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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KINGS

JONATHAN W. ADAMS, as an individual and
on behalf of all others similarly situated,
Plaintiff,

vs.

HACIENDA POST ACUTE, INC., a California
corporation; and DOES 1 through 100,
Defendants.

Case No.: 21C-0143

*[Assigned for all purposes to the Hon.
Randy Edwards in Dept. 2]*

**DECLARATION OF SEAN M.
BLAKELY IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: January 29, 2024
Time: 8:15 a.m.
Dept.: 2

Complaint Filed: May 12, 2021
Trial Date: None Set

1 I, SEAN M. BLAKELY, declare as follows:

2 1. I am a Partner at the Haines Law Group, APC, and counsel for Plaintiff Jonathan
3 W. Adams (“Plaintiff”) and the proposed Settlement Class in the above-captioned matter. I am a
4 member in good standing of the bar of the State of California and am admitted to practice in this
5 Court. I have personal knowledge of the facts stated in this declaration and could testify
6 competently to them if called upon to do so.

7 2. I am a 2008 graduate of Southwestern Law School. I was admitted to the California
8 State Bar in September 2009. From December 2010 to September 2011, I worked as a Law Clerk
9 for Rose, Klein & Marias, a civil litigation firm in Long Beach, California. At Rose, Klein &
10 Marias I assisted trial attorneys in employment and personal injury cases. From September 2011
11 to May 2016, I worked as an associate at the employment law firm of Mahoney Law Group, APC
12 in Long Beach, California. The vast majority of my work at Mahoney Law Group, APC focused
13 on representing employees in wage and hour class actions. My work at Mahoney Law Group,
14 APC also included representing employees in individual claims for wrongful termination,
15 harassment, discrimination, and retaliation. Although non-exhaustive, the types of work I
16 performed at Mahoney Law Group, APC included: conducting client intakes; performing pre-
17 filing research and analysis; drafting complaints; attending court hearings; corresponding with
18 opposing counsel; drafting and responding to written discovery; preparing for and taking and
19 defending depositions; analyzing payroll and timekeeping records and employee handbooks;
20 opposing motions for summary judgment, as well as a variety of other motions such as motions
21 for remand, demurrers and motions to dismiss, motions to strike, motions to compel, motions to
22 quash, and motions for class certification; drafting mediation briefs, attending mediations;
23 drafting long-form settlement agreements; drafting motions for preliminary and final settlement
24 approval; and overseeing the claims process.

25 3. Since November 8, 2016, I have worked at my current firm, Haines Law Group,
26 APC, where, in 2020, I became a Partner. I am currently responsible for managing over forty
27 (40) active wage and hour class and representative actions in both state and federal court.

28 4. The following is a non-exhaustive list of wage and hour class actions in which I

1 have been appointed as class counsel and/or played a significant role in prosecuting the litigation,
2 and which have received final approval: *Santimateo v. Sun Healthcare Group, Inc., et al*, Case
3 No. BC471884, California Superior Court, Los Angeles County, Judge Jane L. Johnson presiding
4 (granted final approval of settlement on behalf of employees at rehabilitation facility involving
5 claims for unpaid wages and meal and rest period violations, and other claims, in which I was
6 approved at an hourly rate of \$325 for work performed in 2012-2013); *Teyuca v. Pacific Alliance*
7 *Medical Center, Inc.*, California Superior Court, Los Angeles County, Judge William F.
8 Highberger presiding (granting final approval of settlement on behalf of healthcare workers for
9 unpaid wages, meal and rest period violations, and other claims, in which I was approved at an
10 hourly rate of \$325 for work performed in 2012-2013); *Arteaga v. Command Center Security,*
11 *Inc.*, Case No. BC480496, California Superior Court, Los Angeles County, Judge John Shepard
12 Wiley, Jr. presiding (granting final approval of settlement on behalf of security guards involving
13 claims for unpaid overtime, meal and rest period violations, and other claims, in which I was
14 approved at an hourly rate of \$425 for work performed in 2012-2015); *Casadine v. Maxim*
15 *Healthcare Services, Inc.*, Case No. CV 12-10078-DMG (CWx), United States District Court,
16 Central District of California, Judge Dolly M. Gee presiding (granting final approval of settlement
17 on behalf of home health care employees involving claims for unpaid wages and other claims, in
18 which I was approved at an hourly rate of \$425 for work performed in 2012-2015); *Guzman v.*
19 *Andrew Lauren Interiors, Inc., et al.*, Case No. BC567757, California Superior Court, Los
20 Angeles County, Judge Elihu M. Berle presiding (granting final approval of settlement on behalf
21 of construction workers involving claims for unpaid wages, meal and rest period violation, and
22 other claims, in which I was approved at an hourly rate of \$425 for work performed in 2014-
23 2016); *Booker v. The Goodyear Tire and Rubber Company*, Case No. BC498399, California
24 Superior Court, Los Angeles County, Judge Amy Hogue presiding (granting final approval of
25 settlement on behalf of tire mechanics involving claims for unpaid wages, meal and rest period
26 violations, and other claims, in which I was approved at an hourly rate of \$425 for work performed
27 in 2013-2015); *Nunez v. CompuCom Systems, Inc.*, Case No. BC618385, California Superior
28 Court, Los Angeles County, Judge John Shepard Wiley, Jr. presiding (granting final approval of

1 settlement on behalf of IT support workers for overtime, meal and period, reimbursement, and
2 related violations, approved at hourly rate of \$475 for work performed in 2016 and 2017); *Galvan*
3 *v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC, California
4 Superior Court, Orange County, Judge William D. Claster presiding (granting final approval of
5 settlement on behalf of non-exempt employees of a chemical manufacturing company involving
6 claims for unpaid overtime and waiting time penalties); *Razon v. TTM Technologies, Inc., et al.*,
7 Case No. 37-2016-00038326-CU-OE-CTL, California Superior Court, San Diego County, Judge
8 Gregory W. Pollack presiding (granting final approval of settlement involving claims for unpaid
9 overtime wages, wage statement violations, and meal period violations); *Blank v. Coty, Inc., et*
10 *al.*, Case No. BC624850, California Superior Court, Los Angeles County, Judge Williams F.
11 Highberger presiding (granting final approval of settlement involving claims for wage statement
12 violations, meal period violations, and other claims); *Morales v. Caremeridian, LLC, et al.*, Case
13 No. BC593191, California Superior Court, Los Angeles County, Judge William F. Highberger
14 presiding (granting final approval of settlement on behalf of direct support professionals
15 involving claims for unpaid wages, meal and rest period violations, wage statement violations,
16 and other claims); *Aguilar v. Act Fulfillment, Inc.*, Case No. RIC1616643, California Superior
17 Court, Riverside County, Judge Sharon J. Waters presiding (granting final approval of settlement
18 on behalf of non-exempt factory workers involving claims for meal period violations); *Sandoval*
19 *v. AMCOR Flexibles Inc.*, Case No. BC617499, California Superior Court, Los Angeles County,
20 Judge Kenneth R. Freeman presiding (granting final approval of settlement on behalf of
21 manufacturing employees involving claims for unpaid wages, meal period violations, rest period
22 violations, and waiting time penalties); *Le v. GBW Railcar Services, L.L.C.*, Case No.
23 RIC1612209, California Superior Court, Riverside County, Judge Sharon J. Waters presiding
24 (granting final approval of settlement on behalf of non-exempt employees of a freight railcar
25 manufacturer involving claims for unpaid overtime and minimum wages, meal period violations,
26 and rest period violations); *Silva v. ADJ Products, LLC*, Case No. BC618581, California Superior
27 Court, Los Angeles County, Judge William F. Highberger presiding (granting final approval of
28 settlement involving claims for unpaid overtime and minimum wages, rest period violations,

wage statement violations, and waiting time penalties); *Lira v. Discus Dental, LLC, et al.*, Case No. CIVDS1620402, California Superior Court, San Bernardino County, Judge David Cohn presiding (granting final approval of settlement on behalf of non-exempt manufacturing employees involving claims for unpaid minimum and overtime wages, meal and rest period violations, and other claims); *Gonzales v. PathPoint*, Case No. BC657147, California Superior Court, Los Angeles County, Judge Carolyn B. Kuhl presiding (granting final approval of settlement on behalf of non-exempt direct support professionals involving claims for meal and rest period violations and other claims); *Duran v. PRADA USA CORP.*, Case No. BC644319, California Superior Court, Los Angeles County, Judge Maren E. Nelson presiding (granting final approval of settlement on behalf of non-exempt commissioned salespersons involving claims for unpaid overtime wages, meal and rest period violations, failure to reimburse for necessary expenditures, and other claims); *Banegas v. UPM, Inc.*, Case No. BC644438, California Superior Court, Los Angeles County, Judge Carolyn B. Kuhl presiding (granting final approval of settlement on behalf of non-exempt manufacturing employees involving claims for unpaid wages, meal and rest period violations, and other claims); *Palafox v. Pacific Line Clean-Up, Inc.*, Case No. 30-2017-00921632-CU-OE-CXC, California Superior Court, Orange County, Judge William D. Claster presiding (granting final approval of settlement on behalf of non-exempt employees involving claims for unpaid overtime wages, meal and rest period violations, and other claims); *Janet Arroyo v. AST Sportswear, Inc., dba Bayside Apparel Manufacturing, Inc.*, Case No. 30-2017-00909663-CU-OE-CXC, California Superior Court, Orange County, Judge Glenda Sanders presiding (granting final approval of settlement on behalf of non-exempt garment employees involving claims for unpaid minimum wages, meal and rest period violations, and other claims); *Carlos Garcia v. Fabrica International, Inc.*, Case No. 30-2017-00949461-CU-OE-CXC, California Superior Court, Orange County, Judge William D. Claster presiding (granting final approval of settlement on behalf of non-exempt manufacturing employees involving claims for unpaid minimum and overtime wages, meal and rest period violations, and statutory penalties); *Jonathan Leon v. Piercey West, Inc.*, Case No. BC656874, California Superior Court, Los Angeles County, Judge Amy D. Hogue presiding (granting final approval of settlement on behalf

1 of non-exempt commissioned salespersons and other employees involving claims for unpaid
2 wages, meal and rest period violations, unreimbursed business expenses, and other claims); and
3 *Matthew Tovar, et al. v. Rentokil North America, Inc.*, Case No. BC676386, California Superior
4 Court, Los Angeles County, Judge Daniel J. Buckley presiding (granting final approval of
5 settlement on behalf of non-exempt employees involving claims for unpaid overtime, meal and
6 rest break violations, and other claims); *Seungmin Samantha Lee v. Infor (US) Inc.*, Case No.
7 CGC-18-566393, California Superior Court, San Francisco County, Judge Ethan P. Schulman
8 presiding (granting final approval of settlement on behalf of sales development representatives
9 involving claims for unpaid overtime, meal and rest period violations, and penalty claims); *Tracy*
10 *Aguilar, et al. v. Aero Port Services, Inc.*, Case No. BC659234, California Superior Court, Los
11 Angeles County, Judge Carolyn B. Kuhl presiding (granting final approval of settlement on behalf
12 of non-exempt employees involving claims for meal and rest period violations, and other claims);
13 *Carlos Perez, et al. v. Moss Bros. Auto Group, Inc., et al.*, Case No. RIC1709905, California
14 Superior Court, Riverside County, Judge Sunshine S. Sykes presiding (granting final approval of
15 settlement on behalf of non-exempt commissioned salespersons involving claims for unpaid
16 wages, meal and rest period violations, other claims); *Julio Alfaro v. Orange Automotive d/b/a*
17 *Kia of Orange*, Case No. 30-2017-00945105-CU-OE-CXC, California Superior Court, Orange
18 County, Judge Randall J. Sherman presiding (granting final approval settlement on behalf of non-
19 exempt commissioned employees involving claims for unpaid wages, meal and rest period
20 violations, unreimbursed business expenses, and penalty claims); *Sepulveda, et al. v. Caliber*
21 *Collision Transport Service LLC, et al.*, Case No. BC669786, California Superior Court, Los
22 Angeles County, Judge Carolyn B. Kuhl presiding (granting final approval of settlement on behalf
23 of non-exempt commissioned employees involving claims for unpaid wages, meal and rest period
24 violations, and penalty claims); *Mariela Cruz v. Traina Dried Fruit, Inc.*, Case No. 9000819,
25 California Superior Court, Stanislaus County, Judge Marie Sovey Silveira presiding (granting
26 final approval of settlement on behalf of non-exempt employees involving claims for unpaid
27 wages, meal and rest period violations, and penalty claims); *Joshua Anthony v. Semper Solaris*
28 *Construction Inc.*, Case No. 37-2018-00035320-CU-OE-CTL, California Superior Court, San

1 Diego County, Judge Gregory W. Pollack presiding (granting final approval of settlement on
2 behalf of non-exempt employees involving claims for overtime wages, wage statement penalties,
3 waiting time penalties, and PAGA civil penalties); *Fabio Gallo v. Coast Composites, LLC*, Case
4 No. 30-2018-01016120-CU-OE-CXC, California Superior Court, Orange County, Judge Glenda
5 Sanders presiding (granting final approval of settlement on behalf of non-exempt employees
6 involving claims for wage statement violations and PAGA civil penalties); *Maria Jessenia*
7 *Gomez, et al. v. CareMeridian, LLC*, Case No. BC655730, California Superior Court, Los
8 Angeles County, Judge William F. Highberger presiding (granting final approval of settlement
9 on behalf of non-exempt nursing employees involving claims for meal and rest period violations,
10 minimum and overtime violations, and penalty claims); *Alfredo Villarreal v. Spenuzza, Inc.*, Case
11 No. RIC1902836, California Superior Court, Riverside County, Judge Sunshine S. Sykes
12 presiding (granting final approval of settlement on behalf of non-exempt manufacturing
13 employees involving claims for unpaid wages, meal and rest period violations, and various
14 penalty claims); *Rosalie A. Wayman v. San Fernando Valley Automotive, LLC, et al.*, Case No.
15 19STCV35904, California Superior Court, Los Angeles County, Judge Maren E. Nelson
16 presiding (granting final approval of settlement on behalf of commission-based employees
17 involving claims for unpaid minimum wages, meal and rest period violations, and penalty claims);
18 *Danielle Bradley Queen, et al. v. Unlimited Quest, Inc.*, Case No. CIVDS1716151, California
19 Superior Court, San Bernardino County, Judge David Cohn presiding (granting final approval of
20 settlement on behalf of non-exempt Direct Support Professionals and Program Supervisors
21 involving claims for rest period violations, unpaid wages, failure to reimburse for necessary
22 business expenditures, wage statement violations, and other penalty claims); *Fabian Santana, et*
23 *al. v. A.M. Cabinets, Inc.*, Case No. 19STCV00803, California Superior Court, Los Angeles
24 County, Judge Daniel J. Buckley presiding (granting final approval of settlement on behalf of
25 non-exempt employees involving claims for unpaid wages, meal and rest period violations, wage
26 statement violations, failure to reimburse for necessary business expenditures, and other penalty
27 claims); *Jonathan Reyes-Delcid v. SNS Transportation Services Inc.*, Case No. BC683026, Judge
28 Daniel J. Buckley presiding (granting final approval of settlement on behalf of non-exempt

employees involving claims for piece-rate violations, unpaid wages, meal and rest period violations, failure to reimburse for necessary business expenditures, and other penalty claims); *Damien Dana Council v. Professional Courier & Newspaper Distribution, et al.*, Case No. BC715054, California Superior Court, Los Angeles County, Judge Amy D. Hogue presiding (granting final approval of settlement on behalf of non-exempt employees involving claims for unpaid wages, meal and rest period violations, and various penalty claims); and *Jose Jimenez v. Fenceworks, Inc.*, Case No. 30-2018-01034150-CU-OE-CXC, California Superior Court, Orange County, Judge William D. Claster presiding (granting final approval of settlement on behalf of non-exempt employees involving claims for piece-rate violations, unpaid wages, meal period violations, and various penalty claims).

5. I have also moved to certify and have received an order certifying a class action in *Ontiveros v. Safelite Fulfillment, Inc., et al.*, Case No. CV 15-7118-DMG (RAOx), United States District Court, Central District of California, Honorable Dolly M. Gee presiding (certifying six classes of employees for rest period violations, wage statement violations, meal period violations, and overtime and double-time violations); and *Vazquez v. Kraft Heinz Foods Company*, Case No. 16-CV-02749-WQH (BLM), United States District Court, Southern District of California, Honorable William Q. Hayes, presiding (certifying unpaid wages classes, meal period classes, wage statement class, and waiting time penalty class).

6. In 2018, 2019, 2020, 2021, and 2022, Thomson Reuters recognized me as a Top Young Attorney in Southern California in the annual Rising Star Edition of Super Lawyers. This is an honor awarded to no more than two-and-a-half percent (2.5%) of attorneys under the age of forty in Southern California each year.

7. As counsel for Plaintiff and the proposed Settlement Class, I have been intimately involved in this case, and I believe that the proposed Settlement is a favorable result for the Settlement Class.

8. Founded in 1965, Defendant Hacienda Post Acute, Inc. (“Hacienda Post Acute”) was a rehabilitation and senior nursing home, providing skilled nursing and long-term care. On or about May 1, 2022, Hacienda Post Acute was acquired by another entity and ceased operating.

1 9. On May 12, 2021, Plaintiff filed his Class Action Complaint in Kings County
2 Superior Court, alleging that Hacienda Post Acute failed to: (i) pay all overtime wages; (ii) pay
3 all minimum wages; (iii) pay reporting time pay; (iv) authorize and permit all required rest
4 periods; (v) provide all required meal periods; (vi) reimburse all necessary business expenses;
5 (vii) provide accurate itemized wage statements; (viii) pay all wages at the end of employment;
6 and (ix) engaged in unfair competition in violation of California Business & Professions Code §
7 17200 *et seq.* On May 12, 2021, Plaintiff sent his PAGA notice letter to the Labor & Workforce
8 Development Agency (“LWDA”). Attached hereto as **Exhibit B** is a true and correct copy of
9 Plaintiff’s LWDA letter. Subsequently, on July 19, 2021, Plaintiff filed the operative First
10 Amended Class and Representative Action Complaint (“FAC”) adding a cause of action for civil
11 penalties under the Private Attorneys’ General Act of 2004, Labor Code Section 2698, *et seq.*

12 10. In connection with mediation, the Parties engaged in extensive informal discovery.
13 Hacienda Post Acute produced a 12% sampling of timekeeping and payroll records for non-
14 exempt employees during the Class Period, as well as its relevant written wage and hour
15 policies/procedures, employee handbook, and other information. Hacienda Post Acute also
16 provided relevant data points such as the total number of aggregate workweeks in the Class Period
17 and the total number of Class Members employed by Hacienda Post Acute in California during
18 the Class Period. Plaintiff hired a labor economist with a Ph.D. in economics to assist Plaintiff in
19 conducting a comprehensive analysis and extrapolation of the payroll and timekeeping data
20 produced by Hacienda Post Acute to create a detailed exposure analysis for all claims at issue.
21 This discovery allowed the Parties to assess the merits and value of Plaintiff’s claims, the chances
22 of certification of Plaintiff’s claims, and Hacienda Post Acute’s potential defenses.

23 11. On September 8, 2022, the Parties participated in a full-day mediation with Todd
24 A. Smith, Esq., a well-respected wage and hour class action mediator. During mediation, the
25 Parties vigorously debated their opposing legal positions, the likelihood of certification of
26 Plaintiff’s claims, the legal basis for the claims and defenses, and Hacienda Post Acute’s financial
27 condition. The Parties did not reach a settlement at mediation and Hacienda Post Acute agreed to
28 turn over its financial records to Plaintiff’s retained forensic accountant to evaluate its financial

1 condition. These documents included records showing that Hacienda Post Acute was acquired
2 on or about May 1, 2022, and ceased operating as of that date. Following Hacienda Post Acute's
3 representation of its financial position, the company turned over its financial records to Plaintiff's
4 retained expert, Keith D. Messerschmidt, who is a forensic accountant and has consulted or
5 provided expert testimony in dozens of litigation and insurance matters. Mr. Messerschmidt
6 opined that Hacienda Post Acute could not reasonably afford to pay more than the Maximum
7 Settlement Amount. Should the Court wish to review a declaration from Mr. Messerschmidt
8 attesting to these facts and Hacienda Post Acute's financial condition, this declaration could either
9 be filed *in camera* or filed under seal, at the Court's request. The Parties thereafter resumed their
10 settlement negotiations with Mr. Smith, who ultimately issued a mediator's proposal for a class-
11 wide settlement, which was accepted by all Parties. During the months that followed, the Parties
12 finalized the terms of the Settlement and executed the long-form Settlement Agreement now
13 before the court. The proposed Class and Representative Action Settlement Agreement
14 ("Settlement") is attached hereto as **Exhibit A**. The proposed Class Notice is attached to the
15 Settlement as **Exhibit 1**.

16 12. The monetary terms of the Settlement are summarized below:

17	Maximum Settlement Amount:	\$500,000.00
18	Minus Court-approved attorneys' fees:	\$166,666.66
19	Minus Court-approved verified costs (up to):	\$30,000.00
20	Minus Court-approved Service Award:	\$7,500.00
21	Minus payment to the LWDA:	\$15,000.00
22	<u>Minus estimated settlement administration costs:</u>	<u>\$15,000.00</u>
23	Net Settlement Amount ("NSA"):	\$265,834.34

24 13. According to Hacienda Post Acute, there are approximately 503 Class Members.
25 Therefore, the average Individual Settlement Payment from the NSA is projected to be
26 approximately \$528.50. There are approximately 239 PAGA Group Members during the PAGA
27 Period. Therefore, each Aggrieved Employee will receive an average of approximately \$20.92
28 from the \$5,000.00 PAGA Amount.

14. Plaintiff alleges that Hacienda Post Acute failed to authorize and permit compliant
off-duty rest periods as Hacienda Post Acute required employees to remain on premises during

1 their off-duty rest periods. Furthermore, Plaintiff alleges that Hacienda Post Acute did not provide
2 third rest periods to employees who worked a shift of more than 10.0 hours. Based on Plaintiff's
3 expert's analysis and extrapolation of employee timekeeping records, there were approximately
4 177,859 shifts in excess of 3.5 hours, entitling employees to at least one rest period. Thus, Plaintiff
5 calculated the maximum potential exposure for this claim at approximately \$2,959,573 (177,859
6 rest period violations * \$16.64 average premium). Hacienda Post Acute counters that it has
7 maintained compliant written rest period policies throughout the Class Period, and that there was
8 no written policy requiring employees to remain on premises during their rest breaks. Hacienda
9 Post Acute further contends that, even if it (or individual managers) had required employees to
10 remain on premises, *Augustus* rejected Plaintiff's "on premises" theory when it observed that
11 "one would expect that employees will ordinarily have to remain onsite or nearby. This constraint,
12 which is of course common to all rest periods, is not sufficient to establish employer control."
13 Hacienda Post Acute also contends that throughout the Class Period it has always authorized and
14 permitted employees a 10-minute rest period for each four (4) hours worked, or major fraction
15 thereof, as required under the Wage Order, and that any failure to take rest periods was a result
16 of employee choice, rather than any Hacienda Post Acute policy and/or practice. Hacienda Post
17 Acute also argues that Plaintiff's rest period claim is not amenable to class treatment, since
18 individual inquiries would be required to determine which employees failed to take rest periods,
19 how many rest periods they failed to take, and the reasons why each employee failed to take rest
20 period(s) on a particular shift. These manageability concerns are especially present with respect
21 to rest period claims, Hacienda Post Acute argues, given that rest periods are not recorded. In
22 light of these defenses, Plaintiff discounted the maximum amount that the class could potentially
23 recover by 70% for risk of non-certification and discounted an additional 75% for risk of being
24 unsuccessful on the merits or failure to recover the full amount sought, to arrive at a projected
25 exposure of approximately \$221,968.

26 15. Plaintiff alleges that Hacienda Post Acute failed to pay all overtime wages owed
27 by not including the value of all non-discretionary remuneration into the regular rate of pay.
28 Specifically, Plaintiff alleges that following the COVID-19 outbreak, Hacienda Post Acute began

1 paying employees a non-discretionary bonus for showing up for their scheduled shift. However,
2 Plaintiff contends Hacienda Post Acute failed to include the value of all remuneration, including
3 this bonus, into the regular rate of pay for purposes of calculating overtime, and as a result,
4 underpaid overtime wages. Based on Plaintiff's review of payroll records, overtimes wages owed
5 to employees due to the failure to calculate COVID-19 pay into the regular rate is approximately
6 \$12,000. Hacienda Post Acute contends that it properly included all forms of remuneration when
7 calculating the regular rate of pay, and therefore, paid all overtime wages to Class Members.
8 Hacienda Post Acute further argues that Class Members received different types of bonuses
9 throughout the Class Period, creating substantive differences among the Class Members with
10 respect to the incentives received, making class certification unlikely. In light of these defenses,
11 Plaintiff discounted the maximum amount that the class could potentially recover by 20% for risk
12 of non-certification and discounted an additional 25% for risk of being unsuccessful on the merits
13 or failure to recover the full amount sought, to arrive at an estimated total of approximately
14 \$7,200.

15 16. Plaintiff alleges that Hacienda Post Acute failed to provide timely, duty-free, and
16 uninterrupted 30-minute meal periods commencing before the end of the fifth hour of work. Based
17 on Plaintiff's expert's analysis and extrapolation of the timekeeping data produced by Hacienda
18 Post Acute, there were approximately 25,568 shifts during the Class Period with a non-compliant
19 first meal period. Further, based on data provided by Hacienda Post Acute, Class Members'
20 average hourly rate of pay during the Class Period was approximately \$16.64 per hour. Therefore,
21 Plaintiff calculated Hacienda Post Acute's maximum exposure on this claim at approximately
22 \$425,451 (25,568 non-compliant first meal periods * \$16.64 average meal period premium).
23 Hacienda Post Acute counters that it maintained compliant written meal period policies
24 throughout the Class Period and provided compliant meal periods in line with those policies and
25 that this is reflected in its timekeeping records, which show compliant first meal periods provided
26 on approximately 85% of all meal period eligible shifts. Hacienda Post Acute further contends
27 that it always *provides* employees the opportunity to take meal periods and is not required to
28 *ensure* they are taken. Thus, Hacienda Post Acute argues that any non-compliant meal periods

1 resulted from lawful employee waiver or choice, rather than any policy and/or practice of
2 Hacienda Post Acute. Finally, Hacienda Post Acute maintains Plaintiff's meal period claim is not
3 suited for class certification since individual inquiries would be needed to assess which employees
4 if any, took non-compliant or missed meal periods, how many meal periods were non-compliant
5 or missed, and the reasons why a particular employee did not take a meal period on a particular
6 shift. In light of these defenses and arguments, Plaintiff discounted Hacienda Post Acute's
7 maximum exposure by 65% for the risk of non-certification, and an additional 70% to account
8 for Hacienda Post Acute's defenses on the merits or failing to recover the full amount sought, to
9 arrive at an estimated total of approximately \$44,672.

10 17. Plaintiff contends that Hacienda Post Acute underpaid Class Members due to its
11 allegedly unlawful rounding policies/practices. Plaintiff alleges that although Hacienda Post
12 Acute's timekeeping system recorded hours worked to the minute, Hacienda Post Acute rounded
13 all time-punches to the nearest quarter-hour, resulting in an underpayment of wages to Class
14 Members. Based on Plaintiff's review of employee timekeeping records, when looking at all shifts
15 in the timekeeping data, there was an average *overpayment* of 2.59 minutes per shift. When
16 looking only at shifts where there was an underpayment, Plaintiff's analysis revealed that Class
17 Members were underpaid approximately 2,952 total hours during the Class Period. Therefore,
18 Plaintiff calculated the maximum exposure for this claim at approximately \$98,243 (2,952 hours
19 * \$16.64 hourly rate * 2 (liquidated damages)). However, Hacienda Post Acute argues that its
20 rounding policies/practices were lawful, since it was both neutral on its face and resulted, over
21 time, in employees being paid for all hours worked. Hacienda Post Acute also contends that
22 multiple Courts of Appeal have found rounding mechanisms to be lawful under similar
23 circumstances. Additionally, Hacienda Post Acute asserts Plaintiff would be unable to certify a
24 rounding class given the individualized inquiries as to whether Class Members were in fact
25 underpaid, or potentially overpaid, for each workday in question. In light of these defenses and
26 arguments, Plaintiff discounted Hacienda Post Acute's maximum exposure by 60% for the risk
27 of non-certification, and an additional 60% to account for Hacienda Post Acute's defenses on the
28 merits or failing to recover the full amount sought, to arrive at an estimated total of approximately

1 \$15,719.

2 18. Plaintiff contends that Hacienda Post Acute required Class Members to use their
3 personal cellphones for a variety of work activities, including but not limited to, communicating
4 with supervisors, but were not reimbursed for these business expenses. Based on Hacienda Post
5 Acute's data, Plaintiff estimated that Class Members worked approximately 10,030 aggregate
6 months during the Class Period. Assuming a \$20.00 reimbursement per month for cellular phone
7 data for work-related activities, Plaintiff calculated Hacienda Post Acute's maximum exposure at
8 approximately \$200,600 (\$20.00 unreimbursed cellular phone data * 10,030 months). Hacienda
9 Post Acute maintains that Class Members were not required to use their personal cellular phones
10 as part of their job. Hacienda Post Acute further argues that any expenses incurred by Class
11 Members were minimal, given the wide availability of low-cost cellular phone plans. Lastly,
12 Hacienda Post Acute argues this claim is not suitable for class treatment, as it would require
13 individualized determinations as to whether each Class Member used a personal cellular phone
14 for work-related purposes, and if so, how much of that use was a reasonable percentage of their
15 individual monthly phone bill. Therefore, in light of these arguments and the presence of the
16 arbitration agreements, Plaintiff discounted the maximum exposure by 55% for the risk of non-
17 certification, and an additional 60% for risk of losing on the merits, to arrive at an estimated
18 exposure of \$36,108.

19 19. As a result of the unpaid wages and unpaid meal and rest period premium wages
20 described above, Plaintiff alleges that Hacienda Post Acute failed to comply with its final pay
21 obligations set forth in Labor Code §§ 201-203. Hacienda Post Acute's records reflected
22 approximately 461 former Class Members who are eligible for waiting time penalties. Based on
23 an hourly rate of \$16.64, Plaintiff estimated the average waiting time penalty per former employee
24 to be approximately \$3,994 (\$16.64 * 8 hours per day * 30 days). Therefore, Plaintiff calculated
25 Hacienda Post Acute's maximum exposure for potential waiting time penalties to be
26 approximately \$1,841,234 (461 former employees * \$3,994 average penalty). However, Hacienda
27 Post Acute argues that it possesses strong, good faith defenses to Plaintiff's underlying claims,
28 thus precluding recovery of waiting time penalties, which are only available for the "willful"

1 failure to pay wages. Hacienda Post Acute further asserts that Plaintiff's waiting time penalty
2 exposure was grossly inflated as not every former employee experienced the alleged Labor Code
3 violations. To account for Hacienda Post Acute's defenses, Plaintiff discounted the maximum
4 exposure by 65% for the risk of non-certification and an additional 75% for the risk of losing on
5 the merits and/or not receiving the maximum penalties sought, to arrive at an estimated exposure
6 of approximately \$161,108.

7 20. As a further result of the unpaid wages and unpaid meal and rest period premium
8 wages described above, Plaintiff alleges that Hacienda Post Acute is liable for wage statement
9 penalties. Those penalties are calculated as \$50 for each "initial" violation and \$100 for each
10 "subsequent" violation, with a maximum of \$4,000 per employee. *See* Labor Code § 226(e).
11 Plaintiff's analysis reflected that there were approximately 239 unique employees and
12 approximately 9,878 pay periods worked during the liability period applicable to Plaintiff's wage
13 statement claim. Plaintiff, therefore, assumed the maximum \$4,000.00 penalty for each employee
14 and calculated Hacienda Post Acute's potential wage statement exposure at approximately
15 \$956,000 (239 employees * \$4,000 maximum penalty)]. Hacienda Post Acute argues any alleged
16 wage statement violations were not "knowing and intentional," and Plaintiff cannot show he or
17 other employees "suffer[ed] injury" due to the alleged wage statement violations, as required by
18 Labor Code § 226(e) for the imposition of penalties. Further, Hacienda Post Acute contends its
19 wage statements always accurately reflected hours worked and amounts paid as well as all other
20 required information. In light of these defenses, as well as risks associated with Plaintiff's
21 underlying claims discussed above, Plaintiff discounted the maximum exposure by 65% for risk
22 of non-certification, and by an additional 75% for risk of being unsuccessful on the merits, for an
23 estimated realistic exposure of approximately \$83,650.

24 21. As a result of the foregoing Labor Code violations, Plaintiff alleges that Hacienda
25 Post Acute is liable for civil penalties under the PAGA. Plaintiff estimated a maximum total
26 PAGA exposure of approximately \$987,800 (9,878 pay periods * \$100 "initial" penalty). Since
27 Plaintiff's PAGA claim is derivative of Plaintiff's underlying wage claims, Hacienda Post Acute
28 asserts the PAGA claim would fail with those claims. Hacienda Post Acute further maintains that,

1 given its good faith defenses, this Court would exercise its discretion to substantially reduce any
2 PAGA penalties if it were to find Hacienda Post Acute liable for any of Plaintiff's claims.
3 Therefore, Plaintiff discounted the maximum figure by 75% for the risk of losing on the merits
4 and/or not recovering a PAGA penalty for each and every pay period, and an additional 80% to
5 account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of
6 approximately \$49,390.

7 22. Using these estimated figures for each of the claims described above, Plaintiff
8 predicted that the potential realistic recovery for the Settlement Class would be approximately
9 \$619,815. The proposed Settlement of \$500,000 represents approximately 81% of the reasonably
10 forecasted recovery for the Settlement Class.

11 23. At Final Approval, my office will apply for an attorneys' fees award of one-third
12 of the Maximum Settlement Amount, which is currently estimated to be \$166,666.66, and up to
13 \$30,000.00 in verified costs reimbursement. Plaintiff submits the requested fee is fair
14 compensation for undertaking complex, risky, expensive, and time-consuming litigation on a
15 purely contingent fee basis. Class Counsel has incurred substantial attorneys' fees conducting
16 pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, conducting
17 extensive informal discovery, analyzing Settlement Class members' timekeeping and payroll
18 records with the help of a retained expert, creating a comprehensive damages model, preparing
19 for and attending mediation, analyzing Hacienda Post Acute's financial records with the help of
20 another retained expert, negotiating and preparing the long-form Settlement Agreement,
21 preparing this Motion, and otherwise litigating the case. Class Counsel expects to expend
22 additional attorney time in attending the hearing on this Motion, overseeing the Notice process
23 and fielding questions from Settlement Class members, preparing the final approval papers, and
24 attending the Final Approval hearing.

25 24. Although the Parties engaged in significant informal discovery prior to mediation,
26 the Parties still had significant formal discovery to complete had the matter not been settled. This
27 would have required the expenditure of substantial time and resources by both Parties that would
28 have very likely spanned several years. Even if Plaintiff was to certify the classes, the Parties

1 would incur considerably more attorneys' fees and costs through a possible decertification
2 motion, trial, and possible appeal. This Settlement avoids those risks and the accompanying
3 expense.

4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct. Executed on December 1, 2023, at El Segundo, California.

6 
7 Sean M. Blakely
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EXHIBIT A

1 **INTRODUCTION**

2 This Class and Representative Action Settlement Agreement (“Settlement Agreement”) is
3 made and entered into by and between Plaintiff JONATHAN ADAMS (“Class Representative,”
4 “Plaintiff,” or “ADAMS”), individually and on behalf of all putative class members and aggrieved
5 employees, on the one hand, and Defendant HACIENDA POST ACUTE, INC. (“Defendant” or
6 “HACIENDA”), on the other hand. ADAMS and HACIENDA are collectively referred to herein
7 as the “Parties.” This Settlement Agreement is subject to the terms and conditions set forth below
8 and the Court’s approval. This Settlement Agreement completely resolves the wage and hour class
9 and representative action filed by ADAMS against Defendant HACIENDA on May 12, 2021, Kings
10 County Superior Court, Case No. 21C-0143.

11 **I. DEFINITIONS**

12 The following definitions are applicable to this Settlement Agreement. Definitions
13 contained elsewhere in this Settlement Agreement shall also be applicable.

14 1. “Action” means the case entitled Jonathan W. Adams v. Hacienda Post Acute, Inc.,
15 Case No. 21C-0143, pending before the Court.

16 2. “Class” means all non-exempt hourly employees who were employed by
17 HACIENDA in California during the Class Period. Members of the Class are referred to herein
18 individually as a “Class Member” and collectively as “Class Members.” HACIENDA represents
19 that the Class includes approximately 503 Class Members as of September 8, 2022.

20 3. “Class List” means a list of Class Members that HACIENDA will compile from its
21 records.

22 4. “Class Period” means the time period from November 15, 2016 through April 30,
23 2022.

24 5. “Court” means the Kings County Superior Court.

25 6. “Defendant’s Counsel” means Atkinson, Andelson, Loya, Ruud & Romo.

26 7. “Effective Date” means the latter of: (a) if no objections to the Settlement Agreement
27 are made in writing or at the hearing for Final Approval, the date the Court enters Judgment and
28 service of entry of judgment is received by Defendant; (b) if objections are made in writing or at the

1 hearing for Final Approval and overruled, and no appeal is taken of the order granting Final
2 Approval, then the Effective Date shall be three (3) calendar days after the deadline to file an appeal
3 of the order granting Final Approval; or (c) if one or more appeals are taken from the Court's
4 overruling of any objections to the settlement, then the Effective Date shall be three (3) calendar
5 days after any appeal is dismissed or the order granting Final Approval of the settlement is affirmed
6 after an appeal, and the order granting Final Approval is not subject to further review and becomes
7 final.

8 8. "Final Approval" means the Court Order granting final approval of the Settlement
9 Agreement and entering final judgment thereon.

10 9. "Individual Settlement Payment" means each Participating Class Member's and/or
11 PAGA Group member's pro rata share of the Net Settlement Proceeds calculated in accordance with
12 the Individual Settlement Payment calculations described below.

13 10. "Maximum Settlement Amount" means the total amount (excluding employer
14 payroll taxes for wage payments under the Settlement Agreement) HACIENDA is required to pay
15 under this Settlement Agreement, subject to ADAMS obtaining Final Approval and the Effective
16 Date occurring. The Maximum Settlement Amount includes only (and all subject to Court
17 approval): (1) the attorneys' fees of Class Counsel; (2) the litigation costs and expenses of Class
18 Counsel; (3) the Service Award to the Class Representative; (4) the payment to the Labor Workforce
19 and Development Agency ("LWDA") pursuant to PAGA; (5) all costs of administration, including,
20 without limitation, the Settlement Administrator's fees and expenses; and (6) the Individual
21 Settlement Payments paid to Participating Class Members and PAGA Group Members.

22 11. "Net Settlement Amount" means the portion of the Maximum Settlement Amount,
23 less the amounts approved and awarded by the Court for: (1) the attorneys' fees of Class Counsel;
24 (2) the litigation costs and expenses of Class Counsel; (3) the Service Award to the Class
25 Representative; (4) the payment to the LWDA pursuant to PAGA; (5) all costs of administration,
26 including, without limitation, the Settlement Administrator's fees and expenses.

27 12. "Notice Deadline" means the date by which Class Members must submit to the
28 Settlement Administrator a valid request to be excluded from the settlement, object to the settlement,

1 or dispute the number of workweeks worked during the Class Period. If the date of the Notice
2 Deadline falls on a Sunday or federal holiday, the time to object, opt-out, or submit the dispute will
3 be extended to the next calendar day on which the U.S. Postal Service is open.

4 13. "Notice of Settlement" means the notice that the Court approves and orders to be
5 sent to all Class Members advising them of their rights under this Settlement Agreement. The Notice
6 of Settlement is attached hereto as Exhibit 1.

7 14. "PAGA" means the California Labor Code Private Attorneys General Act of 2004
8 (Cal. Lab. Code §§ 2698, *et seq.*).

9 15. "PAGA Group" means all non-exempt, hourly-paid California employees employed
10 by HACIENDA during the PAGA Period. Members of the PAGA Group are referred to herein
11 individually as a "PAGA Group Member" and collectively as "PAGA Group Members."

12 16. "PAGA Payment" means the amount that the Parties have agreed to allocate from
13 the Maximum Settlement Amount in order to settle claims arising under PAGA.

14 17. "PAGA Period" shall mean the period from May 12, 2020 through April 30, 2022.

15 18. "Participating Class Members" or "Settlement Class" means all Class Members who
16 do not submit a valid request to be excluded from the settlement, consistent with the terms set forth
17 in this Settlement Agreement.

18 19. "Plaintiff's Counsel" or "Class Counsel" means HAINES LAW GROUP, APC,
19 counsel of record for ADAMS.

20 20. "Preliminary Approval" means the Court Order granting preliminary approval of the
21 Settlement Agreement.

22 21. "Qualified Settlement Account" means the account established by the Settlement
23 Administrator into which the Maximum Settlement Amount and all employer payroll taxes
24 associated therewith shall be deposited by HACIENDA.

25 22. "Released Parties" means HACIENDA, its past, present, and/or future owners,
26 officers, directors, managing agents, trustees, payroll processors, independent contractors, members,
27 managers, shareholders, employees, attorneys, insurers, assigns, shareholders, successors,
28 predecessors and agents, HACIENDA's past, present, and/or future parent, subsidiary, or affiliated

1 entities, DBAs and franchisors, and each of their owners, officers, directors, managing agents,
2 trustees, payroll processors, independent contractors, members, managers, employees, attorneys,
3 insurers, assigns, shareholders, successors, predecessors and agents.

4 23. "Released Claims" means any and all claims, damages, or causes of action alleged
5 in, or arising out of, the allegations in the Complaint and First Amended Complaint filed in the
6 Action and the PAGA Notice, which were alleged or that could have been alleged by ADAMS
7 and/or any Participating Class Member in such complaints and/or the PAGA Notice based on any
8 of the factual allegations contained in such complaints and/or the PAGA Notice, including, but not
9 limited to, claims under state, federal (i.e., Fair Labor Standards Act (FLSA)) or local law, including,
10 but not limited to claims for unpaid wages, claims for the failure to pay minimum wages, claims for
11 the failure to pay overtime wages, claims related to missed meal and rest breaks or periods and
12 nonpayment of premium pay for such, failure to pay reporting time pay, failure to comply with
13 itemized employee wage statement provisions, failure to pay wages due at separation, failure to
14 timely pay wages during employment, failure to keep requisite payroll records, the failure to
15 reimburse for business expenses, unfair competition, the payment of any penalties (including
16 PAGA). The Released Claims specifically include, but are not limited to, all claims arising under
17 California Labor Code sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 516, 558, 1174,
18 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2802 and 2804, the Wage
19 Orders of the California Industrial Welfare Commission, California Business and Profession Code
20 sections 17200, *et seq.*, California Code of Civil Procedure section 1021.5, and California common
21 law of contract, interest and claims for attorney's fees relating in any way to those claims alleged
22 and mentioned in the complaint(s) and/or PAGA Notice.

23 24. "Released PAGA Claims" means any and all claims for civil penalties under PAGA
24 that were pled or which reasonably could have been pleaded based on the factual allegations pled in
25 the operative Complaint in the Action and in the PAGA Notice sent by Plaintiff to the LWDA,
26 including California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 516, 1174, 1194,
27 1197, 1197.1, 1198, 2802, 2804, 2698, *et seq.*, and the applicable IWC Wage Orders.

28 25. "Service Award" means an award approved by the Court to the Class Representative

1 in exchange for a general release, and in recognition of his efforts and work in prosecuting the
2 Action on behalf of all Class Members.

3 26. "Settlement Administrator" means a third-party class action settlement administrator
4 mutually agreed to by the Parties and approved by the Court for the purposes of administering this
5 settlement.

6 27. "Settlement Administration Costs" mean all the expenses payable from the
7 Maximum Settlement Amount to the Settlement Administrator for administering this Settlement
8 Agreement, including, but not limited to, calculating weeks of employment from the Class List,
9 printing, translating into Spanish, distributing and tracking forms for this settlement, mailing
10 notices, calculating awards, processing requests for exclusion and objections, performing necessary
11 skip traces on Notices of Settlement returned as undeliverable, mailing Participating Class Members
12 and PAGA Group Members settlement checks, issuing any required tax reporting forms, distributing
13 the Maximum Settlement Amount and Net Settlement Amounts and providing necessary reports
14 and declarations, as requested by the Parties, Class Counsel and Defendant's Counsel, among other
15 things in this Settlement Agreement.

16 28. "Workweeks" mean the total number of weeks Class Members worked at least one
17 shift for HACIENDA in a non-exempt, hourly-paid position in California at any of its locations
18 during the Class Period. Workweeks shall be calculated by counting the number of days between
19 each Class Member's first date employed by HACIENDA in a non-exempt, hourly-paid position
20 during the Class Period and the last day they were employed by HACIENDA in a non-exempt,
21 hourly-paid position during the Class Period, and dividing that sum by seven and rounding up to the
22 nearest whole number.

23 II. PROCEDURAL AND FACTUAL BACKGROUND

24 29. On May 12, 2021, ADAMS filed a class action Complaint in Kings County Superior
25 Court, alleging nine (9) separate causes of action for various wage and hour violations. In his
26 Complaint, ADAMS' claims include: (1) failure to pay overtime wages; (2) failure to pay minimum
27 wages; (3) failure to pay reporting time pay; (4) failure to provide rest breaks; (5) failure to provide
28 meal breaks; (6) failure to reimburse for all necessary business expenses; (7) failure to provide

1 accurate itemized wage statements; (8) failure to pay all wages at the end of employment; and (9)
2 violation of California Business & Professions Code.

3 30. Additionally on May 12, 2021, ADAMS submitted a PAGA notice (“PAGA Notice”)
4 to the Labor and Workforce Development Agency (“LWDA”). On July 19, 2021, Plaintiff filed a
5 First Amended Complaint to include a tenth cause of action for civil penalties under the California
6 Private Attorneys General Act (“PAGA”).

7 31. After the filing of the Action, ADAMS and HACIENDA engaged in significant
8 informal discovery including the production of policy records, time records, and payroll records for
9 HACIENDA’s employees, as well as other data regarding HACIENDA’s employees. The parties
10 exchanged substantial informal discovery and engaged in conferences regarding ADAMS’ claims
11 and the claims of the alleged aggrieved employees, the value of those claims, and HACIENDA’s
12 defenses to those claims.

13 32. The Parties have engaged in sufficient investigation and discovery to assess the
14 relative merits of ADAMS’ claims and of HACIENDA’S defenses to them. On September 8, 2022,
15 the Parties attended a full-day mediation with experienced employment law mediator Todd Smith,
16 Esq., in an effort to resolve this class and representative action. The Parties did not reach a settlement
17 at mediation, but they continued their settlement negotiations with Mr. Smith and reached a
18 settlement via a mediator’s proposal.

19 33. HACIENDA denies any liability or wrongdoing of any kind associated with the
20 claims alleged in the PAGA Notice and Complaint and First Amended Complaints, and further
21 denies that the Action is appropriate for class treatment for any purpose other than this settlement.
22 HACIENDA contends that it has complied with the California Labor Code at all times. It is
23 HACIENDA’s position that, if this case were to be litigated, class certification would be denied,
24 and the PAGA claims would be found to be without procedural and substantive merit.

25 34. The Parties expressly acknowledge that this Settlement Agreement is entered into
26 solely for the purpose of compromising significantly disputed claims. The Action, the negotiation
27 and execution of this Settlement Agreement, and all acts performed or documents executed pursuant
28 to or in furtherance of the Settlement Agreement (i) shall not be used as an admission or evidence

of wrongdoing on behalf of HACIENDA; (ii) shall not be an admission or evidence of fault on behalf of HACIENDA in any action before a civil, criminal, or administrative agency; and (iii) shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of these or similar claims for class certification in the Action or with respect to any other proceeding.

35. Class Counsel represent they have conducted a thorough investigation into the facts and law during the prosecution of the Action, including the exchange of extensive informal discovery and the review and verification of statistical data and other facts and information provided by HACIENDA. Counsel for the Parties also represent they have investigated the applicable law as applied to the facts discovered regarding the alleged claims of ADAMS, the putative Class, allegedly aggrieved employees, and the potential defenses thereto.

36. Based on their own independent investigation and evaluation, Class Counsel are of the opinion (and will so represent to the Court) that settlement for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risk of significant delay, the risk any class claims would not be certified by the Court, and the risk of successful defenses asserted by HACIENDA. HACIENDA and its counsel also agree (and will so represent to the Court) that this settlement is fair and in the best interest of the Settlement Class.

37. The Parties agree that the Class described herein may be certified for settlement purposes only and that any motion for preliminary approval seeking, *inter alia*, certification of the Class is for purposes of the settlement only. If for any reason the settlement is not approved, the certification will have no force or effect and will immediately be revoked. The Parties further agree that certification for purposes of the settlement is in no way an admission that class certification is proper under the more stringent standard applied for litigation and that evidence of this limited stipulation for settlement purposes only will not be admissible for any purpose in this or any other proceeding. The Parties further agree that by entering this settlement, HACIENDA is not waiving any other defenses to the claims.

III. TERMS OF AGREEMENT

38. Terms of this Settlement Agreement are Subject to Court Approval. All terms set

forth in this Settlement Agreement are subject to Court approval. The Parties stipulate to class certification for purposes of settlement only. ADAMS shall apply to the Court for approval of the Settlement Agreement and for class certification solely for purposes of effectuating this settlement. HACIENDA shall not oppose such application, provided it does not deviate from this Settlement Agreement. If, for any reason, the settlement is not approved, the stipulation to certification will be void. The Parties further agree that certification for purposes of settlement is not an admission that class certification is proper under the standard applied to contested certification motions and that this settlement will not be admissible in this, or in any other, legal process or proceeding as evidence that (i) a class should be certified or (ii) HACIENDA is liable to ADAMS or any other Class Members.

39. Overview of Payment Structure. This settlement is made on a non-reversionary basis. This settlement shall consist of a Maximum Settlement Amount which, in turn, includes only (and all subject to Court approval): (1) the attorneys' fees of Class Counsel; (2) the litigation costs and expenses of Class Counsel; (3) the Service Award to the Class Representative; (4) the payment to the LWDA pursuant to PAGA; (5) all costs of administration, including, without limitation, the Settlement Administrator's fees and expenses; and (6) the Individual Settlement Payments paid to Participating Class Members and PAGA Group Members.

40. Payments Made by HACIENDA. The following are all amounts HACIENDA will pay pursuant to this Settlement Agreement:

a. *Maximum Settlement Amount.* HACIENDA shall pay Five Hundred Thousand Dollars and Zero Cents (\$500,000) to fund settlement of the Action. The payments by HACIENDA pursuant to this Settlement Agreement shall settle all claims released herein. The settlement payment is not being made for any other purpose and will not be construed as compensation for determining eligibility for any health and welfare benefits or unemployment compensation. The Maximum Settlement Amount shall also include any interest that accrues in the Qualified Settlement Account created by the Settlement Administrator.

b. *Employer Payroll Taxes.* HACIENDA shall be responsible for paying employer payroll taxes on wage payments made pursuant to the Settlement Agreement in addition

1 to the Maximum Settlement Amount.

2 c. *No Other Amounts.* HACIENDA is under no obligation under this Settlement
3 Agreement to pay, and shall not pay, anything other than the Maximum Settlement Amount and the
4 employer payroll taxes referred to above.

5 d. *Escalator:* The Maximum Settlement Amount was calculated based on the
6 premise that there are approximately 43,465 workweeks. In the event the actual number of
7 workweeks in the settlement is greater than 10% of this estimate, then the Maximum Settlement
8 Amount will be increased by the same proportion. For instance, if the actual number of workweeks
9 in the settlement is 12% greater than 43,465, HACIENDA agrees to increase the Maximum
10 Settlement Amount will be increased by 2%.

11 41. Funding and Disbursement of Payments Made by HACIENDA. HACIENDA shall
12 deposit the Maximum Settlement Amount, plus all employer taxes due under on wage payments to
13 be made under this Settlement Agreement, with the Settlement Administrator no later than thirty
14 (30) calendar days after the Effective Date. The Settlement Administrator shall disburse the
15 Maximum Settlement Amount to the recipients designated herein no later than 15 calendar days
16 after HACIENDA's payment above.

17 42. Payment of Class Counsel's Attorneys' Fees and Litigation Costs and Expenses.
18 HACIENDA agrees not to object to, undermine or oppose any application or motion by Class
19 Counsel for an award of attorneys' fees not to exceed one-third of the Maximum Settlement
20 Amount, which is currently estimated to be One Hundred Sixty-Six Thousand Six Hundred Sixty-
21 Six Dollars and Sixty-Six Cents (\$166,666.66) of the Maximum Settlement Amount, and reasonable
22 litigation-related costs and expenses not to exceed Thirty Thousand Dollars and Zero Cents
23 (\$30,000), which is subject to review and final approval by the Court. If approved, the Court's
24 award of attorneys' fees and reimbursement of litigation costs and expenses to Class Counsel shall
25 be paid from the Maximum Settlement Amount. Any portion of the amounts sought by Class
26 Counsel not awarded by the Court shall revert back to the Net Settlement Amount for distribution
27 to Participating Class Members, and will not revert to HACIENDA under any circumstance. The
28 attorneys' fees and litigation costs and expenses of Class Counsel include, without limitation, all

1 such fees and costs incurred to date, as well as such fees and costs to be incurred in documenting
2 the settlement, securing Court approval of the settlement, and obtaining judgment in the Action.
3 Neither Plaintiff nor Class Counsel will be entitled to any other attorney fees or costs from
4 HACIENDA other than awarded by the Court pursuant to this Settlement Agreement. Class Counsel
5 shall be solely and legally responsible to pay all applicable taxes on the payments made pursuant to
6 this paragraph. IRS Form 1099 shall be provided to Class Counsel for the payments made pursuant
7 to this paragraph.

8 43. Service Award. HACIENDA agrees not to oppose or object to any application or
9 motion for a Service Award to the Class Representative in an amount equal to or less than Seven
10 Thousand Five Hundred Dollars and Zero Cents (\$7,500), subject to court approval, which if
11 approved shall be payable from the Maximum Settlement Amount and shall be in addition to
12 payment of the Individual Settlement Payment payable to him, and is further consideration for
13 settling this matter and in exchange for the release of all claims by Participating Class Members.
14 The Settlement Administrator shall issue an IRS Form 1099 for the Service Award. The Class
15 Representative shall be solely and legally responsible to pay any and all applicable taxes on the
16 payment made pursuant to this paragraph. Any reduction in the amount of the Service Award by
17 the Court shall remain in the Net Settlement Amount to be distributed to Participating Class
18 Members.

19 44. PAGA Payment. The Parties agree that Twenty Thousand Dollars and Zero Cents
20 (\$20,000) shall be allocated to settle the claims pursuant to the PAGA. Of this amount, seventy-
21 five percent (75%) or Fifteen Thousand Dollars and Zero Cents (\$15,000) shall be made payable to
22 the LWDA and twenty-five percent (25%) or Five Thousand Dollars and Zero Cents (\$5,000) shall
23 be distributed to PAGA Group Members as part of the Net Settlement Amount. The amount of any
24 reduction of the PAGA Payment by the Court shall remain in the Net Settlement Amount to be
25 distributed to Participating Class Members.

26 45. Settlement Administration Costs. Subject to Court approval, the Parties have agreed
27 that Phoenix Settlement Administrators will serve as a neutral third-party claims or settlement
28 administrator to perform all acts required by the Settlement Agreement. The Parties each represent

1 that they do not have any financial interest in the Settlement Administrator or otherwise have a
2 relationship with the Settlement Administrator that could create a conflict of interest. The
3 Settlement Administrator shall be paid for the Settlement Administration Costs. Settlement
4 Administration Costs are expected to total no more than Fifteen Thousand Dollars and Zero Cents
5 (\$15,000). Any portion of the Settlement Administration Costs which is not used shall be returned
6 to the Net Settlement Amount for pro rata distribution to Participating Class Members, and will not
7 revert to HACIENDA under any circumstance. The Settlement Administration Costs shall be paid
8 from the Maximum Settlement Amount and shall cover all costs of the administration of the
9 settlement. No fewer than ten (10) calendar days prior to the filing of the Final Approval Motion,
10 the Settlement Administrator shall provide the Court and all counsel for the Parties with a statement
11 detailing the Settlement Administration Costs. The Parties agree to cooperate in the settlement
12 administration process and to make all reasonable efforts to control and minimize the costs and
13 expenses incurred in the administration of the settlement. An IRS Form 1099 shall be issued to the
14 Settlement Administrator.

15 46. Net Settlement Amount. The Net Settlement Amount shall be available for
16 distribution to Participating Class Members and PAGA Group Members in accordance with the
17 notice procedure and formula set forth in this Settlement Agreement.

18 **IV. DUTIES OF THE PARTIES BEFORE PRELIMINARY APPROVAL AND**
19 **BETWEEN PRELIMINARY AND FINAL APPROVAL**

20 47. Promptly after the execution of this Settlement Agreement, Class Counsel shall move
21 the Court for Preliminary Approval of the Settlement and obtain entry of an order accomplishing
22 the following:

- 23 a. Provisionally certifying the Action under California law as a class action for
24 purposes of this settlement only;
- 25 b. Preliminarily approving the settlement subject only to objections of Class
26 Members, the terms of the Parties' Settlement Agreement, and final approval by the Court;
- 27 c. Approving as to form and content the proposed Notice of Settlement attached
28 hereto as Exhibit 1;

d. Directing the mailing of the Notice of Settlement by first-class mail to the Class Members;

e. Preliminarily appointing ADAMS as Class Representative and Plaintiff's Counsel as Class Counsel (only for purposes of effectuating and implementing this Settlement Agreement);

f. Preliminarily approving the application for payment of reasonable attorneys' up to One-Third of the Maximum Settlement Amount, but not to exceed One Hundred Sixty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$166,666.66); and reimbursement of reasonable litigation-related costs and expenses not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000), payable to Class Counsel;

g. Preliminarily approving the Service Award to the Class Representative in an amount equal to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500);

h. Preliminarily approving settlement administration services by Settlement Administrator and its estimated Settlement Administration Costs of up to Fifteen Thousand Dollars and Zero Cents (\$15,000).

i. Preliminarily approving the allocation of civil penalties pursuant to PAGA in the amount of Twenty Thousand Dollars and Zero Cents (\$20,000), seventy-five percent (75%) of which or Fifteen Thousand Dollars and Zero Cents (\$15,000) shall be payable to the LWDA and twenty-five percent (25%) of which or Five Thousand Dollars and Zero Cents (\$5,000) shall be distributed to PAGA Group Members from the Net Settlement Amount; and

j. Scheduling a hearing for Final Approval on the question whether the proposed settlement should be finally approved as fair, reasonable and adequate to Class Members.

k. The form and content of the proposed Preliminary Approval order is attached as Exhibit 2 to this Settlement Agreement.

48. ADAMS shall submit this Settlement Agreement in support of the Motion for Preliminary Approval. Class Counsel shall not file said motion or any other documents associated with same unless and until Defendant's Counsel has reviewed the contents and afforded an opportunity to comment.

1 49. ADAMS shall also submit this Settlement Agreement to the LWDA (as required by
2 Labor Code § 2699(1)(2)).

3 50. Class Counsel will file a Motion for Final Approval of the Settlement and supporting
4 documents with the Court no later than sixteen (16) court days prior to the Final Approval Hearing.
5 Supporting documents shall include, but are not limited to: (a) a declaration by the Settlement
6 Administrator of due diligence and proof of mailing of the Notice of Settlement required to be
7 mailed to Class Members by this Settlement Agreement, and of the delivery results of the Settlement
8 Administrator's mailings, including tracing and re-mailing efforts; and (b) a proposed Order and
9 Judgment granting Final Approval. Class Counsel will send Defendant's Counsel the final approval
10 motion for review and approval prior to the filing of same. Defendant's Counsel shall have at least
11 five (5) business days in which to review and comment on the language of the Motion for
12 Preliminary Approval and the Motion for Final Approval.

13 51. HACIENDA will not object to or oppose Preliminary or Final Approval of the
14 settlement, including application by Class Counsel for the Service Award, attorneys' fees and
15 reimbursement of litigation-related costs and expenses as set forth above, provided the motions do
16 not deviate from the terms of this Settlement Agreement.

17 52. Class Counsel will submit with the motion for Final Approval a proposed Order and
18 Judgment granting Final Approval. The proposed Order and Judgment granting Final Approval shall
19 include the following findings and orders:

- 20 a. Approving the settlement, adjudging the terms thereof to be fair, reasonable
21 and adequate, and directing that its terms and provisions be carried out;
- 22 b. Approving payment of the Service Award to the Class Representative;
- 23 c. Approving Class Counsel's application for an award of reasonable attorneys'
24 fees and reimbursement of reasonable litigation-related costs and expenses;
- 25 d. Approving the Settlement Administration Costs;
- 26 e. Approving payment of civil penalties to the LWDA and the PAGA Group
27 Members;
- 28 f. Ordering the payment of Individual Settlement Payments in accordance with

the terms of this Agreement;

g. Listing the individuals who opted-out of the Settlement and will not be included in the releases or bound by the Judgment.

h. Entering Final Approval releasing all Released Claims of the Participating Class Members against all Released Parties;

i. Entering judgment in this Action in accordance with this Settlement Agreement, pursuant to Cal. Rules of Court, Rule 3.769(h);

j. Requiring the Settlement Administrator to post a copy of the Judgment on its website for a period of at least 30 days from the date the Judgment is executed in compliance with Cal. Rules of Court, Rule 3.771(b); and

k. Providing that the Court will retain jurisdiction to oversee administration and enforcement of the terms of the settlement and the Court's orders; and

l. The form and content of the proposed Order and Judgment granting Final Approval is attached as Exhibit 3 to this Settlement Agreement.

V. DUTIES OF THE PARTIES AFTER FINAL APPROVAL

53. Following entry of the Court's Order and Judgment granting Final Approval of the Settlement Agreement, the Parties will each act to assure its timely execution and the fulfillment of all its provisions, including, but not limited to the following:

a. Class Counsel will immediately file and serve a written Notice of Entry of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service, on any person who objected to the settlement in writing or at the hearing on the Motion for Final Approval;

b. Should an appeal be taken from the Order and Judgment granting Final Approval of the Settlement Agreement, all Parties will support the Order and Judgment granting Final Approval on appeal;

c. Class Counsel and Defendant's Counsel will reasonably assist the Settlement Administrator as needed or requested in the process of identifying and locating Participating Class Members and PAGA Group Members entitled to payments from the Net Settlement Amount and assuring delivery of such payments;

d. Class Counsel and Defendant's Counsel will reasonably assist the Settlement Administrator as needed or requested in responding to late requests for payments from the Net Settlement Amount;

e. Class Counsel and Defendant's Counsel will ensure that the Settlement Administrator will certify to the Court completion of all payments required to be made by this Settlement Agreement.

VI. PROCEDURE AND ADDITIONAL TERMS

54. Notice Procedure. The Settlement Administrator shall be responsible for the following notice procedure:

a. *Delivery of the Class List.* Within Fourteen (14) calendar days from Class Counsel providing notice to Defendant's Counsel that the order granting preliminary approval has been provided to the Settlement Administrator, HACIENDA shall provide the Class List to the Settlement Administrator. The Class List shall contain (to the extent available in HACIENDA's business records) Class Members' full name, last known addresses, social security numbers, and dates of employment as non-exempt, hourly-paid employees of HACIENDA in California during the Class Period. The Class List information shall remain confidential and shall not be disclosed to anyone, including Class Counsel, except to carry out reasonable efforts described below, or pursuant to express written authorization by HACIENDA. The Settlement Administrator shall use due care with respect to the storage, custody, use, and/or dissemination of the confidential information. The Settlement Administrator will perform address updates and verifications as necessary prior to the first mailing.

b. *Notice.* A notice of pendency of class action, proposed settlement and hearing date for Court approval (previously defined as Notice of Settlement), substantially in the form attached hereto as Exhibit 1 and as approved by the Court, shall be sent by the Settlement Administrator to the Class Members (in English and Spanish), by first class mail, within 14 (14) calendar days after receipt of the Class List. The Notice of Settlement shall be sent via regular First Class U.S. Mail, using the most updated mailing addresses, and advise Class Members of the terms of the settlement, their ability to object to the settlement in writing and/or in person, and their ability

1 to submit a Request for Exclusion. Prior to the mailing of the Notice of Settlement, the Settlement
2 Administrator shall run the names of all Settlement Class members through the National Change of
3 Address (“NCOA”) database to determine any updated addresses for Class Members and update the
4 address of any Class Member for whom an updated address was found through the NCOA search.
5 The Notice of Settlement will further inform Class Members of the Court-established deadlines for
6 filing objections and requesting to be excluded from the Class. The Notice of Settlement will also
7 include the calculation of Workweeks during the applicable Class Period and calculation of the Class
8 Member’s estimated payment (which will be based upon the assumption that the requests for
9 attorney’s fees and costs and the Service Award are awarded in full).

10 c. *Procedure for Lost and Undeliverable Notices.* Any Notice of Settlement
11 returned to the Settlement Administrator as non-delivered on or before the Notice Deadline shall be
12 sent to the forwarding address affixed thereto, if a forwarding address is provided. If no forwarding
13 address is provided, the Settlement Administrator shall promptly, but no later than five (5) business
14 days of receiving notice that the Notice of Settlement was undeliverable, attempt to determine a
15 correct mailing address using a skip-trace, or similar search, using the name, address and/or social
16 security number of the Class Member involved, and promptly re-mail the Notice of Settlement. If
17 after the Notice of Settlement is still returned to the Settlement Administrator as non-deliverable
18 after re-mailing, that individual will be deemed a Participating Class Member for purposes of the
19 Released Claims (as defined below), and the Settlement Administrator will have no further
20 obligation to obtain the Class Member’s current address. The Notice Deadline for any Class
21 Member who is re-mailed a Notice of Settlement shall be extended fifteen (15) calendar days from
22 the date of the re-mailing or the original forty-five (45) calendar day deadline, whichever is later.

23 55. Request for Exclusion Procedure. The Notice of Settlement shall provide Class
24 Members with instructions on how to exclude themselves or “opt out” if they do not wish to
25 participate in this settlement.

26 a. Class Members who wish to opt out of this settlement must mail a written
27 request to be excluded from the Settlement (“Request for Exclusion”) to the Settlement
28 Administrator no later than forty-five (45) calendar days after the initial mailing of the Class Notice,

1 unless extended pursuant to a re-mailing, or unless the Court requires a longer period, in which case
2 the Court-ordered deadline period will apply. To be valid, a Request for Exclusion must include the
3 Class Member's name, signature, the last four digits of their Social Security Number, and a clear
4 statement indicating they wish to be excluded from the settlement. In order to be valid, a Class
5 Member's Request for Exclusion must be postmarked, faxed, or e-mailed to the Settlement
6 Administrator no later than the Notice Deadline.

7 b. Within five (5) calendar days after receipt by the Service Administrator of
8 each timely-submitted Request for Exclusion, the Service Administrator will send a deficiency
9 notice to such Class Members requesting exclusion and note any irregularities in the Request for
10 Exclusion (such as failure to sign or include last four (4) digits of the Class Member's social security
11 number). The deficiency notice will provide the Class Members no more than five (5) calendar days
12 from the mailing of the deficiency notice to resubmit a revised Request for Exclusion that cures all
13 deficiencies. The failure of a Class Member to cure all deficiencies in a timely manner shall
14 invalidate the Request for Exclusion and will not be subject to cure.

15 c. A Class Member who does not properly and timely submit a Request for
16 Exclusion of the Settlement Agreement in the manner and by the deadline specified above will
17 automatically become a Participating Class Member and will be bound by all terms and conditions
18 of the Settlement Agreement, including its release of claims, if the Settlement Agreement is
19 approved by the Court, and be bound by the Final Approval Order. In consideration for settlement
20 and release of all claims of the Participating Class Members against HACIENDA, each Participating
21 Class Member will receive a pro rata share of the Net Settlement Amount.

22 d. A Class Member who properly and timely submits a Request for Exclusion
23 of the Settlement Agreement will not become a Participating Class Member, will not be bound by
24 the Settlement Agreement, and will not have a right to appear at the Final Approval hearing to have
25 any objections to the settlement heard by the Court.

26 e. To the extent any Class Member submits a Request for Exclusion, that Class
27 Member's unclaimed portion shall be reallocated to the Net Settlement Amount. Increases to
28 Participating Class Member payments shall be allocated on a proportional basis based on the size of

each Participating Class Member's Workweeks.

f. Counsel for the Parties shall not discourage any Class Member from participating in, objecting to or opting out of the settlement.

g. If more than ten percent (10%) of Class Members timely and properly submit a Request for Exclusion, then HACIENDA shall have the right, in its sole discretion, to void and revoke the Settlement Agreement and its stipulation to class certification. All signatories and their counsel must not encourage opt-outs. The Parties specifically agree not to solicit opt-outs, directly or indirectly, through any means. Objective statements to Class Members who call Class Counsel with inquiries regarding the settlement, or the exercise of Class Counsel's ethical obligations, shall not be deemed a violation of the prohibitions contained herein. In the event of such a rescission, no party may use the fact that the Parties agreed to settle this case as evidence of HACIENDA's liability in this Action or the lack thereof. If HACIENDA elects its option to void the Settlement Agreement pursuant to this paragraph, HACIENDA will be liable for all settlement administration costs incurred to date.

h. The Settlement Administrator will notify the Parties of the total number of valid Requests for Exclusion forms and identify the individuals who submitted a request for exclusion within ten (10) calendar days after the Notice Deadline. HACIENDA shall have five (5) business days to notify Class Counsel in writing of HACIENDA's intent to revoke the Settlement Agreement, including conditional class certification.

i. Class Members who are also PAGA Group Members will not be permitted to exclude themselves from the PAGA claim portion of the settlement. PAGA penalty settlement payments in the appropriate amounts will be distributed by the Settlement Administrator by mail to the PAGA Group Members including to those Class Members who are PAGA Group Members who submitted a request for exclusion.

56. Objection Procedure. Class Members who wish to object to this settlement should notify the Settlement Administrator in writing, via mail, e-mail, or fax, that they object to the settlement by the Notice Deadline. In order to be valid, a Class Member's objection to the settlement must be postmarked, faxed, or e-mailed to the Settlement Administrator no later than the Notice

Deadline. The Settlement Administrator shall notify and submit a copy of the objection to Class Counsel and Defendant's Counsel forthwith and Class Counsel shall lodge a copy of the objection with the Court. Any objection sent to the Settlement Administrator must be postmarked no later than the Notice Deadline, unless the Court requires a longer period, in which the Court ordered objection period will apply. The objection should provide the name of the Class Member, all facts and reasons why the Class Member is objecting to the settlement along with any legal authority, and signed by the Class Member. Class Members shall be permitted to rescind their objections in writing by submitting a rescission statement to the Settlement Administrator not later than one (1) business day before the Court's Final Approval hearing or as otherwise ordered by the Court. Whether or not they timely submit a written objection, Class Members may appear at the Final Approval hearing to have their objections heard by the Court.

57. Disputed Information on Notice of Settlement. Each Class Member shall have an opportunity to dispute the employment dates and number of Workweeks attributed to him or her as identified in the Class Notice. To the extent a Class Member disputes the employment dates or number of Workweeks identified and listed in the Class Notice, the Class Member may produce evidence to the Settlement Administrator showing that such information is inaccurate. In order to be valid, a Class Member's dispute the employment dates and number of Workweeks, and the evidence in support of such dispute, must be received by the Settlement Administrator no later than the Notice Deadline. Absent evidence rebutting HACIENDA's records, HACIENDA's records will be presumed determinative. If the Defense Counsel and Class Counsel cannot agree the dispute will be submitted to the Court.

58. The Settlement Terms Bind All Class Members Who Do Not Submit a Timely and Valid Request for Exclusion. Any Class Member who does not affirmatively opt-out of the Settlement Agreement by submitting a timely and valid Request for Exclusion consistent with the terms of this Settlement Agreement shall be bound by all of its terms, including those pertaining to the Released Claims (as defined below), as well as any Final Approval that may be entered by the Court when it grants Final Approval of the settlement.

59. Certification Reports Regarding Requests for Exclusion, Disputes, and

1 Undeliverable Notices. The Settlement Administrator shall provide Defendant's Counsel and Class
2 Counsel a weekly report which certifies: (a) the number of Class Members who have submitted a
3 valid or defective Request for Exclusion; (b) the number of Class Member who have disputed the
4 employment dates and number of Workweeks contained in their Notice of Settlement; (c) any
5 objections received by Class Members; and (d) the number of returned, undeliverable and/or re-
6 mailed Notices of Settlement. Additionally, the Settlement Administrator shall provide to
7 Defendant's Counsel and Class Counsel any updated reports regarding the administration of the
8 Settlement Agreement as needed or requested.

9 60. Individual Settlement Payment Calculations. The Settlement Administrator shall
10 determine the eligibility for, and the amounts of, any Individual Settlement Payments under the
11 terms of this Settlement Agreement. Should any question arise regarding the determination of
12 eligibility for participation in the settlement or the amount of any Individual Settlement Payment
13 under the terms of this Settlement Agreement, Class Counsel and Defendant's Counsel will meet
14 and confer and attempt to reach agreement. Any unresolved disputes concerning the administration
15 of the Settlement Agreement will be resolved by the Court, under the laws of the State of California.

16 61. Method of Calculating the Individual Settlement Payments: Individual Settlement
17 Payments will be calculated as follows:

18 a. *PAGA Group Members.* The Settlement Administrator will calculate the total
19 Workweeks for all PAGA Group Members by adding the number of workweeks worked by each
20 PAGA Group Member during the PAGA Period. The amount that each PAGA Group Member will
21 be eligible to receive will be calculated by dividing each PAGA Group Member's individual
22 Workweeks by the total Workweeks of all PAGA Group Members, and multiplying the resulting
23 fraction by Five Thousand Dollars and Zero Cents (\$5,000). The Settlement Administrator will
24 determine the total number of qualifying Workweeks for each PAGA Group Member which will be
25 finalized after approval by the Parties.

26 b. *Participating Class Members.* The Settlement Administrator will calculate
27 the total Workweeks for all Participating Class Members by adding the number of workweeks
28 worked by each Participating Class Member during the Class Period. The amount that each

Participating Class Member will be eligible to receive will be calculated by dividing each Participating Class Member's individual Workweeks by the total Workweeks of all Participating Class Members, and multiplying the resulting fraction by the Net Settlement Amount less the Five Thousand Dollars and Zero Cents (\$5,000). The Settlement Administrator will determine the total number of qualifying Workweeks for each Participating Class Member which will be finalized after approval by the Parties.

c. *Calculation of Individual Settlement Payment.* For Participating Class Members who are also PAGA Group Members the Individual Settlement Payment will be the sum of the amounts calculated for that Class Member in paragraphs 60.a. and 60.b. For Participating Class Members who are not also PAGA Group Members the Individual Settlement Payment will be the amount calculated for that Class Member in paragraph 60.b. For PAGA Group Members who are not also Participating Class Members, the Individual Settlement Payment will be the amount calculated for that PAGA Group Member in paragraphs 60.a. The Settlement Administrator will determine the amounts of the payments to each Class Member will be finalized after approval by the Parties.

62. Allocation and Tax Treatment of Individual Settlement Payments. Individual Settlement Payments shall be allocated as follows: One hundred percent (100%) of the PAGA Group Members share of the PAGA Payment shall be civil penalties; Twenty Percent (20%) of the Individual Settlement Payment (excluding any portion of the share of the PAGA Payment) to Participating Class Members as wages; Forty Percent (40%) of the Individual Settlement Payment (excluding any portion of the share of the PAGA Payment) to Participating Class Members as non-wage statutory damages and interest; and Forty Percent (40%) of the Individual Settlement Payment (excluding any portion of the share of the PAGA Payment) to Participating Class Members as penalties. Portions of each Individual Settlement Payment allocated as wages will be reported on an IRS Form W-2. Portions allocated as non-wage statutory damages and interest, and those portions allocated as PAGA penalties, will be reported on an IRS Form 1099.

63. Payment of Individual Settlement Payments. The Settlement Administrator shall have the authority and obligation to make all payments, credits and disbursements, calculated in

1 accordance with the methodology set forth in this Settlement Agreement and orders of the Court.
2 The Settlement Administrator's duties will include reporting payment of the Individual Settlement
3 Payments to all required taxing and other authorities, taking appropriate withholding from the
4 Individual Settlement Payments, and issuing the appropriate IRS Forms W-2 and 1099. No person
5 shall have any claim against HACIENDA, Defendant's Counsel, ADAMS, Class Counsel, the
6 Settlement Administrator, or any Participating Class Member and/or PAGA Group Member based
7 on distributions and payments made in accordance with this Settlement Agreement.

8 64. No Credit Toward Employer Provided Benefit Plans. All Individual Settlement
9 Payments to Participating Class Members and PAGA Group Members shall be deemed to be income
10 to such Participating Class Members or PAGA Group Members solely in the year in which such
11 awards actually are received by the Participating Class Members and PAGA Group Members. It is
12 expressly understood and agreed that the receipt of such Individual Settlement Payments will not
13 entitle any Participating Class Member or PAGA Group Member to additional compensation or
14 benefits under any company bonus, paid time off (including vacation and sick leave), or other
15 compensation or benefit plan or agreement in place during the period covered by the Settlement
16 Agreement, nor will it entitle any Participating Class Member or PAGA Group Member to any
17 increased retirement, 401(k) benefits or matching benefits, or deferred compensation benefits. It is
18 the intent of this Settlement Agreement that the Individual Settlement Payments provided for in this
19 Agreement are the sole payments to be made by HACIENDA to the Participating Class Members
20 and PAGA Group Members in connection with this Settlement Agreement, and that the Participating
21 Class Members and PAGA Group Members are not entitled to any new or additional compensation
22 or benefits as a result of having received the Individual Settlement Payments (notwithstanding any
23 contrary language or agreement in any benefit or compensation plan document that might have been
24 in effect during the period covered by this Settlement Agreement).

25 65. Circular 230 Disclaimer. EACH PARTY TO THIS SETTLEMENT AGREEMENT
26 (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH
27 PARTY TO THIS SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING
28 PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO

PROVISION OF THIS SETTLEMENT AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS SETTLEMENT AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS SETTLEMENT AGREEMENT.

66. Non-Negotiated Settlement Checks. Participating Class Members and PAGA Group Member must cash each of their Individual Settlement Payment checks within one hundred eighty (180) calendar days after they are mailed by the Settlement Administrator. The Parties agree that any uncashed checks, subject to Court approval, shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code §1500, *et. seq.* for the benefit of those Participating Class Members and PAGA Group Members who did not cash their checks until such time that they claim their property. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code section 384, as the entire Net

1 Settlement Amount will be paid out to Participating Class Members and PAGA Group Members.

2 67. Settlement Administrator's Final Report(s). Not less than ten (10) calendar days
3 after the Notice Deadline, the Settlement Administrator shall report to Defendant's Counsel and
4 Class Counsel: (i) the names of individuals who opted-out of the settlement; (ii) the Individual
5 Settlement Payments owed to each Participating Class Member and/or PAGA Group Member; and
6 (iii) the final number of Class Members who have submitted objections and/or valid Requests for
7 Exclusion requests from the settlement. Upon completion of administration of the settlement, the
8 Settlement Administrator will provide a written declaration under oath to certify such completion to
9 the Court and counsel for all Parties. Additionally, once HACIENDA fully funds the Maximum
10 Settlement Amount and payroll taxes, the Settlement Administrator will provide a written
11 declaration under oath to certify HACIENDA's full and final satisfaction of the Maximum
12 Settlement Amount and payroll taxes and for HACIENDA's use and records.

13 68. Release of Claims. Upon the funding of the Maximum Settlement Amount and all
14 applicable employer-side payroll taxes, and except as to such rights or claims as may be created by
15 this Settlement Agreement, each and every Participating Class Member, on behalf of themselves
16 and their heirs and assigns, releases the Released Parties from the Released Claims that arose during
17 the Class Period. A Participating Class Member's cashing of the settlement check will be considered
18 a consent and opt-in to the settlement of all federal wage and hour claims under the FLSA which
19 are encompassed within these Released Claims, and each Participating Class Member who cashes
20 his or her settlement check will waive his or her rights to bring such claims under the FLSA which
21 arose during the Class Period. A Participating Class Member who does not cash his or her settlement
22 check will retain all rights and claims under the FLSA. However, the settlement will still discharge
23 and extinguish the claims described herein under California law, including those for Participating
24 Class Members who do not cash their settlement checks or who do not opt out of the settlement.

25 69. Release of PAGA Claims. Upon the funding of the Maximum Settlement Amount
26 and all applicable employer-side payroll taxes, and except as to such rights or claims as may be
27 created by this Settlement Agreement, each and every PAGA Group Member, on behalf of
28 themselves and their heirs and assigns, and Plaintiff, on behalf of the State of California, releases

1 the Released Parties from the Released PAGA Claims that arose during the PAGA Period.

2 70. General Release of Any and All Claims of Any Kind by Class Representative Only.

3 Upon the funding of the Maximum Settlement Amount and all applicable employer-side payroll
4 taxes, the Class Representative releases the Released Claims against the Released Parties, and makes
5 the additional following General Release in favor of the Released Parties:

6 a. The Class Representative individually hereby unconditionally waives and
7 forever releases, waives, discharges, any and all demands, damages, debts, liabilities, contracts,
8 obligations, actions, causes of action and claims of every kind, nature, and description whatsoever,
9 whether now known or unknown, suspected or unsuspected, including in equity or otherwise, which
10 he ever had or now has against the Released Parties arising or accruing at any time prior to the
11 Effective Date, including without limitation without limitation any matter, cause or claim arising
12 out of or related to facts or events occurring prior to the execution of this Settlement Agreement,
13 and/or related to ADAMS' employment with HACIENDA and his separation therefrom. At a
14 minimum, the claims released by the Class Representative include but are not limited to: (a) any
15 claims that were or could have been brought under California Labor Code sections 132a, 201, 202,
16 203, 204, 216, 218, 218.5, 218.6, 225.5, 226, 226.3, 226.7, 432.5, 510, 512, 558, 1050, 1054, 1194,
17 1194.2, 1197, 1198, 2698 et seq., 2800, et seq., the applicable Industrial Welfare Commission Wage
18 Orders, the FLSA, and all related or corresponding federal laws, and all implementing regulations
19 and interpreting guidance; (b) any claims that were or could have been brought under California
20 Corporations Code, and California Business and Professions Code, including but not limited to
21 California Business and Professions Code section 17200 et seq. as unlawful, fraudulent or
22 misleading based on the claims, facts and allegations alleged in the Action (including, but not limited
23 to, claims of conduct unlawful under state or federal law); (c) any other causes of action, including
24 those seeking premiums, penalties, interest, punitive damages, costs, attorneys' fees, injunctive
25 relief, declaratory relief, or accounting, whether such causes of action are in tort, contract, equity,
26 statute, or common law; (d) any claims under the Fair Employment and Housing Act, Americans
27 with Disabilities Act, Age Discrimination in Employment Act, and Title VII of the Civil Rights Act
28 of 1964, and (e) any other claims the Class Representative could have made related to her

1 employment with HACIENDA. The Class Representative may hereafter discover facts in addition
2 to or different from those which he now knows or believes to be true, but stipulates and agrees that,
3 upon the funding of the Maximum Settlement Amount and all applicable employer-side payroll
4 taxes, he fully, finally, and forever settles and releases any and all claims, known or unknown,
5 suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which
6 now exist, or heretofore have existed, upon any theory of law or equity and without regard to the
7 subsequent discovery or existence of such different or additional facts. ADAMS is deemed, by
8 operation of the Order granting Final Approval, to have agreed not to sue or otherwise make a claim
9 against any of the Released Parties for any claim.

10 b. The Class Representative acknowledges that he has had the opportunity to
11 review, and has reviewed, California Civil Code section 1542, which provides:

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

18 Being fully informed of this provision of the Civil Code and understanding its provisions,
19 the Class Representative agrees to waive any rights under that section, and acknowledges that this
20 Settlement Agreement and the release contained herein extends to all claims that he has or might
21 have against the Released Parties, including those which are presently unknown to him or that he
22 does not know or suspect to exist, which, if known by ADAMS, might have affected his settlement
23 with, and release of, the Released Parties or might have affected his decision.

24 71. Final Approval Hearing and Entry of Judgment. Upon expiration of the deadlines to
25 postmark a request to be excluded from or objection to the Settlement Agreement, and with the
26 Court's permission, a Final Approval hearing shall be conducted to finally determine the fairness of
27 the settlement, along with the amounts properly payable for (a) Individual Settlement Payments; (b)
28 The Class Representative's Service Award; (c) Class Counsel's attorneys' fees and litigation costs
and expenses; (d) Settlement Administration Costs; and (e) the PAGA Payment. Class Counsel will
be responsible for drafting the attorneys' fees and costs application/motion to be heard at the Final

1 Approval hearing, which such application/motion may be part of the Class Representative's motion
2 for final approval.

3 72. Judgment and Continued Jurisdiction. Upon Final Approval of the settlement by the
4 Court or at the time of or subsequent to the Final Approval hearing, the Parties shall present a Final
5 Approval to the Court for approval and entry. After entry of the Final Approval, the Court shall
6 have continuing jurisdiction under Code of Civil Procedure section 664.6 solely for purposes of
7 addressing: (a) the interpretation and enforcement of the terms of the settlement, (b) Settlement
8 Administration matters, (c) failure to timely pay all amounts owed by Defendant, and (d) such
9 post-Final Approval matters as may be appropriate under court rules or as set forth in this Settlement
10 Agreement.

11 73. No Solicitation of Settlement Objections or Exclusions. The Parties agree to use
12 their best efforts to carry out the terms of this Settlement Agreement. At no time shall any of the
13 Parties or their counsel seek to solicit or otherwise encourage Class Members to submit either a
14 Request for Exclusion or written objections to the Settlement Agreement or to appeal from the
15 Court's Final Approval.

16 74. Interim Stay of Proceedings. Pending completion of the settlement process, the
17 Parties agree to a stay of all proceedings in the Action except such as are necessary to implement
18 the Settlement itself and the Parties agree to refrain from further litigation of this matter, except as
19 to proceedings necessary to implement and obtain an order granting Final Approval of the terms of
20 the settlement.

21 75. Nullification of Settlement Agreement. In the event: (i) HACIENDA timely and
22 properly revokes this Settlement Agreement as set forth in Section VI. Paragraph 55.(g) herein; (ii)
23 the Court does not finally approve the Settlement Agreement as provided herein; (iii) the Court does
24 not enter Final Approval as provided herein, which becomes final as a result of the occurrence of
25 the Effective Date; or (iv) the Settlement Agreement does not become final for any other reason,
26 this Settlement Agreement shall be null and void and any order or judgment entered by the Court in
27 furtherance of this Settlement Agreement shall be treated as void from the beginning. In such a
28 case, the Parties shall be returned to their respective statuses as of the date and time immediately

1 prior to the execution of this Settlement Agreement and the Parties shall proceed in all respects as
2 if this Settlement Agreement had not been executed (and the terms and existence of the Settlement
3 Agreement will be confidential). In the event an appeal is filed from the Court's Final Approval, or
4 any other appellate review is sought prior to the Effective Date, administration of the Settlement
5 Agreement shall be stayed pending final resolution of the appeal or other appellate review (unless
6 otherwise agreed to by the Parties).

7 76. No Admission. Nothing contained herein, nor the consummation of this Settlement
8 Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or
9 wrongdoing on the part of HACIENDA or any of the other Released Parties. HACIENDA
10 specifically denies any and all liability. Each of the Parties hereto has entered into this Settlement
11 Agreement with the intention of avoiding further disputes and litigation with the attendant
12 inconvenience and expenses. This Settlement Agreement is a settlement document and, pursuant to
13 California Evidence Code section 1152 and/or Federal Rule of Evidence 408 and/or any other
14 similar law, shall be inadmissible in evidence in any proceeding, except an action or proceeding to
15 approve the settlement, and/or interpret or enforce this Settlement Agreement, including but not
16 limited to use as a bar or affirmative defense, in whole or in part, to other or future claims or actions.

17 77. Construction. The Parties hereto agree that the terms and conditions of this
18 Settlement Agreement are the result of lengthy, intensive arms-length negotiations between the
19 Parties, and that this Settlement Agreement shall not be construed in favor of or against any party
20 by reason of the extent to which any Party or his, her, or its counsel participated in the drafting of
21 this Settlement Agreement.

22 78. Notices. Unless otherwise specifically provided herein, all notices, demands or other
23 communications given hereunder shall be in writing and shall be deemed to have been duly given
24 as of the third business day after mailing by U.S. registered or certified mail, return receipt requested,
25 addressed as follows:

26 <u>To Class Counsel:</u>	<u>To Defendant's Counsel:</u>
27	
28	

HAINES LAW GROUP, APC
2155 Campus Drive, Suite 180
El Segundo, CA 90245
Paul K. Haines
phaines@haineslawgroup.com
Sean M. Blakely
sblakely@haineslawgroup.com
Alexandra R. McIntosh
amcintosh@haineslawgroup.com

ATKINSON, ANDELSON, LOYA, RUUD & ROMO
12800 Center Court Drive South, Suite 300
Cerritos, California 90703
Ann K. Smith, Esq.
asmith@aalrr.com
Sarkis A. Atoyan
Sarkis.atoyan@aalrr.com

79. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments called for hereunder, and Participating Class Members and PAGA Group Members are not relying on any statement or representation by the Parties in this regard. Participating Class Members and PAGA Group Members understand and agree that Participating Class Members and PAGA Group Members will be solely responsible for the payment of any taxes and penalties assessed on the payments described herein.

80. Headings. The descriptive headings of any paragraphs or sections of this Settlement Agreement are inserted for convenience of reference only and do not constitute a part of this Settlement Agreement, and in no way, define, limit, extend, or describe the scope of this Settlement Agreement or any provision herein.

81. Amendment or Modification. Unless otherwise provided herein, this Settlement Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest, and approved by the Court.

82. Entire Agreement. This Settlement Agreement, any supplemental written agreement subsequently incorporated, and any attached exhibits constitute the entire Settlement Agreement among these Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its exhibits other than the representations, warranties and covenants contained and memorialized in such documents.

1 83. Authorization to Enter into Settlement Agreement. The signatories hereto represent
2 that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to
3 the terms and conditions hereof.

4 84. Mutual Full Cooperation. The Parties and their counsel will cooperate with each
5 other and use their best efforts to affect the implementation of the Settlement Agreement, including
6 but not limited to, execution of such documents and to take such other action as may be reasonably
7 be necessary to implement the terms of this Settlement Agreement. As soon as practicable after
8 execution of this Settlement Agreement, Class Counsel shall, with the assistance of HACIENDA
9 and Defendant's Counsel, take all necessary steps to secure the Court's Preliminary Approval and
10 Final Approval of this Settlement Agreement. In the event the Parties are unable to reach agreement
11 on the form or content of any document needed to implement the Settlement Agreement, or on any
12 supplemental provisions that may become necessary to effectuate the terms of this Settlement
13 Agreement, the Parties may seek the assistance of the Court to resolve such disagreement.

14 85. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they
15 have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer,
16 or encumber to any person or entity any portion of liability, claim, demand, action, cause of action,
17 or rights herein released and discharged except as set forth herein.

18 86. Binding on Successors and Assigns. This Settlement Agreement shall be binding on
19 the Parties' successors, assigns, and agents, and inures to the benefit of the Released Parties,
20 including HACIENDA and its past, present, and/or future owners, officers, directors, managing
21 agents, trustees, payroll processors, independent contractors, members, managers, shareholders,
22 employees, attorneys, insurers, assigns, shareholders, successors, predecessors and agents,
23 HACIENDA's past, present, and/or future parent, subsidiary, or affiliated entities, DBAs and
24 franchisors, and each of their owners, officers, directors, managing agents, trustees, payroll
25 processors, independent contractors, members, managers, employees, attorneys, insurers, assigns,
26 shareholders, successors, predecessors and agents.

27 87. Participating Class Member Signatories. It is agreed that because the Participating
28 Class Members are so numerous, it is impossible or impractical to have each Participating Class

1 Member execute this Settlement Agreement. The Notice of Settlement will advise all Class
2 Members of the binding nature of the release and, upon Final Approval, such shall have the same
3 force and effect as if this Settlement Agreement were executed by each Participating Class Member.
4 Notice of Entry of Judgment shall be served by the Class Representative on HACIENDA.

5 88. California Law Governs. All terms of this Settlement Agreement shall be governed
6 by and interpreted according to the laws of the State of California, without giving effect to any
7 conflict of law principles or choice of law principles.

8 89. Counterparts. This Settlement Agreement may be executed in one or more
9 counterparts. All executed counterparts and each of them shall be deemed to be one and the same
10 instrument provided that counsel for the Parties to this Settlement Agreement shall exchange among
11 themselves original signed counterparts.

12 90. The Class Representative's Waiver of Right to be Excluded and Object. The Class
13 Representative agrees that by signing this Settlement Agreement, she is bound by the terms herein
14 stated and further agrees not to request to be excluded from the settlement and agrees not to object
15 to any of the terms of this Settlement Agreement. Any such letter requesting to be excluded from
16 the settlement or objection shall therefore be void and of no force or effect. Efforts by the Class
17 Representative to circumvent the terms of this paragraph shall be void and of no force or effect.

18 91. Confidentiality Preceding Preliminary Approval, Non-Reporting. The Class
19 Representative and Class Counsel agree that the terms of this settlement (including, but not limited
20 to, the Maximum Settlement Amount), the negotiations leading to this settlement, and all documents
21 related to the settlement shall not be discussed with, advertised, marketed, publicized, published,
22 reported, posted, or promoted to the public, except as necessary to effectuate and/or enforce the
23 terms of this Settlement Agreement and its approval. The Class Representative and Class Counsel
24 further will not publicize, post, market, advertise, or report, the terms of this Settlement Agreement
25 and will not issue any press releases, except that the Class Representative and Class Counsel may
26 disclose in legal proceedings, if and only as necessary a summary of the terms of the Settlement
27 Agreement and may communicate with Class Members regarding the settlement, its terms, and its
28 history (apart from settlement communications).

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Dated: *October 25, 2013*

HACIENDA POST ACUTE, INC.

By: *[Signature]*

John Ray Moore

Title: *President*

Dated:

JONATHAN ADAMS

By: _____
JONATHAN ADAMS

APPROVED AS TO FORM ONLY

Dated: October 26, 2023

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

By: *[Signature]*

Ann K. Smith

Sarkis A. Atoyan

Attorneys for Defendant Hacienda Post Acute, Inc.

Dated:

HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Sean M. Blakely
Alexandra R. McIntosh
Attorneys for Plaintiff Jonathan Adams

Dated:

HACIENDA POST ACUTE, INC.

By: _____

Title:

Dated: Oct 18, 2023

JONATHAN ADAMS

By:  _____

[Jon adams \(Oct 18, 2023 17:00 PDT\)](#)

JONATHAN ADAMS

APPROVED AS TO FORM ONLY

Dated:

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

By: _____

Ann K. Smith

Sarkis A. Atoyan

Attorneys for Defendant Hacienda Post Acute, Inc.

Dated: 10/18/2023

HAINES LAW GROUP, APC

By:  _____

Paul K. Haines

Sean M. Blakely

Alexandra R. McIntosh

Attorneys for Plaintiff Jonathan Adams

EXHIBIT 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KINGS

JONATHAN W. ADAMS, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

HACIENDA POST ACUTE, INC., a California
Corporation; and DOES 1 through 100,

Defendants.

Case No. 21C-0143

**NOTICE OF PENDENCY OF CLASS
ACTION AND PROPOSED SETTLEMENT**

To: All non-exempt hourly employees who were employed by Defendant Hacienda Post Acute, Inc. in California from November 15, 2016 through April 30, 2022. Collectively, these employees will be referred to as “Class Members.”

**PLEASE READ THIS NOTICE CAREFULLY
THIS NOTICE IS BEING SENT IN ENGLISH AND SPANISH
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

Why should you read this notice?

The Kings County Superior Court has granted preliminary approval of a proposed class action settlement (the “Settlement”) in the case of *Jonathan W. Adams v. Hacienda Post Acute, Inc.*, Kings County Superior Court Case No. 21C-0143 (the “Action”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

You may be entitled to money from this Settlement. Defendant Hacienda Post Acute, Inc.’s (“Hacienda Post Acute”) records show that you were employed at Hacienda Post Acute in California as a non-exempt hourly employee between November 15, 2016 and April 30, 2022 (the “Class Period”). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Action, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

What is this case about?

Plaintiff Jonathan W. Adams (“Plaintiff”) brought this Action against Hacienda Post Acute, seeking to assert claims on behalf of a class of non-exempt hourly employees who worked for Hacienda Post Acute in California at any time during the Class Period. Plaintiff is known as the “Class Representative,” and his attorneys, who also represent the interests of all Class Members, are known as “Class Counsel.”

Plaintiff alleges that Hacienda Post Acute failed to provide Class Members with all required meal and rest periods and that it failed to pay all minimum and overtime wages due to alleged regular rate miscalculations and/or allegedly unlawful timekeeping policies and practices. Plaintiff further alleges that Hacienda Post Acute failed to reimburse Class Members for necessary business expenditures. The Action also alleges that as a result of these alleged violations, Hacienda Post Acute failed to provide Class Members with accurate and complete wage statements and failed to timely pay all final wages at the time of separation of

employment. As a further result of the alleged violations, Plaintiff alleges that Hacienda Post Acute engaged in unfair business practices and is liable for civil penalties under the Labor Code Private Attorneys General Act (“PAGA”).

Hacienda Post Acute denies that it has done anything wrong. Hacienda Post Acute denies that it owes Class Members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Hacienda Post Acute, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiff’s claims. However, to avoid additional expense, inconvenience, and interference with its business operations, the Parties concluded that it is in their best interests and the interests of Class Members to settle the Action on the terms summarized in this Notice. After Hacienda Post Acute provided relevant information to Class Counsel, the Settlement was reached after mediation and arm’s-length negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Hacienda Post Acute, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by Hacienda Post Acute, your decision about whether to participate in the Settlement will not affect your employment. California law and Hacienda Post Acute’s policy strictly prohibit unlawful retaliation. Hacienda Post Acute will not take any adverse employment action against or otherwise retaliate, or discriminate, against any Class Member because of the Class Member’s decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for the Plaintiff/ Class Members: HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com Sean M. Blakely sblakely@haineslawgroup.com Alexandra M. McIntosh amcintosh@haineslawgroups.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 haineslawgroup.com	Attorneys for Defendant Hacienda Post Acute: ATKINSON, ANDELSON, LOYA, RUUD & ROMO Ann K. Smith asmith@aalrr.com Sarkis A. Atoyan Sarkis.atoyan@aalrr.com 12800 Center Court Drive South, Suite 300 Cerritos, CA 90703 Tel: (562) 653-3200 Fax: (562) 653-3333 aalrr.com
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What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class, for settlement purposes only, of all non-exempt hourly employees who were employed by Hacienda Post Acute in California during the Class Period. Class Members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Hacienda Post Acute as described below.

Hacienda Post Acute has agreed to pay \$500,000.00 (the “Maximum Settlement Amount”) to fully resolve all claims in the Action, including individual payments to Class Members, requested attorneys’ fees and expenses, settlement administration costs, the amount designated as PAGA civil penalties, and the Class Representative’s Service Award.

The following deductions from the Maximum Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$15,000.00 from the Maximum Settlement Amount to pay the settlement administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Action on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Maximum Settlement Amount. Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of up to one-third of the Maximum Settlement Amount, which is currently estimated to be \$166,666.66, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Action through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$30,000.00 for verified costs Class Counsel incurred in connection with the Action.

Service Award to Class Representative. Class Counsel will ask the Court to award the Class Representative a service award in the amount of \$7,500.00 to compensate him for his service and extra work provided on behalf of the Settlement Class members.

PAGA Payment to State of California. \$15,000.00 will be paid to the California Labor & Workforce Development Agency (“LWDA”), representing 75% of the \$20,000.00 the parties have agreed to allocate to the settlement of Plaintiff’s claim on behalf of the Class Members under the PAGA. The remaining \$5,000.00 will be payable to certain Class Members, as described below.

Calculation of Class Members’ Individual Settlement Payments. After deducting the Court-approved amounts above, the balance of the Maximum Settlement Amount will form the Net Settlement Amount (“NSA”), which will be distributed to all Class Members who do not submit a valid and timely Request for Exclusion (described below). The NSA is estimated at approximately \$265,833.34 and will be divided as follows:

Payments to All Participating Settlement Class Members: The NSA will be distributed to all participating Class Members based on each participating Class Member’s proportionate Workweeks worked during the Class Period.

Additionally, Class Members who were employed by Hacienda Post Acute from May 12, 2020 through April 30, 2022 (“PAGA Period”) (these employees are referred to as “PAGA Group Members”) shall receive a portion of the \$5,000 PAGA Payment based on the number of workweeks worked during the PAGA Period.

Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to all Class Members who did not submit a valid and timely Request for Exclusion. Settlement checks will be valid for 180 days from the date the Settlement Administrator mails it. Any funds payable to Class Members whose checks were not cashed within 180 days after mailing shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the name of the Class Member to whom the check was issued, until such time that they claim their property.

Allocation and Taxes. For tax purposes, each Individual Settlement Payment will be treated as follows: Any payment from the NSA shall be allocated as 40% as penalties; 40% as interest; and 20% as wages. Any payment from the PAGA Payment shall be allocated as 100% penalties. The Settlement Administrator will be responsible for issuing to participating Class Members IRS Forms W-2 for amounts deemed “wages” and IRS Forms 1099 for the amounts allocated as penalties and interest. The Settlement Administrator, Hacienda Post Acute and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, and upon the complete funding of the Maximum Settlement Amount, all Class Members who did not submit a timely and valid Request for Exclusion, on behalf of themselves and their heirs and assigns, will release Hacienda Post Acute, and its past, present, and/or future owners, officers, directors, managing agents, trustees, payroll processors, independent contractors, members, managers, shareholders, employees, attorneys, insurers, assigns, shareholders, successors, predecessor and agents, Hacienda Post Acute's past, present, and/or future parent, subsidiary, or affiliated entities, DBAs and franchisors, and each of their owners, officers, directors, managing agents, trustees, payroll processors, independent contractors, members, managers, employees, attorneys, insurers, assigns, shareholders, successors, predecessor and agents (collectively, the "Released Parties") from all claims, damages, or causes of action alleged in, or arising out of, the allegations in the Complaint and First Amended Complaint filed in the Action and the PAGA Notice, which were alleged or that could have been alleged by Plaintiff and/or any Participating Class Member in such complaints and/or the PAGA Notice based on any of the factual allegations contained in such complaints and/or the PAGA Notice, including, but not limited to, claims under state, federal (i.e., Fair Labor Standards Act (FLSA)) or local law, including, but not limited to claims for unpaid wages, claims for the failure to pay minimum wages, claims for the failure to pay overtime wages, claims related to missed meal and rest breaks or periods and nonpayment of premium pay for such, failure to pay reporting time pay, failure to comply with itemized employee wage statement provisions, failure to pay wages due at separation, failure to timely pay wages during employment, failure to keep requisite payroll records, the failure to reimburse for business expenses, unfair competition, the payment of any penalties (including PAGA). The Released Claims specifically include, but are not limited to, all claims arising under California Labor Code sections 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2802 and 2804, the Wage Orders of the California Industrial Welfare Commission, California Business and Profession Code sections 17200, *et seq.*, California Code of Civil Procedure section 1021.5, and California common law of contract, interest and claims for attorney's fees relating in any way to those claims alleged and mentioned in the complaint(s) and/or PAGA Notice.

In addition, upon the funding of the Maximum Settlement Amount, all PAGA Group Members, on behalf of themselves and their heirs and assigns, release the Released Parties from any and all claims for civil penalties under PAGA that were pled or which reasonably could have been pleaded based on the factual allegations pled in the operative Complaint in the Action and in the PAGA Notice sent by Plaintiff to the LWDA, including California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 516, 1174, 1194, 1197, 1197.1, 1198, 2802, 2804, 2698, *et seq.*, and the applicable IWC Wage Orders, that arose during the PAGA Period.

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement based on the proportionate number of workweeks you worked during the Class Period, and the proportionate number of workweeks you worked during the PAGA Period, as stated below. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Estimated Settlement Payment. Your award is based on the proportionate number of workweeks you worked during the Class Period, and the proportionate number of workweeks you worked during the PAGA Period. The information contained in Hacienda Post Acute's records regarding each of these factors, along with your estimated Individual Settlement Payment, is listed below. If you disagree with the information listed below, you may submit a dispute, along with any supporting documentation, to the Settlement Administrator. Any disputes, along with supporting documentation, must be postmarked no later than **<<RESPONSE DEADLINE>>**. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Class Members. If the Parties and the Settlement Administrator cannot resolve the dispute, the dispute will be submitted to the Court.

According to Hacienda Post Acute's records:

- (a) you worked [REDACTED] workweeks as a non-exempt hourly employee between November 15, 2016 through April 30, 2022; and
- (b) you worked [REDACTED] workweeks as a non-exempt hourly employee between May 12, 2020 and April 30, 2022.

Based on the above, your Settlement Payment is estimated at \$ [REDACTED].

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by mailing, e-mailing or faxing to the Settlement Administrator a written "Request for Exclusion" letter or card postmarked no later than <<RESPONSE DEADLINE>>, with your name, last four digits of your social security number, and your signature. The Request for Exclusion should include a clear statement that the Class Member wishes to be excluded from the Settlement.

Send the Request for Exclusion directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Any person who submits a timely Request for Exclusion from the Settlement shall, upon receipt by the Settlement Administrator, no longer be a Class Member, shall be barred from participating in any portion of the class action Settlement, and shall receive no benefits from the class action Settlement. However, all PAGA Group Members who worked for Hacienda Post Acute during the PAGA Period, including those who opt out, will be bound by the PAGA portion of the Settlement and will receive a portion from the PAGA Payment. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you should mail, e-mail or fax a written objection to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. To be valid, any written objection should: (1) contain the objecting Class Member's full name, as well as contact information for any attorney representing the objecting Class Member for purposes of the objection; (2) all facts and reasons why the Class Member is objecting to the Settlement along with any legal authority; (3) be signed by the Class Member; and (4) be postmarked no later than <<RESPONSE DEADLINE>>.

You may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department 2 of the Kings County Superior Court, located at 1640 Kings County Drive, Hanford, California 93230. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before <<RESPONSE DEADLINE>>. All objections or other correspondence must state the name and number of the case, which is *Jonathan W. Adams v. Hacienda Post Acute, Inc.*, Kings Superior Court Case No. 21C-0143. You do not need to object in writing to be heard at the Final Approval Hearing.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department 2 of the Kings County Superior Court, located at 1640 Kings County Drive, Hanford, California 93230. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the

Service Award to the Class Representative. The Final Approval Hearing may be postponed without further notice to the Settlement Class. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing. **You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.**

How can I get additional information?

This Notice is only a summary of the Action and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the Kings County Superior Court, located at 1640 Kings County Drive, Hanford, California 93230, during regular court hours. You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, HACIENDA POST ACUTE, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>. These deadlines will be strictly enforced.

BY ORDER OF THE COURT ENTERED ON <<PRELIM APPROVAL DATE>>.

EXHIBIT B

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

May 12, 2021

VIA LWDA WEBSITE

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

Re: *Jonathan W. Adams v. Hacienda Post Acute, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Jonathan W. Adams (“Mr. Adams”) in claims arising from his employment with Hacienda Post Acute, Inc. and DOES 1-100 (“Hacienda”). Mr. Adams is an “aggrieved employee” as defined by Labor Code Section 2698, *et seq.*, due to Hacienda’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Section 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated.

Pursuant to California Judicial Council Emergency Rule 9, statutes of limitations of more than 180 days were suspended for 178 days, from April 6, 2020 through October 1, 2020. Accordingly, the relevant time period for the violations described herein is one year plus 178 days prior to the date of this letter. Thus, the “aggrieved employees” whom Mr. Adams seeks to represent include all non-exempt employees who worked for Hacienda in California at any time from one year plus 178 prior to the date of this letter through the present.

Hacienda owns and operates nursing homes that provide skilled nursing and long-term care. Mr. Adams was employed by Hacienda as a non-exempt employee in the positions of “Maintenance” and “Central Supply” from approximately March 2020 through approximately September 2020.

During Mr. Adams’ employment with Hacienda, Hacienda utilized a timekeeping system which resulted in Mr. Adams and other non-exempt employees not being compensated for all hours actually worked, whether by rounding, time-shaving, or otherwise. Specifically, Mr. Adams and other aggrieved employees clocked in and out for their shifts by using a hand scanner and entering the last four digits of their social security number into a machine; however, although Hacienda recorded employees’ hours worked to the minute, Hacienda only paid Mr. Adams and other aggrieved employees in quarter-hour increments. Defendant’s rounding and/or shaving of time entries was not even-handed over time, and has resulted in Mr. Adams and other aggrieved employees being

deprived of all earned wages, including minimum wages for all hours worked, and overtime wages on those occasions when they worked over eight hours in a workday and/or forty hours in a workweek.

During Mr. Adams' employment with Hacienda, Mr. Adams and other aggrieved employees sometimes worked more than 40 hours in a workweek but Hacienda failed to pay them overtime for all such hours worked. On information and belief, Hacienda only paid daily overtime but did not pay weekly overtime when Mr. Adams or other aggrieved employees worked over 40 hours in a workweek.

As noted above, Mr. Adams and other aggrieved employees sometimes worked overtime hours, including hours in excess of eight hours per workday and/or 40 forty hours per workweek. However, even when Hacienda did pay overtime pay, it did not pay overtime compensation equal to one and one-half times Mr Adams' or other aggrieved employees' "regular rate" of pay for working overtime hours. Specifically, Mr. Adams and other aggrieved employees received non-discretionary incentive pay, including but not limited to "HERO" pay and/or other forms of pay that are not excludable from the "regular rate" of pay as a matter of law (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay"). Hacienda failed to accurately calculate Mr. Adams' and other aggrieved employees' regular rate of pay as a result of receiving Incentive Pay, as Mr. Adams and other aggrieved employees were only paid one-and-a-half times their *base* rate of pay, thereby causing them to be underpaid all their required overtime wages.

Hacienda failed to provide Mr. Adams and other aggrieved employees with all legally compliant meal periods because they fail to provide their employees with a timely, 30-minute meal period commencing before the end of the fifth hour of work. Specifically, Mr. Adams' and other aggrieved employees' meal periods are regularly "late" (i.e., starting after the completion of the fifth hour of work). For example, Mr. Adams often began work before 7:00 a.m., but was not provided a meal period until well after 12:00 p.m. Further, Hacienda's meal period policies/practices failed to provide Mr. Adams and other aggrieved employees with a second 30-minute meal period on occasions where they worked over 10.0 hours in a workday. Hacienda has further failed to compensate Mr. Adams and other aggrieved employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class period, Hacienda maintained no payroll code for paying meal period premiums under Labor Code § 226.7.

Hacienda's rest period policies/practices also failed to authorize and permit Mr. Adams and other aggrieved employees all rest periods to which they were entitled. Specifically, Hacienda required Mr. Adams and other aggrieved employees to remain on Hacienda's premises during rest periods, thereby failing to relinquish all control over their employees during rest periods as required under California law. In addition, Hacienda failed to authorize and permit Mr. Adams and other aggrieved employees to take a third

rest period on shifts of over 10.0 hours. On those occasions where Mr. Adams or other aggrieved employees were not provided with all legally compliant rest periods to which they were entitled, Hacienda failed to compensate them with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the relevant time period, Hacienda maintained no payroll code or other mechanism for the payment of rest period premium wages under Labor Code § 226.7 in the event that a legally compliant rest period was not provided to their non-exempt employees.

Upon information and belief, Hacienda has also failed to compensate Mr. Adams and other aggrieved employees for all required reporting time pay. For example, when Mr. Adams was working as “maintenance,” Mr. Adams was regularly called into work for a second shift and/or on the weekend but was not always put to work and/or was sent home after as little as twenty minutes. When this happened to Mr. Adams or to other aggrieved employees, upon information and belief, Hacienda did not compensate Mr. Adams or other aggrieved employees for at least two hours of work and/or half of their usually scheduled hours at their regular rate of pay. For instance, on August 19, 2020, after Mr. Adams worked a full shift from 7:02 a.m. to 3:29 p.m., Hacienda required Mr. Adams to return to work for a second shift from 4:49 p.m. to 6:19 p.m. Despite requiring Mr. Adams to report to work for a second shift, Hacienda only paid Mr. Adams an additional 1.52 hours. Mr. Adams alleges that this policy and practice is in violation of the reporting time pay requirements under California law, including Wage Order 4, § 5, and as a result, Hacienda have failed to pay Mr. Adams and other aggrieved employees for all required reporting time pay.

Hacienda also failed to adequately reimburse Mr. Adams and other aggrieved employees for all reasonable and necessary work expenditures, including, but not limited to, use of personal cellular phones to communicate with management. Despite requiring Mr. Adams and other aggrieved employees to use their personal cell phones for work-related purposes, Hacienda did not reimburse Mr. Adams and other employees for their cellular phone expenses.

As a result of Hacienda’s failure to pay all earned minimum and overtime wages, and failure to pay all meal and rest period premium wages and all reporting time pay, Hacienda maintained inaccurate payroll records, issued inaccurate wage statements to Mr. Adams and other aggrieved employees, and failed to pay Mr. Adams and other aggrieved former employees all wages owed at the time of their separation of employment with Hacienda.

Mr. Adams is informed and believes, and based thereon alleges, that the violations described herein are continuing to the present.

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As described above, Hacienda committed, and continues to commit, the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 4 (“Wage Order 4”):

Overtime Violations

Hacienda was, and is, required to properly compensate non-exempt employees, including Mr. Adams and other aggrieved employees, for all overtime hours worked pursuant to Labor Code §§ 204, 210, 216, 510, 558, 1194, 1198 and Wage Order 4. Wage Order 4, § 3 requires an employer to pay an employee “one and one-half (1½) times [the] employee’s regular rate of pay” for work in excess of 8 hours per workday or over 40 hours in a workweek, and for the first eight (8) hours and/or in excess of 40 hours of work in the workweek, and “double the employee’s regular rate of pay” for all hours worked in excess of 12 hours in a workday or in excess of 8 hours on the seventh day of a workweek. As alleged herein, Hacienda has caused Mr. Adams and other aggrieved employees to work overtime and/or double-time hours but has not compensated Mr. Adams or other aggrieved employees at one and one-half times (or two times, in the case of double-time) their “regular rate” of pay for such hours.

Minimum Wage Violations

Hacienda was, and is, required to pay Mr. Adams and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour worked. *See* Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1198, and Wage Order 4, § 4. As alleged above, Hacienda maintained, and continues to maintain, timekeeping policies/practices and pay policies/practices that regularly, systematically, and impermissibly fail to compensate Mr. Adams and other aggrieved employees for all hours worked. As a result of these policies/practices, Mr. Adams and other aggrieved employees have been, and continue to be, deprived of all required minimum wages.

Rest Period Violations

As alleged above, Hacienda failed, and continues to fail, to authorize and permit Mr. Adams and other aggrieved employees to take all rest periods to which they are legally entitled. *See* Labor Code §§ 226.7, 516, 558, 1198; Wage Order 4, § 12. As a result, Mr. Adams and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest period is not provided.”). As alleged above, Hacienda has failed to pay them the premium wages to which they are legally entitled.

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Meal Period Violations

As alleged above, Hacienda failed, and continues to fail, to provide Mr. Adams and other aggrieved employees with all required and compliant meal periods, due to Hacienda's meal period policies/practices that often fail to provide legally compliant 30-minute first meal periods before the end of the fifth hour of work, and which fail to provide second meal periods for shifts of over 10.0 hours. *See* Labor Code §§ 226.7, 512, 558, 1198; Wage Order 4, § 11. As a result, Mr. Adams and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with...[an] order of the Industrial Welfare Commission...the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided."). As alleged above, Hacienda has failed to pay them the premium wages to which they are legally entitled.

Failure to Reimburse Employees for Necessary Business Expenditures

As alleged above, due to Hacienda's unlawful policy and practice of requiring employees to use their personal phones and/or other personal equipment and services for work purposes and failing to reimburse Mr. Adams and other aggrieved employees for these and/or other business expenses, Hacienda has violated Labor Code § 2802, which provides: "An employer shall indemnify his or her employees 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 obedience to the directions of the employer." Mr. Adams and other aggrieved employees are therefore entitled to reimbursement of such unpaid work expenses, with interest.

Reporting Time Pay Violations

As alleged herein, Hacienda has failed to pay Mr. Adams and other aggrieved employees with reporting time pay on those occasions when they were owed reporting time pay under California law. Hacienda's failure to pay reporting time pay violates Labor Code §§ 1198-1199 and Wage Order 4, § 5.

Wage Statement Violations

As alleged herein, Hacienda knowingly and intentionally, as a matter of uniform policy and practice, has failed to furnish Mr. Adams and other aggrieved employees with complete and accurate wage statements with respect to their total gross wages earned, total net wages earned, total hours worked, total hours worked at each rate of pay, and meal and rest period premium wages earned, in violation of Labor Code § 226.

Failure to Pay All Final Wages at Termination

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. As alleged herein, Hacienda has failed to timely pay aggrieved former employees all of their final wages at the time of separation.

Pursuant to Labor Code § 203, Hacienda's failure to pay all final wages due to Mr. Adams and other aggrieved former employees was willful and, consequently, entitles Mr. Adams and other aggrieved former employees to waiting time penalties equal to one day of wages for each day Hacienda failed to pay their final wages after separation, up to a maximum of thirty days.

Mr. Adams is informed and believes, and based thereon alleges, that the violations alleged herein are continuing to the present. As an "aggrieved employee," Mr. Adams will initiate a civil action on behalf of himself, the State of California, and other aggrieved employees to recover civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Adams' own investigation, and on information and belief, Hacienda has committed the following Labor Code violations:

- a. Hacienda has violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Adams and other aggrieved employees all overtime and/or double-time compensation earned;
- b. Hacienda has violated Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Mr. Adams and other aggrieved employees at least the statutory minimum wage for all hours worked;
- c. Hacienda has violated Labor Code §§ 1198 and 1199 by failing to pay all reporting time pay owed to Mr. Adams and other aggrieved employees;
- d. Hacienda has violated Labor Code §§ 226.7, 516, 558, and 1198 by failing to authorize and permit all legally required rest periods and by failing to pay rest period premiums to Mr. Adams and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;
- e. Hacienda has violated Labor Code §§ 226.7, 512, 558, and 1198 by failing to provide all legally required meal periods and by failing to pay meal period premiums to Mr. Adams and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- f. Hacienda has violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Adams and other aggrieved employees for all necessary work expenditures incurred;
- g. Hacienda has violated Labor Code § 226 by failing to furnish Mr. Adams and other aggrieved employees with accurate, complete itemized wage statements;
- h. Hacienda has violated Labor Code §§ 201-203 by failing to pay Mr. Adams and other aggrieved former employees all final wages owed at the termination of their employment;

- i. Hacienda has violated Labor Code § 204 by failing to pay Mr. Adams and other aggrieved employees all earned wages at least twice during each calendar month; and
- j. Hacienda has violated Labor Code § 1174 by failing to keep accurate records on behalf of Mr. Adams and other aggrieved employees.

Pursuant to Labor Code section 2699.3, please notify us and Hacienda if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC

A handwritten signature in blue ink, appearing to read 'P. H.', is written over a horizontal line.

Paul K. Haines

cc: Hacienda Post Acute, Inc., c/o John Rex Moore, Agent for Service of Process (via certified mail)

Haines Law Group
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USPS CERTIFIED MAIL



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