved by a court ranges from thirty to forty percent (30% to 40%) based on the same factors. I have also reviewed several recent Federal District Court Cases where the Court has approved common fund based fee requests. These cases include *In re Activision Sec. Litigation*, 723 F.Supp. 1373, 1379 (N.D. Cal. 1989), *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-cv-0063, *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745, *Green, et al. v. Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069, *Benitez et al. v. Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122, *Chavez et al. v. Petrissans et al.*, USDC Eastern District, Case No. 1:08-cv-00122, and *Willis et al. v. Cal-Western Transport*, USDC Eastern

1 District, Case No. 1:00-cv-05695, which are cited in Plaintiff's Memorandum of Points and Authorities.
2 I believe my request of \$105,000 (approximately 35%) for attorneys' fees is justified given the results
3 obtained on behalf of the class. Moreover, at this time, my firm has advanced all costs for Plaintiff and
4 Class Members and has not received any compensation whatsoever for our time expended in this case.
5 The expected costs through final approval are \$12,084.73. Attached as Exhibit D is a true and correct
6 copy of the costs incurred prior to the filing of this Motion and the expected costs incurred through the
7 final approval and fairness hearing. Any difference in the actual costs and the maximum amount
8 allocated under the Agreement will be added to the Net Settlement Amount.

9 19. I have used several class action administrator companies in the wage and hour class
10 actions I have resolved in the past and believe Simpluris, Inc. will provide the best service to administer
11 the proposed class settlement. Under the Agreement, the difference between the originally allocated
12 \$7,500 and the actual administration costs of \$5,000.00, will be paid to the participating Class Members
13 on a pro rata basis.

14 20. A copy of the Agreement and the entire Motion was submitted to the LWDA for review
15 at the same time the Motion was submitted to the Court pursuant to California Labor Code section
16 2699(1)(2). A true and correct copy of documents demonstrating the settlement documents were
17 provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as
18 Exhibit E.

19 I declare under penalty of perjury under the laws of the State of California that the foregoing is
20 true and correct. Executed on May 12, 2022 in Elk Grove, California.

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24 Justin P. Rodriguez
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1 Galen T. Shimoda (Cal. State Bar No. 226752)
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5 Attorneys for Plaintiff, RITA ELSALAYMEH,
individually and on behalf of similarly situated employees
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8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SUTTER**

10 RITA ELSALAYMEH, individually and on
11 behalf of all other similarly situated employees,

12 Plaintiff,

13 vs.

14 TRI-COUNTY RESPITE CARE SERVICE, a
15 California Corporation; JOY M. SCOTT, an
Individual; and DOES 1 through 100, inclusive,

16 Defendants.
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Case No. CVCS21-0000579

CLASS ACTION

**DECLARATION OF LINDSAY KLINE
REGARDING NOTICE AND
SETTLEMENT ADMINISTRATION**

Date: June 13, 2022
Time: 9:00 a.m.
Dept.: 1
Judge: Hon. Perry Parker

Filed: April 7, 2021
FAC Filed: June 8, 2021
Trial Date: None Set

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1. I am employed as a Project Manager by Simpluris, Inc. (“Simpluris”), the claims administrator in the above-entitled action. Our Corporate Office address is 3194-C Airport Loop Dr., Costa Mesa, CA 92626. My telephone number is (714) 640-5635. I am over twenty-one years of age and authorized to make this declaration on behalf of Simpluris and myself.

3. Simpluris was approved by Counsel for Rita Elsalaymeh, (“Plaintiff”), and Tri-County Respite Care Service and Joy M. Scott (“Defendants”), (collectively the “Parties”), to provide settlement administration services in the *Rita Elsalaymeh v. Tri-County Respite Care Service et. al* case (“Settlement”). In this capacity, Simpluris was charged with (a) establishing and maintaining a related settlement fund account; (b) establishing and maintaining a calendar of administrative deadlines and responsibilities; (c) processing and mailing payments to the Plaintiffs, Class Counsel and Class Members; (d) printing and mailing the Notice of Proposed Class Action and PAGA Settlement, and Hearing Date for Final Court Approval of Settlement to Class Members; (e) receiving and validating Requests for Exclusion, Objections or Disputes of Workweeks submitted by Class Members; (f) calculating Employer Payroll Taxes and providing appropriate forms and calculations to Defendants; (g) mailing settlement checks, (h) providing counsel with weekly reports; and (i) other tasks as the Parties mutually agree or the Court orders Simpluris to perform.

4. A toll-free telephone number was included in the Notice of Proposed Class Action and PAGA Settlement, and Hearing Date for Final Court Approval of Settlement for the purpose of allowing the Class Members to call Simpluris and to make inquiries regarding the Settlement. The system is accessible 24 hours a day, 7 days a week, and will remain in operation throughout the settlement process. Callers have the option to speak with a live call center representative during normal

1 business hours or to leave a message and receive a return call during non-business hours. Spanish-
2 speaking representatives are available during normal business hours. The toll-free telephone number
3 included in the Notice of Proposed Class Action and PAGA Settlement, and Hearing Date for Final
4 Court Approval of Settlement was (888) 369-3780 and was live on March 17, 2022.

5 NOTIFICATION TO THE CLASS

6 5. On February 17, 2022, Simpluris received the Court-approved Notice of Proposed Class
7 Action and PAGA Settlement, and Hearing Date for Final Court Approval of Settlement (hereafter
8 “Notice”). The Notice advised Class Members of their right to request exclusion from the Settlement,
9 object to the Settlement, dispute workweeks, do nothing, and the implications of each such action. The
10 Notice advised Class Members of applicable deadlines and other events, including the Final Approval
11 Hearing, and how Class Members could obtain additional information.

12 6. On February 25, 2022, Defense Counsel provided Simpluris with a mailing list (“Class
13 List”) containing Class Members’ names, most recent mailing address, Social Security numbers and
14 dates of employment for each Class Member during the Class Period. The Class List contained data for
15 two hundred and six (206) Class Members.

16 7. The mailing addresses contained in the Class List were processed and updated utilizing
17 the National Change of Address Database (“NCOA”) maintained by the U.S. Postal Service. The
18 NCOA contains requested changes of address filed with the U.S. Postal Service. In the event that any
19 individual had filed a U.S. Postal Service change of address request, the address listed with the NCOA
20 would be utilized in connection with the mailing of the Notice. Simpluris was able to locate twenty six
21 (26) updated addresses using NCOA prior to the mailing of the Notice.

22 8. On March 17, 2022, Notice was mailed to two hundred and six (206) Class Members
23 with addresses contained in the Class List via First Class mail or updated via the NCOA search. A copy
24 of the Notice is attached hereto as **Exhibit A**.

25 9. A total of ten (10) Notices were returned to Simpluris. Of these, none (0) were returned
26 with a forwarding address. If a Class Member’s Notice was returned by the USPS as undeliverable and
27 without a forwarding address, Simpluris performed an advanced address search (i.e. skip trace) on all of
28 these addresses by using Accurint, a reputable research tool owned by Lexis-Nexis. Simpluris used the

1 Class Member's name and previous address to locate a current address. Through the advanced address
2 searches, Simpluris was able to locate nine (9) updated addresses and Simpluris promptly mailed a
3 Notice to those updated addresses. Ultimately, there was only one (1) Notice that was undeliverable.

4 **REQUESTS FOR EXCLUSION, OBJECTIONS AND DISPUTES**

5 10. The deadline for Class Members to submit a Request for Exclusion, Object to the
6 Settlement or Dispute work weeks was May 2, 2022.

7 11. As of this date, Simpluris has received one (1) Request for Exclusion from Class
8 Member, Allison A. Gregory.

9 12. As of this date, Simpluris has not received any Objections to the Settlement from Class
10 Members.

11 13. As of this date, Simpluris has not received any Disputes regarding work weeks from
12 Class Members.

13 **CLASS MEMBER AWARDS**

14 14. As of this date, there are two hundred and six (206) Class Members who will be paid
15 their portion of the Net Settlement Fund. This number includes the Class Member who requested
16 exclusion as they will still receive their portion of the PAGA payment.

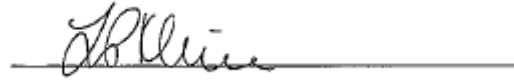
17 15. The Net Settlement Fund of \$155,415.27 available to pay Class Members was
18 determined by subtracting the Class Counsel's Fees (\$105,000.00), Class Counsel's Litigation Costs
19 (\$12,084.73), Named Plaintiff's Service Award (\$15,000.00), PAGA LWDA payment (\$7,500.00), and
20 the Administration Costs (\$5,000.00) from the Maximum Settlement Amount (\$300,000.00).

21 16. The *average estimated payment* is \$754.44 and the *highest estimated payment* is
22 \$2,111.36.

23 **ADMINISTRATION COSTS**

24 17. Simpluris' total costs for services in connection with the administration of this
25 Settlement, including fees incurred and anticipated future costs for completion of the administration, are
26 \$5,000.00. Simpluris' work in connection with this matter will continue with the calculation of the
27 settlement checks, issuance and mailing of those settlement checks, etc., and to do the necessary tax
28 reporting on such payments.

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2 I declare under penalty of perjury under the laws of the State of California that the foregoing is
3 true and correct. Executed this 12th day of May 2022, in Costa Mesa, CA.
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Lindsay Kline
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EXHIBIT A

CALIFORNIA SUPERIOR COURT FOR THE COUNTY OF SUTTER

Elsalaymeh v. Tri-County Respite Care Service, et al., CVCS21-0000579

**NOTICE OF PROPOSED CLASS ACTION AND PAGA SETTLEMENT, AND HEARING DATE FOR
FINAL COURT APPROVAL OF SETTLEMENT**

«IMbFullBarcodeEncoded»

«FirstName» «LastName» «BusinessName»

«Address1» «Address2»

«City», «State» «Zip»-«ZipDPC3»

SIMID «SIMID»
«Notice_Encoded»

ATTENTION: All non-exempt employees who have or continue to work for Defendants in California from April 7, 2017, to November 29, 2021 (the “Class Members”).

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE OR TO OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

Pursuant to an order from the Sutter County Superior Court (“Court”) granting preliminary approval of this class action settlement, entered on February 14, 2022, you are receiving notice of a proposed class action settlement between Plaintiff Rita Elsalaymeh (“Plaintiff” or “Class Representative”), and Defendants Tri-County Respite Care Service and Joy Scott (“Defendants”) on behalf of Class Members as defined above. You are receiving this notice because Defendants’ records indicate you fall within the definition of “Class Member.” Defendants’ records also indicate that you worked «MERGED_WW» workweeks during the applicable Class Period (as defined below), which means your share of the settlement proceeds is estimated to be «MERGED_EstSettAmnt_CALC». Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate, and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court’s order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On April 7, 2021, Plaintiff, a former employee, filed a Complaint against Defendants in the California Superior Court for the County of Sutter on behalf of herself and Class Members. The term “Action” means this putative class action pending in the Superior Court of California for the County of Sutter, Case No. CVCS21-0000579. The Class Period is from April 7, 2017, to November 29, 2021 (the “Class Period”).

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of herself and Class Members. Plaintiff alleged that Defendants violated California law by 1) violating Labor Code §§ 510, 1194; IWC Wage Order 5, 15 § 3 (Failure to Pay Overtime Wages); 2) violating Labor Code §§ 1194, 1197.1; IWC Wage Order Nos. 5, 15 § 4 (Failure to Pay Minimum Wages); 3) violating Labor Code §§ 226.7, 512 and Wage Order Nos. 5, 15 §§ 11(A) and 11(B) (Failure to Provide Meal Periods or

Pay Premiums in Lieu Thereof); 4) violating Labor Code § 226.7 and Wage Order Nos. 5, 15 § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof); 5) violating Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements); 6) violating Labor Code §§ 201-203, 256 (Failure to Pay Final Wages); 7) violating Labor Code § 2802 (Failure to Pay Reimbursements for Expenses); 8) violating Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order); 9) violating Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records); 10) violating Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave); 11) violating Business and Professions Code §§ 17200, *et seq.*, (Unfair Competition); and 12) violating Labor Code §§ 2698, *et seq.*, (PAGA Claims). Defendants have denied all of Plaintiff's allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide Settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendants continue to deny all allegations and claims. Defendants have entered into this settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Parties have entered into a *Joint Stipulation of Regarding Class Action PAGA Settlement and Release* ("Agreement"), which has been preliminarily approved by the Court. The Agreement applies to any and all Class Members as defined above. "Class Member" does not include persons who submit a valid request to opt out (as explained below). If you are a Class Member, you have the opportunity to participate in the settlement, or to exclude yourself ("opt out") from the settlement. This notice is to advise you of how you can either participate in the settlement or be excluded from the settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendants agree to pay a total sum of Three Hundred Thousand Dollars (\$300,000) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 35% of the Gross Settlement Amount which equals \$105,000, attorneys' costs not to exceed \$15,000, Claims Administrator Costs estimated not to exceed \$7,500, Class Representative's Enhancement Payment of \$15,000, and \$10,000 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendants in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$10,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees, which are defined as all non-exempt employees have or continue to work for Defendants in California from March 29, 2020, to November 29, 2021.

The number of weeks you worked during the Class Period and your estimated share of the Net Settlement Amount and PAGA Payment ("Claim Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by participating Class Members, the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees' allocations for the PAGA claims.

B. Claim Amounts and Allocation Between Class Members and Aggrieved Employees

Defendants will pay Claim Amounts through the Claims Administrator, as described below, to each Class Member who does not opt out of the settlement and to Aggrieved Employees. All Claim Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Claim Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as two-thirds for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC will issue and one-third for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Class Members who do not opt out and Aggrieved Employees will not require the submission of a claim form. Each Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. Receipt of the Claim Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendants' Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Claims Administrator from Defendants' records. Defendants' records will be presumed correct unless evidence to the contrary is provided to the Claims Administrator. Defendants' records and any additional evidence will be reviewed by the Claims Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendants' records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than May 2, 2022. The dispute will be resolved by the Claims Administrator based on the records and evidence provided. The Claims Administrator's decision on all disputes will be final and binding.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released all claims contained in the Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint, through the Class Period. This release excludes the release of claims not permitted by law. The Qualified Claimant's Released Claims exclude claims for workers' compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

Aggrieved Employees will be deemed to have released all claims that were brought under the Private Attorneys General Act, Labor Code § 2698, *et seq.*, based on the facts or claims alleged in the Action during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released ("Released Parties") include means Defendants, as well as Defendants' officers, shareholders, directors, agents, employees, attorneys, and insurers.

Class Members can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if Class Members have questions about the released claims and what they mean.

E. Attorneys' Fees and Costs

Defendants have agreed to pay Class Counsel's attorneys' fees and costs to be approved by the Court, up to a maximum of 35% of the Gross Settlement Amount which equals \$105,000, and attorneys' costs not to exceed \$15,000. Class Counsel's attorneys' fees and costs will be paid and deducted from the Gross Settlement Amount.

F. Reasonableness of Settlement

All attorneys for the Parties to the Action believe the amounts payable to Class Members, Aggrieved Employees, and amounts for attorneys' fees and costs requested are fair and reasonable. The Class Representative and Class Counsel support this Settlement. Among the reasons for support are the defenses to liability potentially available to Defendants, the inherent risk of trial on the merits, the risk of denial of class certification, and the delays associated with litigation.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement

If you wish to participate in the settlement and believe your workweek information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement

If you do not wish to participate in the settlement, you may be excluded (*i.e.*, "opt out") by submitting a timely written request to the Claims Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the settlement, and/or wants to be excluded from this settlement; (c) identify the case name and number (*i.e.* *Elsalaymeh v. Tri-County Respite Care Service, et al.*, CVCS21-0000579); (d) be signed; and (e) be post-marked no later than May 2, 2022. The request to opt out must be signed, dated and mailed by First Class U.S. Mail or the equivalent, to:

Elsalaymeh v. Tri-County Respite Care Service, et al
c/o Settlement Administrator
P.O. Box 26170
Santa Ana, CA 92799

The request to opt out must be postmarked no later than May 2, 2022. If you submit a request to opt out which is not postmarked by May 2, 2022, your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. If the request to opt out is sent from within the United States it must be sent through the United States Postal Service by First Class Mail, or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Claims Administrator, no longer be a Class Member and not receive their share of the class settlement payment. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the settlement, you can object to the terms of the Agreement. However, if the Court rejects your objection, you will still be bound by the terms of the Agreement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve

or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify the case name and number (*i.e.* *Elsalymeh v. Tri-County Respite Care Service, et al.*, CVCS21-0000579) (e) be signed; and (f) be post-marked no later than May 2, 2022. The objection must be sent to the Claims Administrator at the address identified in section III.B and to counsel for Plaintiff and Defendants at the addresses identified in section IV of this notice.

If you have submitted a written objection as outlined above, you may also appear at the Final Approval Hearing, either in person or through your own attorney, to state your objection. However, you must file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendants. If you appear through your own attorney, you are responsible for paying that attorney.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

After final approval of the settlement has been granted by the Court, each and every Class Member who does not opt out of the settlement and Aggrieved Employee, will release Defendants and the Released Parties from the released claims described above. In other words, if you were employed as a Class Member by Defendants in California during the Class Period, and you do not exclude yourself from the settlement, you will be deemed to have entered into this release and to have released the above-described claims. In addition, you will be barred from ever suing Defendants and the Released Parties with respect to the claims covered by this settlement. If the settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 1, 1175 Civic Center Blvd., Yuba City, CA 95993 on June 13, 2022, at 9:00 A.M. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs. The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing, unless you wish to object to the settlement.

VI. ADDITIONAL INFORMATION

If you want additional information about this lawsuit and its proceedings, you can contact Class Counsel or Defendants' Counsel as follows:

Justin P. Rodriguez
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

Kathleen Carter
Jeffrey Gillette
Messner Reeves LLP
650 Town Center Drive, Suite 700
Costa Mesa, California 92626
Telephone: (949) 612-9128
On behalf of Defendants

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL (888)-369-3780.

BY ORDER OF THE COURT

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 **Shimoda & Rodriguez Law, PC**
9401 East Stockton Boulevard, Suite 120
3 Elk Grove, CA 95624
Telephone: (916) 525-0716
4 Facsimile: (916) 760-3733

5 Attorneys for Plaintiff RITA ELSALAYMEH
individually and on behalf of similarly situated employees
6
7

8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SUTTER**
10

11 RITA ELSALAYMEH, individually and on
12 behalf of all other similarly situated
employees,

13 Plaintiff,

14 vs.

15 TRI-COUNTY RESPITE CARE SERVICE, a
16 California Corporation; JOY M. SCOTT, an
Individual; and DOES 1 to 100, inclusive,

17 Defendants.
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Case No. CVCS21-0000579

CLASS ACTION

**EXHIBIT LIST AND EXHIBITS IN
SUPPORT OF PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT**

Date: June 13, 2022

Time: 9:00 a.m.

Dept.: 1

Judge: Hon. Perry Parker

Filed: April 7, 2021

FAC Filed: June 8, 2021

Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Joint Stipulation Regarding Class Action and PAGA Settlement and Release
B	Plaintiff's Operative Complaint
C	Plaintiff's Letter to the LWDA Regarding PAGA Claims
D	Plaintiff's Itemized Costs
E	Proof of Submission of Proposed Settlement Agreement to LWDA

Dated: May 12, 2022

Shimoda & Rodriguez Law, PC

By: _____

Galen T. Shimoda
Justin P. Rodriguez
Attorneys for Plaintiff

Exhibit A

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Jessica L. Hart (Cal. State Bar No. 331441)
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Attorneys for Plaintiff RITA ELSALAYMEH individually and on behalf of similarly situated employees

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Jeff Gillette (Cal. State Bar No. 123346)
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Costa Mesa, California 92626
telephone: 949.612.9128

Attorneys for TRI-COUNTY RESPITE CARE SERVICE, and JOY SCOTT

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SUTTER

RITA ELSALAYMEH, individually and on
behalf of all other similarly situated employees,

Plaintiff,

vs.

TRI-COUNTY RESPITE CARE SERVICE, a
California Corporation; JOY SCOTT, an
individual; and DOES 1 to 100, inclusive,

Defendants.

Case No.: CVCS21-0000579

**JOINT STIPULATION REGARDING CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE**

Filed: April 7, 2021

FAC Filed: June 8, 2021

Trial Date: None Set

This Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement”) is made and entered into between the Plaintiff Rita Elsalaymeh (“Plaintiff”), on behalf of herself, the Labor and Workforce Development Agency, and Aggrieved Employees, and Defendants Tri-County Respite Care Service (“Tri-County”) and Joy Scott (“Scott”) the Executive Director of Tri-County (collectively “Defendants”). This Agreement is subject to the terms and conditions set forth below and the approval of the Court.

1. DEFINITIONS

The following terms, when used in this Agreement, have the following meanings:

1.1 “Action” means the above stated lawsuit, *Elsalaymeh v. Tri-County Respite Care Service, et al.*, Sutter County Superior Court, Case No. CVCS21-0000579, filed April 7, 2021.

1.2 “Aggrieved Employee(s)” means all of Tri-County’s non-exempt employees who have or continue to work for Tri-County in California during the PAGA Claim Period.

1.3 “Agreement” or “Settlement” or “Settlement Agreement” means this Joint Stipulation Regarding Class Action and PAGA Settlement and Release.

1.4 “Claim Amount” means an individual Qualified Claimant’s and Aggrieved Employee’s allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in Sections 1.21, 1.25, 5.5, and 5.8.

1.5 “Claims Administrator” means and refers to Simpluris, Inc., the third-party entity that will administer the Agreement as outlined in Sections 4 and 7, or any other third-party class action settlement claims administrator agreed to by the Parties and approved by the Court for the purposes of administering this Agreement. The Parties each represent that they do not have any financial interest in the Claims Administrator or otherwise have a relationship with the Claims Administrator that could create a conflict of interest.

1.6 “Claims Administrator Costs” means the fees and expenses reasonably incurred by the Claims Administrator as a result of the procedures and processes expressly required by this Agreement, and shall include all costs of administering the Agreement, including, but not limited to, all tax document preparation, custodial fees, and accounting fees incurred by the Claims Administrator; all costs and fees associated with preparing, issuing and mailing any and all notices and other correspondence to Class

Members and/or Aggrieved Employees; all costs and fees associated with communicating with Class Members and/or Aggrieved Employees, Class Counsel, and Defendants' Counsel; all costs and fees associated with computing, processing, reviewing, and paying the Claim Amounts, and resolving disputes; all costs and fees associated with calculating tax withholdings and payroll taxes, if any, making related payment to federal and state tax authorities, if any, and issuing tax forms relating to payments made under the Agreement; all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency; all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering Claim Amounts; and any other costs and fees incurred and/or charged by the Claims Administrator in connection with the execution of its duties under this Agreement.

1.7 "Class Counsel" means Galen T. Shimoda, Justin P. Rodriguez, and Jessica L. Hart of the Shimoda Law Corp.

1.8 "Class Member(s)" means all of Tri-County's non-exempt employees who have or continue to work for Tri-County over the Class Period. The estimated number of Class Members is 202.

1.9 "Class Period" means from April 7, 2017, up to either (1) the Preliminary Approval Date, or (2) November 29, 2021, whichever is earlier.

1.10 "Class Representative" means Plaintiff Rita Elsalaymeh.

1.11 "Class Representative's Released Claims" means all claims arising from, could have been asserted, or related in any way to the Class Representative's employment with Defendants, under federal, state, or local laws, and/or ordinances, or tort or contract theories, whether known or unknown, and whether anticipated or unanticipated, including without limitation statutory, constitutional, contractual or common law claims for lost wages, unpaid wages, emotional distress, punitive damages, special damages, damages, unpaid costs, penalties, liquidated damages, interest, attorneys' fees, litigation costs, restitution, equitable relief or other similar relief or claims. The Class Representative's Released Claims, however, exclude claims for workers' compensation, unemployment insurance benefits, or other claims that cannot be released as a matter of law.

1.12 "Complaint" means the operative Complaint on file in the Action with the Court.

1.13 "Court" means the Sutter County Superior Court.

1.14 “Defendants” means Tri-County Respite Care Service and Joy Scott.

1.15 “Defendants’ Counsel” means Messner Reeves LLP.

1.16 “Enhancement Payment” means the amount approved by the Court to be paid to the Class Representative in recognition of the time and effort expended on behalf of Class Members for the benefit of Class Members, which is in addition to any Claim Amount paid to the Class Representative as a Qualified Claimant.

1.17 “Effective Date” means the day the Court files a signed order granting final approval of this Agreement unless there is a timely objection lodged that has not later been withdrawn, in which case the Effective Date will be either (a) the 60th calendar day after a signed order approving this Agreement has been filed provided no appellate proceeding having been filed; or (b) seventh (7th) calendar day after any appellate proceeding opposing the Agreement has been finally dismissed with no material change to the terms of this Agreement and there is no right to pursue further remedies or relief, whichever is later.

1.18 “Final Approval Date” means the date a signed order granting final approval of this Agreement is filed with the Court.

1.19 “Gross Settlement Amount” is the sum of Three Hundred Thousand Dollars (\$300,000).

1.20 “LWDA” means the California Labor and Workforce Development Agency.

1.21 “Net Settlement Amount” is the portion of the Gross Settlement Amount available for distribution to Qualified Claimants, as described in this Agreement, after deduction of Plaintiff’s attorneys’ fees and litigation costs, Claims Administrator Costs, the PAGA Payment, and Enhancement Payment to the Class Representative.

1.22 “Notice of Settlement” means the document substantially in the form attached hereto as Exhibit 1.

1.23 “Notice Period” means forty-five (45) calendar days from the initial mailing of the Notice of Settlement to Class Members and Aggrieved Employees.

1.24 “PAGA” means Private Attorneys General Act.

1.25 “PAGA Payment” means the amount allocated from the Gross Settlement Amount towards resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.*

1 1.26 "PAGA Claim Period" means March 29, 2020, up to either (1) the Preliminary Approval
2 Date, or (2) November 29, 2021, whichever is earlier.

3 1.27 "Parties" mean Defendants and Plaintiff.

4 1.28 "Preliminary Approval Date" means the date a signed order granting preliminary approval
5 of this Agreement is filed with the Court.

6 1.29 "QSF" means a Qualified Settlement Fund set up by the Claims Administrator for the
7 benefit of the Qualified Claimants and/or Aggrieved Employees and from which the payments under this
8 Agreement shall be made. Any amounts Defendants have agreed to pay under this Agreement shall remain
9 the property of Defendants until the payments required under the Agreement are made.

10 1.30 "Qualified Claimant" means any and all Class Members who have not made any timely
11 request to opt-out of the Agreement.

12 1.31 "Qualified Claimant's Released Claims" means all claims contained in the Complaint, and
13 any additional wage and hour claims that could have been brought based on the facts alleged in the
14 operative Complaint, through the Class Period. This release excludes the release of claims not permitted
15 by law. The Qualified Claimant's Released Claims exclude claims for workers' compensation or
16 unemployment insurance benefits. This release will cover all Class Members who do not opt out.

17 1.32 "Qualifying Workweeks" are weeks worked by Class Members and/or Aggrieved
18 Employees during the Class Period and/or PAGA Claim Period, respectively, in California. For Class
19 Members, workweeks shall be defined as the total length of service (in days) in California during the Class
20 Period divided by seven. For Aggrieved Employees workweeks shall be defined as the total length of
21 service (in days) in California during the PAGA Claim Period divided by seven. The calculation of a
22 Class Member's and/or Aggrieved Employee's workweeks and a determination as to whether a Class
23 Member and/or Aggrieved Employee was actively employed in California in a particular workweek shall
24 be construed from Defendants' records.

25 1.33 "Released PAGA Claims" means any and all claims that were brought under the Private
26 Attorneys General Act, Labor Code § 2698, *et seq.*, based on the facts or claims alleged in the Action
27 during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.
28

1.34 “Released Parties” means Defendants, as well as Defendants’ officers, shareholders, directors, agents, employees, attorneys, and insurers.

2. DESCRIPTION OF THE LITIGATION

2.1 On or about March 29, 2021, Plaintiff sent notice to the LWDA to exhaust administrative remedies under the PAGA for 1) violations of Labor Code §§ 510, 1194; IWC Wage Order 5, 15 § 3 (Failure to Pay Overtime Wages); 2) violations of Labor Code §§ 1194, 1197.1; IWC Wage Order Nos. 5, 15 § 4 (Failure to Pay Minimum Wages); 3) violations of Labor Code §§ 226.7, 512 and Wage Order Nos. 5, 15 §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof); 4) violations of Labor Code § 226.7 and Wage Order Nos. 5, 15 § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof); 5) violations of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements); 6) violations of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages); 7) violations of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses); 8) violations of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order); 9) violations of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records); and 10) violations of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave).

2.2 The LWDA did not respond to the notice within the statutorily required time frame and, as such, Plaintiff became authorized to act as a Private Attorneys General on all alleged PAGA claims.

2.3 On or about April 7, 2021, Plaintiff filed a class action Complaint in Sutter County Superior Court on behalf of herself and Class Members alleging claims for 1) failure to pay overtime wages; 2) failure to pay minimum wages; 3) meal period violations; 4) rest period violations; 5) wage statement violations; 6) waiting time penalties; 7) failure to reimburse expenses; and 8) unfair competition. Plaintiff filed a First Amended Complaint on approximately June 8, 2021 to add a PAGA cause of action based on the violations alleged in the March 29, 2021, notice to the LWDA on behalf of herself and Aggrieved Employees.

2.4 Through informal discovery, Defendants and Defendants’ Counsel provided Class Counsel with copies of all applicable versions of its policies and procedures, employee handbooks, and information on Class Members during the Class Period including, but not limited to, Class Members’

workweeks, dates of employment, total number of Class Members, their rates of pay, and pay periods as well as timecard data and payroll reports for a randomly selected sample of Class Members.

2.5 After Class Counsel received the data, the Parties participated in a lengthy mediation on September 30, 2021, with private mediator Lou Marlin. At the conclusion of the mediation, the Parties were able to come to a resolution. At all times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length.

2.6 Discussions between Plaintiff and Class Counsel, between counsel for the Parties, document productions, extensive legal analysis, the provision of information by Defendants to Plaintiff and the detailed analysis of the records, including expert analysis, have permitted each side to assess the relative merits of the claims and the defenses to those claims.

2.7 In the Action, Plaintiff contends that Defendants violated California law by 1) failing to pay employees earned overtime wages; 2) failing to pay all minimum wages owed due to Defendants' rounding policy and required off the clock work; 3) failing to provide duty-free meal and rest periods and pay premiums in lieu thereof; 4) failing to pay sufficient reimbursement for work-related cell phone use; 5) failing to accurately itemize the hours and wages earned on paystubs issued to class members; 6) failing to keep accurate records of hours worked; 7) failing to pay employees earned wages at termination or separation; 8) unfair competition; and 9) PAGA claims. Defendants have denied each of Plaintiff's claims and Defendants have denied that this Action is appropriate for class certification for anything other than settlement purposes. The agreed upon Gross Settlement Amount was reached after evaluating the Parties' theories of potential exposure for the underlying claims and the class data supporting these claims. The Parties, with the assistance of the mediator, also assessed appropriate discounts to the potential liability based on Defendants' factual and legal contentions and defenses.

2.8 The Parties agree that the above-described investigation and evaluation, as well as discovery and the information exchanged to date, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Class Counsel, Defendants, and Defendants' Counsel have concluded that it is desirable that the Action be settled in a manner and upon such terms and conditions set forth herein in order to avoid further expense, inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the

Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action. Plaintiff, Class Counsel, Defendants, and Defendants' Counsel are of the opinion that the Agreement for the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and circumstances.

3. THE CONDITIONAL NATURE OF THIS AGREEMENT

3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose of settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a conditional basis. If the Court does not enter an order granting final approval of the Agreement, or if the Court's approval of the settlement is reversed or materially modified on appellate review, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

3.2 Defendants have denied all claims as to liability, damages, liquidated damages, penalties, interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendants have agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or the Final Approval Date does not occur, Defendants do not waive, but rather expressly reserve, all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability to challenge class or collective treatment on any grounds, as well as to assert any and all other potential defenses or privileges.

4. SCOPE OF THE CLASS

4.1 The scope of the class of individuals encompassed under the Agreement, who are entitled to all benefits as authorized under the Agreement and subject to all obligations and duties required under the Agreement, shall include all Class Members as defined in Section 1.8 and all Aggrieved Employees as defined in Section 1.2. However, it shall not include any Class Members who submit valid and timely requests to opt-out of the Agreement and settlement, as set forth in Section 7.5.1.

1 4.2 Individuals entitled to recover under this Agreement will include only those individuals
2 who are identified as being within the scope of this Agreement under Section 4.1.

3 4.3 Any person who believes that he or she is a Class Member or Aggrieved Employee and
4 wishes to participate in the Agreement, but did not receive a Notice of Settlement because his or her name
5 did not appear on the class list provided to the Claims Administrator prior to mailing, may submit a data
6 request to the Claims Administrator. The data request must contain all of the following information: (a)
7 the full name and, if applicable, Social Security Number of the individual making the request; (b) the
8 name used by such employee as of the time his or her employment with Tri-County ended; (c) the years
9 during which such employee was employed with Tri-County; and (d) a return address to which a response
10 may be sent. Every data request must be postmarked on or before the conclusion of the Notice Period or
11 otherwise submitted to the Claims Administrator such that it is received before the conclusion of the
12 Notice Period. Upon receipt of any data requests, the Claims Administrator shall promptly (in no event
13 more than two business days) transmit the data requests to Defendants' Counsel and request that
14 Defendants review their records.

15 4.4 If Defendants do agree that the person listed in a data request is a Class Member and/or
16 Aggrieved Employee, the Claims Administrator shall promptly mail a Notice of Settlement to the person
17 who submitted the data request, at the address designated for that purpose in the data request. All
18 provisions of this Agreement relating to the Notice of Settlements shall apply to Notice of Settlements
19 sent in response to data requests, and any person who submits a data request and is sent a Notice of
20 Settlement in response shall be treated by the Claims Administrator as a Class Member and/or Aggrieved
21 Employee for all other purposes.

22 4.5 If Defendants disagree that the person listed in a data request is a Class Member and/or
23 Aggrieved Employee, Defendants' Counsel and Class Counsel shall attempt to resolve any such dispute
24 in good faith within seven (7) calendar days of Class Counsel being advised in writing of the data request
25 dispute. Defendants' records shall control unless the individual submitting the data request provides
26 persuasive evidence to doubt the accuracy of those records. Each data request dispute that Defendants'
27 Counsel and Class Counsel cannot timely resolve shall be resolved by the Claims Administrator. The
28 Claims Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve

the dispute. The Claims Administrator must resolve any dispute submitted to it within seven (7) calendar days after Defendants' Counsel and Class Counsel submit the dispute to the Claims Administrator. The decision by the Claims Administrator shall be final and there shall be no right of appeal.

5. TERMS OF THE SETTLEMENT

The Parties agree as follows:

5.1 Gross Settlement Amount: In consideration and exchange for the releases described in Section 6, Defendants shall pay the Gross Settlement Amount (\$300,000). Funding of the Gross Settlement Amount shall occur within twenty-one (21) days after the Final Approval Date to be held in trust in a QSF by the Claims Administrator. The Gross Settlement Amount includes payments to Qualified Claimants, Aggrieved Employees, all attorneys' fees, costs and litigation expenses related to the Action incurred to date, as well as all such fees and costs incurred in documenting the Agreement, administering the Agreement (including Claims Administrator Costs), and obtaining final approval of the Agreement, the Enhancement Payment to the Class Representative and the PAGA Payment. Any monies necessary to satisfy Defendants' tax obligations (e.g. employer FICA, FUTA and SDI contributions on wage payments) on any monies distributed to Qualified Claimants will be paid in addition to the Gross Settlement Amount.

5.2 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of 35% or \$105,000 of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendants have agreed to not oppose Class Counsel's application for attorneys' fees so long as it does not exceed the \$105,000 threshold. Class Counsel will also be entitled to reimbursement for advanced litigation expenses not to exceed \$15,000, which shall be paid from the Gross Settlement Amount. Defendants have agreed to not oppose Class Counsel's request for reimbursement for advanced litigation expenses so long as they do not exceed the \$15,000 threshold. The Claims Administrator will issue Class Counsel an IRS Form 1099 for the attorneys' fees and costs paid under this Agreement. In the event that the Court awards less than the requested attorney's fees and/or costs, the portion of the requested amounts not awarded to Class Counsel shall be added to the Net Settlement Amount to be distributed to Qualified Claimants on a pro rata basis.

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1 5.3 Claims Administrator Costs: The Claims Administrator Costs shall be paid from the Gross
2 Settlement Amount and shall not exceed \$7,500. The difference between any actual costs and the allocated
3 \$7,500 shall be added to the Net Settlement Amount.

4 5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiff, shall apply to the Court for
5 an Enhancement Payment to the Class Representative in an amount not to exceed Fifteen Thousand
6 Dollars (\$15,000) to compensate for the risks, time, and expense of her involvement in the Action and
7 securing the benefits of this Agreement for Class Members. The Enhancement Payment is in addition to
8 the Claim Amount Plaintiff would otherwise be due under the Agreement as a Qualified Claimant.
9 Defendants have agreed to not oppose Class Counsel's request for an Enhancement Payment to Plaintiff
10 so long as it does not exceed the amount stated herein. The Enhancement Payment will be designated as
11 a non-wage payment and reported on an IRS Form 1099. In the event that the Court awards less than the
12 Enhancement Payment amount requested, then any portion of the requested amount not awarded to the
13 Class Representative shall be added to the Net Settlement Amount to be distributed to Qualified Claimants
14 on a pro rata basis.

15 5.5 PAGA Payment: Ten Thousand Dollars (\$10,000) of the Gross Settlement Amount shall
16 be allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment
17 will be paid to the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees on a pro
18 rata basis as described below in Section 5.8. Any amount not approved by the Court for the allocated
19 PAGA Payment shall be added to the Net Settlement Amount to be distributed to Qualified Claimants on
20 a pro rata basis.

21 5.6 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount or
22 PAGA Payment allocated to Qualified Claimants and/or Aggrieved Employees that were not claimed by
23 cashing their respective settlement checks before the deadline to do so, that remaining amount shall be
24 donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc. and the Center for Workers Rights. No portion of
25 the Gross Settlement Amount will revert to Defendants for any reason.

26 5.7 No Additional Benefits Contributions: All Claim Amounts paid to Qualified Claimants
27 and Aggrieved Employees shall be deemed to be income solely in the year in which such amounts were
28 actually received. It is expressly understood and agreed that the receipt of such Claim Amounts will not

entitle any Qualified Claimant or Aggrieved Employee to any new or additional compensation or benefits under any company bonus or other compensation or benefit plan or agreement in place during the period covered by the Agreement, nor will it entitle any Qualified Claimant Aggrieved Employee to any increased retirement, 401(k) and/or 403(b) benefits or matching benefits, or deferred compensation benefits. It is the intent of this Agreement that the Claim Amounts provided for in this Agreement are the sole payments to be made by Defendants to the Qualified Claimants and Aggrieved Employees in connection with this Agreement (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the period covered by this Agreement).

5.8 Pro Rata Distribution Formula: Payment to Qualified Claimants and Aggrieved Employees of their Claim Amount will not require the submission of a claim form. A Net Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for approved attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Claims Administrator Costs, and the PAGA Payment. Each Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share.

5.9 Tax Allocation: The Parties recognize that the Claim Amounts to be paid to Qualified Claimants and/or Aggrieved Employees reflect a settlement of a dispute over claimed penalties and wages. The Claims Administrator shall calculate the employer's share of payroll taxes on the amounts paid to Qualified Claimants as wages as well as calculating all required withholdings and deductions from said wage payments. The characterization of Claim Amounts to Qualified Claimants and Aggrieved Employees are as follows:

5.9.1 One-Third (1/3) of each Qualified Claimants' Claim Amount shall be allocated for payment of disputed wages and shall be subject to required employer taxes. Qualified Claimants shall

1 receive an IRS Form W-2 for reporting of this portion of their Claim Amount.

2 5.9.2 Two-Thirds (2/3) of each Qualified Claimants' Claim Amount shall be allocated
3 for disputed statutory penalties and interest, and no amount shall be deducted for any taxes. This portion
4 of the Claim Amount consists of other income, not wages, for which the Qualified Claimants shall receive
5 an IRS Form 1099-MISC.

6 5.9.3 The entirety (100%) of each Aggrieved Employee's share of the 25% portion of the
7 PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted
8 for any taxes. This portion of the Claim Amount consists of other income, not wages, for which the
9 Aggrieved Employees shall receive an IRS Form 1099-MISC.

10 5.10 Qualified Claimants and Aggrieved Employees shall be solely responsible for the reporting
11 and payment of their share of any federal, state and/or municipal income or other taxes on payments made
12 pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendants' Counsel free and
13 harmless from any claims resulting from treatment of such payments as non-taxable, including the
14 treatment of such payments as not subject to withholding or deduction for payroll and employment taxes.
15 No party has made any representation to any of the other Parties as to the taxability of any payments
16 pursuant to this Agreement, including the payments to Qualified Claimants, the payments to Aggrieved
17 Employees, the payments to Class Counsel, the payments to the Class Representative, the payroll tax
18 liability of Defendants, or the allocation of the Net Settlement Amount or PAGA Payment to wage and
19 non-wage income as provided in this Section, or otherwise as to tax implications of any provision of this
20 Agreement.

21 5.11 No Additional Contribution by Defendants: Defendants' monetary obligation under this
22 Agreement is limited to the Gross Settlement Amount and any employer side payroll taxes owed on
23 amounts characterized as wages under this Agreement. All other costs and expenses arising out of or in
24 connection with the performance of this Agreement shall be paid from the Gross Settlement Amount,
25 unless expressly provided otherwise herein. However, in the event this agreement is deemed null and
26 void as described in Section 3 because the Court, in its independent determination, finds that the
27 Agreement does not meet the standards for settlement approval, then Defendants and Plaintiff shall be
28

1 equally responsible for the costs of the Claims Administrator incurred between the date the Agreement
2 was executed and the date of such event.

3 5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement
4 only, certification of the class as defined in Section 1.8 and 4.1 is appropriate and the requisites for
5 establishing class certification have been met and are met.

6 5.13 Adequacy of Class Counsel and Class Representatives: The Parties agree that, for purposes
7 of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members and
8 Aggrieved Employees.

9 **6. RELEASE**

10 6.1 Release of Claims by Qualified Claimants: Upon the Effective Date, all Qualified
11 Claimants will be deemed to fully, finally and forever release Qualified Claimant's Released Claims as to
12 all Released Parties. In addition, on the Effective Date, all Qualified Claimants and their successors in
13 interest will be permanently enjoined and forever barred from prosecuting any of Qualified Claimant's
14 Released Claims against any of the Released Parties.

15 6.2 Release of Claims by Aggrieved Employees: Upon the Effective Date, all Aggrieved
16 Employees will be deemed to fully, finally and forever release the Released PAGA Claims as to all
17 Released Parties. In addition, on the Effective Date, all Aggrieved Employees and their successors in
18 interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA
19 Claims against any of the Released Parties.

20 6.3 Release by Plaintiff: Upon the Effective Date, Plaintiff will be deemed to fully, finally and
21 forever release the Qualified Claimant's Released Claims, Released PAGA Claims, and Class
22 Representative's Released Claims as to all Released Parties. In addition, on the Effective Date, Plaintiff
23 and any successors in interest will be permanently enjoined and forever barred from prosecuting any of
24 the Qualified Claimant's Released Claims, Released PAGA Claims, and Class Representative's Released
25 Claims against any of the Released Parties, as outline in sections 1.11, 1.31, 1.33-1.34.

26 6.3.1 In addition to the Released Claims identified in in section 6.3, on the Effective
27 Date, Plaintiff agrees to generally release the Released Parties from any and all claims, whether known
28 or unknown, under all federal, state and local statutes, and federal and state common law (including but

not limited to those for contract, tort, and equity), except for workers compensation claims. Plaintiff acknowledges the language of Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Plaintiff expressly waives the protection of Section 1542. Plaintiff understands and agrees that claims or facts in addition to or different from those which are now known or believed by them to exist may hereafter be discovered. It is Plaintiff's intention to settle fully and release all of the claims, except for workers compensation claims, she now has against the Released Parties, whether known or unknown, suspected or unsuspected.

7. SETTLEMENT ADMINISTRATION

7.1 Duties of Claims Administrator: The Claims Administrator shall be responsible for: 1) receiving Class Member and Aggrieved Employee contact information and confirming addresses are valid; 2) calculating estimated Claim Amounts and any and all taxes associated with the Claim Amounts, including Employer taxes; 3) taking appropriate steps to trace and locate any individual Class Members and Aggrieved Employee whose address or contact information as provided to the Claims Administrator is inaccurate or outdated and mailing the Notice of Settlement to Class Members; 4) providing notification to the appropriate state and federal officials of this Agreement as required under the law; 5) receiving, independently reviewing, and resolving any challenges (in consultation with Class Counsel and Defendants' Counsel) from Class Members or Aggrieved Employees, including any associated documentation, regarding their Qualified Workweek calculations; 6) receiving and serving on Class Counsel, Defendants' Counsel, and the Court, copies of any written objections, and/or any opt out statements; 7) establishing a toll free telephone line and responding to inquiries and requests for information or assistance from Class Members and/or Aggrieved Employees; 8) maintaining a QSF; 9) determining and paying the final amounts due to be paid under the Agreement after resolution of all challenges, disputes, opt-outs, awarded attorneys' fees and costs, Claims Administrator Costs, PAGA Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability to locate Class Members or Aggrieved Employees; 10) determining the validity of any disputes or late

1 opt-outs by previously unidentified Class Members or Aggrieved Employees; 11) paying any residual
2 funds from uncashed checks; 12) reporting to Class Counsel and Defendants' Counsel regarding the
3 statistics of the administration, including (a) the number of initial Notice of Settlements mailed; (b) the
4 number of forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the
5 number of total undeliverable Notice of Settlements; (e) the number of address traces performed for
6 undeliverable Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced
7 addresses; (g) the number of total objections received; (h) the number of opt-out requests received; (i) the
8 number of disputes received; (j) the number of disputes resolved; 13) providing a declaration to the Court
9 regarding the final statistics of the administration and compliance with all payment obligations under the
10 Agreement; 14) completing all necessary tax reporting on the QSF and payment of the Claim Amounts to
11 Qualified Members and Aggrieved Employees; and 15) carrying out other related tasks as necessary to
12 effectuate the terms of this Agreement and any Order of the Court. All disputes relating to the Claims
13 Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which
14 will have continuing jurisdiction over the terms and conditions of this Agreement, until all payments and
15 obligations contemplated by the Agreement have been fully executed.

16 7.2 Notice to Class Members and Aggrieved Employees: The Notice of Settlement will
17 provide Class Members and Aggrieved Employees with a summary of the terms and conditions of the
18 Agreement, how to participate in the settlement, how to object to the Agreement, how to dispute the
19 individual's Qualifying Workweeks, and how to opt-out from the Agreement. The Notice of Settlement
20 will also inform Class Members and Aggrieved Employees of the Gross Settlement Amount, Net
21 Settlement Amount, proposed attorneys' fees and costs allocations, any proposed Enhancement Payments,
22 proposed Claims Administrator Cost allocations, proposed PAGA Payment allocations, the scope of the
23 class, the nature and extent of the released claims, dates set for a fairness hearing and hearing on Class
24 Counsels' motion for attorneys' fees and costs. The Notice of Settlement shall include information
25 regarding Class Member's and Aggrieved Employee's estimated Claim Amount.

26 7.3 Class Member Data and Mailing: No later than fourteen (14) calendar days after the
27 Preliminary Approval Date, Defendants shall provide the Claims Administrator with the name, last known
28 mailing address, last known telephone number, Social Security Number, start and end date of employment

(if any) of each Class Member, and any other information the Claims Administrator needs to effectuate notice to Class Members and Aggrieved Employees as outlined herein. The Claims Administrator shall review the data to determine the number of Qualifying Workweeks for each Class Member and Aggrieved Employee. No later than fourteen (14) calendar days after receipt of such address information, the Claims Administrator will perform a national change of address ("NCOA") search, update the addresses per the results of the NCOA search, and then mail the Notice of Settlement, substantially in the form attached as Exhibit 1, to each Class Member and Aggrieved Employee by first-class mail, postage prepaid. The Claims Administrator shall maintain all information received from Defendants confidential to itself, and Defendants' Counsel. However, Class Counsel shall be able to review the breakdown of Qualified Workweeks and estimated Claim Amounts for Class Members and Aggrieved Employees prior to mailing for quality assurance provided the personal identifying information is redacted and/or omitted.

7.4 Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement is returned to the Claims Administrator as non-delivered on or before the conclusion of the Notice Period, the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5) calendar days. If no forwarding address is provided, then the Claims Administrator shall promptly attempt to determine a correct address using a single skip-trace, computer or other search using the name, address and/or Social Security number of the individual involved, and shall then perform a single re-mailing within five (5) calendar days. Following each search that does not result in a corrected address, for those Class Members who appear to be current employees of Defendants at the time of the Preliminary Approval Date, the Claims Administrator shall contact Defendants' Counsel for assistance and Defendants shall cooperate in good faith with the Claims Administrator's reasonable efforts to obtain valid mailing addresses for Class Members to the extent they are active employees of Defendants. In the event the Notice of Settlement is forwarded to a new address and/or re-mailed to a Class Member, the deadline for the Class Member to submit any request to opt-out, dispute, or objection shall be the end of the Notice Period or 10 days from the date of the re-mailing, whichever is later. In the event the procedures in this Section are followed and the Class Member does not timely and properly request to opt-out, the Class Member shall be bound by all terms of the Agreement, including the Releases contained in Section 6.

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1 7.5 Responses to Notice of Settlement:

2 7.5.1 *Opt-Outs*: The Notice of Settlement shall provide that Class Members who wish
3 to exclude themselves from the Agreement must submit a request to opt-out as provided in this Section.
4 The request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that
5 he or she does not want to be a Class Member, does not want to participate in the settlement, and/or wants
6 to be excluded from the settlement; (c) identify the case name and number (*i.e. Elsalaymeh v. Tri-County*
7 *Respite Care Service, et al.*, CVCS21-0000579); (d) be signed; and (e) be post-marked no later than the
8 conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4. The Class Member must
9 personally sign the request to opt-out. No request to opt-out may be made on behalf of a group of Class
10 Members. The date of the postmark on the return-mailing envelope shall be the exclusive means used to
11 determine whether a request to opt-out has been timely submitted. Any Class Member who requests to
12 opt-out of the Agreement will not be entitled to any benefit of the Agreement or any portion of the Net
13 Settlement Amount, will not be bound by the Agreement, nor will they have any right to object, appeal or
14 comment thereon. Class Members who fail to submit a valid and timely request to opt-out shall be bound
15 by all terms of the Agreement and any order or final judgment thereon, regardless of whether they
16 otherwise have requested to opt-out of the Agreement. Aggrieved Employees cannot opt out of this
17 Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt
18 out of being a Class Member.

19 7.5.2 *Objection Procedures*: Any Class Member who does not opt-out but who wishes
20 to object to this Agreement or otherwise to be heard concerning this Agreement shall send their written
21 objections to the Claims Administrator and also serve copies of the objections on Class Counsel and
22 Defendants' Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny
23 the Agreement, not change the terms of the Agreement. The objection must (a) state the Class Member's
24 full name and date of birth; (b) provide evidence that the individual is, in fact, a Class Member; (c) state
25 the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify
26 the case name and number (*i.e. Elsalaymeh v. Tri-County Respite Care Service, et al.*, CVCS21-0000579)
27 (e) be signed; and (f) be post-marked no later than the conclusion of the Notice Period or the re-mailing
28 timeline stated in Section 7.4. The objecting Class Member must also file a notice of intent to appear with

1 the Court and serve the notice on Class Counsel and Defendants' Counsel, if they intend to appear at the
2 final approval hearing.

3 7.5.3 *Dispute Procedures:* Any Class Member who disputes the number of Qualifying
4 Workweeks on the Notice of Settlement shall contact the Claims Administrator. The dispute must (a)
5 identify the nature of the dispute; (b) provide any information or documentation supporting the dispute;
6 (c) be signed; and (d) be post-marked no later than the conclusion of the Notice Period or the re-mailing
7 timeline stated in Section 7.4. The Claims Administrator shall promptly (in no event more than two
8 business days) forward all such disputes to Defendants' Counsel and request that Defendants review the
9 dispute. Defendants' records shall presumptively control unless the Class Member can produce
10 documentation evidencing other periods of employment worked. If Defendants agree with submitted
11 information, the Class Member shall be credited or subtracted Qualifying Workweeks in accordance with
12 their submitted dispute and that final number of Qualified Workweeks shall govern the calculation of that
13 Class Member's Claim Amount. If Defendants do not agree with the submitted information, Defendants'
14 Counsel will promptly advise Class Counsel of the dispute, which includes turning over any
15 documentation submitted by the Class Member as part of the dispute. Defendants' Counsel and Class
16 Counsel shall attempt in good faith to resolve any such dispute within five (5) calendar days of Class
17 Counsel being advised of the dispute. Each dispute that Defendants' Counsel and Class Counsel cannot
18 timely resolve shall be resolved by the Claims Administrator or Court.

19 7.5.4 *Deficient Opt-Outs, Objections, or Disputes:* In the event that a deficient opt-out,
20 objection, or dispute is received on or before the conclusion of the Notice Period, the Claims Administrator
21 shall mail a letter to the Class Member within five (5) calendar days informing them of the deficiency. If
22 a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure the deficiency
23 shall be the end of the Notice Period or 10 days from the date of the deficiency letter, whichever is later.

24 7.6 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1
25 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and
26 shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class
27 Counsel or Defendants' Counsel to provide notice of the proposed Agreement.

1 7.7 Claims Administrator Declaration Regarding Notice Period: Within twenty-one (21) days
2 after the conclusion of the Notice Period, the Claims Administrator shall provide Class Counsel and
3 Defendants' Counsel with a signed declaration under penalty of perjury providing a complete and detailed
4 report regarding the statistics and responses of settlement administration to date and all the Claims
5 Administrators' obligations under Sections 7.1 to 7.5.4.

6 7.8 Claims Administrator Payments to Qualified Claimants, Class Counsel and Plaintiff:
7 Within seven (7) calendar days after the Final Approval Date and the Court's determination of the amount
8 of attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to Plaintiff, the
9 PAGA Payment, and Claims Administrator Costs, the Claims Administrator shall calculate the final Net
10 Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any
11 applicable taxes thereon, and report the results of these calculations Class Counsel and Defendants'
12 Counsel. Defendants shall wire the Gross Settlement Amount and applicable taxes necessary to fund the
13 Settlement as described in Section 5.1 to the Claims Administrator within twenty-one (21) calendar days
14 after the Final Approval Date to be to be held in trust in a QSF. Within 14 calendar days after Defendants'
15 last day to fund the settlement, the Claims Administrator shall deliver payment of Class Counsels'
16 attorney's fees and costs, the Enhancement Payment payable to Plaintiff, the 75% portion of the PAGA
17 Payment payable to the LWDA, Claims Administrator Costs, and payment to Qualified Claimants and/or
18 Aggrieved Employees as required under this Agreement and approved by Court.

19 7.8.1 The Claims Administrator shall mail a check(s), with tracking and delivery, the
20 Court-approved attorneys' fees and costs to Class Counsel unless other method is requested by Class
21 Counsel. Class Counsel shall provide the Claims Administrator with the pertinent taxpayer identification
22 number and payment instructions after the Final Approval Date.

23 7.8.2 The Claims Administrator shall mail a check by mail, with tracking and delivery,
24 for the Court-approved Enhancement Payment to the Class Representative, care of Class Counsel unless
25 other method is requested by Class Counsel.

26 7.8.3 Only Qualified Claimants and Aggrieved Employees will receive their Claim
27 Amount.
28

7.8.4 The Claims Administrator shall remit and report the applicable portions of the payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this Agreement. Defendants agree to reasonably cooperate with the Claims Administrator to the extent necessary to determine the amount of the payroll tax payment required.

7.9 Settlement Check Expiration and Uncashed Checks: The Claims Administrator shall issue Claim Amounts to Qualified Claimants and Aggrieved Employees in the form of a check, which shall become null and void if not deposited within one hundred twenty (120) calendar days of issuance. After one hundred twenty (120) calendar days of issuance, the checks shall be voided and funds from all uncashed checks shall be transmitted in accordance with Section 5.6. The Claims Administrator shall deliver these funds within fourteen (14) calendar days after the check cashing deadline.

7.10 Claims Administrator Declaration Regarding Compliance and Settlement Administration: Within twenty-one (21) calendar days after the last day for Qualified Claimants and Aggrieved Employees to cash their settlement checks, the Claims Administrator shall provide Class Counsel and Defendants' Counsel with a signed declaration under penalty of perjury providing a complete and detailed report regarding the settlement administration documenting that all payments under the Agreement have been made, that the Court's final approval order has been complied with, and that all the obligations of the Claims Administrator have been completed.

8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE

8.1 The schedule may be modified depending on whether and when the Court grants necessary approvals, orders notice to Class Members, and sets further hearings. The schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures as expeditiously as reasonably practicable. The preliminary schedule for notice, approval, and payment procedures carrying out the Agreement is as follows:

Last day for Defendants to provide Claims Administrator with Class Member information	Within 14 calendar days after the Preliminary Approval Date
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1	Last day for Claims Administrator to complete NCOA search, update Class Member mailing information, and mail Notice of Settlement	Within 14 calendar days after the Claims Administrators' receipt of Class Members' information from Defendants
2		
3		
4	Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
5		
6		
7	Last day for Claims Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 21 calendar days after end of the Notice Period
8		
9	Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendants' Counsel	Within 7 calendar days after the Final Approval Date
10		
11		
12		
13		
14	Last day for Defendants to fund settlement	Within 21 calendar days after Final Approval Date
15		
16		
17	Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment to the LWDA, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	Within 14 calendar days after Defendants last day to fund the settlement
18		
19		
20		
21	Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 calendar days after issuance of checks to Qualified Members and Aggrieved Employees
22		
23	Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
24		
25		
26	Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline
27		
28		

1 **9. DUTIES OF THE PARTIES**

2 9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed
3 motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this
4 Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class
5 action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of
6 any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may
7 be requested by the Court relating to, or that are otherwise necessary to the approval and implementation
8 of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement
9 purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to
10 the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final
11 approval. Within one week of signing this Agreement Class Counsel shall provide a draft of the
12 Preliminary Approval Motion to Defendants' Counsel. Defendants' Counsel will provide comments
13 and/or proposed revisions within one week after receipt of the draft Preliminary Approval Motion from
14 Class Counsel. With regard to the final approval documents, a similar one-week maximum review and
15 response time shall be observed by the Parties. The Parties will request that the Court's preliminary
16 approval of this Agreement be embodied in an Order Granting Preliminary Approval of Class Action and
17 PAGA Settlement.

18 9.1.1 Plaintiff's motion shall seek an order: 1) Preliminarily approving the Agreement;
19 2) Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the
20 Notice of Settlement by first class mail to Class Members and Aggrieved Employees; 4) Preliminarily
21 appointing Plaintiff and Class Counsel as representatives of Class Members; 5) Preliminarily approving
22 settlement administration services to be provided by the Claims Administrator; 6) Preliminarily approving
23 the proposed Enhancement Payment to Plaintiff; 7) Preliminarily approving the application for payment
24 of reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8)
25 Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally
26 approved as fair, reasonable and adequate as to the Class Members.

27 9.1.2 Defendants shall not oppose Plaintiff's motion for approval of the proposed
28 Agreement.

1 9.1.3 The Parties shall cooperate with each other and the Claims Administrator during
2 the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and
3 appropriate to assure effective communication to individual Class Members of information about their
4 rights and obligations under this Agreement.

5 9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the
6 Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if
7 any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the
8 Agreement, a declaration by the Claims Administrator of due diligence and proof of mailing of the Notice
9 of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results of
10 the Claim Administrator's mailings including tracing and re-mailing efforts.

11 9.2.1 Class Counsel will submit a proposed order and judgment for final approval, which
12 shall include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair,
13 reasonable and adequate, and directing that its terms and provisions be carried out; 2) Approving the
14 payment of an Enhancement Payment to the Class Representative; 3) Approving Class Counsel's
15 application for an award of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4)
16 Approving the Claims Administrator Costs; and 5) Providing that the Court will retain jurisdiction to
17 oversee administration and enforcement of the terms of the Agreement and the Court's orders.

18 9.2.2 Following entry of the Court's Order granting final approval of the Agreement, the
19 Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the
20 following: 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside
21 the judgement be filed, all parties will support the final approval order on appeal or otherwise; 2) Class
22 Counsel will assist the Claims Administrator as needed or requested in the process of identifying and
23 locating Qualified Claimants and Aggrieved Employees entitled to payments under the Agreement and
24 assuring delivery of such payments; 3) Class Counsel and Defendants' Counsel will cooperate with each
25 other and assist the Claims Administrator as needed or requested in completing the distribution of any
26 residual amounts, as specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction with
27 the Claims Administrator, will certify to the Court completion of all payments required to be made by this
28 Agreement.

1 9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness
2 hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action
3 and PAGA Settlement and Final Judgment.

4 9.4 Notice to LWDA: Plaintiff agrees to provide notice to the Labor and Workforce
5 Development Agency ("LWDA") of this settlement in accordance with Labor Code § 2699 (1)(2).

6 **10. MISCELLANEOUS TERMS**

7 10.1 Defendants' Right to Withdraw Based on Opt-Outs: If, prior to the Final Approval Date,
8 10% or more of the Class Members have submitted proper and timely requests to opt-out in accordance
9 with the provisions of the Agreement, Defendants may, at its election, rescind the Agreement and all
10 actions taken in its furtherance will be thereby null and void. Defendants must exercise this right of
11 rescission, in writing, to Class Counsel, within seven (7) calendar days after the Claims Administrator
12 notifies the Parties of the total number of opt-outs. If the option to rescind is exercised, then any Claims
13 Administrator Costs shall be paid by Defendants. Defendants have represented that there are no more
14 than 13,284 pay periods during the Class Period. In the event the number of pay periods during the
15 Class Period is more than 14,612.4 (*i.e.*, greater than 10% more than 13,284), then the Gross Settlement
16 Amount shall be increased proportionally by the pay periods in excess of 13,284, multiplied by the pay
17 period value. For example, if there were 11,900 pay periods represented to exist during the Class Period,
18 but there are actually 15,000 pay periods in the Class Period, and the actual pay period value is \$5.00
19 per pay period, Defendants would have to increase the Gross Settlement Amount by \$15,500.00 (15,000
20 pay periods – 11,900 pay periods = 3,100 pay periods x \$5.00/pay periods).

21 10.2 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF
22 THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT
23 OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND
24 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
25 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
26 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
27 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
28 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT

1 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
2 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX
3 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
4 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
5 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
6 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
7 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY
8 TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
9 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
10 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX
11 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
12 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
13 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
14 BY THIS AGREEMENT.

15 10.3 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
16 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
17 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
18 and discharged in this Agreement.

19 10.4 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by
20 signing this Agreement Defendants are waiving any rights to appeal from the Court's approval of the
21 settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement
22 Plaintiff is waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.

23 10.5 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
24 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
25 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

26 10.6 Judgment and Retention of Jurisdiction to Enforce: Upon the Final Approval Date,
27 judgment will be entered according to this Agreement, with the Court to retain jurisdiction over the parties
28 to enforce the terms therein.

1 10.7 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
2 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to,
3 execution of such other documents and the taking of such other action as may reasonably be necessary to
4 fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including
5 all efforts contemplated by this Agreement and any other efforts that may become necessary by Court
6 order, or otherwise, to effectuate this Agreement and the terms set forth herein.

7 10.8 No Admission of Liability: Neither the acceptance nor the performance by Defendants of
8 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to
9 be, construed as, or deemed to be, an admission by Defendants of the truth of any of the allegations in the
10 Complaint, the representative character of the Action, the validity of any of the claims that were or could
11 have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of
12 Defendants in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by
13 Defendants of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members,
14 or any other person, and Defendants specifically disclaim any liability, culpability, negligence, or
15 wrongdoing toward Plaintiff, the Class Members, or any other person. Each of the Parties has entered
16 into this Stipulation with the intention to avoid further disputes and litigation.

17 10.9 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
18 communications given hereunder shall be in writing and shall be deemed to have been duly given as of
19 the third business day after mailing by United States certified mail, return receipt requested, addressed as
20 follows:

21 To Plaintiff and the Class:

22 Justin P. Rodriguez
23 Shimoda Law Corp.
24 9401 East Stockton Blvd., Suite 120
25 Elk Grove, CA 95624

26 To Defendants:

27 Kathleen Carter
28 Jeffrey Gillette
 Messner Reeves LLP
 650 Town Center Drive, Suite 700
 Costa Mesa, California 92626

1 10.10 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of
2 this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that
3 this Agreement shall not be construed in favor of or against any party by reason of the extent to which any
4 party or its counsel participated in the drafting of this Agreement.

5 10.11 Binding Effect of Agreement: The Parties, by signing this Agreement, are bound by the
6 terms herein. The Parties waive their rights to file an appeal, writ, or any challenge whatsoever to the
7 terms of this Agreement except as discussed in Sections 10.1 and 10.4. This Stipulation shall be binding
8 upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, Claims
9 Administrators, successors, and assigns.

10 10.12 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys
11 acting for, or purporting to act for, the Class, Class Members, or Plaintiff, may recover or seek to recover
12 any amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except
13 as expressly provided in this Agreement. The Parties stipulate and agree that the Sutter County Superior
14 Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil Procedure
15 Code section 664.6 and that the prevailing party any action necessary to enforce the terms of the
16 Agreement after default by the other party may recover reasonable attorney's fees and costs related thereto.

17 10.13 No Modifications: This Agreement may be amended or modified only by a written
18 instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be
19 discharged except by performance in accordance with its terms.

20 10.14 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and
21 represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement
22 and to take all appropriate action required or permitted to be taken by such Parties pursuant to this
23 Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of
24 this Agreement.

25 10.15 Class Member Signatories: Because the Action has not yet been certified, and the Class
26 Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member
27 sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement
28 may be executed on behalf of all Class Members by the Class Representative.

1 10.16 Counterparts: This Agreement shall become effective upon its execution by all of the
2 undersigned. Plaintiff, Class Counsel, Defendants and Defendants' Counsel may execute this Agreement
3 in counterparts, and execution of counterparts shall have the same force and effect as if each had signed
4 the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force
5 and effect of originals.

6 10.17 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been
7 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and
8 the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance
9 with, and governed by, the substantive laws of the State of California without giving effect to that State's
10 choice of law principles.

11 10.18 Headings and Captions: Section titles or captions contained in the Agreement are inserted
12 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
13 this Agreement, or any provision thereof.

14 10.19 No Retaliation or Discouragement: The Parties agree they will take no action that could
15 be construed as retaliation against any Class Members for participating or seeking to participate in this
16 class action settlement. The Parties will not discourage any class member from participating or seeking
17 to participate in this class action settlement. This is a material term of the Agreement and non-breaching
18 Parties will seek court intervention if this provision is breached. Should non-breaching Party prevail, they
19 shall be entitled to further attorneys' fees and costs.

20 10.20 Integrated Agreement: This Agreement sets forth the entire understanding between the
21 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
22 Each party acknowledges that there is no representation, inducement, promise or agreement which has
23 been made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement,
24 which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent
25 that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

26 10.21 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to
27 the benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.
28

10.22 Invalidity of Any Provision: Before declaring any provision of this 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.

10.23 Waiver of Compliance: No waiver of any condition or covenant contained in this 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.

10.24 Captions: The captions and section numbers in this Agreement are inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this Agreement.

IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

For Plaintiff:

Date: 12/15/2021

DocuSigned by:

20CBADD01B1C445...
Rita Elsalaymeh

FOR Defendants:

Date: _____

By: _____
For Tri-County Respite Care Service

Date: _____

By: _____
For Joy Scott

APPROVED AS TO FORM

Shimoda Law Corp.

Dated: 12/15/21

By: 
Justin P. Rodriguez
Attorney for Plaintiff and Similarly Situated Employees

10.22 Invalidity of Any Provision: Before declaring any provision of this 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.

10.23 Waiver of Compliance: No waiver of any condition or covenant contained in this 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.

10.24 Captions: The captions and section numbers in this Agreement are inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this Agreement.

IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

For Plaintiff:

Date: _____

Rita Elsalaymeh

FOR Defendants:

Date: 12-22-2021

By:
For Tri-County Respite Care Service

Date: 12-22-2021

By:
For Joy Scott

APPROVED AS TO FORM

Shimoda Law Corp.

Dated: _____

By: _____
Justin P. Rodriguez
Attorney for Plaintiff and Similarly Situated
Employees

1 APPROVED AS TO FORM

MESSNER REEVES LLP

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3 Dated: December 22, 2021

4 By: Jeffrey Gillette
Kathleen Carter
Jeffrey Gillette
Attorney for Defendants
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Exhibit 1

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SUTTER

RITA ELSALAYMEH, individually and on
behalf of all other similarly situated employees,

Plaintiff,

vs.

TRI-COUNTY RESPITE CARE SERVICE, a
California Corporation; JOY SCOTT, an
individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. CVCS21-0000579

CLASS ACTION

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT, AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: All non-exempt employees who have or continue to work for Defendants in California from April 7, 2017, to _____. (the "Class Members").

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE OR TO OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

Pursuant to an order from the Sutter County Superior Court ("Court") granting preliminary approval of this class action settlement, entered on _____, you are receiving notice of a proposed class action settlement between Plaintiff Rita Elsalaymeh ("Plaintiff" or "Class Representative"), and Defendants Tri-County Respite Care Service and Joy Scott ("Defendants") on behalf of Class Members as defined above. You are receiving this notice because Defendants' records indicate you fall within the definition of "Class Member." Defendants' records also indicate that you worked _____ workweeks during the applicable Class Period (as defined below), which means your share of the settlement proceeds is estimated to be _____. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court's order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On April 7, 2021, Plaintiff, a former employee, filed a Complaint against Defendants in the California Superior Court for the County of Sutter on behalf of herself and Class Members. The term "Action" means this putative class action pending in the Superior Court of California for the County of Sutter, Case No. CVCS21-0000579. The Class Period is from April 7, 2017, to _____ (the "Class Period").

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of herself and Class Members. Plaintiff alleged that Defendants violated California law by 1) violating Labor Code §§ 510, 1194; IWC Wage Order 5, 15 § 3 (Failure to Pay Overtime Wages); 2) violating Labor Code §§ 1194, 1197.1; IWC Wage Order Nos. 5, 15 § 4 (Failure to Pay Minimum Wages); 3) violating Labor Code §§ 226.7, 512 and Wage Order Nos. 5, 15 §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof); 4) violating Labor Code § 226.7 and Wage Order Nos. 5, 15 § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof); 5) violating Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements); 6) violating Labor Code §§ 201-203, 256 (Failure to Pay Final Wages); 7) violating Labor Code § 2802 (Failure to Pay Reimbursements for Expenses); 8) violating Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order); 9) violating Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records); 10) violating Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave); 11) violating Business and Professions Code §§ 17200, *et seq.*,

(Unfair Competition); and 12) violating Labor Code §§ 2698, *et seq.*, (PAGA Claims). Defendants have denied all of Plaintiff's allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide Settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendants continue to deny all allegations and claims. Defendantss have entered into this settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Parties have entered into a *Joint Stipulation of Regarding Class Action PAGA Settlement and Release* ("Agreement"), which has been preliminarily approved by the Court. The Agreement applies to any and all Class Members as defined above. "Class Member" does not include persons who submit a valid request to opt out (as explained below). If you are a Class Member, you have the opportunity to participate in the settlement, or to exclude yourself ("opt out") from the settlement. This notice is to advise you of how you can either participate in the settlement or be excluded from the settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendants agree to pay a total sum of Three Hundred Thousand Dollars (\$300,000) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 35% of the Gross Settlement Amount which equals \$105,000, attorneys' costs not to exceed \$15,000, Claims Administrator Costs estimated not to exceed \$7,500, Class Representative's Enhancement Payment of \$15,000, and \$10,000 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendants in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$10,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees, which are defined as all non-exempt employees have or continue to work for Defendants in California from March 29, 2020, to .

The number of weeks you worked during the Class Period and your estimated share of the Net Settlement Amount and PAGA Payment ("Claim Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by participating Class Members, the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees' allocations for the PAGA claims.

B. Claim Amounts and Allocation Between Class Members and Aggrieved Employees

Defendants will pay Claim Amounts through the Claims Administrator, as described below, to each Class Member who does not opt out of the settlement and to Aggrieved Employees. All Claim Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Claim Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as two-thirds for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC will issue and one-third for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Class Members who do not opt out and Aggrieved Employees will not require the submission of a claim form. Each Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. Receipt of the Claim Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendants' Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Claims Administrator from Defendants' records. Defendants' records will be presumed correct unless evidence to the contrary is provided to the Claims Administrator. Defendants' records and any additional evidence will be reviewed by the Claims Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendants' records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than [redacted]. The dispute will be resolved by the Claims Administrator based on the records and evidence provided. The Claims Administrator's decision on all disputes will be final and binding.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released all claims contained in the Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint, through the Class Period. This release excludes the release of claims not permitted by law. The Qualified Claimant's Released Claims exclude claims for workers' compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

Aggrieved Employees will be deemed to have released all claims that were brought under the Private Attorneys General Act, Labor Code § 2698, *et seq.*, based on the facts or claims alleged in the Action during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released ("Released Parties") include means Defendants, as well as Defendants' officers, shareholders, directors, agents, employees, attorneys, and insurers.

Class Members can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if Class Members have questions about the released claims and what they mean.

E. Attorneys' Fees and Costs

Defendants have agreed to pay Class Counsel's attorneys' fees and costs to be approved by the Court, up to a maximum of 35% of the Gross Settlement Amount which equals \$105,000, and attorneys' costs not to exceed \$15,000. Class Counsel's attorneys' fees and costs will be paid and deducted from the Gross Settlement Amount.

F. Reasonableness of Settlement

All attorneys for the Parties to the Action believe the amounts payable to Class Members, Aggrieved Employees, and amounts for attorneys' fees and costs requested are fair and reasonable. The Class Representative and Class Counsel support this Settlement. Among the reasons for support are the defenses to liability potentially available to Defendants, the inherent risk of trial on the merits, the risk of denial of class certification, and the delays associated with litigation.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement

If you wish to participate in the settlement and believe your workweek information is accurate, **you do not need to take any further action.** Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement

If you do not wish to participate in the settlement, you may be excluded (*i.e.*, "opt out") by submitting a timely written request to the Claims Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the settlement, and/or wants to be excluded from this settlement; (c) identify the

case name and number (i.e. *Elsalaymeh v. Tri-County Respite Care Service, et al.*, CVCS21-0000579); (d) be signed; and (e) be post-marked no later than _____. The request to opt out must be signed, dated and mailed by First Class U.S. Mail or the equivalent, to:

[admin info]

The request to opt out must be postmarked no later than _____. If you submit a request to opt out which is not postmarked by _____, your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. If the request to opt out is sent from within the United States it must be sent through the United States Postal Service by First Class Mail, or the equivalent. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Claims Administrator, no longer be a Class Member and not received their share of the class settlement payment. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the settlement, you can object to the terms of the Agreement. However, if the Court rejects your objection, you will still be bound by the terms of the Agreement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including any legal analysis and/or supporting documentation; (d) identify the case name and number (i.e. *Elsalaymeh v. Tri-County Respite Care Service, et al.*, CVCS21-0000579) (e) be signed; and (f) be post-marked no later than _____. The objection must be sent to the Claims Administrator at the address identified in section III.B and to counsel for Plaintiff and Defendants at the addresses identified in section IV of this notice.

If you have submitted a written objection as outlined above, you may also appear at the Final Approval Hearing, either in person or through your own attorney, to state your objection. However, you must file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendants. If you appear through your own attorney, you are responsible for paying that attorney.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

After final approval of the settlement has been granted by the Court, each and every Class Member who does not opt out of the settlement and Aggrieved Employee, will release Defendants and the Released Parties from the released claims described above. In other words, if you were employed as a Class Member by Defendants in California during the Class Period, and you do not exclude yourself from the settlement, you will be deemed to have entered into this release and to have released the above-described claims. In addition, you will be barred from ever suing Defendants and the Released Parties with respect to the claims covered by this settlement. If the settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department ___, [address] on _____ at _____ to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs. The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing, unless you wish to object to the settlement.

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VI. ADDITIONAL INFORMATION

If you want additional information about this lawsuit and its proceedings, you can contact Class Counsel or Defendants' Counsel as follows:

Justin P. Rodriguez
Shimoda Law Corp.
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

Kathleen Carter
Jeffrey Gillette
Messner Reeves LLP
650 Town Center Drive, Suite 700
Costa Mesa, California 92626
telephone: (949) 612-9128

On behalf of Defendants

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT

Exhibit B

FILED BY FAX

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Brittany V. Berzin (Cal. State Bar No. 325121)
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Electronically Filed
June 8, 2021
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SUTTER
CLERK OF THE COURT
By: Brenda Johnson, Deputy

6 Attorneys for Plaintiff RITA ELSALAYMEH,
individually and on behalf of all other similarly situated employees,

7
8
9 **SUPERIOR COURT OF CALIFORNIA**
10 **FOR THE COUNTY OF SUTTER**

11 RITA ELSALAYMEH, individually and on	)	Case No. CVCS21-0000579
12 behalf of all other similarly situated	)	
12 employees,	)	<u>CLASS ACTION</u>
	)	
13 Plaintiff,	)	FIRST AMENDED COMPLAINT FOR
	)	DAMAGES:
14 vs.	)	
	)	1. Failure to Pay Overtime Wages
15 TRI-COUNTY RESPITE CARE SERVICE, a	)	2. Failure to Pay Minimum Wages
16 California Corporation;	)	3. Meal Period Violations
17 JOY M. SCOTT, an individual; and	)	4. Rest Period Violations
18 DOES 1 to 100, inclusive,	)	5. Wage Statement Violations
	)	6. Waiting Time Penalties
19 Defendants.	)	7. Failure to Reimburse Expenses
	)	8. Unfair Competition
	)	9. Private Attorneys General Act
	)	
21		DEMAND FOR JURY TRIAL

22
23 Plaintiff RITA ELSALAYMEH ("Plaintiff"), on behalf of herself and all other similarly
24 situated employees, hereby files this Complaint against Defendants TRI-COUNTY RESPITE CARE
25 SERVICE, a California Corporation; JOY M. SCOTT, an individual; and DOES 1 to 100, inclusive
26 (hereinafter all collectively referred to as "Defendants"). On information and belief, Plaintiff alleges
27 the following:

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INTRODUCTION

1
2 1. This is a class action lawsuit brought by Plaintiff on behalf of herself and similarly
3 situated employees seeking unpaid overtime wages, minimum wages, meal period premiums, rest period
4 premiums, and statutory penalties for violations of the California Labor Code. Plaintiff has also alleged
5 a Private Attorneys General Act ("PAGA") cause of action.

JURISDICTION AND VENUE

6
7 2. The Sutter County Superior Court has jurisdiction in this matter pursuant to California
8 Code of Civil Procedure section 410.10 to determine alleged violations of the California Labor Code,
9 California Business and Professions Code, and Wage Order No. 5.

10 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that
11 Defendants reside in Sutter County. In addition, some of the wrongful acts and violations of law
12 asserted herein occurred within Sutter County, and Defendants' obligation to pay wages arose in Sutter
13 County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

14 4. Plaintiff sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the
15 claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of herself
16 and other similarly situated employees. Pursuant to Labor Code section 2699.3, Plaintiff gave written
17 notice via online submission to the Labor and Workforce Development Agency ("LWDA") on
18 approximately March 29, 2021. Plaintiff provided facts and legal bases for her claims within the notice
19 to the LWDA on all violations asserted under the Private Attorneys General Act cause of action.
20 Plaintiff submitted the \$75.00 filing fee. The March 29, 2021, notice was also sent via certified mail to
21 Defendants on the same day. Plaintiff is informed and believes, that to date, the LWDA has not
22 provided any response to Plaintiff's notice correspondence. Accordingly, Plaintiff is informed and
23 believes that she has exhausted all administrative remedied pursuant to the Private Attorneys General
24 Act and may bring this action on behalf of herself and all similarly situated employees (*i.e.* Aggrieved
25 Employees). *See* Cal. Labor Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134
26 Cal.App.4th 365, 383 n.18, 385 n.19 (2005).

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PARTIES

5. RITA ELSALAYMEH is an individual over the age of eighteen (18) and is a resident of the State of California.

6. On information and belief, Plaintiff alleges, TRI-COUNTY RESPITE CARE SERVICE, is now and/or at all times mentioned in this Complaint was a California Non-Profit Corporation and the owner and operator of an industry, business and/or facility doing business in the State of California.

7. Plaintiff is informed and believes, and thereupon alleges, that JOY M. SCOTT is an individual over the age of eighteen (18) and is a resident of the State of California. Plaintiff further alleges that JOY M. SCOTT is an owner, director, officer, and/or managing agent of TRI-COUNTY RESPITE CARE SERVICE responsible for causing the violations outlined in the first through eighth causes of action. As such JOY M. SCOTT is individually liable pursuant to California Labor Code section 558.1.

8. Defendants DOES 1 through 100 are affiliates, subsidiaries, and related entities and the alter egos of each of the other Defendants named herein, corporate, or otherwise, who participated in and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true names and capacities of these DOE Defendants when they are ascertained. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiff.

9. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiff.

10. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint employment, joint venture, partnership, and common enterprise, and were acting within the course and scope of, and in pursuance of said joint employment, joint venture, partnership, and common enterprise.

11. Defendants, and each of them, now and/or at all times mentioned in this Complaint approved, ratified, acquiesced, aided, or abetted the acts and omissions alleged in this Complaint.

12. Defendants proximately caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

CLASS ALLEGATIONS

13. Plaintiff brings the First through Eighth Causes of Action on behalf of herself and all others similarly situated as a class action pursuant to California Code of Civil Procedure section 382. The class which Plaintiff seeks to represent is composed of, and defined, as follows:

all non-exempt employees who have or continue to work for Defendants in California from April 7, 2017, to the present.

14. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) Numerosity: The putative class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that Defendants have employed as many as one hundred (100) individuals falling within the above stated class definition throughout the State of California during the applicable statute of limitations, who were subjected to the policies and practices outlined in this Complaint. As such, joinder of all members of the putative class is not practicable.

(b) Common Questions Predominate: Common questions of law and fact exist as to all members of the putative class and predominate over questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the following:

- i. Whether Defendants paid putative class members for all hours worked;
- ii. Whether Defendants paid all overtime wages owed;
- iii. Whether Defendants failed to correctly calculate putative class members' regular rate of pay;

- iv. Whether Defendants maintained accurate payroll records;
- v. Whether Defendants failed to authorize and permit all meal and rest periods;
- vi. Whether, as a result of Defendants' policies and practices, Plaintiff and putative class members were not authorized and permitted to take all meal and rest periods owed;
- vii. Whether, as a result of Defendants' policies and practices, Plaintiff and putative class members received all minimum and overtime wages due;
- viii. Whether, as a result of Defendants' policies and practices, Plaintiff and putative class members received all wages, due and owing, at the time of their termination or separation;
- ix. Whether, as a result of Defendants' policies and practices, Plaintiff and putative class members did not receive all reimbursements owed; and
- x. Whether Defendants provided Plaintiff and putative class members with wage statements that complied with Labor Code section 226.

(c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative class. The putative class also sustained damages arising out of Defendants' common course of conduct in violation of the law as complained of herein. Plaintiff and all members of the putative class were non-exempt employees who were not compensated for all hours worked, including travel time, were not paid overtime wages, not permitted to take "duty-free" meal and paid rest periods, and were not reimbursed for the personal use of their cellphones. As a result, Plaintiff and each member of the putative class will have suffered the same type of harm and seek the same type of recovery based on the same legal theories.

(d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the putative class. For all relevant times, Plaintiff resided in California and worked for Defendants in California. Moreover, Plaintiff is an adequate representative of the putative class as Plaintiff has no interests that are adverse to those of putative class

members. Additionally, Plaintiff has retained counsel who has substantial experience in complex civil litigation and wage and hour matters.

- (e) Superiority: A class action is superior to other available means for the fair and efficient adjudication of the controversy since individual joinder of all members of the putative class is impracticable. Class action treatment will permit a larger number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as damages suffered by each individual member of the class may be relatively small, the expenses and burden of the individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, and an important public interest will be served by addressing the matter as a class action. The cost to the court system of adjudication of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

15. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

GENERAL ALLEGATIONS

16. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 15 as though fully set forth herein.

17. Plaintiff worked for Defendants as a respite care worker from approximately February 1, 2005, to November 24, 2020, making approximately \$16.00 per hour. Defendant, Tri-County Respite Care Service, is a non-profit organization headquartered in Yuba City, which employs people to assist families and caregivers with care for children with developmental disabilities and adults with brain impairment.

18. In Plaintiff's capacity as a respite worker, her job duties varied depending on the needs of the families she served. Plaintiff, however, estimates that she spent approximately seventy percent (70%) of her time taking developmentally disabled clients into the surrounding community to shop, run errands, go to meals, sign up for classes, go to the movies, attend appointments, go to the park, and

1 otherwise spend time away from the home. Plaintiff would also frequently run errands for the families,
2 which did not involve spending time with the client themselves. As respite workers, Plaintiff and
3 similarly situated employees were employed to provide families and caregivers with support in whatever
4 way they needed to lessen their burden as care providers.

5 19. Over the course of Plaintiff's employment with Defendants, her hours varied, however,
6 she often worked over eight (8) hours a day and forty (40) per week. Despite this, Defendants did not
7 pay Plaintiff overtime. In fact, it was Defendants' policy and practice not to pay Plaintiff and similarly
8 situated employees overtime wages regardless of the number of hours they worked. Additionally,
9 Defendants did not correctly incorporate the value of the non-discretionary remuneration, such as special
10 bonuses, into Plaintiffs and similarly situated employees' regular rate of pay when calculating sick leave
11 pay.

12 20. In addition to failing to pay Plaintiff and similarly situated employees all overtime wages
13 due, Defendants also failed to pay Plaintiff and similarly situated employees minimum wages for all
14 hours worked. Specifically, beginning in approximately 2017, Defendants stopped paying Plaintiff for
15 her travel time between worksites in a single day. Plaintiff generally traveled to and from three (3)
16 client homes in one workday. Defendants knew Plaintiff would spend, at a minimum, from 30-40
17 minutes traveling between worksites each day but failed to compensate her for this time. Furthermore,
18 Plaintiff and similarly situated employees often took work-related phone calls and ran errands for clients
19 before and after their shifts. Defendants were aware that Plaintiff and similarly situated employees were
20 working off-the-clock but failed to compensate them for this time.

21 21. Defendants further did not authorize and permit Plaintiff and similarly situated
22 employees to take uninterrupted meal and rest periods due to Defendants' policy of not permitting
23 employees to take a duty-free meal periods, as they were required to remain with the client at all times.
24 This included a first meal period before the completion of the fifth hour of work and a second meal
25 period and third rest period on occasions when they worked more than ten (10) hours in a day.
26 Additionally, Defendants failed to pay Plaintiff and similarly situated employees meal and rest period
27 premiums owed.

22. Finally, Defendants failed to sufficiently reimburse Plaintiff and similarly situated employees for their use of personal cell phones for work purposes. Defendants required Plaintiff and similarly situated employees to use a company application on their phone to sign in and out of work and to communicate with Defendants and the families they served on a routine basis. Despite this, Plaintiff and similarly situated employees were only paid from 2-3 dollars per pay period for their cellphone use. This did not come close to compensating employees for a reasonable percentage of their cell phone bills considering the time spent on their phones for work purposes.

23. As a result of Defendants' failure to pay Plaintiff and similarly situated employees all overtime wages, minimum wages, and meal and rest period premiums owed, the wage statements Defendants issued were defective. Specifically, Defendants did not accurately list total hours worked, wages due, and total missed meal and rest period premiums earned, and the corresponding rates of pay.

24. As a further result of Defendants' failure to pay Plaintiff and similarly situated employees for all regular and overtime hours worked and failure to pay meal and rest period premiums, Defendants failed to provide all final wages owed to Plaintiff and similarly situated employees within twenty-four (24) hours of their termination or seventy-two (72) hours of their resignation.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(As to all Defendants)

25. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 24 as though fully set forth herein.

26. During the period Plaintiff was employed by Defendants, Defendants were required to compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day. *See, e.g.,* IWC Wage Order No. 5 § (3)(A); Cal. Lab. Code §§ 510, 1194.

27. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day and/or forty (40) hours per week on several occasions while employed by Defendants. However,

1 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
2 worked at their regular rate of pay.

3 28. Plaintiff and similarly situated employees were not exempt from overtime protections
4 under the California Wage Orders and Labor Code.

5 29. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
6 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
7 the extent pertinent as if set forth here in full.

8 **SECOND CAUSE OF ACTION**
9 **FAILURE TO PAY MINIMUM WAGES**
10 **(As to all Defendants)**

11 30. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 29 as though fully
12 set forth herein.

13 31. For the period preceding the filing of this Complaint, Defendants were required to
14 compensate Plaintiff and similarly situated employees with at least California's applicable minimum for
15 every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 5 § 4(A); Cal. Lab. Code § 1194.

16 32. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants aware of their
17 obligation to pay the minimum wage for each hour worked but failed to do so.

18 33. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
19 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
20 the extent pertinent as if set forth here in full.

21 **THIRD CAUSE OF ACTION**
22 **MEAL PERIOD VIOLATIONS**
23 **(As to all Defendants)**

24 34. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 33 as though fully
25 set forth herein.

26 35. An employer must provide an employee a meal period in accordance with the
27 applicable Wage Order, and California Labor Code sections 226.7 and 512.

28 36. California Labor Code sections 226.7 and 512 and IWC Wage Order Number 5,
section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30)
minutes for each work period of more than five (5) hours.

37. California Labor Code section 512 further provides that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

38. Defendants employed Plaintiff and similarly situated employees for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated employees to take their first meal period before the completion of their fifth hour of work and failed to allow Plaintiff and similarly situated employees to take their second meal period before the completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their rights to all meal periods throughout their employment.

39. Defendants further failed to pay Plaintiff and similarly situated employees the applicable meal period premiums for any such missed meal breaks.

40. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(As to all Defendants)

41. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 40 as though fully set forth herein.

42. An employer must provide an employee a rest period in accordance with the applicable Wage Order and California Labor Code section 226.7.

43. California Labor Code section 226.7 and Wage Order Number 5, section 12(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

44. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly situated employees to take paid rest periods of at least ten (10) minutes for each work period that they worked more than four (4) hours or a major fraction thereof.

45. Defendants further failed to pay Plaintiff and similarly situated employees the applicable rest period premiums for any such missed rest periods.

46. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

47. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 46 as though fully set forth herein.

48. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

49. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the

1 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not
2 accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime
3 and double time hours worked and corresponding rates of pay, and gross and net wages earned. As
4 such, Plaintiff and similarly situated employees were not able to promptly and easily determine their
5 total hours worked from their paystubs alone. Additionally, Plaintiff and similarly situated
6 employees suffered confusion over whether they received all wages owed and were prevented from
7 effectively challenging information on their wage statements.

8 50. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
9 employees have been damaged as stated in the section below entitled "DAMAGES," which is
10 incorporated here to the extent pertinent as if set forth here in full.

11 **SIXTH CAUSE OF ACTION**
12 **WAITING TIME PENALTIES**
13 **(As to all Defendants)**

14 51. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 50 as though fully
15 set forth herein.

16 52. An employer must pay an employee who is terminated all unpaid wages immediately
17 upon termination. *See* Cal. Lab. Code § 201.

18 53. An employer must pay an employee who resigns all unpaid wages within seventy-two
19 (72) hours of their resignation. *See* Cal. Lab. Code § 202.

20 54. Plaintiff and similarly situated employees did not receive all wages, including minimum
21 and overtime wages, meal and rest period premiums, or all sick leave pay owed at their termination or
22 within the required time after their separation from employment.

23 55. An employer who willfully fails to pay an employee wages in accordance with California
24 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
25 days. *See* Cal. Lab. Code § 203.

26 56. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees'
27 their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff
28 and similarly situated employees were not paid for all regular and overtime hours as they authorized the
practices and policies denying these wages. Such conduct shows Defendants had knowledge of earned,

1 but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining wages
2 owed.

3 57. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
4 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by
5 thirty (30) days for Defendants' failure to pay all wages due.

6 **SEVENTH CAUSE OF ACTION**
7 **FAILURE TO REIMBURSE EXPENSES**
8 **(As to all Defendants)**

9 58. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 57 as though fully
10 set forth herein.

11 59. California Labor Code section 2802(a) states that "An employer shall indemnify his or
12 her employee for all necessary expenditures or losses incurred by the employee in direct consequence of
13 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
14 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
15 unlawful."

16 60. Defendants required Plaintiff and similarly situated employees to use their personal cell
17 phones to clock in and out of work and communicate with managers and clients but failed to reimburse
18 them adequately for such use.

19 61. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
20 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
21 the extent pertinent as if set forth here in full.

22 **EIGHTH CAUSE OF ACTION**
23 **UNFAIR COMPETITION**
24 **(As to TRI-COUNTY RESPITE CARE SERVICE and DOES 1 to 100)**

25 62. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 61 as though fully
26 set forth herein.

27 63. Unfair competition shall mean and include any unlawful, unfair, or fraudulent business
28 act or practice and unfair, deceptive, untrue, or misleading advertising and any act prohibited by Chapter
1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See*
California Business and Professions ("B&P") Code § 17200.

64. Plaintiff and similarly situated employees were not paid all wages owed, including minimum and overtime wages, and meal and rest period premiums, or reimbursed for business expenses, during their employment or any time thereafter.

65. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law (“UCL”) (Business and Professions Code 17200, *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

66. As a direct and legal result of the Defendants’ conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

67. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 66 as though fully set forth herein.

68. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with her and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 5, § 3 (Failure to Pay Overtime Wages);
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order Nos. 5, 15 § 4 (Failure to Pay Minimum Wages);
- Violation of Labor Code §§ 226.7, 512 and Wage Order Nos. 5, 15 §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof);
- Violation of Labor Code § 226.7 and Wage Order Nos. 5, 15 § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof);
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements);

- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages);
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses);
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order);
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records); and
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave).

69. Plaintiff seeks civil penalties against Defendants as provided in the Labor Code, or, if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

70. Plaintiff seeks these civil penalties from Defendants pursuant to Labor Code sections 2699(a) and 2699.3.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in the amount of \$1,000,000;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in the amount of \$1,000,000;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
 - d. Liquidated damages pursuant to California Labor Code section 1194.2;
4. As to the Third Cause of Action:
 - a. Wages in the amount of \$1,000,000;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;

5. As to the Fourth Cause of Action:

- a. Wages in the amount of \$1,000,000;
- b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;

6. As to the Fifth Cause of Action:

- a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);
- b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);

7. As to the Seventh Cause of Action:

- a. Reimbursements in the amount of \$1,000,000;
- b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

8. As to the Ninth Cause of Action:

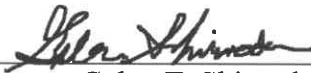
- a. For civil penalties as provided for in the Labor Code for each enumerated violation;
- b. For those Labor Code sections, the violation of which there is no civil penalty provided, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;
- c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- d. For any other remedies as allowed by law and/or deemed appropriate by the Court;

- 9. For such other and further relief as this Court may deem just and proper, including, but not limited to:

- a. Wages as proved at trial;
- b. Injunctive and Declaratory relief;
- c. Attorney’s fees and costs as provided for by law; and
- d. Interest.

Dated: June 8, 2021

Shimoda Law Corp.

By: 
Galen T. Shimoda
Justin P. Rodriguez
Brittany V. Berzin
Jessica L. Hart
Attorneys for Plaintiff

Elsalaymeh v. Tri-County Respite Care Service
Sutter Superior Court Case No. CVCS21-0000579

**PROOF OF SERVICE — CCP §§ 1013a and 2015.5
and California Rules of Court, Rule 1.21 and Rule 2.150**

I, Erika F. Collazo, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action.

On June 8, 2021, I served the following documents on the party below:

- First Amended Complaint for Damages

Kathleen Carter Messner Reeves, LLP 610 Newport Center Drive, Suite 420 Newport Beach, CA 92660 Phone: (949) 612-9128 Fax: (916) 253-1544 Emails: JGillette@messner.com kcarter@messner.com astrathearn@messner.com jtusko@messner.com egraham@messner.com	
--	--

[XXX] [By Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Elk Grove, California, addressed as set forth above.

[] [By Personal Service] By personally delivering a true copy thereof to the office of the addressee above.

[] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:_____.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 8, 2021, at Elk Grove, California.

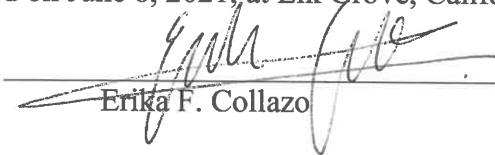

Erika F. Collazo

Exhibit C



Shimoda Law Corp.
9401 East Stockton Blvd.
Suite #200
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

March 29, 2021

For Online Filing:

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Elsalaymeh v. Tri-County Respite Care Service*

Dear Labor Commissioner,

As counsel for Rita Elsalaymeh ("Plaintiff"), I am writing to provide you and the following "employers" notice pursuant to California Labor Code section 2699.3:

Tri-County Respite Care Service
c/o Cynthia G. Lawrence, Esq.
Sims, Lawrence & Arruti
2261 Lava Ridge Court
Roseville, CA 95661

Joy M. Scott
c/o Cynthia G. Lawrence, Esq.
Sims, Lawrence & Arruti
2261 Lava Ridge Court
Roseville, CA 95661

We are setting forth the "facts and theories" to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against Tri-County Respite Care Service and Joy M. Scott ("Defendants"). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but are not limited to, the following: all employees working for Defendants in California over the applicable statutory period. Plaintiff is clearly entitled to bring a Private Attorneys General Act ("PAGA") claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).



A. FACTS

Plaintiff worked for Defendants as a respite care worker from approximately February 1, 2005 to November 24, 2020, making approximately \$16.00 per hour. Defendant, Tri-County Respite Care Service, is a non-profit organization headquartered in Yuba City, which employs individuals to assist families and caregivers with care for children with developmental disabilities and adults with brain impairment.

In Plaintiff's capacity as a respite worker, her job duties varied depending on the needs of the families she served. Plaintiff, however, estimates that she spent approximately seventy percent (70%) of her time taking developmentally disabled clients into the surrounding community to shop, run errands, go to meals, sign up for classes, go to movies, attend appointments, go to the park, and otherwise spend time away from the home. Plaintiff would also frequently run errands for the families, which did not involve spending time with the client themselves. As respite workers, Plaintiff and Aggrieved Employees were there to provide families and caregivers with support in whatever they needed to lessen their burden as care providers.

Over the course of Plaintiff's employment with Defendants, her hours varied, however, she often worked over eight (8) hours a day and forty (40) per week. In fact, it was Defendants' policy to not provide Plaintiff and Aggrieved Employees daily overtime regardless of the number of hours they worked. Additionally, Defendants did not correctly incorporate the value of the non-discretionary remuneration, such as special bonuses, into Plaintiffs and Aggrieved Employees' regular rate of pay when calculating sick leave pay.

In addition to failing to pay Plaintiff and Aggrieved Employees all overtime wages due, Defendants also failed to pay Plaintiff and Aggrieved Employees' minimum wages for all hours worked. Specifically, beginning in approximately 2017, Defendants stopped paying Plaintiff for her travel time between worksites in a single day. Plaintiff generally traveled to and from three (3) client homes in one workday. Defendants knew that Plaintiff would spend, at a minimum, from 30-40 minutes traveling between worksites each day but failed to compensate her for this time. Furthermore, Plaintiff and Aggrieved Employees often took work-related phone calls and ran errands for clients before and after their shifts. Defendants were aware that Plaintiff and Aggrieved Employees were working off-the-clock, but failed to compensate them for this time,

Defendants further did not authorize and permit Plaintiff and Aggrieved Employees to take uninterrupted meal and rest periods due to Defendants' policy of not allowing employees to leave the client while in their care. This included a first meal period before the completion of the fifth hour of work and a second meal period and third rest period on occasions when they worked more than ten (10) hours in a day. Additionally, Defendants failed to pay Plaintiff and Aggrieved Employees meal and rest period premiums owed.



Finally, Defendants failed to sufficiently reimburse Plaintiff and Aggrieved Employees for their use of personal cell phones for work purposes. Defendants required Plaintiff and Aggrieved Employees to use a company application on their phone to sign in and out of work and to communicate with Defendants and the families they served on a routine basis. Despite this, Plaintiff and Aggrieved Employees were only paid from 2-3 dollars per pay period for their cellphone use. This did not come close to compensating employees for a reasonable percentage of their cell phone bills considering the time spend on their phone for work purposes.

As a result of Defendants' failure to pay Plaintiff and Aggrieved Employees all overtime wages, minimum wages, and meal and rest period premiums owed, the wage statements Defendants issued were defective. Specifically, Defendants did not accurately list total hours worked, wages due, and total missed meal and rest period premiums earned, and the corresponding rates of pay.

As a further result of Defendants' failure to pay Plaintiff and Aggrieved Employees for all regular and overtime hours worked and failure to pay meal and rest period premiums, Defendants failed to provide all final wages owed to Plaintiff and Aggrieved Employees within twenty-four (24) hours of their termination or seventy-two (72) hours of their resignation.

B. ALLEGATIONS AND CHARGES

Count 1– Violation of Labor Code §§ 510, 1194; IWC Wage Order 5, 15 § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week and were not paid all overtime wages owed. Plaintiff and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.

Count 2 – Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order Nos. 5, 15 § 4 (Failure to Pay Minimum Wages)

During the period Plaintiff and Aggrieved Employees were employed by Defendants they were entitled to be paid at least the State's minimum wage rate for each hour that they worked. *See, e.g.*, IWC Wage Order MW-2019; IWC Wage Order No. 5, § (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendants did not pay Plaintiff and Aggrieved



Employees for all hours worked. Thus, Plaintiff and Aggrieved Employees were not paid at least the applicable state minimum wage for those hours worked. This is against the law.

Count 3- Violation of Labor Code §§ 226.7, 512 and Wage Order Nos. 5, 15 §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 5, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 5, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendants also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

Count 4 – Violation of Labor Code § 226.7 and Wage Order Nos. 5, 15 § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 5, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendants also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.

Count 5 – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” For



the reasons stated above, Defendants failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This is in violation of the law.

Count 6 – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including minimum wages, overtime wages and meal and rest period premiums, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.

Count 7 – Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Defendants failed to pay sufficient reimbursements for use of their personal cell phone for work purposes by Plaintiff and Aggrieved Employees. This was in violation of the law.

Count 8 – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf on an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendants, by and through Defendants’ agents, violated Plaintiff and Aggrieved Employees’ rights provided for under Labor Code sections 558 and 558.1, as well as the incorporated Wage Orders and incorporated statutes therein. Defendant Joy M. Scott was an officer, director, shareholder, and/or managing agent of Defendant Tri-County Respite Care Service responsible for the violations stated herein as she was in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead. This is against the law.



Count 9 – Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)

Labor Code section 226.3 provides that any employer who fails to maintain records required by Labor Code section 226(a) or provide records required by 226(a) shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation. Labor Code section 1174(d) provides that employers must keep and maintain accurate payroll records showing the hours worked daily by, and the wages paid to, employees. Defendants failed to maintain the accurate records required by law and, instead, maintained incomplete, inaccurate records regarding Plaintiff and Aggrieved Employees' wage records and hours worked. This was against the law.

Count 10 – Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

Labor Code sections 246, *et seq.*, mandate that employers must provide California employees, who work thirty (30) or more days within a year for the employer, paid sick leave of at least one (1) hour for every thirty (30) hours worked that begins to accrue at the commencement of employment. An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than twenty-four (24) hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. An employer may limit the use of sick leave to either twenty-four (24) hours or the equivalent of three (3) days, whichever is greater, during a year period. However, employers using an accrual method rather than a lump sum method must allow employees to accrue up to forty-eight (48) hours or the equivalent of six (6) days at any given time. Employers must authorize employees to take paid sick leave under the conditions set forth in the Healthy Workplaces, Healthy Families Act of 2014 ("HWHFA") for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member. Any sick leave taken must be paid at the employee's regular rate of pay. For the reasons state above, Defendants failed to provide Plaintiff and Aggrieved Employees with sick leave meeting the requirements set forth in HWHFA. Plaintiff will be seeking equitable, injunctive, and restitutionary relief to remedy these violations.

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If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda Law Corp.

By: 
Galen T. Shimoda

GTS/jh
cc: Client via e-mail

1 *Elsalaymeh v. Tri-County Respite Care Service*

2 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
3 **and California Rules of Court, Rule 1.21 and Rule 2.150**

4 I, Rylee K. Fonseca, declare that:

5 I am a citizen of the United States and am over the age of eighteen years and not a party to
6 the within above-entitled action.

7 On March 29, 2021, I served the following documents on the party below:

- 8 • Private Attorney General Act Letter

9 Tri-County Respite Care Service 10 c/o Cynthia G. Lawrence, Esq. 11 Sims, Lawrence & Arruti 12 2261 Lava Ridge Court Roseville, CA 95661	Joy M. Scott c/o Cynthia G. Lawrence, Esq. Sims, Lawrence & Arruti 2261 Lava Ridge Court Roseville, CA 95661
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13 [XXX] [By Certified Mail] I am familiar with my employer's practice for the collection
14 and processing of correspondence for mailing with the United States Postal
15 Service and that each day's mail is deposited with the United States Postal
16 Service that same day in the ordinary course of business. On the date set forth
17 above, I served the aforementioned document(s) on the parties in said action by
placing a true copy thereof enclosed in a sealed envelope with postage thereon
fully prepaid, for collection and mailing on this date, following ordinary business
practices, at Elk Grove, California, addressed as set forth above.

18 [] [By Personal Service] By personally delivering a true copy thereof to the office
of the addressee above.

19 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
20 personally delivered via the following overnight courier service:_____.

21 I declare under penalty of perjury under the laws of the State of California that the foregoing
22 is true and correct, and that this declaration was executed on March 29, 2021, at Elk Grove,
23 California.

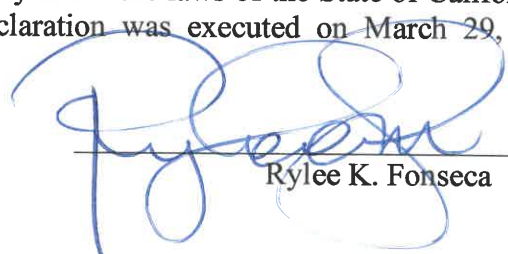
24 
25 Rylee K. Fonseca
26
27
28

Exhibit D

Entered	Description	Amount
3/17/2021	Class Action - Phone, Fax, Scan, Copying, Non-Certified/Courier Postage, Lexis Legal Research Fees	\$500.00
3/17/2021	Payment for Records - Sacramento County Case Search for Def and Ptf	\$1.00
3/30/2021	Payment to LWDA - PAGA Filing Fee	\$75.00
3/30/2021	Certified Mail - PAGA Letters to Employers	\$8.62
4/7/2021	Payment to Court - Complaint Fee Superior Court	\$435.00
4/7/2021	E-Filing Charge - Complaint	\$15.56
5/11/2021	Mediation - Mediation fee	\$7,000.00
6/9/2021	One Legal Service Fee - E Filing Amended Complaint	\$50.00
6/9/2021	One Legal Service Fee - E Filing Amended Complaint	\$50.00
7/29/2021	Service Fee to Court - Proof of Service of Summons One Legal E-Filing	\$16.06
9/10/2021	Mediation - Attorneys and Client Lunch	\$68.70
9/21/2021	One Legal Service Fee - E-file Status Conference Statement	\$18.12
9/24/2021	Court Call Appearance - Status Conference Hearing ID: 11347859	\$94.00
9/27/2021	Berger Consulting Data Analysis - Invoice No. 4924	\$2,175.00
1/14/2022	E-Filing Charge - Preliminary Approval Motion One Legal Fee	\$20.04
1/14/2022	Payment to Court - Preliminary Approval Motion	\$60.00
1/14/2022	Payment to Court - Preliminary Approval Motion Proposed Order	\$20.00
2/15/2022	Court Call Appearance - Case Management Conference	\$94.00
4/19/2022	Court Call Appearance - Case Management Conference	\$94.00
4/26/2022	One Legal E-Filing and E-Service Fee - Case Management Conference Statement	\$18.63
Anticipated	E-Filing Charge - Final Approval Motion One Legal Fee	\$50.00
Anticipated	Payment to Court - Final Approval Motion	\$60.00
Anticipated	Payment to Court - Final Approval Motion Proposed Order	\$20.00
Anticipated	UPS to OC - Final Approval Motion	\$27.00
Anticipated	One Legal E-Filing and E-Service Fee - Compliance Hearing	\$20.00
Anticipated	Court Call Appearance - Compliance Hearing	\$94.00
Anticipated	Payment to Court - Complex Fee	\$1,000.00

Total: \$12,084.73

Exhibit E

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff RITA ELSALAYMEH
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SUTTER

RITA ELSALAYMEH, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

TRI-COUNTY RESPITE CARE SERVICE, a
California Corporation; JOY M. SCOTT, an
Individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. CVCS21-0000579

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: June 13, 2022

Time: 9:00 a.m.

Dept.: 1

Judge: Hon. Perry Parker

Filed: April 7, 2021

FAC Filed: June 8, 2021

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement (“Motion”) in the above
3 referenced case came before this Court, on June 13, 2022, at 9:00 a.m., in Department 1 before the
4 Honorable Perry Parker, presiding. Named Plaintiff Rita Elsalaymeh (“Plaintiff”) filed this putative
5 class action on April 7, 2021. The operative Complaint alleges that Defendants Tri-County Respite
6 Care Service, and Joy M. Scott, (“Defendants”) violated California law by 1) failing to pay overtime
7 wages; 2) failing to pay minimum wages; 3) committing rest and meal period violations; 4)
8 committing wage statement violations; 5) waiting time penalties; 6) failing to reimburse expenses; and
9 7) engaging in unfair competition. Plaintiff has also alleged Defendants are liable for civil penalties
10 under the Private Attorneys General Act (“PAGA”) based on these violations. Plaintiff sought
11 attorneys’ fees and costs as part of this Action. Defendants denied all of Plaintiff’s claims and denied
12 that this case was appropriate for class treatment. No class has been certified. The class settlement
13 was preliminarily approved by this Court on February 14, 2022.

14 The parties have agreed to settle the class and PAGA claims. Defendants will provide
15 monetary consideration in exchange for a release of claims consistent with the terms of the proposed
16 settlement as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and
17 Release (“Agreement”). Any capitalized terms herein shall have the same meaning as set forth in the
18 Agreement. The Court, having received and considered Plaintiff’s Motion for Final Approval of Class
19 Action and PAGA Settlement, the declarations in support, the Agreement, the Notice of Settlement,
20 and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS FOLLOWS:

21 **1. CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF CLASS**
22 **REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

23 The Court finds that certification of the following class for settlement purposes only is
24 appropriate under the California Code of Civil Procedure and related case law:

25 All non-exempt employees who have or continue to work for Defendants
26 in California from April 7, 2017, to November 29, 2021

27 The Court recognizes that the foregoing definition is for Class Member identification purposes
28 only and is not intended to capture the claims at issue or limit or alter the released claims under the

1 Agreement. A Class Member shall not include Allison A. Gregory, who timely opted out of the class
2 settlement as identified in paragraph 11 of the declaration of Lindsay Kline. This individual shall not be
3 bound by the Agreement or any of the releases or obligations therein except for the releases and
4 covenants regarding to the PAGA claims as set forth in section 1.33 and 6.2 as she is still an Aggrieved
5 Employee under the Agreement and there is no ability to opt out of a PAGA settlement.

6 The Court finds that Class Members meet the ascertainability and numerosity requirements since
7 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
8 the definition and the number of Class Members would make joinder impractical. The commonality and
9 predominance requirements are met for settlement purposes since there are questions of law and fact
10 common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's
11 contentions that Defendants caused the violations outlined above by 1) failing to pay employees earned
12 overtime wages; 2) failing to pay all minimum wages owed due to Defendants' rounding policy and
13 required off the clock work; 3) failing to provide duty-free meal and rest periods and pay premiums in
14 lieu thereof; 4) failing to pay sufficient reimbursement for work-related cell phone use; 5) failing to
15 accurately itemize the hours and wages earned on paystubs issued to class members. The PAGA,
16 waiting time penalty, wage statement violation, and unfair competition claims also derive from these
17 violations. Additionally, Class Members seek the same remedies under state law. The typicality
18 requirement for settlement purposes is also satisfied since the claims of the Class Representative is
19 based on the same facts and legal theories as those applicable to the class members.

20 The Court also finds that certifying the settlement class is required to avoid each Class Member
21 from litigating similar claims individually. This settlement will achieve economies of scale for Class
22 Members with relatively small individual claims and conserve the resources of the judicial system.

23 The Court finds that Plaintiff Rita Elsalaymeh and Plaintiff's counsel, Galen T. Shimoda and
24 Justin P. Rodriguez of Shimoda & Rodriguez Law, PC, to be adequate representatives of the settlement
25 class. The Court confirms their appointment as class representative and class counsel, respectively.

26 **2. APPROVING CLASS ACTION AND PAGA SETTLEMENT**

27 The Court has reviewed the preliminarily approved Agreement, which was submitted with
28 Plaintiff's Motion as Exhibit A. The Court finds that final approval is warranted as the Agreement falls

1 within the range of reasonableness and if fair, reasonable, and adequate for Class Members. The Court
2 also acknowledges that Class Members were able to object to the settlement through the administration
3 process and at a fairness hearing. Only one individual opted out of the settlement and zero Class
4 Members objected to the settlement in any way.

5 Because the Court finds the Parties' settlement to have been agreed upon only after an extensive
6 investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court
7 gives final approval to the Agreement and all terms therein as if stated here in full, including the
8 \$300,000 Gross Settlement Amount.

9 The Court orders that Plaintiff Rita Elsalaymeh will receive \$15,000 as a Class Representative
10 Enhancement Payment in addition to any amount Plaintiff may be entitled to under the Agreement's pro
11 rata distribution formula for Plaintiff's time and effort on behalf of Class Members.

12 The Court orders and approves Simpluris, Inc., to act as the Claims Administrator in this case.
13 The Claims Administrator will take its fees out of the Gross Settlement Amount, which are \$5,000.00.
14 The difference between the actual cost of the Claims Administrator and originally allocated \$7,500 will
15 be redistributed to Qualified Claimants on a pro-rata basis.

16 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
17 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits can be
18 accurately traced as set forth in the Agreement, Plaintiff and Class Counsel were able to negotiate on
19 behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request
20 is a specific, lump-sum percentage of the Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt*
21 *v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v.*
22 *Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees request of
23 thirty five percent (35%) of the Gross Settlement Amount, *i.e.* \$105,000, to be appropriate compensation
24 for Class Counsel. The attorneys' fees request is within the range that has been approved by other
25 Courts in similar cases and is reasonable in light of the circumstances of this case, the substantial and
26 beneficial results obtained on behalf of Class Members, and the contingent nature of the recovery over
27 the course of this case, which included potential loss at summary judgment, certification, and/or trial
28 proceedings. Additionally, the Court orders that \$12,084.73 of the settlement proceeds will be paid to

1 Class Counsel for reasonable costs incurred in this case. Any difference between the actual costs
2 incurred and the \$15,000 originally allocated shall be paid to the Qualified Claimants on a pro-rata basis.

3 The Court approves of the ten thousand dollars (\$10,000) PAGA Payment, which shall be paid
4 from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the
5 alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and
6 Workforce Development Agency (“LWDA”) and Twenty-Five percent (25%) will be paid to Aggrieved
7 Employees on a pro rata basis as described in the Agreement. The Court also finds that the Agreement
8 provides a recovery that creates an effective substantial deterrent to any potential future non-compliance,
9 furthering the purpose of the Labor Code and LWDA.

10 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to
11 Qualified Claimants and/or Aggrieved Employees that are not cashed by the deadline to do so shall be
12 paid out 50/50 to Capital Pro Bono, Inc., and the Center for Workers Rights.

13 The releases and waivers for Class Members who do not opt out of being bound by the
14 Agreement (*i.e.* Qualified Claimants), Aggrieved Employees, and the Class Representative are also
15 approved by the Court as set forth in the Agreement.

16 **3. APPROVAL OF DISTRIBUTION TO THE CLASS, THE NOTICE OF SETTLEMENT,**
17 **OPPORTUNITY TO OPT OUT OF, AND OBJECT TO, THE SETTLEMENT**

18 The Court finds that the Notice of Settlement, which was submitted with Plaintiff’s Motion as
19 Exhibit A to the declaration of Lindsay Kline, fairly and adequately advised Class Members of the terms
20 of the preliminarily approved Agreement, the rights being waived, their right to opt out, the ability to
21 dispute the number of workweeks worked during the Class Period, their pro rata share of the Net
22 Settlement Amount, how to participate in the settlement, how to file documentation in opposition to the
23 proposed settlement, and when to appear at the fairness hearing. The Court further finds that the Notice
24 of Settlement and distribution of such notice by first class mail to each identified Class Member at his or
25 her most recent address based on a National Change of Address database search from the Class
26 Members’ last known address and a skip trace on any Class Members who have the Notice of Settlement
27 returned as “undeliverable” or “not at this address” comported with all constitutional requirements,
28 including those of due process.

4. IMPLEMENTATION SCHEDULE

Accordingly, with good cause shown, the Court hereby approves and orders that the following implementation schedule be adhered to:

Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendants' Counsel	Within 7 calendar days after the Final Approval Date
Last day for Defendants to fund settlement	Within 21 calendar days after the Final Approval Date
Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment to the LWDA, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	Within 14 calendar days after Defendants' last day to fund the settlement
Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 calendar days after issuance of checks to Qualified Members and Aggrieved Employees
Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to

1 the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved
2 Agreement.

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4 **IT IS SO ORDERED.**

5 Date: _____

6 By: _____
7 Judge of the Superior Court
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