

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo-Johnson (State Bar #343881)
Perssia Razma (State Bar #351398)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
prazma@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

KEVIN WYATT and KIMBERLEE
CALIFANO, individuals, and on behalf of all
persons similarly situated,

Plaintiffs,

v.

BH-SD OPCO, LLC, dba ALVARADO
PARKWAY INSTITUTE BEHAVIORAL
HEALTH SYSTEMS, a Delaware Limited
Liability Company; and DOES 1-50, Inclusive,

Defendants.

Case No. 37-2021-00021168-CU-OE-CTL

**DECLARATION OF PERSSIA RAZMA, ESQ.
IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA SETTLEMENT**

Date: July 26, 2024

Time: 9:30 a.m.

Judge: Hon. Gregory W. Pollack
Dept.: C-71

1 I, Perssia Razma, Esq., declare as follows:

2 1. I am over eighteen years of age and if called as a witness, I could and would competently
3 testify to the following facts from my own personal knowledge. I am an attorney-at-law and co-counsel
4 of record for Plaintiffs Kevin Wyatt (“Plaintiff Wyatt”) and Kimberlee Califano (“Plaintiff Califano”)
5 (collectively, “Plaintiffs”) in this wage and hour class action filed BH-SD OPCO, LLC, dba Alvarado
6 Parkway Institute Behavioral Health Systems (hereinafter “Defendant”).

7 2. This declaration is being submitted in support of Plaintiffs’ motion for Preliminary
8 Approval of Class Action and PAGA Settlement.

9 **I. EXHIBITS**

10 3. Attached hereto as **Exhibit “1”** is a true and correct copy of the Stipulation for Class and
11 PAGA Action Settlement and Release of Claims (“Agreement” or “Settlement Agreement”). Attached
12 as **Exhibit “A”** to the Agreement is a true and correct copy of the proposed Notice Packet.

13 4. Attached hereto as **Exhibit “2”** is a true and correct copy of the proof of filing with the
14 Labor and Workforce Development Agency notice of this settlement with the Agreement and Motion
15 for Preliminary Approval of Class Action and PAGA Settlement evidencing Class Counsel’s
16 compliance with California Labor Code Section 2699(1)(2).

17 5. Attached hereto as **Exhibit “3”** is a true and correct copy of the bid for settlement
18 administration submitted by Apex Class Action LLC, in the amount of \$12,990.00.

19 **II. INTRODUCTION**

20 6. An objective evaluation of the Settlement confirms that the relief negotiated on behalf of
21 the Class is fair, reasonable, and adequate. The Settlement was negotiated by the Parties at arm’s length.
22 The Settlement confers substantial benefits to the Class Members. The relief offered by the Settlement
23 is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage
24 and hour cases (*see infra*). Indeed, by settling now rather than proceeding to trial, Class Members will
25 not have to wait (possibly years) for relief, nor will they have to bear the risk of class certification being
26 denied or of Defendant prevailing at trial. Finally, the Settlement considers Defendant’s financial
27 condition and ability to satisfy a larger settlement. Given that there are approximately 1,229 Class
28

Members, **the average gross recovery is approximately \$291.84** (Net Settlement Amount divided by Class Members).

7. As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval and falls within the range of reasonableness. The average Individual Class Payment to the Participating Class Members meets awards in similar wage and hour class actions. Moreover, the proposed Class is appropriate for provisional certification. Accordingly, Plaintiffs respectfully request the Court grant preliminary approval of the Settlement.

III. FACTS AND PROCEDURE

A. Overview of the Litigation

8. Defendant is a behavioral health system that operates outpatient psychiatric and substance use disorder services throughout California, including San Diego county, where Plaintiffs worked. Plaintiff Wyatt was employed by Defendant from September of 2015 through July of 2020 as a Housekeeper. Plaintiff Califano has been employed by Defendant since 2005 as a Staffing Coordinator and Purchasing Agent in the Nursing Department. At all times during their employment, Plaintiffs earned an hourly wage and were entitled to legally compliant meal and rest periods, and minimum, regular and overtime wages for all hours worked. Throughout their employment, Plaintiffs were subject to Defendant's policies and procedures.

9. Generally, Plaintiffs claim that Defendant failed to provide compliant meal and rest periods, failed to pay for all time worked, including time spent undergoing COVID-19 screenings, failed to pay overtime and meal period premiums at the correct regular rate of pay, failed to furnish accurate itemized wage statements, failed to reimburse for mandatory business expenses, and failed to pay all wages upon separation. Defendant denies liability for each of Plaintiffs' claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiffs' claims, including but not limited to, compliant wage statements, compliant reimbursement practices, and timely payment of all wages due upon separation of employment.

10. On May 12, 2021, Plaintiff Wyatt served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). On April 29, 2024, Plaintiff Wyatt served Defendant and the LWDA with an Amended PAGA Notice. Plaintiff Wyatt's

1 PAGA Notices set forth the facts and theories supporting Defendant’s alleged violations of various
2 provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage
3 Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act,
4 Cal. Lab. Code Sections 2698 *et seq* (“PAGA”).

5 11. On May 12, 2021, Plaintiff Wyatt served Defendant and the Labor and Workforce
6 Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). On April 29, 2024,
7 Plaintiff Wyatt served Defendant and the LWDA with an Amended PAGA Notice. Plaintiff Wyatt’s
8 PAGA Notices set forth the facts and theories supporting Defendant’s alleged violations of various
9 provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage
10 Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act,
11 Cal. Lab. Code Sections 2698 *et seq* (“PAGA”).

12 12. On February 4, 2022, Plaintiff Califano filed a class action complaint in San Diego
13 County Superior Court, Case No. 37-2022-00004654-CU-OE-CTL alleging the same causes of action
14 as those alleged by Plaintiff Wyatt, but excluding a cause of action for Failure to Pay Wages Due and
15 Payable Twice Monthly. In November of 2022, Plaintiffs’ cases were consolidated by the Court, with
16 Plaintiff Wyatt’s case being the lead case.

17 13. On October 20, 2023, Plaintiffs filed a first amended complaint (“Operative Complaint”),
18 alleging ten causes of action for: (1) Unfair Competition in Violation of Cal. Lab. Code § 17200; (2)
19 Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 and 1197.1; (3) Failure
20 to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510 *et seq.*; (4) Failure to Provide Required
21 Meal Periods in Violation of Cal. Lab. Code §§ 226.7, 512 and the applicable Wage Order; (5) Failure
22 to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7, 512 and the applicable wage
23 order; (6) Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code §226; (7)
24 Failure to Pay Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; (8) Failure to
25 Reimburse for Required Expenses in Violation of Cal. Lab. Code § 2802); (9) Failure to Pay Wages At
26 Least Twice in a Calendar Month in Violation of Cal. Lab. Code § 204; and (10) Violations of the
27 Private Attorneys General Act (Labor Code §§ 2698, *et seq*).

28 ///

1 14. After engaging in written discovery, the Parties agreed to mediate this action. To prepare
2 for mediation, the Parties agreed to informally exchange documents and data points subject to the
3 mediation privilege, including but not limited to, the Class Members' time data and certain payroll data
4 points. As discussed *infra*, Plaintiffs' counsel retained the forensic consultants at Baker Tilly US, LLP
5 ("Baker Tilly") to analyze Defendant's time and payroll data.

6 15. On April 14, 2023, the Parties participated in an all-day private mediation presided over
7 by Tripper Ortman, Esq. (the "Mediator"), an experienced mediator of wage and hour class and PAGA
8 actions. At the mediation, the Parties were unable to reach a settlement. The Parties continued settlement
9 negotiations, and at the recommendation of the Mediator, enlisted Hon. Mitchel Goldberg (Ret.) to
10 review Defendant's financials and assess its ability to pay a monetary settlement. With the assistance
11 of the Mediator and Judge Goldberg's evaluations, the Parties ultimately reached the settlement which
12 was subsequently memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties
13 drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion.

14 **B. Class Counsel Thoroughly Investigated the Factual and Legal Issues**

15 16. Months before filing the Action, Class Counsel began its pre-filing investigation into the
16 Plaintiffs' complaints. Class Counsel's investigation started with several lengthy interviews with
17 Plaintiffs. As part of the interview process, Plaintiffs produced documents related to their employment,
18 including portions of their time and payroll records. At the conclusion of the interviews, Class Counsel
19 determined that Plaintiffs' complaints justified further inquiry.

20 17. Class Counsel subsequently requested Plaintiffs' employee files from Defendant. In
21 response, Defendant produced hundreds of pages of documents, including but not limited to, copies of
22 Defendant's written policies and Plaintiffs' hiring documents and payroll and time records. Class
23 Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate
24 Plaintiffs' claim that Defendant failed to, among other things, provide compliant meal and rest periods,
25 provide accurate wage statements, and reimburse for mandatory business expenses.

26 18. To prepare for mediation, Defendant produced time and payroll records for the Class
27 Members, aggregate workweek and pay period data for the Class Members, average hourly rate for the
28 Class Members, and copies of applicable handbooks, policies, and agreements. At the time of

1 mediation, Defendant estimated that the Class was comprised of comprised of 1,229 individuals who
2 collectively worked approximately 103,717 Workweeks during the Class Period. Further, Defendant
3 estimated that there were approximately 1,558 PAGA Employees during the PAGA Period.

4 19. Class Counsel then retained the statisticians and economists at Baker Tilly US, LLP to
5 evaluate the Class Members' payroll and time data. Baker Tilly provides data analysis and damage
6 modeling consulting services in wage and hour class actions. Baker Tilly's team of financial and data
7 analysts are credentialed and experienced experts in their fields.

8 20. Baker Tilly analyzed Defendant's time and payroll data to assist in the development of
9 various damage models. Among other things, Baker Tilly determined the approximate amount of
10 unpaid wages, amount of unpaid overtime wages, number of workweeks, pay periods, average length
11 of shifts and average number of hours worked per week. Baker Tilly also estimated the number of
12 missed, late, or truncated meal and rest periods, the amount of unpaid wages, the amount of
13 unreimbursed expenses, the amount of unpaid overtime, the amount of unreimbursed business expenses,
14 and the amount of missed meal and rest period premiums paid during the Class Period.

15 21. Overall, Class Counsel thoroughly investigated the claims at issue, including: (1)
16 determining Plaintiffs' suitability as a putative class representatives through interviews, background
17 investigations, and analysis of their employment files; (2) evaluating all of Plaintiffs' potential claims;
18 (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions,
19 and the type of employer; (4) analyzing the Class Members' time and payroll records; (5) analyzing
20 Defendant's labor policies and practices; (6) researching settlements in similar cases as well as
21 outstanding issues which could affect settlement approval; (7) evaluating Plaintiffs' claims and
22 estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9)
23 participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and
24 magnitude of the claims being settled, as well as the impediments to recovery, such as to make an
25 independent assessment of the reasonableness of the terms to which the Parties have agreed.

26 22. Class Counsel only agreed to enter the Settlement following this thorough investigation,
27 evaluation of Plaintiffs' claims, and evaluation of Defendant's financial condition. Based on its
28 investigation of the facts, applicable law, and marketplace for similar settlements, and considering the

1 risk of significant delay and uncertainty associated with litigation, and the various defenses asserted by
2 Defendant, Class Counsel firmly believe this Agreement to be in the best interests of the Class
3 Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should
4 preliminarily approve the Settlement.

5 **C. The Parties Settled After Mediation**

6 23. On April 14, 2023, the Parties conducted a full day of mediation with Tripper Ortman,
7 Esq. (the "Mediator"). The Mediator helped manage the Parties' expectations and provided a useful,
8 neutral analysis of the issues and risks to both sides. The Parties made substantial progress with the
9 Mediator's assistance. Namely, the Parties exchanged information regarding their respective claims
10 and defenses, including their respective evaluation of the damages. The mediation concluded without
11 a settlement. However, the Parties continued settlement negotiations, and at the recommendation of the
12 Mediator, enlisted Hon. Mitchel Goldberg (Ret.) to review Defendant's financials and assess its ability
13 to pay a monetary settlement. With the assistance of the Mediator and Judge Goldberg's evaluations,
14 the Parties ultimately reached a settlement. The complete and final terms of the Parties' settlement are
15 now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate,
16 and reasonable compromise of the claims at issue.

17 **IV. ARGUMENT**

18 **A. The Court Should Preliminarily Approve the Proposed Class Action Settlement**

19 1. The Parties Reached the Settlement Through Arm's-Length Bargaining Led by
20 Experienced Counsel.

21 24. The Parties participated in mediation mediator Tripper Ortman, Esq (the "Mediator").
22 The Mediator managed the Parties' expectations and provided a useful, neutral analysis of the issues
23 and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL), 2008
24 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably
25 against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir. 2001) 236 F.3d
26 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the
27 proceedings were free of collusion and undue pressure.")) After a full day of mediated negotiations,
28 negotiations continued, and the Parties reached an agreement.

1 25. Once the Parties agreed to the Mediator’s proposal, the Parties engaged in negotiations
2 regarding the written terms of the class action settlement. The Agreement is the final product of the
3 mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a reasonable
4 compromise of the claims at issue.

5 2. Class Counsel’s Thorough Investigation Provided an Objective Measurement of
6 the Settlement’s Reasonableness.

7 26. As set forth in greater detail above, Class Counsel conducted a very thorough
8 investigation into the factual and legal issues in dispute. In addition to formal and informal discovery,
9 document review, data analysis and legal research, Class Counsel also researched similar wage and
10 hour actions. Although no two cases are identical, this research provided Class Counsel with a marker
11 to inform settlement discussions and, ultimately, to measure this settlement against. The investigation
12 allowed Class Counsel to realistically assess the value of Plaintiffs’ claims and intelligently engage
13 defense counsel in settlement discussions that culminated in the proposed settlement now before the
14 Court.

15 **B. The Gross Settlement Amount Meets the Recognized Range of Reasonableness.**

16 27. The Gross Settlement Amount of \$700,000.00 is fair and reasonable considering the
17 nature and magnitude of the claims being settled and the various potential impediments to recovery.
18 Prior to mediation, Class Counsel retained Baker Tilly US, LLP to develop economic damage models
19 measuring Defendant’s liability exposure while accounting for the uncertainties of continued litigation.
20 The various models were informed by Class Counsel’s investigation, including the analysis of a
21 significant sample of time and payroll data. Class Counsel projected Defendant’s liability exposure for
22 *class claims* (excluding PAGA Penalties) ranged between \$2,117,571.05 (“Realistic Damages”) and
23 \$9,041,981.61 (“Maximum Damages”) if successful at trial. This range reflects the uncertainty
24 regarding several of the claims. Thus, the Gross Settlement Amount represents a recovery of between
25 33.06% (“Realistic Damages”) and 7.74% (“Maximum Damages”) of Defendant’s class-wide exposure
26 – well within the recognized range of reasonableness. The following summarizes Defendant’s liability
27 exposure.

28 ///

1 1. Estimated Damages for Regular Rate Violations

2 a. Regular Rate Violations for Purposes of Overtime and Double-Time
3 Wages

4 28. Plaintiffs allege that Defendant failed to include certain non-discretionary payments when
5 calculating the regular rate of pay for purposes of overtime and double-time wages. The regular rate of
6 pay, which can change from pay period to pay period, includes adjustments to the straight time rate,
7 reflecting, among other things, non-discretionary bonuses and awards, shift differentials and the per-
8 hour value of any non-hourly compensation the employee has earned. *Alvarado v. Dart Container Corp.*
9 *of California* (2018) 4 Cal.5th 542, 552-554. For overtime work, “an employee must receive a 50
10 percent premium on top of his or her regular rate of pay[.]” *Id.* at 553. Here, Defendant failed to include
11 non-discretionary payments, including flat rate on-call payments, shift differentials, and non-
12 discretionary bonuses when calculating the regular rate of pay when paying Plaintiffs and Class
13 Members overtime and double-time wages.

14 29. Conversely, Defendant denied liability and asserted that it correctly calculated the regular
15 rate of pay for purposes of paying overtime and double-time wages.

16 30. Based on Defendant’s defenses, Class Counsel applied a 90% discount to this claim and
17 estimated that the damages for this claim ranged from approximately \$15,591.30 to approximately
18 \$155,913.00.

19 b. Regular Rate Violations for Purposes of Meal Period Premiums

20 31. Plaintiffs further allege that Defendant failed to include non-discretionary payments when
21 calculating the regular rate of pay for purposes of meal period premiums. California law requires meal
22 period premiums and rest period premiums to be paid at an employee’s regular rate of pay. See *Ferra*
23 *v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.) The *Ferra* decision applies retroactively.
24 (*Ferra*, 11 Cal. at p. 1179 – 1180). Here, to the extent that Defendant paid meal period premiums,
25 Defendant failed to include non-discretionary payments, including flat rate on-call payments, shift
26 differentials, and non-discretionary bonuses when calculating the regular rate of pay when paying
27 Plaintiffs and Class Members meal period premiums.

28 ///

1 32. Conversely, Defendant denied liability and asserted that it correctly calculated the regular
2 rate of pay for purposes of paying meal period premiums. Class Counsel estimated Defendant's
3 exposure for this claim at \$72,475.

4 c. Regular Rate Violations for Purposes of Redeemed Sick Pay

5 33. Plaintiffs further allege that Defendant failed to include non-discretionary payments when
6 calculating the regular rate of pay for purposes of sick pay. California Labor Code section 246(1)(1)
7 expressly mandates that sick pay for non-exempt employees be based on either "the regular rate of pay
8 for the workweek in which the employee uses paid sick time" or the regular rate of pay in the 90 days
9 preceding the use of the sick leave. Here, Defendant failed to include non-discretionary payments,
10 including flat rate on-call payments, shift differentials, and non-discretionary bonuses when calculating
11 the regular rate of pay when paying Plaintiffs and Class Members for redeemed sick pay.

12 2. Estimated Damages for Meal Period Violations

13 34. Plaintiffs alleged that Defendant failed to provide compliant meal periods. Specifically,
14 Plaintiffs alleged that because of rigorous work schedules and Defendant's understaffing, Plaintiffs and
15 Class Members were unable to take timely and duty-free meal periods. An analysis of the Class
16 Members' time and payroll data revealed a modest 8.46% meal period violation rate. A majority of
17 these violations were seen in shifts between 5 and 6 hours. Defendant had in place a meal period waiver
18 that was signed by a majority of the Class Members. However, Plaintiffs alleged that a majority of these
19 signed meal period waivers were unenforceable.

20 35. Defendant argued, *inter alia*, that it provided the Class Members with compliant meal
21 periods and maintained facially compliant meal period policies, such that any missed meal periods were
22 by choice of each individual Class Member. Further, Defendant argued that its meal period waiver was
23 enforceable. Thus, Defendant argued that there was no potential liability for Plaintiffs' alleged meal
24 period violations and any claimed violations required a highly individualized inquiry not suitable to
25 class treatment.

26 36. Consequently, Plaintiff applied a 90% discount to this claim and estimated that the
27 damages for this claim ranged from approximately \$162,554.20 to approximately \$1,625,542.00.

28 ///

1 3. Estimated Exposure for Rest Period Violations

2 37. Plaintiffs also alleged that Defendant failed to provide compliant rest periods.
3 Specifically, Defendant required Plaintiffs and Class Members to carry a pager, which was later
4 replaced with a requirement to carry a cell phone. Class Members were required to keep these devices
5 on them even on rest breaks, so that employees could be reached during a break if need be. Class
6 Members frequently received communications on these devices, interrupting or cutting short their rest
7 breaks. Importantly, even when rest breaks were not interrupted, they were always on-call. These
8 breaks are non-compliant, as they are not a period of true rest.

9 38. Again, Defendant denied liability and asserted that it maintained legally compliant rest
10 period policies and practices throughout the Class Period. Moreover, Plaintiff recognizes the
11 evidentiary burdens establishing this claim. Establishing Plaintiff's rest period claim would rely, almost
12 entirely, on Class Member testimony, making it a riskier claim at class certification and liability stages.
13 Certification likely would have required depositions of Class Members who provided declarations, and
14 Defendants surely would have obtained opposing declarations stating either rest breaks were taken, or
15 rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013)
16 2013 WL 210223, at *11 ("Because of the competing testimony before the Court, plaintiff's evidence
17 that defendant may have an illegal, written rest break policy is insufficient for this Court to find that
18 common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012)
19 2012 WL 5503550, at *8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not
20 generate uniform practices.").

21 39. Accordingly, Plaintiffs applied a 90% discount to the rest break claim. Plaintiffs
22 estimated the range of potential outcomes for this claim was between approximately \$108,557.40 to
23 approximately \$1,085,574.01.

24 4. Estimated Exposure for Unpaid Wages

25 40. Plaintiff also alleged that Defendant failed to pay its employees for all hours worked.
26 Specifically, Plaintiffs asserted that Defendant failed to pay employees for time spent undergoing
27 COVID-19 screenings before the start of their shifts. Based on Plaintiffs' testimony and Class
28 Counsel's investigation, Employees were required to arrive on-site, underdo an antigen test, and wait

1 in their car until they were cleared to work. The amount of time spent waiting could exceed 30 minutes.
2 As a result, Plaintiffs and Class Members forfeited compensation for all the time they spent working
3 under Defendant's control.

4 41. Defendant vigorously denied liability for this claim. Further, Defendant asserted that it
5 had in place a written policy requiring its employees to accurately record all their time worked and
6 argued that such written policies and procedures directed its employees not to work while off the clock.
7 Further, Defendant argued that the off-the-clock claim was not suitable to class treatment because
8 individualized issues predominated. For example, even assuming Plaintiffs performed work while off-
9 the-clock, which Defendant dispute, the time spent would vary drastically from class member to class
10 member that it could not be established by common proof.

11 42. Class Counsel estimated Defendant's exposure for this claim at \$376,867.00.

12 5. Estimated Exposure for Unreimbursed Business Expenses

13 43. Plaintiffs alleged that Defendant required Plaintiffs and Class Members to use their
14 personal cell phones and personal vehicles as a result of and in furtherance of their job duties but were
15 not reimbursed by Defendant. California employers who require employees to incur personal business
16 expenses for work purposes must reimburse the employee for the cost incurred. (See Cal. Labor Code
17 § 2802(a), providing that "An employer shall indemnify his or her employee for all necessary
18 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
19 duties, or of his or her obedience to the directions of the employer..."). Specifically, Plaintiff and Class
20 Members were required to use their cell phones to send and receive work-related communications.
21 However, they were not reimbursed or indemnified by Defendant for the cost associated with the use
22 of the personal cell phones for Defendant's benefit. Additionally, Plaintiffs and Class Members were
23 required to use their personal vehicles to travel between Defendant's facilities, and travel to and from
24 medical supply retailers, and similarly were not reimbursed.

25 44. Again, Defendant denied any liability for this claim and asserted that it maintained legally
26 compliant expense reimbursement policies and practices throughout the Class. Further, Defendant
27 argued that a vast majority of Class Members were not required to use their personal cell phones or
28 travel. Moreover, Plaintiffs recognize the evidentiary burdens establishing this claim. Establishing

1 Plaintiffs' unreimbursed business expenses claim would rely, almost entirely, on Class Member
2 testimony, making it a riskier claim at class certification and liability. Thus, Defendant argued that there
3 was no potential liability for this claim and any claimed violations required a highly individualized
4 inquiry not suitable to class treatment.

5 45. Consequently, Plaintiff applied a 90% discount to this claim and estimated that the
6 damages for this claim ranged from approximately \$62,597.30 to approximately \$625,973.00.

7 6. Estimated Exposure for Wage Statement and Waiting Time Penalties

8 46. Plaintiffs also alleged that Defendant failed to furnish its employees with accurate
9 itemized wage statements. Specifically, Plaintiffs alleges that as a result of Defendant's failure to
10 provide meal and rest periods as required by the California Labor Code, Plaintiff and other Class
11 Members are entitled to derivative wage statement penalties. (*See Naranjo v. Spectrum Security*
12 *Services* (2022) 13 Cal. 5th 93 (concluding that meal premiums are "wages" entitling employees to
13 derivative wage statement penalties). Plaintiffs also alleged that the Defendant's labor code violations
14 resulted in derivative liability for waiting time penalties.

15 47. Defendant argued that these claims would fail because the underlying claims would fail.
16 Further, Defendant argued that even if it failed to furnish accurate wage statements, Plaintiffs could not
17 establish the injury requirement on a class-wide basis. Finally, Defendant argued that Plaintiffs could
18 not prove the "willful" prong needed to obtain waiting time penalties under Labor Code section 203.

19 48. Consequently, Plaintiffs applied a 75% discount to these claims and estimated that the
20 damages for these claims ranged from approximately \$1,260,236.25 to approximately \$5,040,945.00.

21 7. Defendant's PAGA Exposure

22 49. In all, Class Counsel projected Defendants' liability exposure for PAGA claims ranged
23 between \$139,400.00 ("Conservative Model") and \$4,454,272.00 ("Aggressive Model") if successful
24 at trial.

25 50. Here, the Parties negotiated a good faith PAGA Penalties payment in the amount of
26 \$50,000.00 which is 7.14% of the Gross Settlement Amount. This amount falls well within the range
27 of approved PAGA Penalties. Seventy-Five percent (75%) of the PAGA Penalties (\$37,500) will be
28 paid to the LWDA ("LWDA PAGA Payment") with the remaining twenty-five percent (25%) of the

1 PAGA Penalties (\$12,500) will be distributed to the PAGA Employees (“Individual PAGA Payments”),
2 which is within the range of PAGA Penalties approved by courts and should be approved.

3 **C. Inherent Risks of Continued Litigation and Defendant’s Financial Condition**
4 **Support Preliminary Approval.**

5 51. With respect to the most immediate challenge, i.e., class certification, the risks attendant
6 to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart*
7 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated, reversed, and remanded
8 a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed
9 the trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies,*
10 *Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
11 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
12 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
13 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
14 individualized questions of fact not susceptible to class treatment.”); *a.S.A. Cab Ltd.* (2009) 176
15 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
16 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
17 harm); *Campbell v. Best Buy Stores, L.P.,* (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
18 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
19 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
20 certification of driver meal and rest period claims based on the predominance of individual issues).
21 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
22 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
23 settlement.

24 52. Finally, continuing to litigate this action would require continued and extensive resources
25 coupled with significant Court time to proceed through trial and post-trial motions; which can often
26 take years. Furthermore, wage and hour litigation is complex and expensive, as it often necessitates
27 extensive expert testimony, particularly with regards to damages. But even if Plaintiffs is successful at
28 trial, Plaintiffs are acutely aware that a judgment does not end the litigation. Plaintiffs fully expect that

1 Defendant would appeal any favorable judgment. As demonstrated by *Magadia, supra*, 999 F.3d 668,
2 the risk of an appeal and subsequent reversal is real.

3 53. Further, Defendant's poor financial condition supports preliminary approval of the
4 settlement. During the litigation, Defendant represented that it would be unable to satisfy a larger class-
5 wide settlement due to its financial condition. At the recommendation of the Mediator, Class Counsel
6 enlisted Hon. Mitchel Goldberg (Ret.) to review Defendant's financials and assess its ability to satisfy
7 a class-wide settlement. Judge Goldberg analyzed Defendant's publicly available financial information,
8 and a number of Defendant's financial documents. Based on Judge. Goldberg's review, he determined
9 that Defendant could afford the settlement contemplated here without a significant disruption of its
10 business based on its current financial condition. Moreover, the payment plan contemplated by the
11 Agreement is appropriate here because it allows for Defendant to work toward accumulating the
12 settlement funds.

13 54. In this matter, Class Counsel negotiated a Gross Settlement Amount of \$700,000.00 that
14 is roughly between approximately 33.06% of Defendants' *class-wide* liability exposure for damages,
15 and approximately 7.74% of Defendant's maximum class wide liability exposure for damages and
16 statutory penalties. Given the amount of the settlement here, as compared to potential value of the
17 claims, offset by the various inherent risks to continued litigation, the settlement is fair and reasonable.

18 **D. Proposed Notice Informs the Class About the Case and Settlement**

19 55. The Parties jointly drafted the Notice Packet which fairly and neutrally informs the Class
20 Members of their rights and remedies. The Settlement Administrator will first verify addresses, then
21 mail the proposed Notice Packet to all Class Members. The Notice will include information regarding
22 the nature of the lawsuit, a summary of the substance of the Settlement's terms, the class definition, the
23 procedure, and time period within which to requests for exclusions or objections to the Settlement, the
24 date for the final approval hearing, the formula used to calculate settlement payments, and the terms
25 and scope of the Released Claims. Agreement at § VII(C). The Parties negotiated this method to ensure
26 delivering the most reasonable method of notice to the Class Members while ensuring cost effective
27 administration of the Settlement.

28 ///

1 56. Accordingly, both the method of disseminating the Notice Packet and content of the
2 Notice Packet satisfy due process. (*See* C.R.C. 3.776(e)-(f); *State of Cal. v. Levi Strauss* (1986) 41
3 Cal.3d 460,485 (the class notice must “fairly apprise the class members of the terms of the proposed
4 compromise and of the options open to dissenting class members.”).)

5 **E. The Court Should Preliminarily Approve the Class Representative Payment**

6 57. The Settlement provides for a Class Representative Payment of \$10,000 to each Plaintiff
7 (or \$20,000 total). The Class Representative Payment is fair and reasonable compensation for the
8 Plaintiffs’ efforts bringing the action, assisting Class Counsel with the litigation and settlement,
9 regularly conferring with Class Counsel on the status of their case and the strategies for prosecuting the
10 claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate relief
11 for the Settlement Class Members, and agreeing to provide Defendant a general release of all claims
12 arising out of their employment.

13 58. Class Counsel on behalf of Plaintiffs will file a formal motion for the negotiated Class
14 Representative Payment once preliminary approval of the Settlement is granted. Plaintiffs respectfully
15 submit that the above showing is sufficient for preliminary approval of the negotiated Class
16 Representative Payment.

17 **F. The Court Should Preliminary Approve the Class Counsel Fees Payment and Class**
18 **Counsel Expenses Payment**

19 59. Class Counsel took this matter on a contingency fee basis and invested significant time
20 and expense successfully prosecuting Plaintiffs’ claims. As discussed *supra*, the estimated average
21 Individual Class Payment illustrates the demonstrably positive outcome for the Participating Class
22 Members. Considering the positive outcome for the Class Members, and in light of the supporting
23 authority, the proposed Class Counsel Fees Payment and Class Counsel Expenses Payment is fair and
24 reasonable.

25 60. Plaintiffs will file a formal motion for the negotiated Class Counsel Fees Payment and
26 Class Counsel Expenses Payment once preliminary approval of the Settlement is granted. Plaintiffs
27 respectfully submit that the above showing is sufficient for preliminary approval of the negotiated
28 attorneys’ fees and expenses.

1
2
3
4
5
6
7
8
9
1
1
1
1
1
1
1
1
1
1
2
2
2
2
2
2
2
2
2
2

61. For Settlement purposes only, Plaintiffs contend, and Defendant does not dispute, that additional certification of the Class is appropriate.

62. Because all Class Members are Defendant's current and former employees, the class is ascertainable from Defendant's regular business records, i.e., payroll records.

63. The statutes relating to each of Plaintiffs' claims apply with equal force and effect to the Class. Factually, Defendant's policies and practices apply class-wide and Defendant's liability is determined by facts common to all members of the class. The wage and hour issues are both serious and substantial, and a class action is the most advantageous method of dealing with the claims of Settlement Class Members.

64. Plaintiffs' wage and hour claims are typical of the proposed Class because they arise from the same factual basis and are based on the same legal theories applicable to the other Class Members. Likewise, Plaintiffs' interests are entirely coextensive with the interests of the Class. Plaintiffs allege they were injured by the same company-wide practices to which the proposed Class Members were subjected to and seek the same relief. Plaintiffs have already demonstrated their ability to advocate for the interests of the Class Members by initiating this litigation, undertaking extensive class discovery, and negotiating the proposed settlement to assure that it is fair.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 3rd day of July 2024, at San Diego, California.

By: Perssia Razma
Perssia Razma, Esq.
Attorneys for Plaintiff

EXHIBIT 1

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo-Johnson (State Bar #343881)
Perssia Razma (State Bar # 351398)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
prazma@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

KEVIN WYATT and KIMBERLEE
CALIFANO, individuals, on behalf a Class of
all other persons similarly situated,

Plaintiffs,

v.

BH-SD OPCO, LLC, dba ALVARADO
PARKWAY INSTITUTE BEHAVIORAL
HEALTH SYSTEMS, a Delaware Limited
Liability Company; and DOES 1 through 50,
Inclusive,

Defendants.

Case No.: 37-2021-00021168-CU-OE-CTL

*[Unlimited Civil Jurisdiction-LEAD case]
Related to 37-2022-00004654-CU-OE-CTL*

**STIPULATION FOR CLASS AND PAGA
ACTION SETTLEMENT AND RELEASE
OF CLAIMS**

FAC Filed:	September 28, 2023
Complaint Filed:	May 12, 2021
Related Complaint Filed:	February 4, 2022
Trial Date:	Not Set

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

1 from the assets of Defendant and any person related to Defendant. *All accrued*
2 *interest shall be paid and distributed to the Participating Class Members as part of*
3 *their respective Individual Class Payment.*

4 D. “Agreement” or “Settlement Agreement” or “Stipulation” means this Stipulation for
5 Class and PAGA Action Settlement and Release of Claims.

6 E. “Class” or the “Settlement Class” means all current and former non-exempt
7 employees of Defendant who worked in California at any time during the Class
8 Period.

9 F. “Class Counsel” means Jean-Claude Lapuyade, Esq. of JCL Law Firm, APC and
10 Shani Zakay of Zakay Law Group, APLC.

11 G. “Class Counsel Fees Payment” and “Class Counsel Expenses Payment” mean the
12 amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees
13 and actual and documented litigation expenses, respectively, incurred in prosecuting
14 the Action.

15 H. “Class Data” means Class Member identifying information that Defendant will in
16 good faith compile from its records and provide to the Settlement Administrator. It
17 shall be formatted as a Microsoft Excel spreadsheet and shall include: each Class
18 Member’s full name; last-known mailing address; Social Security Number; and start
19 and end dates of employment as an hourly-paid or non-exempt employee.

20 I. “Class Member” or “Settlement Class Member” means a member of the Class, as
21 either a Participating Class Member or Non-Participating Class Member (including a
22 Non-Participating Class Member who qualifies as a PAGA Employee).

23 J. “Class Notice” or “Notice Packet” means the COURT APPROVED NOTICE OF
24 CLASS ACTION SETTLEMENT, to be mailed to Class Members in the form,
25 without material variation except as may be ordered by the Court, attached hereto as
26 **Exhibit A** and incorporated by reference into this Agreement.

27 K. “Class Period” means the period beginning May 12, 2017, to September 30, 2023.
28

- 1 L. "Class Representatives" means Plaintiff Kevin Wyatt and Plaintiff Kimberlee
2 Califano.
- 3 M. "Class Representative Payment" means payments to the Class Representatives for
4 initiating the Action and providing services in support of the Action, in recognition
5 of their efforts and risks in assisting with the prosecution of the Action.
- 6 N. "Court" means the Superior Court for the State of California, County of San Diego
7 presiding over the Action.
- 8 O. "Defendant" means BH-SD OPCO, LLC dba Alvarado Parkway Institute Behavioral
9 Health Systems.
- 10 P. "Defense Counsel" means Fisher & Phillips, LLP.
- 11 Q. "Effective Date" means the date when all of the following events have occurred: (1)
12 this Agreement has been executed by all Parties, Class Counsel and Defense Counsel;
13 (2) the Court has given and entered preliminary approval of the Settlement; (3) the
14 Class Notice has been given to the Settlement Class; (4) the Court has held a Final
15 Approval Hearing and entered a Final Approval Order and Judgement finally
16 approving of this Agreement and the terms herein; and (5) the later of the following
17 events: (i) five (5) business days after the period for filing any appeal, writ, or other
18 appellate proceeding opposing the Court's Final Approval Order and Judgment has
19 elapsed without any appeal, writ, or other appellate proceeding having been filed; or
20 (ii) if any appeal, writ, or other appellate proceeding opposing the Court's Final
21 Approval Order and Judgement has been filed, five (5) business days after any appeal,
22 writ, or other appellate proceedings opposing the Settlement has been finally and
23 conclusively dismissed with no right to pursue further remedies or relief. In this
24 regard, it is the intention of the Parties that the Settlement shall not become Effective
25 until the Court's entry of any order approving the Settlement is completely final, and
26 there is no further recourse by a Class Member, or an appellant or objector who seeks
27 to contest the Settlement. It is further agreed by and between the Parties that this
28 Settlement shall not become Effective if Defendant, contrary to Paragraph III.A., is

required to pay more than the total amount of maximum liability under the terms of the Agreement as set forth in Paragraph III.A., except as provided in Paragraph IV.D., and Defendant shall not have any obligation (monetary or otherwise) under the terms of this Settlement, unless and until any objections, writs and/or appeals, and any rights of appeal with respect to any objections or the judgment, have been finally exhausted or resolved upholding the terms of this Settlement.

R. "Final Approval" means the Court's order granting final approval of the Settlement.

S. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.

T. "Final Judgement" means the Judgement entered by the court upon granting Final Approval of the Settlement.

U. "Funding Date" means the date on which Defendant has completely funded the Gross Settlement Amount in accordance with the terms of this Agreement.

V. "Gross Settlement Amount" means Seven Hundred Thousand Dollars and Zero Cents (\$700,000.00), which is the maximum total amount Defendant agrees to pay under the Settlement, except as provided in Paragraph IV.D. below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, the Class Counsel Fees Payment, the Class Counsel Expenses Payment, the Class Representative Payments, and the Administration Cost. The Gross Settlement Amount shall be all-in with no reversion to Defendant.

W. "Individual Class Payment" means a Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

X. "Individual PAGA Payment" means a PAGA Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked by the PAGA Employee during the PAGA Period.

Y. "LWDA" means the California Labor and Workforce Development Agency, the agency to receive a share of PAGA Penalties under Labor Code § 2699, subd. (i).

- 1 Z. “LWDA PAGA Payment” means 75% of the PAGA Penalties allocated and paid to
2 the LWDA under Labor Code § 2699, subd. (i).
- 3 AA. “Net Settlement Amount” or “NSA” means the Gross Settlement Amount, less the
4 following payments in the amounts approved by the Court: Individual PAGA
5 Payments, LWDA PAGA Payment, Class Representative Payments, Class Counsel
6 Fees Payment, the Class Counsel Expenses Payment, and Administration Costs. The
7 remainder is to be paid to Participating Class Members as Individual Class Payments.
- 8 BB. “Non-Participating Class Member” means any Class Member who opts out of the
9 Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 10 CC. “Operative Complaint” shall mean the First Amended Complaint filed in the Action
11 on October 20, 2023.
- 12 DD. “PAGA” means the California Labor Code Private Attorneys General Act of 2004,
13 Labor Code § 2698 *et seq.*
- 14 EE. “PAGA Employee” means a current or former non-exempt employee of Defendant
15 who worked for Defendant in California at any time during the PAGA Period.
- 16 FF. “PAGA Pay Periods” means the number of pay periods during which a PAGA
17 Employee worked for Defendant during the PAGA Period, calculated by dividing the
18 total number of calendar days in which a PAGA Employee worked for Defendant as
19 a non-exempt employee in California during the PAGA Period (less any days on a
20 leave of absence) by fourteen (14).
- 21 GG. “PAGA Period” means the period beginning May 12, 2020, to September 30, 2023.
- 22 HH. “PAGA Penalties” shall mean Fifty Thousand Dollars and Zero Cents (\$50,000.00),
23 the total amount of PAGA civil penalties to be paid from the Gross Settlement
24 Amount, allocated with 25% of the payment going to the PAGA Employees for
25 Individual PAGA Payments (\$12,500) and 75% of the payment going to the LWDA
26 for the LWDA Payment (\$37,500), in settlement of the PAGA claims. The amount of
27 the PAGA Penalties is subject to Court approval pursuant to California Labor Code
28 section 2699, subd. (l). Any reallocation of the Gross Settlement Amount to increase

the PAGA Penalties will not constitute grounds by any party to void this Agreement, so long as the Gross Settlement Amount remains the same.

II. “PAGA Notice” means Plaintiff Wyatt’s May 12, 2021, Notice to Defendant and the LWDA pursuant to Labor Code § 2699.3, subd. (a), as amended by Plaintiff Wyatt on April 29, 2024.

JJ. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

KK. “Parties” means Plaintiffs and Defendant, collectively, and “Party” shall mean either Plaintiffs or Defendant, individually.

LL. “Plaintiffs” shall mean Kevin Wyatt and Kimberlee Califano.

MM. “Preliminary Approval” means the Court’s order granting preliminary approval of the Settlement.

NN. “QSF” means the Qualified Settlement Fund established, designated, and maintained by the Settlement Administrator to fund the Gross Settlement Amount.

OO. “Released Class Claims” means the claims being released as described in Paragraph V.A. below.

PP. “Released PAGA Claims” means the claims being released as described in Paragraph V.B. below.

QQ. “Released Parties” means Defendant BH-SD OPCO, LLC dba Alvarado Parkway Institute Behavioral Health Systems, and its former, present and future owners, predecessors, parent companies, subsidiaries, investors, affiliates, and divisions, and all of their current, former and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint ventures, agents, successors, assigns, accountants, insurers, attorneys, and representatives.

RR. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.

SS. “Response Deadline” means the date forty-five (45) calendar days after the Settlement Administrator mails the Class Notice to Class Members and shall be the last date on

1 which Class Members may submit Requests for Exclusion or objections to the
2 Settlement.

3 TT. “Settlement” means the disposition of the Action effected by this Agreement and the
4 Judgment.

5 UU. “Workweeks” means the number of weeks during which a Class Member worked for
6 Defendant as a non-exempt employee in California during the Class Period,
7 calculated by dividing the total number of calendar days in which a Class Member
8 worked for Defendant as a non-exempt employee in California during the Class
9 Period (less any days on a leave of absence) by seven (7).

10 **II. RECITALS**

11 A. On May 12, 2021, Plaintiff Wyatt filed a Notice of Violations with the LWDA
12 pursuant to Labor Code section 2699.3, subd. (a), and served the same on Defendant.
13 The same day, Plaintiff Wyatt filed a class action complaint against Defendant
14 (“*Wyatt* Action”) alleging claims for: (1) Failure to Pay Overtime Compensation; (2)
15 Failure to Pay Wages for Hours Worked; (3) Failure to Provide Meal Periods; (4)
16 Failure to Provide Rest Periods; (5) Failure to Provide Accurate Itemized Statements;
17 (6) Failure to Pay Wages Due and Payable Twice Monthly; (7) Failure to Reimburse
18 for Required Expenses; (8) Failure to Pay Wages Upon Termination of Employment;
19 and (9) Unfair Competition and Unlawful Business Practices.

20 B. On February 4, 2022, Plaintiff Califano filed a class action complaint against
21 Defendant (“*Califano* Action”), alleging claims for: (1) Unfair Competition (Bus. &
22 Prof. Code §§ 17200 *et seq.*); (2) Failure to Pay Minimum Wages (Labor Code §§
23 1194, 1197 and 1197.1); (3) Failure to Pay Overtime Wages (Labor Code §§ 510 *et*
24 *seq.*); (4) Failure to Provide Required Meal Periods (Labor Code §§ 226.7, 512 and
25 the applicable Wage Order); (5) Failure to Provide Required Rest Periods (Labor
26 Code §§ 226.7, 512 and the applicable wage order); (6) Failure to Provide Accurate
27 Itemized Statements (Labor Code § 226); (7) Failure to Pay Wages When Due (Labor
28

Code §§ 201, 202, 203; 204); and (8) Failure to Reimburse for Required Expenses (Labor Code § 2802).

C. On November 29, 2022, the *Wyatt* Action and *Califano* Action were consolidated by the San Diego Superior Court (collectively the “Action”).

D. On October 20, 2023, Plaintiffs filed their First Amended Complaint, alleging claims for: (1) Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*); (2) Failure to Pay Minimum Wages (Labor Code §§ 1194, 1197 and 1197.1); (3) Failure to Pay Overtime Wages (Labor Code §§ 510 *et seq.*); (4) Failure to Provide Required Meal Periods (Labor Code §§ 226.7, 512 and the applicable Wage Order); (5) Failure to Provide Required Rest Periods (Labor Code §§ 226.7, 512 and the applicable wage order); (6) Failure to Provide Accurate Itemized Statements (Labor Code § 226); (7) Failure to Pay Wages When Due (Labor Code §§ 201, 202, 203; 204); (8) Failure to Reimburse for Required Expenses (Labor Code § 2802); (9) Failure to Pay Wages at Least Twice in a Calendar Month (Labor Code § 204); and (10) Violation of the Private Attorneys General Act (Labor Code §§ 2698, *et seq.*).

E. On April 29, 2024, Plaintiff Wyatt submitted an Amended Notice of Violations with the LWDA pursuant to Labor Code section 2699.3, subd. (a) (the “PAGA Notice”).

F. The Class Representatives believe they have claims based on alleged violations of the California Labor Code, and the Industrial Welfare Commission Wage Orders, and that class certification is appropriate because the prerequisites for class certification can be satisfied in the Action, and this action is manageable as a PAGA representative action.

G. Defendant adamantly denies any liability or wrongdoing of any kind whatsoever associated with the claims alleged in the Action and the PAGA Notice, denies that Plaintiffs are adequate representatives to allege class and/or representative claims, including possessing standing under PAGA, and further denies that other than this Settlement, that the Action is appropriate for class or representative treatment. With respect to Plaintiffs’ claims, Defendant contends, among other things, that at all times

1 it has complied with all applicable state, federal and local laws and regulations
2 affecting Plaintiffs, the Class Members, and the PAGA Employees, including with
3 the California Labor Code and the Industrial Welfare Commission Wage Orders.

4 H. The Class Representatives are represented by Class Counsel. Class Counsel
5 investigated the facts relevant to the Action, including conducting an independent
6 investigation as to the allegations, reviewing documents and information exchanged
7 through informal discovery, and reviewing documents and information provided by
8 Defendant pursuant to informal requests for information to prepare for mediation.
9 Defendant produced for the purpose of settlement negotiations certain employment
10 data concerning the Settlement Class, which Class Counsel reviewed and analyzed
11 with the assistance of an expert.

12 I. On April 14, 2023, the Parties participated in an all-day private mediation presided
13 over by Tripper Ortman, Esq. (the “Mediator”), an experienced mediator of wage and
14 hour class and PAGA actions. At the mediation, the Parties were unable to reach a
15 settlement. The Parties continued settlement negotiations, and at the recommendation
16 of the Mediator, enlisted Hon. Mitchel Goldberg (Ret.) to review Defendant’s
17 financials and assess its ability to pay a monetary settlement. With the assistance of
18 the Mediator and Judge Goldberg’s evaluations, the Parties ultimately reached the
19 settlement that is memorialized herein after accepting the Mediator’s proposal. The
20 Settlement is the product of arm’s length negotiations by highly skilled and well-
21 informed counsel.

22 J. Based on their own independent investigation and evaluation, Class Counsel is of the
23 opinion that the Settlement with Defendant is fair, reasonable, and adequate, and is in
24 the best interest of the Settlement Class considering all known facts and
25 circumstances, including the risks of significant delay, defenses asserted by
26 Defendant, uncertainties regarding class certification, and numerous potential
27 appellate issues. Although it denies any liability, Defendant agrees to this Settlement
28

solely to avoid the inconveniences and cost of further litigation. The Parties and their counsel have agreed to settle the claims on the terms set forth in this Agreement.

K. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Action of Plaintiffs or the Class Members have merit or that Defendant bears any liability to Plaintiffs or the Class on those claims or any other claims, or as an admission by Plaintiffs that Defendant's defenses in the Action have merit.

L. It is the desire of the Parties to fully, finally and forever settle, compromise and discharge all disputes and claims alleged or that could have been alleged and/or arising from the allegations and causes of action stated in the entire Action. To achieve a full and complete release of Defendant and the specific additional entities and persons identified herein, each Settlement Class Member acknowledges that this Stipulation is intended to include in its effect all claims contained in the Action and PAGA Notice and any additional wage and hour claims that could have been brought based on the facts alleged in the Action and/or PAGA Notice during the Class Period and PAGA Period.

M. The Parties believe that the Settlement is fair, reasonable, and adequate. The Settlement was arrived at through arm's-length negotiations, taking into account all relevant factors. The Parties recognize the uncertainty, risk, expense, and delay attendant to continuing the Action through trial and any appeal. Accordingly, the Parties desire to settle, compromise and discharge all disputes and claims arising from or relating to the Action fully, finally, and forever.

N. For purposes of this Settlement only, the Parties stipulate to the certification of the Class. The Parties agree that certification for the purpose of settlement is not an admission that certification is proper under Section 382 of the California Code of Civil Procedure. Should, for whatever reason, the Court not grant Final Approval, or if the Final Approval Order and Judgement thereon does not become final, the Parties'

1 stipulation to class certification as part of the Settlement shall become null and void
2 *ab initio* and shall have no bearing on, and shall not be admissible in connection with,
3 the issue of whether or not certification would be appropriate or inappropriate in a
4 non-settlement context in this or any other proceeding.

5 O. If for any reason the settlement does not become effective, Defendant reserves the
6 right to contest certification of any class for any reason and reserves all available
7 defenses to the claims in the Action.

8 Based on the aforementioned that are a part of this Agreement, the Parties agree as follows:

9 **III. MONETARY TERMS OF AGREEMENT**

10 A. Gross Settlement Amount. Except as otherwise provided by Paragraph IV.D. below,
11 Defendant agrees to pay a maximum total amount of Seven Hundred Thousand Dollars and
12 Zero Cents (\$700,000.00) as the Gross Settlement Amount, in full and complete settlement
13 of the Action, and in exchange for the releases set forth below. Defendant has no obligation
14 to pay the Gross Settlement Amount or any applicable payroll taxes prior to the deadline
15 stated in Paragraph IV. C. of this Agreement. The Settlement Administrator will disburse the
16 entire Gross Settlement Amount without asking or requiring Participating Class Members or
17 PAGA Employees to submit any claim as a condition of payment. The Parties agree that this
18 is a non-reversionary Settlement and that no portion of the Gross Settlement Amount shall
19 revert to Defendant.

20 1. Payments from the Gross Settlement Amount. Within thirty (30) days of the
21 Funding Date, the Settlement Administrator will make and deduct the
22 following payments from the Gross Settlement Amount, in the amounts
23 specified by the Court in the Final Approval:

24 a) To Plaintiffs: A Class Representative Payment of not more than
25 \$10,000 for each Plaintiff (or \$20,000 total) as approved by the Court (in
26 addition to any Individual Class Payment and/or Individual PAGA Payment
27 he or she is entitled to receive) as a service award to Plaintiffs for their
28 participation in this Action. Defendant will not oppose Plaintiffs' requests for

1 Class Representative Payments that do not exceed this amount. If the Court
2 approves a Class Representative Payment less than the amount requested, the
3 Administrator will retain the remainder in the Net Settlement Amount. The
4 Administrator shall timely report the Class Representative Payments on IRS
5 Form 1099. Plaintiffs, and each of them, assume full responsibility and
6 liability for employee taxes owed on the Class Representative Payment.

7 b) To Class Counsel: A Class Counsel Fees Payment of not more than
8 one-third of the Gross Settlement Amount, which is currently estimated to be
9 \$233,333.33, and a Class Counsel Expense Payment of not more than \$25,000
10 as reimbursement for Class Counsel's actual and documented litigation costs,
11 both as approved by the Court. Defendant will not oppose requests for these
12 payments provided that they do not exceed these amounts. Plaintiffs will file
13 a motion for Class Counsel Fees Payment and Class Counsel Expenses
14 Payment no later than 16 court days prior to the Final Approval Hearing. If
15 the Court approves a Class Counsel Fees Payment and/or a Class Counsel
16 Expenses Payment less than the amounts requested, the Administrator will
17 retain the remainder in the Net Settlement Amount. Released Parties shall
18 have no liability to Class Counsel or any other Plaintiff's Counsel arising from
19 any claim or any portion of any Class Counsel Fees Payment and/or Class
20 Counsel Expenses Payment. The Administrator will pay the Class Counsel
21 Fees Payment and Class Counsel Expenses Payment divided between Class
22 Counsel in the following percentages: 50% to JCL Law Firm, APC; and 50%
23 to Zakay Law Group, APLC. The Administrator will timely report the Class
24 Counsel Fee Payments and Class Counsel Expenses Payments on IRS Form
25 1099. Class Counsel assumes full responsibility and liability for taxes owed
26 on the Class Counsel Fees Payment and the Class Counsel Expenses Payment.

27 c) To the Administrator: Administration Costs not to exceed \$13,000
28 except for a showing of good cause and as approved by the Court. To the

1 extent the Administration Costs are less, or the Court approves payment less
2 than \$13,000, the Administrator will retain the remainder in the Net
3 Settlement Amount.

4 d) To the LWDA and PAGA Employees: PAGA Penalties allocated to
5 the LWDA PAGA Payment and to the Individual PAGA Payments. The
6 Parties will seek approval from the Court for the PAGA Payment of Fifty
7 Thousand Dollars (\$50,000) out of the Gross Settlement amount, of which
8 seventy-five percent (75%), or \$37,500, will be distributed to the LWDA (i.e.,
9 LWDA PAGA Payment) and twenty-five percent (25%), or \$12,500, will be
10 distributed to the PAGA Employees on a pro rata basis (i.e. total Individual
11 PAGA Payments). If the Court approves PAGA Penalties of less than the
12 amount requested, the Administrator will retain the remainder in the Net
13 Settlement Amount.

14 (1) The Administrator will calculate each Individual PAGA
15 Payment by: (a) dividing the amount of the PAGA Employees' 25%
16 share of PAGA Penalties (\$12,500.00) by the total number of PAGA
17 Pay Periods worked by all PAGA Employees during the PAGA
18 Period, and (b) multiplying the result by each PAGA Employee's
19 PAGA Pay Periods.

20 (2) The Administrator will report the Individual PAGA Payments
21 on IRS 1099 Forms, if applicable. The Parties also agree that 100% of
22 the Individual PAGA Payments will be treated as penalties sought in
23 the lawsuit, and will not be subject to any withholdings. PAGA
24 Employees assume full responsibility and liability for any taxes owed
25 on their Individual PAGA Payment.

26 e) To Each Participating Class Member: An Individual Class Payment
27 calculated by: (a) dividing the Net Settlement Amount by the total number of
28 Workweeks worked by all Participating Class Members during the Class

Period, and (b) multiplying the result by each Participating Class Member's Workweeks.

(1) Tax Allocation of Individual Class Payment. The Parties agree that 10% of each Participating Class Member's Individual Class Payment will be allocated to the settlement of wage claims (the "Wage Portion"). The remaining 90% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for other damages and interest (the "Non-Wage Portion"). The Wage Portion will be reported on an IRS W-2 Form, and the Non-Wage Portion will be reported on IRS Form 1099 (if applicable) by the Administrator. The Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Class Payment, and issue checks to Participating Class Members for their Individual Class Payment, less taxes and withholdings. The Administrator will not undertake any withholding with respect to the Non-Wage Portion of the Individual Class Payments. Participating Class Members assume full responsibility and liability for any employee taxes owed on any portion of their Individual Class Payment.

2. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments called for, and Class Members and/or PAGA Employees are not relying on any statement or representation by the Parties in this regard. Class Members and/or PAGA Employees understand and agree that they will be responsible for the payment of any taxes and penalties assessed on the Individual Class Payments and/or Individual PAGA Payments described and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of Individual Class Payments and/or Individual PAGA Payments.

1 **IV. SETTLEMENT FUNDING AND PAYMENTS**

2 A. Workweeks. The total compensable Workweeks are estimated to be approximately
3 103,717 for the Class Period through the date of mediation on April 14, 2023. Defendant
4 will provide a declaration under penalty of perjury confirming the number of applicable Class
5 Members and workweeks they worked during the applicable Class Period five (5) days prior
6 to Plaintiffs deadline to file their motion for preliminary approval of the settlement. If the
7 final accounting of the Workweeks during the Class Period increases by more than 110% of
8 the estimate stated herein (i.e., 114,089), the Class and PAGA Period will be adjusted to the
9 date that Workweeks do not exceed 114,089.

10 B. Class Data. Not later than ten (10) business days after the Court grants Preliminary
11 Approval of the Settlement, Defendant will deliver the Class Data to the Administrator in the
12 form of a confidential Microsoft Excel spreadsheet, which is not to be shared or provided to
13 Class Counsel at any time or in any form. To protect Class Members' privacy rights, the
14 Administrator must maintain the Class Data in confidence, use the Class Data only for
15 purposes of this Settlement and for no other purpose, and restrict access to the Class Data to
16 Administrator employees who need access to the Class Data to effect and perform under this
17 Agreement. The Parties and their counsel will expeditiously use best efforts, in good faith, to
18 reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

19 C. Funding of Gross Settlement Amount. Defendant will fund the Gross Settlement
20 amount through the Settlement Administrator. Defendant will make an initial payment of
21 \$20,000 within sixty (60) days of the Court's Final Approval. Thereafter, Defendant will
22 make thirty-four (34) equal installment payments of \$20,000 by the end of each month for
23 thirty-four (34) months, after which the Gross Settlement Amount will be fully funded by
24 Defendant. If Defendant fails to make a payment under this funding schedule, Defendant
25 shall be given written notice of such missed payment and will have sixty (60) days to cure.
26 Any interest accrued will be added to the NSA and distributed to the Settlement Class
27 Members except that if final approval is reversed on appeal, then Defendant is entitled to
28 prompt return of the principal and all interest accrued.

1 D. Employer-Side Taxes. Employer-side taxes on the Wage Portion of Individual Class
2 Payments will be paid separately by Defendant in addition to the Gross Settlement Amount,
3 and shall be paid to the Administrator by the Funding Date.

4 E. Payments From the Gross Settlement Amount

5 1. Payments from the Gross Settlement Amount shall be made towards the Class
6 Counsel Fees Payment, Class Counsel Expenses Payment, Administration
7 Costs, Class Representative Payments, Individual Class Payments, Individual
8 PAGA Payments, and LWDA PAGA Payment, within thirty (30) days of the
9 Funding Date.

10 2. The Administrator will issue checks for the Individual Class Payments and
11 Individual PAGA Payments and send them to the Class Members via First
12 Class U.S. Mail, postage prepaid. The face of each check shall prominently
13 state the date (not less than 180 days after the date of mailing) when the check
14 will be voided. The Administrator will cancel all checks not cashed by the
15 void date. The Administrator will send checks for Individual Class Payments
16 to all Participating Class Members. The Administrator will send checks for
17 Individual PAGA Payments to all PAGA Employees including Non-
18 Participating Class Members who qualify as PAGA Employees. Before
19 mailing any checks, the Administrator must update the recipients' mailing
20 addresses using the National Change of Address Database and conduct an
21 Accurant or substantially similar skip traces.

22 3. The Administrator must conduct a Class Member Address Search for all other
23 Class Members whose checks are returned undelivered without a USPS
24 forwarding address. Within 7 days of receiving a returned check the
25 Administrator must re-mail checks to the USPS forwarding address provided
26 or to an address ascertained through the Class Member Address Search. The
27 Administrator need not take further steps to deliver checks to Class Members
28 whose re-mailed checks are returned as undelivered. The Administrator shall

promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4. If a Class Member does not cash his or her Individual Class Payment and/or Individual PAGA Payment check within ninety (90) days, the Administrator shall send a letter to such persons, advising that the check will expire after the 180th day, and invite the Class Member to request reissuance in the event the check was destroyed, lost or misplaced.

5. Any funds from payments to the Settlement Class that are returned or have not been cashed within 180 days of the Individual Class Payment and/or Individual PAGA Payment disbursement, and any interest accrued thereon, shall be turned over to the California State Controller: Unclaimed Property Fund in the name of the individual Participating Class Member or PAGA Employee.

6. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement. All Individual Class Payments and Individual PAGA Payments made to Class Members shall be deemed to be income to such Class Member solely in the year in which such payments are actually received by the Class Members. It is expressly understood and agreed that the receipt of such payments will not entitle any Class Member to additional compensation or benefits under any company retirement, sick, vacation, bonus, contract or other compensation or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle any Class Member to any increased retirement, 401(k) benefits or matching benefits, or deferred compensation benefits. It is the intent of this Stipulation that the Individual Class Payments and Individual PAGA

1 Payments provided for in this Agreement are the sole payments to be made by
2 Defendant to the Class Members in connection with this Settlement, and that
3 the Class Members are not entitled to any new or additional compensation or
4 benefits as a result of having received such payments (notwithstanding any
5 contrary language or agreement in any benefit or compensation plan document
6 that might have been in effect during the period covered by this Settlement).

7 **V. RELEASE OF CLAIMS**

8 A. Release of Class Claims. Upon the Effective Date, and except as to the right to enforce
9 the terms and conditions of the Agreement, each Participating Class Member shall
10 fully and finally release and discharge the Released Parties, from any and all claims,
11 rights, demands, liabilities and causes of action of any nature or description alleged in
12 the Action against Defendant that were alleged in the Actions or reasonably could have
13 been alleged based on the facts and legal theories alleged in the Operative Complaint,
14 including but not limited to, all claims under the California Labor Code, Wage Orders,
15 and related orders of the California Industrial Commission alleged in the Action or
16 which could have been alleged based on the facts alleged in the Action, including all
17 of the following claims for relief: (1) Unfair Competition (Bus. & Prof. Code §§ 17200
18 *et seq.*) arising from violations of the Labor Code released herein; (2) Failure to Pay
19 Minimum Wages (Labor Code §§ 1194, 1197 and 1197.1); (3) Failure to Pay Overtime
20 Wages (Labor Code §§ 510 *et seq.*); (4) Failure to Provide Required Meal Periods
21 (Labor Code §§ 226.7, 512 and the applicable Wage Order); (5) Failure to Provide
22 Required Rest Periods (Labor Code §§ 226.7, 512 and the applicable wage order); (6)
23 Failure to Provide Accurate Itemized Statements (Labor Code § 226); (7) Failure to
24 Pay Wages When Due (Labor Code §§ 201, 202, 203; 204); (8) Failure to Reimburse
25 for Required Expenses (Labor Code § 2802); and (9) Failure to Pay Wages at Least
26 Twice in a Calendar Month (Labor Code § 204) (the “Released Class Claims”). The
27 claims released under this Paragraph shall include, but not necessarily be limited to,
28 claims for: meal period violations and failure to pay compensation in lieu thereof; rest

1 break violations and failure to pay compensation in lieu thereof; failure to pay
2 minimum wages, regular wages, overtime and double time wages; all theories related
3 to unpaid wages (including but not limited to off-the-clock work, time shaving, time
4 rounding, on-call time, working through meal periods, regular rate claims, on-duty
5 meal period violations, paid sick leave, paid time off, or any other claims giving rise
6 to minimum and/or overtime violations); unpaid meal period penalties; unpaid rest
7 period penalties; wage statement violations; failure to keep requisite payroll records;
8 failure to reimburse business expenses; failure to pay wages upon separation from
9 employment; failure to pay wages during employment; late payment of wages; waiting
10 time penalties; and any claims under Business & Professions Code section 17200
11 arising from violations of the Labor Code released herein, as well as any damages,
12 restitution, disgorgement, civil penalties (except PAGA penalties which are separately
13 released), statutory penalties, taxes, interest or attorneys' fees or costs resulting
14 therefrom. This release and waiver, however, shall be conditional on the full payment
15 of the Gross Settlement Amount necessary to fund all payment obligations, and will
16 only release such claims during the Class Period.

17 B. Released PAGA Claims. Upon the Effective Date, all PAGA Employees shall fully
18 and finally release and discharge the Released Parties from all causes of action and
19 claims for civil penalties under the Private Attorneys General Act of 2004, Labor Code
20 section 2698, *et seq.* that were alleged in the Action, in the PAGA Notice, or
21 reasonably could have been alleged based on the facts and legal theories contained
22 therein, including but not limited to, claims for civil penalties under PAGA based on
23 the following: (1) Failure to Pay Minimum Wages (Labor Code §§ 1194, 1197 and
24 1197.1); (2) Failure to Pay Overtime Wages (Labor Code §§ 510 *et seq.*); (3) Failure
25 to Provide Required Meal Periods and associated premiums (Labor Code §§ 226.7,
26 512 and the applicable Wage Order); (4) Failure to Provide Required Rest Periods and
27 associated premiums (Labor Code §§ 226.7, 512 and the applicable wage order); (5)
28 Failure to Provide Accurate Itemized Statements (Labor Code § 226); (6) Failure to

1 Pay Wages When Due (Labor Code §§ 201, 202, 203; 204); (7) Failure to Reimburse
2 for Required Expenses (Labor Code § 2802); and (8) Failure to Pay Wages at Least
3 Twice in a Calendar Month (Labor Code § 204) (the “Released PAGA Claims”). This
4 release and waiver, however, shall be conditional on the full payment of the Gross
5 Settlement Amount necessary to fund all payment obligations, and will only release
6 such claims during the PAGA Period. PAGA Employees cannot exclude themselves
7 from the PAGA release contained in this paragraph.

8 C. Nullification of Settlement Agreement. If this Settlement Agreement is not
9 preliminarily or finally approved by the Court, fails to become effective, or is reversed,
10 withdrawn or modified by the Court, or in any way prevents or prohibits Defendant
11 from obtaining a complete resolution of the Released Class Claims and Released
12 PAGA Claims, or if Defendant fails to fully fund the Gross Settlement Amount:

- 13 1. This Settlement Agreement shall be void *ab initio* and of no force or effect,
14 and shall not be admissible in any judicial, administrative or arbitral
15 proceeding for any purpose or with respect to any issue, substantive or
16 procedural;
- 17 2. The conditional class certification (obtained for any purpose) shall be void *ab*
18 *initio* and of no force or effect, and shall not be admissible in any judicial,
19 administrative or arbitral proceeding for any purpose or with respect to any
20 issue, substantive or procedural;
- 21 3. None of the Parties to this Settlement will be deemed to have waived any
22 claims, objections, defenses, or arguments in the Action, including with
23 respect to the issue of class certification; and
- 24 4. Defendant shall bear the sole responsibility for any cost to issue or reissue any
25 curative notice to the Settlement Class Members and all Settlement
26 Administration Costs incurred to the date of nullification.

27 ///

28 ///

1 **VI. MOTION FOR PRELIMINARY APPROVAL**

2 A. Plaintiffs' Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all
3 documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice
4 and memorandum in support of the Motion for Preliminary Approval that includes an analysis
5 of the Settlement under Dunk/Kullar and a request for approval of the PAGA Settlement
6 under Labor Code Section 2699, subd. (f)(2)) and (ii) a draft proposed Order Granting
7 Preliminary Approval and Approval of the Class and PAGA Action Settlement and Release
8 of Claims; Class Counsel will provide the drafts in (i) to (iii) to Defense Counsel three (3)
9 days before filing for review and comment.

10 B. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly
11 responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no
12 later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date
13 for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of
14 the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's
15 Preliminary Approval to the Administrator.

16 C. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
17 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
18 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in
19 person or by telephone, and in good faith, to resolve the disagreement. If the Court does not
20 grant Preliminary Approval or conditions Preliminary Approval on any material change to
21 this Agreement, Class Counsel and Defense Counsel will expeditiously work together on
22 behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the
23 Agreement and otherwise satisfy the Court's concerns.

24 **VII. SETTLEMENT ADMINISTRATION**

25 A. Selection of Administrator. The Parties have jointly selected Apex Class Action LLC
26 to serve as the Administrator and verified that, as a condition of appointment, Apex
27 Class Action LLC agrees to be bound by this Agreement and to perform, as a fiduciary,
28 all duties specified in this Agreement in exchange for payment of Administration

Costs. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlement.

B. Settlement Administrator Responsibilities. The Settlement Administrator shall be responsible for: establishing and administering the QSF; calculating, processing and mailing payments to the Class Representatives, Class Counsel, LWDA and Class Members; printing and mailing the Notice Packets to the Class Members as directed by the Court; receiving and reporting the objections and requests for exclusion; calculating, deducting and remitting all legally required taxes from Individual Class Payments and distributing tax forms for the Wage Portion and Non-Wage Portion of the Individual Class Payments and/or Individual PAGA Payments; processing and mailing tax payments to the appropriate state and federal taxing authorities; providing declaration(s) as necessary in support of preliminary and/or final approval of this Settlement; and other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities by among other things, sending a weekly status report to the Parties' counsel stating the date of the mailing, the of number of Requests for Exclusion it receives (including the numbers of valid and deficient), and number of objections received.

C. Notice Procedures to Class Members.

1. No later than five (5) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Employees, Workweeks and PAGA Pay Periods in the Class Data.

2. Notice Packets.

a) The Notice Packet shall contain the Court Approved Notice of Class Action Settlement in a form substantially similar to the form attached

1 as **Exhibit A**. The Court Approved Notice of Class Action Settlement
2 shall inform Class Members and PAGA Employees that they need not
3 do anything in order to receive an Individual Class Payment and/or
4 Individual PAGA Payment and to keep the Settlement Administrator
5 apprised of their current mailing address, to which the Individual Class
6 Payment and/or Individual PAGA Payment will be mailed following
7 the Funding Date. The Court Approved Notice of Class Action
8 Settlement shall set forth the release to be given by all members of the
9 Class who do not request to be excluded from the Settlement Class in
10 exchange for an Individual Class Payment, the number of Workweeks
11 worked by the Class Member during the Class Period, and the
12 estimated amount of their Individual Class Payment if they do not
13 request to be excluded from the Settlement. The Notice will also
14 advise the PAGA Employees that they will release the Released
15 PAGA Claims and will receive their share of the Individual PAGA
16 Payment regardless of whether they request to be excluded from the
17 Settlement.

18 b) The Notice Packet's mailing envelope shall include the following
19 language: "IMPORTANT LEGAL DOCUMENT- YOU MAY BE
20 ENTITLED TO PARTICIPATE IN A CLASS ACTION
21 SETTLEMENT; A PROMPT REPLY TO CORRECT YOUR
22 ADDRESS IS REQUIRED AS EXPLAINED IN THE ENCLOSED
23 NOTICE."

24 3. Notice by First Class U.S. Mail. Upon receipt of the Class Data, the
25 Settlement Administrator will perform a search based on the National Change
26 of Address Database to update and correct any known or identifiable address
27 changes. No later than twenty-one (21) calendar days after receipt of the Class
28 Data, the Settlement Administrator shall mail copies of the Notice Packet to

1 all Class Members via regular First-Class U.S. Mail. The Settlement
2 Administrator shall exercise its best judgment to determine the current mailing
3 address for each Class Member. The address identified by the Settlement
4 Administrator as the current mailing address shall be presumed to be the best
5 mailing address for each Class Member.

6 4. Undeliverable Notices. Any Notice Packets returned to the Settlement
7 Administrator as non-delivered on or before the Response Deadline shall be
8 re-mailed to any forwarding address provided. If no forwarding address is
9 provided, the Settlement Administrator shall promptly attempt to determine a
10 correct address by lawful use of skip-tracing, or other search using the name,
11 address and/or Social Security number of the Class Member involved, and
12 shall then perform a re-mailing, if the Settlement Administrator identifies
13 another mailing address. In addition, if any Notice Packets, which are
14 addressed to Class Members who are currently employed by Defendant, are
15 returned to the Settlement Administrator as non-delivered and no forwarding
16 address is provided, the Settlement Administrator shall notify Defense
17 Counsel. Defendant will request that the currently employed Class Member
18 provide a corrected address and transmit to the Administrator any corrected
19 address provided by the Class Member. Class Members who received a re-
20 mailed Notice Packet shall have their Response Deadline extended fifteen (15)
21 days from the original Response Deadline.

22 5. Challenges to Calculation of Workweeks and/or PAGA Pay Periods. Each
23 Class Member shall have the opportunity to challenge the number of
24 Workweeks and/or PAGA Pay Periods allocated to the Class Member in the
25 Class Notice. The Class Member may challenge the allocation by
26 communicating with the Administrator via fax or mail. The challenging Class
27 Member must submit supporting documentation in support of their dispute. In
28 the absence of any contrary documentation, the Administrator is entitled to

1 presume that the Workweeks and/or PAGA Pay Periods contained in the Class
2 Notice are correct. The Administrator's determination of each Class
3 Member's allocation of Workweeks and/or PAGA Pay Periods shall be final
4 and not appealable or otherwise susceptible to challenge. The Administrator
5 shall promptly provide copies of all challenges to the calculation of
6 Workweeks and/or PAGA Pay Periods to Defense Counsel and Class Counsel
7 and the Administrator's determination of the challenges.

8 6. Disputes Regarding Administration of Settlement. Any disputes not resolved
9 by the Settlement Administrator concerning the administration of the
10 Settlement will be resolved by the Court under the laws of the State of
11 California. Before any such involvement of the Court, counsel for the Parties
12 will confer in good faith to resolve the disputes without the necessity of
13 involving the Court.

14 7. Requests for Exclusion. The Court Approved Notice of Class Action
15 Settlement contained in the Notice Packet shall state that Class Members who
16 wish to exclude themselves from the Settlement must submit, via fax or mail,
17 a signed written Request for Exclusion to the Settlement Administrator by the
18 Response Deadline. The written Request for Exclusion must state that the
19 Class Member wishes to exclude himself or herself from the Settlement and
20 (1) must contain the name, address, and the last four digits of the Social
21 Security number of the person requesting exclusion; (2) must be signed by the
22 Class Member; (3) must be postmarked or fax stamped by the Response
23 Deadline and returned to the Settlement Administrator at the specified address
24 or fax telephone number; and (4) contain a typewritten or handwritten notice
25 stating in substance that the Class Member wishes to be excluded from the
26 settlement of the class action lawsuit entitled *Wyatt et al. v. BH-SD OPCO et*
27 *al.*, currently pending in Superior Court of San Diego, Case No. 37-2021-
28 00021168. The Request for Exclusion will not be valid if it is not timely

submitted, if it is not signed by the Class Member, or if it does not contain the name and address and last four digits of the Social Security number of the Class Member. The date of the postmark on the mailing envelope or fax stamp on the Request for Exclusion shall be the exclusive means used to determine whether the Request for Exclusion was timely submitted. Any Class Member who submits a timely Request for Exclusion shall be a Non-Participating Class Member, will not be entitled to an Individual Class Payment, and will not be otherwise bound by the terms of the Settlement or have any right to object, appeal or comment thereon. However, any Non-Participating Class Member that is also a PAGA Employee will still receive his/her pro rata share of the Individual PAGA Payment, as specified herein, and in consideration, will be bound by the Released PAGA Claims as set forth in Paragraph V.B. herein. Every Class Members who does not submit a valid and timely Request for Exclusion on or before the Response Deadline is deemed a Participating Class Member under this Agreement, shall be bound by all terms and conditions of the Settlement, including the Participating Class Members' release of the Released Class Claims under Paragraph V.A., and any final judgment entered in this Action if the Settlement is approved by the Court. No later than twenty-one (21) calendar days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a final list of the Class Members who have timely submitted Requests for Exclusion. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage members of the Class to submit Requests for Exclusion from the Settlement. Defendant has the right, but not the obligation, to rescind or void this Settlement if more than 5% of the Class Members opt-out from the Settlement. Defendant agrees to meet and confer with Class Counsel prior to rescinding the Settlement. If Defendant exercises the option to rescind, Defendant will pay the settlement administration costs incurred up to the date of recission.

1 8. Objections to Settlement. Only Participating Class Members may object to
2 the class action components of the Settlement, including contesting the
3 fairness of the Settlement and/or the amounts requested for the Class Counsel
4 Fee Payment, the Class Counsel Expenses Payment, and/or the Class
5 Representative Payments. The Court Approved Notice of Class Action
6 Settlement contained in the Notice Packet shall state that Participating Class
7 Members may submit written objections to the Settlement Administrator via
8 fax or mail by the Response Deadline. Written objections from a Participating
9 Class Member must be signed by the Class Member and state: (1) the case
10 name and number; (2) the name of the Class Member; (3) the address of the
11 Class Member; (4) the last four digits of the Class Member's Social Security
12 number; (5) the basis for the objection; and (6) if the Class Member intends
13 to appear at the Final Approval/Settlement Fairness Hearing. A Participating
14 Class Member who fails to make objections in writing in the manner specified
15 above may still make their objections orally at the Final Approval/Settlement
16 Fairness Hearing with the Court's permission. Participating Class Members
17 will have a right to appear at the Final Approval/Settlement Fairness Hearing
18 to have their objections heard by the Court regardless of whether they
19 submitted a written objection. At no time shall any of the Parties or their
20 counsel seek to solicit or otherwise encourage Class Members to file or serve
21 written objections to the Settlement or appeal from the Order and Final
22 Judgment. Non-Participating Class Members who submit a written Request
23 for Exclusion may not object to the Settlement. Class Members may not
24 object to the PAGA Penalties.

25 **VIII. MOTION FOR FINAL APPROVAL**

26 A. Final Approval Motion. Not later than 16 court days before the calendared Final
27 Approval Hearing, Plaintiff will file in Court a Motion for Order Granting Final
28 Approval of the Settlement that includes a request for approval of the PAGA

1 settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order
2 and a proposed Judgment, which motion shall request final approval of the Settlement
3 and a determination of the amounts payable for the Class Representative Payment,
4 the Class Counsel Fees Payment, Class Counsel Expenses Payment, the PAGA
5 Penalties, and the Administration Costs (collectively, “Motion for Final Approval”).
6 Plaintiffs shall provide Defendant with a draft of the Motion for Final Approval at
7 least three (3) business days prior to the filing of the Motion to give Defendant an
8 opportunity to propose changes or additions to the Motion. Class Counsel and
9 Defense Counsel will expeditiously meet and confer via email or by telephone, and
10 in good faith, to resolve any disagreements concerning the Motion for Final Approval.

11 1. Declaration by Settlement Administrator. No later than seven (7) days after
12 the Response Deadline, the Settlement Administrator shall submit a
13 declaration in support of Plaintiffs’ Motion for Final Approval detailing the
14 number of Notice Packets mailed and re-mailed to Class Members, the
15 number of undeliverable Notice Packets, the number of timely Requests for
16 Exclusion, the full names of those Class Members who requested exclusion
17 from the Settlement, the number of objections received, the amount of the
18 average, highest, and lowest Individual Class Payments, the amount of the
19 average, highest, and lowest Individual PAGA Payments, the Administration
20 Costs, and any other information as the Parties mutually agree or the Court
21 orders the Settlement Administrator to provide.

22 2. Final Approval Order and Judgment. Class Counsel shall present an Order
23 Granting Final Approval of Class Action Settlement to the Court for its
24 approval, and Judgment thereon, at the time Class Counsel files the Motion
25 for Final Approval.

26 3. Response to Objections. Each Party retains the right to respond to any
27 objection raised by a Participating Class Member, including the right to file
28

responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

4. Duty to Cooperate. If the Court does not grant Final Approval, or conditions Final Approval on any material modification of the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Payment, Class Counsel Fees Payment, Class Counsel Expenses Payment and/or Administration Costs shall not constitute a material modification to the Agreement within the meaning of this Paragraph.

B. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement and all orders and judgments entered in connection with this Agreement.

C. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs, or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

1 D. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
2 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires any
3 material modification of this Agreement (including, but not limited to, the scope of release
4 to be granted by Participating Class Members), this Agreement shall be null and void. The
5 Parties shall nevertheless expeditiously work together in good faith to address the appellate
6 court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50
7 basis, any additional Administration Costs reasonably incurred after remittitur. An appellate
8 decision to vacate, reverse, or modify the Court's award of the Class Representative Payment,
9 Class Counsel Fees Payment or Class Counsel Expenses Payment, shall not constitute a
10 material modification of the Judgment within the meaning of this Paragraph, as long as the
11 Gross Settlement Amount remains unchanged.

12 E. Amended Judgment. If any amended judgment is required under Code of Civil
13 Procedure section 384, the Parties will work together in good faith to jointly submit a
14 proposed amended judgement.

15 **IX. ADDITIONAL PROVISIONS**

16 A. Cooperation. The Parties and their counsel will cooperate with each other and use
17 their best efforts to implement the Settlement.

18 B. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
19 except such proceedings necessary to implement and complete the Settlement, pending the
20 Final Approval/Settlement Fairness Hearing to be conducted by the Court.

21 C. Amendment or Modification. This Agreement may be amended or modified only by
22 an express written instrument signed by all Parties or their representatives and approved by
23 the Court.

24 D. Entire Agreement. Except for Plaintiffs' individual settlement agreements with
25 Defendant, which resolve Plaintiffs' individual claims and shall not affect this Agreement in
26 any way, this Agreement and any attached Exhibit constitute the entire Agreement among
27 these Parties, and no oral or written representations, warranties or inducements have been
28

made to any Party concerning this Agreement or its Exhibit other than the representations, warranties and covenants contained and memorialized in this Agreement and its Exhibit.

E. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section, the “acknowledging party” and each Party to this Agreement other than the acknowledging party, an “other party”) acknowledges and agrees that: (1) no provision of this 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 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 Agreement.

F. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The persons signing this Agreement on behalf of Defendant represents and warrants that he/she is authorized to sign this Agreement on behalf of Defendant. Plaintiffs represent and warrant that they are authorized to sign this Agreement and that they have not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

1 G. No Public Comment: The Parties and their counsel agree that they will not issue any
2 press releases, initiate any contact with the press, respond to any press inquiry, or have any
3 communication with the press about the fact, amount or terms of the Settlement Agreement.
4 Class Counsel further agrees not to use the Settlement Agreement or any of its terms for any
5 marketing or promotional purposes. Nothing herein will restrict Class Counsel from
6 including publicly available information regarding this settlement in future judicial
7 submissions regarding Class Counsel's qualifications and experience. Further, Class Counsel
8 will not include, reference, or use the Settlement Agreement for any marketing or
9 promotional purposes, either before or after the Motion for Preliminary Approval is filed.

10 H. Binding on Successors. This Agreement shall be binding upon, and inure to the
11 benefit of, the successors of each of the Parties.

12 I. California Law Governs. All terms of this Agreement and the Exhibit and any
13 disputes shall be governed by and interpreted according to the laws of the State of California.

14 J. Headings. The descriptive heading of any section or paragraph of this Agreement is
15 inserted for convenience of reference only and does not constitute a part of this Agreement.

16 K. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation
17 of this Agreement. This Agreement will not be construed against any Party on the basis that
18 the Party was the drafter or participated in the drafting.

19 L. Calendar Days. Unless otherwise noted, all references to "days" in this Agreement
20 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls
21 on a weekend or California state court legal holiday, such date or deadline shall be on the
22 first business day thereafter.

23 M. Counterparts. This Agreement may be executed in one or more counterparts by
24 facsimile, electronically (e.g., DocuSign), or email, which for purposes of this Agreement,
25 shall be accepted as original. All executed counterparts and each of them shall be deemed to
26 be one and the same instrument provided that counsel for the Parties to this Agreement shall
27 exchange among themselves copies or originals of the signed counterparts.
28

1 N. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this
2 Settlement is a fair, adequate, and reasonable settlement of this Action and have arrived at
3 this Settlement after extensive arms-length negotiations, taking into account all relevant
4 factors, present and potential.

5 O. Invalidity of Any Provision. Before declaring any provision of this Agreement
6 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent
7 possible consistent with applicable precedents so as to define all provisions of this Agreement
8 valid and enforceable.

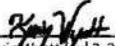
9 P. No Admission of Liability, Class Certification or Representative Manageability for
10 Other Purposes. This Agreement represents a compromise and settlement of highly disputed
11 claims. Nothing contained in this Agreement and no documents referred to and no action
12 taken to carry out this Agreement is intended to or should be construed or used as an
13 admission of liability, culpability, negligence or wrongdoing by Defendant, which
14 specifically denies any liability, culpability, negligence, or wrongdoing towards Plaintiff,
15 Class Members, or any other person for any of the allegations in the Operative Complaint
16 and/or the PAGA Notice; nor should it be intended or construed as an admission by Plaintiff
17 that Defendant's defenses in the Action have merit. The Parties agree to class certification
18 and representative treatment for purposes of this Settlement only. If, for any reason, the Court
19 does not grant Preliminary Approval, does not grant Final Approval, or does not enter Final
20 Judgment, Defendant reserves the right to contest certification of any class and/or the
21 appropriateness of a PAGA representative action for any reason, Defendant reserves all
22 available defenses to the claims in the Action, and Plaintiff reserves the right to move for
23 class certification on any grounds available and to contest Defendant's defenses. The
24 Settlement, this Agreement, and Parties' willingness to settle the Action will have no bearing
25 on, and will not be admissible in connection with, any litigation (except for proceedings to
26 enforce or effectuate the Settlement and this Agreement).

27 [SIGNATURE PAGE FOLLOWS]
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFFS:

DATED: 07/02/2024


Kevin Wyatt (Jul 2, 2024 12:22 PDT)

Kevin Wyatt

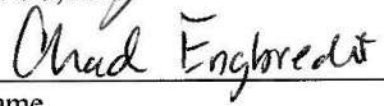
DATED: _____

Kimberlee Califano

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

DATED: July 3, 2024


BH-SD OPCO, LLC


Printed Name

General Counsel
Title

IT IS SO AGREED AS TO FORM ONLY BY COUNSEL:

DATED: July 2, 2024

JCL LAW FIRM, A.P.C.

By: 
Attorneys for Plaintiff and Settlement Class Members

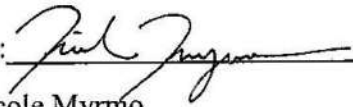
DATED: July 2, 2024

ZAKAY LAW GROUP, APLC

By: 
Attorneys for Plaintiff and Settlement Class Members

DATED: July 3, 2024

FISHER & PHILLIPS LLP

By: 
Nicole Myrmo
Attorneys for Defendant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO AGREED, FORM AND CONTENT, BY PLAINTIFFS:

DATED: _____

Kevin Wyatt

DATED: 07/02/2024

Kimberlee Califano
Kimberlee Califano (Jul 2, 2024 13:43 PDT)

Kimberlee Califano

IT IS SO AGREED, FORM AND CONTENT, BY DEFENDANT:

DATED: _____

BH-SD OPCO, LLC

Printed Name

Title

IT IS SO AGREED AS TO FORM ONLY BY COUNSEL:

DATED: _____

JCL LAW FIRM, A.P.C.

By: _____
Attorneys for Plaintiff and Settlement Class Members

DATED: _____

ZAKAY LAW GROUP, APLC

By: _____
Attorneys for Plaintiff and Settlement Class Members

DATED: _____

FISHER & PHILLIPS LLP

By: _____

Nicole Myrmo
Attorneys for Defendant

EXHIBIT A

**NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT
AND FINAL HEARING DATE**

(Wyatt et al. v. BH-SD OPCO et al., San Diego County Superior Court Case No. 37-2021-00021168)

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT.
PLEASE READ THIS NOTICE CAREFULLY.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Individual Class Payment is: \$<< <u> </u> >>. Your estimated Individual PAGA Payment is: \$<< <u> </u> >>. See the explanation below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below. In exchange for the settlement payment, you will release claims against the Defendant as detailed below.
Exclude Yourself	If you wish to exclude yourself from the Settlement, you must send a written Request for Exclusion to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement, however you will still be bound by the PAGA Release and receive an Individual PAGA Payment, if applicable. Instructions are set forth below.
Object	You may object by writing to the Court about why you believe the settlement should not be approved or by appearing in court. Directions are provided below.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of this lawsuit pending in the Superior Court for the State of California, County of San Diego (the “Court”) has been reached between Plaintiff Kevin Wyatt and Plaintiff Kimberlee Califano (“Plaintiffs”) and BD-SD OPCO, LLC (“Defendant”). The Court has granted preliminary approval of the Settlement. **You may be entitled to receive money from this Settlement.**

You have received this Class Notice because you have been identified as a member of the Class, which is defined as:

All current and former non-exempt employees who were employed by Defendant in the State of California at any time during the period between May 12, 2017 through September 30, 2023 (“Class Period”).

This Class Notice explains the lawsuit, the Settlement, and your legal rights. It is important that you read this Notice carefully as your rights may be affected by the Settlement.

2. What is this class action lawsuit about?

On May 12, 2021, Plaintiff Wyatt served the Labor and Workforce Development Agency (“LWDA”) with a Notice of Violations and served the same on Defendant. On the same date, Plaintiff Wyatt filed a Class Action Complaint against Defendant in the Superior Court of the State of California, County of San Diego, Case No. 37-2021-00021168 (the “*Wyatt* Action”), alleging claims for: (1) Failure to Pay Overtime Compensation; (2) Failure to Pay Wages for Hours Worked; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Failure to Provide Accurate Itemized Statements; (6) Failure to Pay Wages Due and Payable Twice Monthly; (7) Failure to Reimburse for Required Expenses; (8) Failure to Pay Wages Upon Termination of Employment; and (9) Unfair Competition and Unlawful Business Practices.

On February 4, 2022, Plaintiff Califano filed a Class Action Complaint against Defendant in the Superior Court of the State of California, County of San Diego, Case No. 37-2022-00004654 (the “*Califano* Action”). Plaintiff Califano asserted claims that Defendant: (1) Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*); (2) Failure to Pay Minimum Wages (Labor Code §§ 1194, 1197 and 1197.1); (3) Failure to Pay Overtime Wages (Labor Code §§ 510 *et seq.*); (4) Failure to Provide Required Meal Periods (Labor Code §§ 226.7, 512 and the applicable Wage Order); (5) Failure to Provide Required Rest Periods (Labor Code §§ 226.7, 512 and the applicable wage order); (6) Failure to Provide Accurate Itemized Statements (Labor Code § 226); (7) Failure to Pay Wages When Due (Labor Code §§ 201, 202, 203; 204); and (8) Failure to Reimburse for Required Expenses (Labor Code § 2802).

On November 29, 2022, the *Wyatt* Action and the *Califano* Action were consolidated by the San Diego Superior Court, with the *Wyatt* Action as the lead case (collectively, the “Action”). On October 20, 2023, Plaintiffs amended the Action, alleging claims for: (1) Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*); (2) Failure to Pay Minimum Wages (Labor Code §§ 1194, 1197 and 1197.1); (3) Failure to Pay Overtime Wages (Labor Code §§ 510 *et seq.*); (4) Failure to Provide Required Meal Periods (Labor Code §§ 226.7, 512 and the applicable Wage Order); (5) Failure to Provide Required Rest Periods (Labor Code §§ 226.7, 512 and the applicable wage order); (6) Failure to Provide Accurate Itemized Statements (Labor Code § 226); (7) Failure to Pay Wages When Due (Labor Code §§ 201, 202, 203; 204); (8) Failure to Reimburse for Required Expenses (Labor Code § 2802); (9) Failure to Pay Wages at Least Twice in a Calendar Month (Labor Code § 204); and (10) Violation of the Private Attorneys General Act (Labor Code §§ 2698, *et seq.*). On April 29, 2024, Plaintiff Wyatt submitted an Amended Notice of Violations with the LWDA pursuant to Labor Code section 2699.3, subd. (a) (the “PAGA Notice”).

Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, disputes any wages, damages and penalties claimed by the Class Representatives are owed, and further contends that, for any purpose other than settlement, the Action is not appropriate for class or representative action treatment. Defendant contends, among other things, that at all times it complied with the California Labor Code and the Industrial Welfare Commission Wage Orders.

On April 14, 2023, the Parties participated in an all-day mediation with Tripper Ortman, Esq, an experienced mediator of wage and hour class actions. At the mediation, the Parties were unable to reach a settlement. The Parties continued settlement negotiations, and with the assistance of the mediator, the Parties ultimately reached the present settlement. The Court granted preliminary approval of the Settlement on MONTH XX, 202X. At that time, the Court also preliminarily approved Plaintiff Wyatt and Plaintiff Califano to serve as the Class Representatives, and the law firms of JCL Law Firm, APC and Zakay Law Group, APC to serve as Class Counsel.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendant has agreed to pay an amount of Seven Hundred Thousand Dollars and Zero Cents (\$700,000.00) (the “Gross Settlement Amount”) to fund the settlement. The Gross Settlement Amount includes the payment of all Individual Class Payments to Settlement Class Members, Class Counsel Fees Payment, Class Counsel Expenses Payment, Administration Costs, the Individual PAGA Payments to PAGA Employees, the LWDA PAGA Payment, and the Class Representative Payments to the Plaintiffs.

After the Judgment becomes Final, Defendant will pay the Gross Settlement Amount by depositing the money in 35 equal installment payments with the Settlement Administrator. “Final” means the date the Judgment is no longer subject to appeal, or if an appeal is filed, the date the appeal process is completed and the Judgment is affirmed.

Amounts to be Paid from the Gross Settlement Amount. The Settlement provides for certain payments to be made from the Gross Settlement Amount, which will be subject to final Court approval, and which will be deducted from the Gross Settlement Amount before settlement payments are made to Class Members, as follows:

- Administration Costs. The amount paid to the Settlement Administrator from the Gross Settlement Amount for administering the Settlement currently estimated not to exceed \$13,000 for expenses, including expenses of sending this Notice, processing opt outs, and distributing settlement payments.
- Class Counsel Fees Payment and Class Counsel Expenses Payment. An award of attorneys’ fees that the Court authorizes to be paid to Class Counsel for the services they rendered to Plaintiffs and the Settlement Class in the Action, not to exceed 33.33% of the Gross Settlement Amount, currently estimated to be \$233,333.33 out of \$700,000.00 and an award reimbursable litigation expenses that the Court authorizes to be paid to Class Counsel for the expenses they have incurred up to \$25,000 for all expenses incurred as documented in Class

Counsel's billing records, both subject to Court approval. Class Counsel have been prosecuting the Action on behalf of Plaintiffs and the Class on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses.

- Class Representative Payments. Class Representative Payments in the amount of Ten Thousand Dollars (\$10,000) to each Plaintiff, or such lesser amount as may be approved by the Court, to compensate them for services on behalf of the Class in initiating and prosecuting the Action, and for the risks they undertook.
- PAGA Penalties. A payment of Fifty Thousand Dollars (\$50,000.00) to be allocated from the Gross Settlement Amount, relating to Plaintiffs' claim under the Private Attorneys General Act ("PAGA"), with 25% of the payment (\$12,500.00) going to the PAGA Employees ("Individual PAGA Payments") and 75% of the payment (\$37,500.00) going to the State of California's Labor and Workforce Development Agency ("LWDA PAGA Payment")
- Calculation of Payments to Participating Class Members. After all the above payments of the court-approved Class Counsel Fees Payment, Class Counsel Expenses Payment, the Class Representative Payment, the PAGA Penalties, and the Administration Costs are deducted from the Gross Settlement Amount, the remaining portion, called the "Net Settlement Amount," shall be distributed to class members who do **not** request exclusion ("Participating Class Members"). The Individual Class Payment for each Participating Class Member will be calculated by dividing the Net Settlement Amount by the total number of workweeks for all Participating Class Members that occurred during the Class Period and multiplying the result by each individual Participating Class Member's workweeks that occurred during the Class Period. A "workweek" is defined as the number of weeks during which a Class Member worked for Defendant as a non-exempt employee in California during the Class Period, divided by seven (7).
- Calculation of Individual PAGA Payments to PAGA Employees. The Individual PAGA Payments shall be distributed to PAGA Employees irrespective of whether they exclude themselves or opt-out. The Individual PAGA Payment will be divided by the total number of PAGA Pay Periods worked by all PAGA Employees during the PAGA Period, and then taking that number and multiplying it by the number of PAGA Pay Periods worked by each respective PAGA Employee during the PAGA Period. "PAGA Employees" means all current or former non-exempt employees who were employed by Defendant in the State of California at any time during the PAGA Period. The PAGA Period means the period between May 12, 2020, to September 30, 2023.

If the Court approves the Settlement, you will automatically be mailed a check for your Individual Class Payment and Individual PAGA Payment to the same address as this Class Notice. You do not have to do anything to receive a payment.

If your address has changed, you must contact the Settlement Administrator to inform them of your correct address to insure you receive your payment.

Tax Matters. Ten percent (10%) of each Individual Class Payment is allocated to wages. Taxes are withheld from this amount, and each Participating Class Member will be issued an Internal Revenue Service Form W-2 for such payment. Ninety percent (90%) of each Individual Class Payment is allocated to interest, penalties and other non-wage payments, and no taxes will be withheld, and each Participating Class Member will be issued an Internal Revenue Service Form 1099 for such payment. In addition, no taxes will be withheld from the PAGA Penalties paid to PAGA Employees, and each PAGA Employee will be issued an Internal Revenue Service Form 1099 for such payment. Neither Class Counsel nor Defense Counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

No Credit Toward Benefit Plans. The Individual Class Payments and Individual PAGA Payments made to Participating Class Members and/or PAGA Employees under this Settlement Agreement, as well as any other payments made pursuant to this Settlement Agreement, will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order granting final approval of the Settlement and entering judgment.

4. What Do I Release Under the Settlement?

Released Class Claims. Upon entry of final judgment, Plaintiffs and the Participating Class Members shall release all Released Class Claims that occurred during the Class Period as to Defendant BH-SD OPCO, LLC dba Alvarado Parkway Institute Behavioral Health Systems, and its former, present and future owners, predecessors, parent companies, subsidiaries, investors, affiliates, divisions, and all of their current, former and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint ventures, agents, successors, assigns, accountants, insurers, attorneys, and representatives (collectively, the "Released Parties"). Released Class Claims means all Participating Class Members will fully and finally release and discharge the Released Parties from any and all claims, rights, demands, liabilities and causes of action of any nature or description alleged in the Action against Defendant that were alleged in the Actions or reasonably could have been alleged based on the facts and legal theories alleged in the Operative Complaint, including but not limited to, all claims under the California Labor Code, Wage Orders, and related orders of the California Industrial Commission alleged in the Action or which could have been alleged based on the facts alleged in the Action, including all of the following claims for relief: (1) Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*) arising from violations of the Labor Code released herein; (2) Failure to Pay Minimum Wages (Labor Code §§ 1194, 1197 and 1197.1); (3) Failure to Pay Overtime

Wages (Labor Code §§ 510 *et seq.*); (4) Failure to Provide Required Meal Periods (Labor Code §§ 226.7, 512 and the applicable Wage Order); (5) Failure to Provide Required Rest Periods (Labor Code §§ 226.7, 512 and the applicable wage order); (6) Failure to Provide Accurate Itemized Statements (Labor Code § 226); (7) Failure to Pay Wages When Due (Labor Code §§ 201, 202, 203; 204); (8) Failure to Reimburse for Required Expenses (Labor Code § 2802); and (9) Failure to Pay Wages at Least Twice in a Calendar Month (Labor Code § 204) (the “Released Class Claims”). The claims released under this Paragraph shall include, but not necessarily be limited to, claims for: meal period violations and failure to pay compensation in lieu thereof; rest break violations and failure to pay compensation in lieu thereof; failure to pay minimum wages, regular wages, overtime and double time wages; all theories related to unpaid wages (including but not limited to off-the-clock work, time shaving, time rounding, on-call time, working through meal periods, regular rate claims, on-duty meal period violations, paid sick leave, paid time off, or any other claims giving rise to minimum and/or overtime violations); unpaid meal period penalties; unpaid rest period penalties; wage statement violations; failure to keep requisite payroll records; failure to reimburse business expenses; failure to pay wages upon separation from employment; failure to pay wages during employment; late payment of wages; waiting time penalties; and any claims under Business & Professions Code section 17200 arising from violations of the Labor Code released herein, as well as any damages, restitution, disgorgement, civil penalties (except PAGA penalties which are separately released), statutory penalties, taxes, interest or attorneys’ fees or costs resulting therefrom (collectively, Class Release). This release and waiver, however, shall be conditional on the full payment of the Gross Settlement Amount necessary to fund all payment obligations, and will only release such claims during the Class Period.

The Released PAGA Claims shall be released as follows. Upon final entry of judgment, all PAGA Employees shall fully and finally release and discharge the Released Parties from all Released PAGA Claims, irrespective of whether they opt-out of the class settlement, and will be bound by this PAGA Release (the “PAGA Release”). “Released PAGA Claims” means any and all causes of action and claims for civil penalties under the Private Attorneys General Act of 2004, Labor Code section 2698, *et seq.* that were alleged in the Action, in the PAGA Notice, or reasonably could have been alleged based on the facts and legal theories contained in the Action and/or PAGA Notice, including but not limited to, claims for civil penalties based on the following: (1) Failure to Pay Minimum Wages (Labor Code §§ 1194, 1197 and 1197.1); (2) Failure to Pay Overtime Wages (Labor Code §§ 510 *et seq.*); (3) Failure to Provide Required Meal Periods and associated premiums (Labor Code §§ 226.7, 512 and the applicable Wage Order); (4) Failure to Provide Required Rest Periods and associated premiums (Labor Code §§ 226.7, 512 and the applicable wage order); (5) Failure to Provide Accurate Itemized Statements (Labor Code § 226); (6) Failure to Pay Wages When Due (Labor Code §§ 201, 202, 203; 204); (7) Failure to Reimburse for Required Expenses (Labor Code § 2802); and (8) Failure to Pay Wages at Least Twice in a Calendar Month (Labor Code § 204) (the “Released PAGA Claims”). This release and waiver, however, shall be conditional on the full payment of the Gross Settlement Amount necessary to fund all payment obligations, and will only release such claims during the PAGA Period.

This means that, if you do not timely and formally exclude yourself from the settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant about the legal issues resolved

by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

5. How much will my payment be?

Defendant's records reflect that you have << >> Workweeks worked during the Class Period (May 12, 2017 to September 30, 2023). Based on this information, your estimated Individual Class Payment is << >>.

Defendant's records reflect that you have << >> pay periods worked during the PAGA Period (May 12, 2020 to September 30, 2023). Based on this information, your estimated Individual PAGA Payment is << >>.

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Settlement Administrator at the address provided in this Notice no later than [forty-five (45) days after the Notice or fifteen (15) days after the re-mailed Notice].

6. How can I get a payment?

To get money from the settlement, you do not have to do anything. A check for your settlement payment will be mailed automatically to the same address as this Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: Apex Class Action LLC.

The Court will hold a hearing on to decide whether to finally approve the Settlement. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed within a few months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient. After entry of the Judgment, the Settlement Administrator will provide notice of the final judgment to the Class Members by posting a copy of the Judgment on the administrator's website at <https://www.apexclassaction.com/>.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Settlement or "opt out." **If you opt out, you will receive NO money from the Settlement, and you will not be bound by its terms, except as provided as follows.** Irrespective of whether you exclude yourself from the Settlement or "opt out," you will be bound by the PAGA Release, you will be deemed to have released the Released PAGA Claims, and you will receive a share of the Individual PAGA Payment.

To opt out, you must submit to the Settlement Administrator, by First Class Mail, a written, signed and dated Request for Exclusion postmarked no later than . The address for the Settlement Administrator is Apex Class Action LLC, 18 Technology Drive, Ste. 164, Irvine, CA 92618. The Request for Exclusion must state in substance that the Class Member has read the Class

Notice and that he or she wishes to be excluded from the settlement of the class action lawsuit entitled *Wyatt et al. v. BH-SD OPCO et al.*, currently pending in Superior Court of San Diego, Case No. 37-2021-00021168-CU-OE-CTL. The request for exclusion must contain your name, address, signature and the last four digits of your Social Security Number for verification purposes. The request for exclusion must be signed by you. No other person may opt out for a member of the Class.

Written Requests for Exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I tell the Court that I would like to challenge the Settlement?

Any Class Member who has not opted out and believes that the Settlement should not be finally approved by the Court for any reason, may object to the proposed Settlement. Objections may be in writing and state the Class Member's name, current address, telephone number, and describe why you believe the Settlement is unfair and whether you intend to appear at the final approval hearing. All written objections or other correspondence must also state the name and number of the case, which is *Wyatt et al. v. BH-SD OPCO et al., San Diego County Superior Court Case No. 37-2021-00021168-CU-OE-CTL*. You may also object without submitting a written objection by appearing at the final approval hearing scheduled as described in Section 9 below.

To object to the Settlement, you cannot opt out. If the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Participating Class Members who do not object. Any Participating Class Member who does not object in the manner provided in this Class Notice shall have waived any objection to the Settlement, whether by appeal or otherwise.

Written objections must be delivered or mailed to the Settlement Administrator no later than _____. The address for the Settlement Administrator is 18 Technology Drive, Suite 164, Irvine, CA 92618.

The addresses for the Parties' counsel are as follows:

Class Counsel:

Jean-Claude Lapuyade, Esq.
JCL Law Firm, APC
5440 Morehouse Dr., Ste 3600
San Diego, CA 92121
Tel.: (619) 599-8292
Fax: (619) 599-2891
E: jlapuyade@jcl-lawfirm.com

Class Counsel:

Shani O. Zakay, Esq.
Zakay Law Group, APLC
5440 Morehouse Dr., Ste 3600
San Diego, CA 92121
Tel: (619) 599-8292
Fax: (619) 599-8291
E: shani@zakaylaw.com

Counsel for Defendant:

Nicole Myrmo, Esq.
Fisher & Phillips
4747 Executive Dr. Ste. 1000
San Diego CA 92121
Tel.: (858) 597-9600
Fax: (858) 597-9601
E: nmyrmo@fisherphillips.com

9. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at 00:00 AM/PM on _____, at the San

Diego County Superior Court, Department C-71, located at 330 W. Broadway, San Diego, CA 92101 before Judge Gregory W Pollack. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement. If there are objections, the Court will consider them. The Court will listen to people who have made a timely written request to speak at the hearing or who appear at the hearing to object. The Court may reschedule this hearing without further notice to you. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

10. How do I get more information about the Settlement?

You may call the Settlement Administrator at 1-800-355-0700 or write to *Wyatt et al. v. BH-SD OPCO et al.*, currently pending in San Diego County Superior Court Case No. 37-2021-00021168-CU-OE-CTL, Settlement Administrator, c/o Apex Class Action LLC.

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by writing to JCL Law firm, APC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121 or by visiting the website listed in this notice.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.
- Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, all funds from such uncashed checks shall be turned over to the California State Controller: Unclaimed Property Fund in the name of the individual Participating Class Member or PAGA Employee. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

EXHIBIT 2

EXHIBIT 3



Quotation Request:

Kelli McTague
JCL Law Firm, A.P.C.
kmctague@jcl-lawfirm.com
888.498.6999

Case Name:

Date:
RFP Number:

Califano v. BH-SD OPCO, LCC

Friday, February 2, 2024
69990044

Prepared By:

Sean Hartranft
Apex Class Action LLC
Sean@apexclassaction.com
949.878.3676

Settlement Specifications	
Estimated Class Size:	1,229
Certified Language Translation:	No
Static Settlement Website	No
Percentage of Undeliverable Mail	20%

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
-----------------------	-----------------	---------	----------	----------------

Data Analytics and Standardization				
Import and Standardize Data*	Per Hour	\$125.00	3	\$375.00
Data Analyst	Per Hour	\$150.00	3	\$450.00
*Data provided must be in a workable format. Apex can standardize provided data at an additional cost of \$150/hr.				
Sub Total:				\$825.00

Mailing of Class Notice				
Form Set Up	Per Hour	\$120.00	1	\$120.00
Print & Mail Class Notice	Per Piece	\$1.25	1,229	\$1,536.25
USPS First Class Postage	Per Piece	\$0.68	1,229	\$835.72
Remail Undeliverable Mail (Skip-Trace)	Per Piece	\$2.15	246	\$528.47
Receive and Process Undeliverable Mail	Per Hour	\$75.00	2	\$150.00
Process Class Member Correspondence via mail, e-mail & fax	Per Piece	\$75.00	5	\$375.00
NCOA Address Update (USPS)	Static Rate	\$295.00	1	\$295.00
Sub Total:				\$3,840.44

Project Management				
Project Management	Per Hour	\$150.00	3	\$450.00
Project Coordinator	Per Hour	\$90.00	3	\$270.00
Data Analyst and Reporting	Per Hour	\$140.00	2	\$280.00
Sub Total:				\$1,000.00



Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
-----------------------	-----------------	---------	----------	----------------

Toll-Free Contact Center, Website & Reporting				
Bilingual Toll-Free Contact Center	Static Rate	\$285.60	1	\$285.60
Settlement Status Reports	Static Rate	\$750.00	1	Waived
			Sub Total:	\$285.60

Distribution & Settlement Fund Management				
Settlement Calculations (Preliminary and Final)	Per Hour	\$120.00	4	\$480.00
Account Management and Reconciliation	Per Hour	\$140.00	4	\$560.00
Print & Mail Distribution Settlement Check (W-2/1099)	Per Piece	\$1.00	1,229	\$1,229.00
USPS First Class Postage	Per Piece	\$0.68	1,229	\$835.72
Remail Distribution to Updated Address (Skip Trace)	Per Piece	\$2.15	123	\$264.24
Individual Income Tax Preparation & Reporting	Per Hour	\$100.00	10	\$1,000.00
QSF Income Tax Reporting (per calendar year)	Per Year	\$1,250.00	1	\$1,250.00
			Sub Total:	\$5,618.96

Post Distribution Reconciliation				
Bank Account Reconciliation	Per Hour	\$135.00	4	\$540.00
Project Management Reconciliation	Per Hour	\$100.00	4	\$400.00
Declarations	Per Hour	\$120.00	4	\$480.00
			Sub Total:	\$1,420.00

				WILL NOT EXCEED: \$12,990.00
--	--	--	--	-------------------------------------

Thank you for your business!



Terms & Conditions

The following Terms and Conditions govern the provision of all services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. **Services:** Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").
2. **Payment Terms:** As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.
3. **Incurred Expenses:** In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.
4. **Invoicing:** Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In case of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.
5. **Case Duration:** The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.
6. **Termination of Services:** Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (i) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.
7. **Independent Contractor:** As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.
8. **Apex warrants** that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services. It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's rerunning, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.
9. **Limitation of Liability:** The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.
10. **Indemnification:** The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.

11. **Confidentiality:** Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of this term may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the parties concerning confidentiality. These terms may only be amended in writing and signed by both parties.
12. **Ownership** of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex. It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.
13. **Upon the completion of the administration and unless retention instructions are ordered by the court, Apex will notify the client that it will destroy and/or return all confidential information and property within 90 days upon the client's written request. Alternatively, the material may be stored for one year at a monthly fee of \$1.50 per storage box for paper documents and \$0.01 per image for electronic copies over a period of three years, which compensates Apex for its electronic and hard-copy storage costs. Apex will not be liable for any damages, liability, or expenses incurred in connection with any delay in delivery of, or damage to disks, magnetic tapes, or any input data provided by the client or its representatives unless Apex has agreed in writing to assume such responsibility.**
14. **COMPLETE AGREEMENT.** These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.
15. **This provision outlines the requirements for providing notice or other communication under this agreement. All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.**
16. **Force Majeure:** In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.
17. **The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions. No choice of law or conflict of laws provisions shall affect this governing law provision.**
18. **Severability:** This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.
19. **Nonwaiver:** This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.