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Attorneys for Plaintiff ANIETA C. PETITT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANIETTA C. PETITT

Plaintiffs,

v.

EXIGENCY HEALTHCARE SERVICES,
LLC, FELIXBERTO O. MATAMIS, and
KAREN P. PANILIO

Defendants.

No. Case No.: 5:21-cv07639-VKD

**DECLARATION OF ALEXANDER S.
RUSNAK IN SUPPORT OF PLAINTIFFS’
MOTION FOR ORDER APPROVING
SETTLEMENT OF FLSA AND PAGA
CLAIMS; MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: December 20, 2022
Time: 1:30 p.m.
Courtroom: 2-5th Floor
Judge: Honorable Virginia K. DeMarchi

I, Alexander S. Rusnak, declare as follows:

1. I am one of the attorneys of record in this case. I have personal knowledge of the facts set forth in this declaration, and, if called as a witness, I could and would testify thereto.
2. I am submitting this declaration to provide the factual basis for our recommendation to approve the settlement reached under the Private Attorneys General Act, Cal. *Labor Code* § 2698 *et. seq.* (“PAGA”). This motion and a copy of the proposed settlement, which is attached as Exhibit A, was submitted to the State of California, Labor and Workforce Development Agency

1 (“LWDA”), through their online PAGA submission portal. The Attached Exhibit A is a true and
2 correct copy of the Settlement Agreement entered into by the parties.

- 3 3. I am providing this declaration on three issues: (1) the investigation into this case and my
4 opinion as to the value of this case; (2) my experience in wage and hour employment law; and
5 (3) my view on the settlement including the settlement amount and the PAGA apportionment.
6

7 **Procedural History**

- 8
9 4. On July 1, 2021, I electronically filed on behalf of Plaintiff Anieta Petitt a notice with the Labor
10 & Workforce Development Agency (“LWDA”) pursuant to *Labor Code* § 2699.3 stating the
11 alleged *Labor Code* violations Plaintiff and other aggrieved employees suffered by Defendant
12 employers and other responsible individuals as well as the factual basis of the stated violations.
13 The LWDA did not respond to the notice sent.
14
15 5. On August 29, 2021, I filed on behalf of Plaintiff, against Defendants, a civil complaint with this
16 Court alleging various violations under the Fair Labor Standards Act and California’s *Labor*
17 *Code* Plaintiff suffered and a representative claim under Labor Code § 2698 *et seq.* for violations
18 alleged in the December July 1, 2021, notice sent to the LWDA and Defendants.
19

20 **Investigation**

- 21 6. On December 21, 2021, Parties exchanged initial disclosures.
22
23 7. On February 10, 2022, Plaintiff Propounded Written Discovery in the form of interrogatories,
24 requests for production and requests for admission. Defendants responding to Plaintiffs
25 discovery and produced pay and time records of both Plaintiffs and other workers pursuant to the
26 Court’s Protective Order Re: Confidential Information.
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- 1 8. On June 7, 2022, the Parties participated in a mediation session with Arthur Eidelhoch, who was
2 appointed mediation by the Court pursuant to the Parties agreement to participate in the Court's
3 ADR program.
4
5 9. Through course of mediation, the Parties reached the resolution outlined in the settlement
6 agreement attached, a resolution that is conditioned on the Court's approval.
7
8 10. Plaintiff's counsel reviewed all of defendants employee time and pay records for the one-year
9 statute of limitation period covered under Plaintiffs' PAGA claims.
10
11 11. After reviewing Defendants discovery responses and documents produced, I reviewed the time
12 and pay records of Defendants 112 workers who worked for Defendants during the period of
13 time covered by Plaintiff's PAGA claims--one year from Plaintiff's July 1, 2021, Notice to the
14 LWDA.

15 **Counsel's Experience in Wage and Hour Litigation and Time Records**

- 16
17 12. I have been licensed to practice law in California since 2014. My practice focuses exclusively on
18 consumer rights and representing employees in wage and hour as well as discrimination and
19 retaliation claims.
20
21 13. I attended law school at Santa Clara University School of Law and graduated in 2014. Prior to
22 attending law school, I received a Bachelor of Science in Biochemistry from UC Davis and a
23 Master's in Science in Chemistry from UC San Diego. Prior to law school, I worked as a
24 research scientist as in both academic and private institutions.
25
26 14. In 2014, I opened my own practice in San Jose as a sole practitioner focusing on consumer and
27 employee rights. Later, the practice became a two-person partnership with Jennifer Rusnak.
28 Jennifer Rusnak has been licensed to practice law in California since 2006.

- 1 15. After graduating from law school and being admitted to the California Bar in 2014, I worked as a
2 research fellow at the Katherine and George Alexander Community Law Center, which is
3 affiliated with Santa Clara University School of law and as a sole practitioner. In 2017, my
4 practice became a two-attorney law partnership. My partner and co-counsel Jennifer L. Rusnak
5 graduated from Thomas Jefferson School of Law in 2006 and was admitted to the California Bar
6 in 2006.
- 7 16. I have been in practice for nearly eight years, focused exclusively on consumer and employee
8 rights. I am admitted and practice in both California and Oregon. I maintain two offices, one in
9 San Jose, CA and another in Oregon City, OR.
- 10 17. I have litigated numerous PAGA cases which settled an in which I have secured penalties to the
11 State of California after a Fairness Hearing. The last PAGA settlement that was approved in
12 Santa Clara County Court was the case of *Gruhlke v. Atilekt Inc. et al*, Santa Clara County Court,
13 Case No. 19CV341870 before Hon. Socrates P. Manoukian, which approved a PAGA (four-
14 worker) and individual settlement of a single employee for \$215,027.34 with \$124,859.30
15 allocated for civil penalties. Attorneys' fees and costs were awarded by motion and not taken
16 from the above total. In addition, the matter of *Maldonado et al v. Excel Hotel Services, Inc. et*
17 *al*, Northern District of California, San Francisco Division, Case No. 20-cv-07512-LB, an FLSA
18 with an accompanying PAGA claim was settled for \$190,000 with \$46,673.00 allocated to
19 PAGA penalties (with 10 disclosed aggrieved workers with up to 27 aggrieved workers based on
20 employers' failure to maintain any records of a predominantly migrant construction workforce).
21
22
- 23 18. I am familiar with the rates charged by Plaintiff contingency attorneys. This is based on
24 conversations with other counsel, case law and the *Laffey*-Matrix and the *Fitzpatrick* Matrix.
- 25 19. With respect to billing, our office maintains contemporaneous billing records and bill in 6-
26 minute (0.1 hour) increments. I have reviewed our billing records and compared it to our other
27
28

1 records, such as e-mails, letters, phone logs, text messages and documents in our files for
2 accuracy.

3 20. My understanding of the current market rates for Plaintiff's counsel with my level of experience
4 is over \$425 an hour, which is my current billable rate for any non-contingent work that I
5 perform.

6 21. My understanding of the current market rates for Plaintiff's counsel with Ms. Rusnak's level of
7 experience is over \$625 per hour, which is her current billable rate for any non-contingent work
8 that she performs.

9 22. In 2018, The Honorable Mary E. Arand found the rate of \$325.00 per hour reasonable for
10 Alexander S. Rusnak when awarding discovery sanction in a wage and hour claim in Santa Clara
11 County Court.

12 23. On September 17, 2020, The Honorable Edward G. Weil, in the matter of *Diego Gonzalez v.*
13 *Golden State Granite, Inc .et al* (Contra Costa County Court Case# MSC19-01703), approved
14 found my hourly rate of \$350.00 per hour reasonable for a wage and hour action that included a
15 PAGA claim in Contra Costa County.

16 24. The Rusnak Law Office is a two-attorney partnership, with limited case capacity. As such, we
17 limit the number of cases that we handle to ensure we can provide the necessary attention to
18 these matters. As a result, to appropriately prosecuting this case, we repeatedly turned down
19 representation opportunities for prospective clients with meritorious claims in both Oregon and
20 California.

21 25. In this case, the Rusnak Law Office represents Plaintiffs on a contingent basis with no guarantee
22 of payment.

23 26. Plaintiffs' counsel represented Plaintiffs on a contingent basis and advanced all costs associated
24 with litigation.

25 27. The firm's practice to maintain contemporaneous time records for hours worked. I have reviewed
26 these records fees generated and costs incurred are listed in the table below.
27
28

ATTORNEY	RATE	HOURS	Total
Alexander S. Rusnak	\$425.00 per hour	118.6	\$50,405.00
Jennifer L. Rusnak	\$625.00 per hour	23.6	\$14,750.00
TOTAL			\$65,155.00

28. Plaintiffs Counsel's billing can be summarized as follows:

- a. Counsel spent 13.9 hours with Plaintiff preparing for litigation, preparing Plaintiffs' notice to the LWDA, an initial complaint.
- b. Counsel spent 34.9 hours communicating with Plaintiffs and opposing counsel, either telephonically, via email or via videoconference to discuss the status of the matter, strategize or meet and confer as necessary through the course of litigation.
- c. Counsel propounding written discovery, preparing initial disclosures, and reviewing Defendants responses to Plaintiffs written discovery involved 19.9 hours of attorney time.
- d. Reviewing records and preparing a damage analysis for Plaintiff's individual claims and PAGA representative claims involved 24.8 hours of attorney time.
- e. Counsel spent 31.8 hours preparing for mediation, including the preparation of Plaintiff's mediation brief, preparing Plaintiffs for mediation, attending full day of mediation and finalizing the proposed settlement of claims post mediation.
- f. Counsel spent 16.9 hours preparing this Motion and supporting documents.

29. Court intervention, such as the resolution of discovery disputes were unnecessary as counsel for parties were able to resolve all issues through the meet and confer process due their productive relationship.

30. Further Plaintiffs seek to allocate the \$2,805.57 for costs incurred:

Cost	Amount
Plaintiffs' First Appearance Fee	\$402.00
PAGA Notice Submission Fee to LWDA	\$75.00

Postage	\$12.37
Printing Fees (employee records were produced electronically and were printed to facilitate review)	\$114.15
Mediator Fees	\$1,800.00
Investigator Costs	\$195.00
Chamber Copy Delivery Fee	\$200.00
Total	\$2,805.57

Counsel Assessment of Settlement Terms

31. As shown in Exhibit A the proposed settlement for this case is for ONE HUNDRED AND SIXTY THOUSAND DOLLARS (\$160,000.00). Of this amount, approximately THIRTY-FOUR THOUSAND (\$34,000.00) is attributed to PAGA penalties and SIXTY-FIVE THOUSAND DOLLARS (\$65,000.00) will be paid to Plaintiff's individual claims. TEN THOUSAND DOLLARS (\$10,000.) is allocated to PAGA administration Costs (Phoenix Class Action Administration estimates the costs to administer the settlement to \$4,500. Plaintiff seeks to allocate \$5,000 of the funds to administer the settlement, with any remaining funds allocated to the PAGA penalties.)
32. The thrust of Plaintiff's complaint is that Defendants classified Plaintiff and other aggrieved employees as independent contractors did not pay overtime premiums as mandated by the FLSA and California's *Labor Code*. Plaintiffs alleged that that they were not provided compliant wage statements, rest breaks and meal periods compliant with California's *Labor Code*. Plaintiffs also alleged that they were not reimbursed for expenses incurred commuting between care facilities while on duty, such as for the use of personal vehicles or costs incurred for using ride share services such as Lyft and Uber.
33. Plaintiffs and other aggrieved workers' working conditions were, in part, regulated under Wage Order 15-2001. Wage Order 15-2001 provides for alternate policies for rest breaks and meal

1 periods \ in certain situations and under certain conditions. These alternate provisions provide for
2 the “on duty” meal periods and rest breaks that permit an employee to “generally supervise” a
3 minor or senior who requires supervision while on a rest break or meal period without penalty.
4 Further, the parties dispute as to whether the aggrieved employees are “personal attendants”
5 under California law and thus exempt from rest break and meal period requirements and subject
6 to alternate overtime premium schedules, such as nine hours in a workday or forty-five hours in a
7 workweek, which would significantly impact Defendants liability under PAGA.

8
9 34. As to Plaintiffs PAGA penalties calculations, each worker was paid every two weeks. I reviewed
10 the time and pay records of all 112 workers, which provided for a total of 1,083 pay periods. The
11 civil penalty calculation total is \$3,830,700.00 and is based upon the maximum amount provided
12 by the *Labor Code*:

- 13
14 a. *Labor Code* § 204 (failing to pay all wages due twice each calendar month or more
15 frequently) - \$100 per pay period per worker x 1,083 pay periods = \$108,300.00.
16
17 b. *Labor Code* § 226.7 (requiring employee to work during rest break or meal period) -
18 \$100 per pay period per worker x 1,083 pay periods = \$108,300.00.
19
20 c. *Labor Code* § 204 (failing to pay all wages due twice each calendar month or more
21 frequently) - \$100 per pay period per worker x 1,083 pay periods = \$108,300.00.
22
23 d. *Labor Code* § 510 (failing to pay overtime for hours in excess of eight hours in a
24 workday, forty hours in a workweek and double overtime for hours worked in excess of
25 twelve in a workday - - \$100 per pay period per worker x 1,083 pay periods =
26 \$108,300.00.
27
28 e. *Labor Code* § 512 (failing to provide meal periods) - \$100 per pay period per worker x
1,083 pay periods = \$108,300.00.

- 1 f. *Labor Code* § 558 (civil penalty for violating any provisions regulating hours and pay
2 under the Labor Code or an Order from the Industrial Welfare Commission) - \$50 per
3 pay period per worker x 1,083 pay periods = \$54,150.00.
4
5 g. *Labor Code* §226.7 (pattern and practice of willful misclassification employee as
6 independent contractor) - 112 employees x \$25,000 maximum penalty = \$2,800,000
7
8 h. *Labor Code* § 1174 (failure to maintain accurate payroll and time records for hours
9 worked and wages paid) - 112 employees x \$500 = \$56,000.00.
10
11 i. *Labor Code* § 1198 (failing to comply with the hours of work and the standard conditions
12 set by the Labor Commission) - \$100 per pay period per worker x 1,083 pay periods =
13 \$108,300.00.

14 35. In regard to Plaintiff's individual claims, without waiving any privilege under the attorney work
15 product doctrine, Defendants owed Plaintiff approximately \$121,609.13, with approximately
16 \$41,859.46 in unpaid wages owed under the FLSA, and an equal amount in liquidated damages.

17 36. It is my opinion that the amount of the proposed settlement, coupled with the parties interest to
18 promptly resolve this matter, Defendants corrective measures and Defendants limited financial
19 resources coupled with the desire to avoid further litigation costs for an uncertain result is a fair
20 and reasonable resolution to the claims asserted. The relative amounts recovered as to individual
21 claims and PAGA penalties are comparable to those recovered in other matters.

22 37. Without disclosing any confidential information, I was able to review documents and
23 information relating to Defendants financial condition, which was a relevant factor to the
24 settlement amount reached.

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1 I declare under penalty of perjury under the laws of California that the forgoing is true and correct.
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3 Dated: November 8, 2022

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5 _____
6 Alexander S. Rusnak
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EXHIBIT A

CDF LABOR LAW LLP
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Dalia Z. Khatib, State Bar No. 323712
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Attorneys for Defendants
EXIGENCY HEALTHCARE SERVICES, LLC,
FELIXBERTO O. MATAMIS, and KAREN P. PANLILIO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANIETTA C. PETITT,

Plaintiff,

vs.

EXIGENCY HEALTHCARE SERVICES,
LLC, FELIXBERTO O. MATAMIS, and
KAREN P. PANILIO,

Defendants.

) Case No. 5:21-cv-07639-VKD
)

) **JOINT STIPULATION OF PAGA**
) **AND INDIVIDUAL FLSA**
) **SETTLEMENT**

) Complaint Filed: September 29, 2021
)
)
)
)
)
)

JOINT SETTLEMENT AGREEMENT

meanings ascribed to them as set forth below:

(a) “Complaint.”

Complaint means the operative Complaint filed on September 29, 2021, in the United States District Court, Northern District of California, Case No. 5:21-cv-07639-VKD, by Plaintiff in the Action.

(b) “Covered Period.”

September 29, 2020, through the date the Court grants final approval of the Agreement and dismisses the Action with prejudice.

(c) “Aggrieved Employees.”

Aggrieved Employees are all persons, including Plaintiff, who worked with, by or through Defendants, and/or were employed by Defendants in a caregiver position, performing caregiver duties, in California at any time from September 29, 2020, through the date the Court grants final approval of the Settlement (the “Covered Period”).

(d) “Defense Counsel” or “Counsel for Defendants.”

Defense Counsel and Counsel for Defendants refers to:

Corey J. Cabral Dalia Z. Khatib CDF LABOR LAW LLP 900 University Ave., Suite 200 Sacramento, CA 95825

(e) “Effective Date.”

Effective Date means the earliest date, following entry by the trial court of an order and judgment approving this Settlement, upon which one of the following has occurred: (i) expiration of all potential appeal periods without a filing of a notice of appeal of the final approval order or judgment; or (ii) final affirmance of the final approval order and judgment by an appellate court as a result of any appeal(s); or, (iii) final dismissal or denial of all such appeals (including any petitions for review, rehearing, *certiorari*, etc.) such that the final approval order and judgment are no longer subject to further judicial review.

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1 **(f) “PAGA Letter.”**

2 PAGA Letter refers to Plaintiff’s letter to the LWDA dated July 01, 2021.

3 **(g) “Plaintiff’s Counsel” and “Counsel for Plaintiff.”**

4 Plaintiff’s Counsel and Counsel for Plaintiff refer to:

5 Alexander S. Rusnak
6 Jennifer L. Rusnak
7 RUSNAK LAW OFFICE
8 1001 Molalla Ave. Suite 221
9 Oregon City, OR 97045

9 **(h) “Released Representative Claims.”**

10 Released Representative Claims shall include all claims for civil penalties by Plaintiff, the
11 Aggrieved Employees, and the State of California that were raised in the Lawsuit, and any and all
12 claims for civil penalties that could have been raised in the Lawsuit based on the allegations
13 therein, including those arising from Plaintiff’s allegations that she and/or the Aggrieved
14 Employees suffered Labor Code violations due to alleged failures to pay overtime wages, to
15 provide compliant meal and or rest breaks, to provide payments for non-compliant breaks or the
16 non-provision of breaks, to furnish compliant wage statements, to timely pay all earned wages, and
17 to reimburse for all business expenses incurred. Released Representative Claims does not include
18 any claims for individualized relief that may be had by the Aggrieved Employees.

19 **(i) “Plaintiff’s Released Claims”**

20 Plaintiff’s Released Claims shall include any and all individual claims raised by Plaintiff in
21 the Lawsuit based on allegations therein, including those arising from Plaintiff’s claims based on
22 an alleged 1) failure to pay overtime under state and federal; 2) failure to provide meal and rest
23 breaks; 3) failure to provide compliant wage statements; 4) waiting time penalties; 5) waiting time
24 penalties; 6) failure to reimburse expenses; 7) failures to reimburse expenses; and 8) unfair
25 business practices, as well as any and all that could have been raised. Plaintiff’s Released Claims
26 shall also include Plaintiff’s General Release of Claims

27 **(j) “Plaintiff’s General Release”**

28 This Agreement is intended to release any and all claims Plaintiff may have against the

Released Parties, even if Plaintiff is not presently aware of them, and even if Plaintiff having knowledge of the existence of a presently unknown claim that shall be released through this Agreement would have materially affected Plaintiff's acceptance of this Agreement. Accordingly, Plaintiff waives the protection of California Civil Code Section 1542 and any other analogous rule or principle of law. Section 1542 states:

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

Notwithstanding this language, Plaintiff knowingly intends to and wishes to release both known and unknown claims she may have against Released Parties and Plaintiff understands and recognizes that she is waiving all rights given to her by section 1542 of the California Civil Code.

(k) "Released Parties."

Release Parties means Defendants and all of Exigency Healthcare Services, LLC's respective current and former parents, subsidiaries, predecessors and successors, co-employers, and affiliated entities, and each of its respective officers, directors, employees, partners, shareholders, and agents, and any other successors, assigns, or legal representatives of Defendants.

Article II.

Section 2.1 BACKGROUND.

On July 1, 2021, Plaintiff Anieta C. Pettit submitted her PAGA letter to the LWDA and delivered a copy to Defendants by certified mail. On September 29, 2021, Plaintiff filed the Complaint in the United States District Court, Northern District of California entitled *Pettit v. Exigency Healthcare Services, LLC, et. al.*, Case No. 5:21-cv-7639. Through the litigation of the Action, the Parties have engaged in extensive formal and informal discovery, including written

discovery responses. On June 7, 2022, the Parties attended a Court sponsored mediation session with a neutral mediator with experience in mediation complex and representative actions. The Parties reached this Agreement after the above-referenced efforts.

The Agreement contemplates the (a) entry of an order by the Court approving the Settlement Agreement for the Released Claims; (b) dismissal of the Action with prejudice; and (c) all the parties bearing their respective fees and costs except as otherwise expressly provided in this Agreement.

Article III.

Section 3.01 COOPERATION.

The Parties will cooperate in obtaining through written stipulation or unopposed motion, if a motion is required, an Order from the Court approving the Settlement Agreement as described in this Agreement at the earliest possible date. The Parties agree to use their best efforts to expedite the preparation and submission of the settlement documents. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of this Agreement, including the settlement payment as described in this Agreement. Plaintiff further agrees to fully cooperate with Defendants to enforce the Released Claims agreed to in this Agreement should any Aggrieved Employee challenge the scope or validity of the release contemplated by this Agreement. Moreover, Defendants are willing to provide the Court with an *in camera* inspection of adequate financial records of Defendants, to the extent the Court requires such an inspection.

Section 3.02 COURT APPROVAL AND NOTICE TO LWDA.

The Parties will seek to obtain the Court's final approval of this Agreement and dismissal of the Action with prejudice by way of a stipulation or unopposed motion to be filed by Plaintiff as soon as practicable, or as directed by the Court. Concurrent with the Parties' submission of a stipulation or unopposed motion, Plaintiff shall submit a copy of this Agreement, to the LWDA, pursuant to Labor Code Section 2699(l)(2).

Plaintiff and Defendants will jointly lodge this Agreement with the Court for its final

1 approval. The Court's final approval of this Agreement, and dismissal of the Action with prejudice,
2 shall be embodied in a written Order. Should the Court not grant final approval of this Agreement
3 and dismiss the Action with prejudice, then the entirety of this Agreement shall be null and void.

4 Should the Court grant final approval of this Agreement, Plaintiff shall, within 10 days after
5 entry of the judgment or order granting final approval, submit a copy thereof to the LWDA,
6 pursuant to Labor Code Section 2699(l)(3).

7 **Section 3.03 AGGRIEVED EMPLOYEE CONTACT AND PAY PERIOD INFORMATION.**

8 No later than fourteen (14) calendar days after the Court's entry of the order granting final
9 approval of the Agreement and dismissing the Action with prejudice, Defendants shall provide the
10 Settlement Administrator with (1) a copy of the Court's order or judgment granting final approval
11 of the Agreement and (2) a list of all Aggrieved Employees ("Aggrieved Employees List"). The
12 Aggrieved Employees List shall state the first name and last name in separate columns for each
13 Aggrieved Employee, the last known home address for each Aggrieved Employee, each Aggrieved
14 Employee's social security number on record with the employer—to the extent it was provided, as
15 well as each individual Aggrieved Employee's total pay periods during the Covered Period or
16 sufficient information for the Settlement Administrator to determine each individual Aggrieved
17 Employee's total pay periods during the Covered Period. The Settlement Administrator will be
18 required to execute the Parties' Stipulated Protective Order and treat all information contained in
19 the Aggrieved Employee List as Confidential and will use commercially reasonable methods to
20 maintain the information in a confidential and secure manner and will use it only for purposes of
21 effectuating the terms of this Agreement. Within thirty (30) calendar days after receiving the
22 Aggrieved Employee List from Defendants, the Settlement Administrator shall make any necessary
23 updates to the contact information provided in the Aggrieved Employee List by performing an
24 address-check via a National Change of Address validation, and to calculate each Aggrieved
25 Employee's Individual Pay Periods, as defined in Section 3.04(b)(vi) below.

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1 **Section 3.04 SETTLEMENT PAYMENT PROCEDURES.**

2 **a. Deposit of Gross Settlement Amount with Settlement Administrator;**
3 **Establishment of Qualified Settlement Fund.**

4 No later than twenty-one (21) calendar days after the Effective Date, Defendants shall
5 deposit the first portion of the Gross Settlement Amount in the amount of One Hundred Ten
6 Thousand Dollars and Zero Cents (\$110,000.00) with the Settlement Administrator. The second
7 portion of the Gross Settlement Amount will be paid by January 31, 2023, in the amount of Fifty
8 Thousand Dollars and Zero Cents (\$50,000.00). The Settlement Administrator shall establish a
9 Qualified Settlement Fund ("QSF") for purposes of administering the Settlement Payments required
10 under this Agreement, as set forth below. The Settlement Administrator shall issue the appropriate
11 tax forms for payments required under this Agreement and perform all required tax reporting under
12 California and federal law.

13 **b. Qualified Settlement Fund Payment Amounts/Calculations.**

14 i. Attorneys' Fees and Costs. Subject to the Court's approval and any
15 necessary adjustments ordered by the Court, Plaintiff's Counsel shall request and be
16 paid up to 1/3 of the QSF, which is Fifty-Three Thousand Three Hundred Twenty-
17 Eight Dollars and Zero Cents (\$53,328.00) for attorneys' fees and up to Six
18 Thousand Dollars and Zero Cents (\$6,000.00) for reimbursement of litigation costs
19 from the QSF, and Defendants will not oppose these requests. To the extent that the
20 Court approves an amount(s) less than the amount stated above for Plaintiff's
21 Counsel's attorneys' fees and litigation costs, the remainder is added to the net
22 settlement amount and will be distributed to the allegedly aggrieved employees.
23 The Settlement Administrator shall issue an IRS Form 1099-MISC for the
24 Attorneys' Fees and Costs approved and/or ordered by the Court, if any. This
25 Agreement is not contingent upon the Court awarding Plaintiff's Counsel any
26 particular amount in attorneys' fees or litigation costs. Any amount requested by
27 Plaintiff and/or Plaintiff's Counsel for Attorneys' Fees and Costs that is not granted
28 or approved by the Court shall return to the QSF and be distributed as provided in

1 this Agreement. Plaintiff retains her right to appeal any decision by the Court
2 regarding the Attorney's Fees and Costs.

3 ii. Plaintiff's Released Claims and General Release. Subject to the Court's
4 approval and any necessary adjustments ordered by the Court, Sixty-Five Thousand
5 Dollars (\$65,000) of the QSF shall go to Plaintiff's Released Claims and General
6 Release. Of the \$65,000, Forty Thousand Dollars (\$40,000.00) shall be paid as
7 wages, subject to withholding. The remaining Twenty-Five Thousand (\$25,000.00)
8 shall be paid as liquidated damages and waiting time penalties and paid via 1099-
9 MISC as consideration for statutory penalties, waiting time penalties, liquidated
10 damages, interest, and other non-wage remuneration. Defendants will not oppose
11 this request. To the extent that the Court approves an amount(s) less than the
12 amount stated above for Plaintiff's Released Claims and General Release, the
13 remainder is added to the net settlement amount and will be distributed to the
14 allegedly aggrieved employees. The Settlement Administrator shall issue one IRS
15 Form W-2 for wages and one 1099 for both individual liquidated damages, waiting
16 time penalties and Plaintiff's share of civil penalties under PAGA. This Agreement
17 is contingent upon the Court approving Plaintiff's settlement of their individual
18 claims of at least \$65,000.00 pursuant to 29 U.S.C. §216.

19 iii. Settlement Administrator's Fees and Costs. Before seeking to obtain the
20 Court's final approval of this Agreement by way of a stipulation or unopposed
21 motion, to be filed by Plaintiff, the Parties will mutually agree to retain a third-party
22 settlement administrator to administer the settlement pursuant to the Agreement
23 ("Settlement Administrator"). The Parties have agreed to Phoenix Class Action
24 Settlement Administrators are to act as the Settlement Administrator in this matter.
25 All fees and costs incurred by the Settlement Administrator in connection with the
26 administration of the settlement, including calculation of Civil Penalty Payments to
27 Aggrieved Employees and mailing of the Notice Packets described herein, whether
28 foreseen or not, shall be paid out of the QSF. These costs are expected not to exceed

1 \$10,000; to the extent they exceed this amount, they shall be paid from QSF; to the
2 extent they fall below this amount, the remainder shall be added to the QSF.

3 iv. Civil Penalties Fund. The remainder of the QSF, after payment of the
4 Attorneys' Fees and Costs, Plaintiff's Released Claims and General Release, and
5 Settlement Administrator's Fees and Costs, to the extent they are granted and/or
6 approved by the Court, as set forth herein, shall be allocated to the payment of civil
7 penalties pursuant to the PAGA ("Civil Penalties Fund").

8 1. Civil Penalty Payment to the LWDA. Pursuant to Labor Code Section
9 2699(i), seventy five percent (75%) of the Civil Penalties Fund will be
10 paid to the LWDA.

11 2. Civil Penalty Payments to Aggrieved Employees. Pursuant to Labor
12 Code Section 2699(i), twenty five percent (25%) of the Civil Penalties
13 Fund will be paid to all Aggrieved Employees. Aggrieved Employees
14 are not required to submit a claim for their Civil Penalty Payment. Each
15 Aggrieved Employee's Civil Penalty Payment from the Civil Penalties
16 Fund shall be based on the Aggrieved Employee's Individual Pay
17 Periods as a pro rata share of the Total Pay Periods for all Aggrieved
18 Employees during the Covered Period. "Total Pay Periods" will be the
19 total number of pay periods for all Aggrieved Employees during the
20 Covered Period, according to Defendants' records. "Individual Pay
21 Periods" will be the total number of pay periods worked by an individual
22 Aggrieved Employee during the Covered Period, according to
23 Defendants' records. The Settlement Administrator shall issue an IRS
24 Form 1099 for each Aggrieved Employee's Civil Penalty Payment;
25 except for Plaintiff, for whom the Settlement Administrator shall issue
26 one IRS Form 1099 for both the Plaintiff's Released Claims and General
27 Release award and/or ordered by the Court, if any, and his Civil Penalty
28 Payment.

1 **c. Mailing of Settlement Payments and Notice Packets.**

2 Within thirty (30) days after receiving the Gross Settlement Amount from Defendants, the
3 Settlement Administrator shall concurrently mail the Settlement Payments established under
4 Section 3.04(b), as follows:

5 i. Attorneys' Fees and Costs Payment. The Settlement Administrator shall pay
6 the Attorneys' Fees and Costs Payment to Plaintiff's Counsel by wiring the funds.
7 The Settlement Administrator shall issue Plaintiff's Counsel all appropriate tax
8 itemization forms for the Attorneys' Fees and Costs Payment, such as IRS Form(s)
9 1099-MISC. Forty Thousand Dollars (\$40,000) of the approved attorneys fees and all
10 of the approved costs shall be paid with thirty (30) days of Defendants initial
11 \$110,000 payment. The remainder of the approved attorneys fees shall be paid
12 concurrently with the Administrator disbursement of PAGA civil penalties. Should
13 the Court approve less than \$40,000 in attorneys fees, 70% of the approved attorneys
14 fees shall be paid after receipt of the initial \$110,000 payment from Defendants.

15 ii. Plaintiff's Released Claims and General Release Payment and Plaintiff's
16 Civil Penalties Payment. The Settlement Administrator shall mail Plaintiff's
17 Payments for her Released Claims, General Release, and Civil Penalties combined in
18 two checks. The first check shall be for Plaintiff's wage portion of her payment for
19 the Released Claims and General Release, which shall be paid within thirty (30) days
20 of Defendants initial \$110,000 payment. Plaintiff's non-wage remuneration, including
21 statutory penalties, liquidated damages, interest, waiting time penalties and her
22 portion of PAGA civil penalties, shall be paid within her Notice Packet, as described
23 in Section 3.04(c)(iv) below, by First Class U.S. Mail, to Plaintiff's Counsel.

24 iii. LWDA's Civil Penalty Payment. The Settlement Administrator shall mail
25 the LWDA's Civil Penalty Payment and a copy of the order or judgment granting
26 final approval of the Agreement, by First Class U.S. Mail, to:

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28 ///

Department of Industrial Relations
Accounting Unit (PAGA Payment - LWDA-CM-546915-18)
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102.

iv. Aggrieved Employees' Notice Packets and Civil Penalty Payments. The Settlement Administrator shall mail Aggrieved Employees a Notice of PAGA Settlement (the template for which is attached hereto as **Exhibit A**), their settlement payment, and the appropriate tax form, pursuant to this Agreement (collectively the "Notice Packet"), by First Class U.S. Mail, to the last known address of each recipient with directions to the Postmaster to forward the Notice Packets and return all undeliverable Notice Packets to the Settlement Administrator. For each Notice Packet that is returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the Aggrieved Employee by using the employee's social security number and any address updates via use of a "credit header" or other skip trace service to find a more recent address for the employee and shall remail the Notice Packet to the updated address if found. If no updated addresses are found, no further effort to locate the Aggrieved Employee is required.

v. Undeliverable Notice Packets and Uncashed Civil Penalty Payment Checks. The settlement checks constituting Aggrieved Employees' Civil Penalty Payments shall remain valid for one hundred eighty (180) days. To the extent that an Aggrieved Employee's (a) Notice Packet is undeliverable, or (b) Civil Penalty Payment check is uncashed one hundred eighty (180) days after the date listed on the check, the Settlement Administrator shall send the Civil Penalty Payment amount to the California State Controller's Office's Unclaimed Property Division to be held as unclaimed funds in the Aggrieved Employee's name.

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ARTICLE IV

Limitations On Use Of This Settlement.

Section 4.01 No Admission.

This Agreement and compliance with this Agreement shall not be construed as an admission by Defendants of any liability whatsoever, or as an admission by Defendants of any violations of Plaintiff's rights or the rights of any of the Aggrieved Employees, or violation of any order, law, statute, duty or contract whatsoever. Defendants specifically disclaim any liability to Plaintiff or any of the Aggrieved Employees for any alleged violation of his/her rights, or for any alleged violation of any order, law, statute, duty or contract.

Section 4.02 Nullification.

If the Court should for any reason fail to approve this Agreement and dismiss the Action with prejudice after reasonable attempts by the Parties to obtain approval and such dismissal, and the Parties are unable to reach agreement on an alternative methodology for gaining approval pursuant to Labor Code Section 2699(l)(2), then (a) this Agreement shall be considered null and void, (b) neither this Agreement, the Parties' Memorandum of Understanding, nor any of the related negotiations or proceedings shall be of any force or effect, and (c) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Memorandum of Understanding and this Agreement had been not been entered and as if this Agreement had not been filed with the Court.

Section 4.03 Invalidation.

Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties subsequently agree in writing that the remaining provisions shall remain in full force and effect.

Section 4.04 Public Statements by the Parties.

Defendants and Plaintiff agree to limit public comment on this Agreement, the anticipated and resulting settlement, the Action, and Plaintiff's claims to stating that the matter has been resolved to the satisfaction of both Parties, except as necessary to obtain an order or judgment from the Court approving the Agreement and dismissing the Action with prejudice and to enforce the

1 Agreement as may be necessary. The parties will not initiate public comment, including but not
2 limited to press inquiries or website, blog, or social media postings. To the extent either Parties'
3 counsel creates any public comment, the identification of the Parties should be kept confidential.

4 **Article V.**

5 **Section 5.01 Release and Waiver of Released Claims.**

6 Upon entry of the order or judgment approving this Agreement, including the settlement
7 payments provided in this Agreement, Plaintiff, all Aggrieved Employees, and the State of
8 California shall be deemed to have fully, finally, and forever released, relinquished, and discharged
9 each and all of the Released Parties from each and all of the Released Representative Claims, and
10 Plaintiff shall be deemed to have fully, finally, and forever released, relinquished, and discharged
11 each and all of the Released Parties from each and all of the Plaintiff's Released Claims. The
12 Release and Waiver of Released Representative Claims is binding on the State of California, which
13 includes the LWDA and its departments, divisions, commissions, boards, agencies, and employees,
14 and any of the Released Parties' current or former employees who may seek to represent the State
15 of California to recover civil penalties pursuant to the PAGA based on the Released Representative
16 Claims.

17 **Article VI.**

18 **Miscellaneous Provisions**

19 **Section 6.01 Voluntariness.**

20 This Agreement is executed voluntarily and without duress or undue influence on the part
21 of or on behalf of any of the Parties, or of any other person, firm or other entity. The Parties have
22 cooperated in the negotiation and preparation of this Agreement and each of its terms. This
23 Agreement shall not be construed against any Party on the basis that the Party, or Party's Counsel,
24 was the drafter or participated in the drafting of this Agreement.

25 **Section 6.02 Amendments.**

26 The terms and provisions of this Agreement may be amended only by a written agreement
27 that is both (a) signed by the Plaintiff, Plaintiff's Counsel, Defendants and Defense Counsel who
28 executed this Agreement and (b) approved by the Court. Any waiver of any provision of this

Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise.

Section 6.03 Assignment.

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, Plaintiff's Counsel, or Defense Counsel without the express written consent of each other Party and their respective counsel hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person. Plaintiff expressly warrants that she has not transferred to any person or entity any right or cause of action, or claim released by this Agreement.

Section 6.04 Governing Law.

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California.

Section 6.05 Entire Agreement.

This Agreement contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the Cases.

Section 6.06 Waiver of Compliance.

Any failure of any Party, Defense Counsel, and/or Plaintiff's Counsel hereto to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties and their respective counsel hereto entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 6.07 Counterparts.

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all

of which counterparts taken together shall constitute but one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

Section 6.08 Attorneys' Fees and Costs.

Except as expressly provided herein, Defendants and Plaintiff shall each bear their own attorney's fees and costs.

Section 6.09 Dispute(s).

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, the Parties agree to submit any such dispute(s) to mediator Arthur Eidelhoch. To the extent any Party seeks to enforce any of the terms of this Agreement in Court or before the Court, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

Section 6.10 Binding.

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

Section 6.11 Continuing Jurisdiction.

The Parties agree that upon the occurrence of the dismissal of this case pursuant to the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code of Civil Procedure Section 664.6 and the Court shall retain exclusive and continuing equity jurisdiction of the Action, and over all Parties and Aggrieved Employees, to interpret and enforce the terms, conditions and obligation of the Agreement.

IN WITNESS WHEREOF, the Parties have executed this Joint Stipulation for PAGA and Individual FLSA Settlement Agreement on the date set forth.

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1 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this
 2 Joint Stipulation of PAGA and Individual FLSA Settlement between Plaintiff and Defendants
 3 as set forth below:

4 IT IS SO STIPULATED.

5
 6 Dated: 9/27/2022

DocuSigned by:
 Acantela
 478D103F21104C8...

ANIETTA C. PETITT, Plaintiff

8 Dated: 9/30/2022

EXIGENCY HEALTHCARE SERVICES, LLC

Authorized Representative of Exigency Healthcare
 Services, LLC, Defendant

Name: KAREN PANLILIO

Title: OWNER

14 Dated: 9/30/2022

Karen P. Panlilio

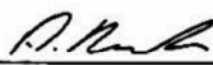
16 Dated: 9/30/2022

Felixberto O. Matamis, JR.

18 APPROVED AS TO FORM ONLY.

20 Dated: 9/29/22

RUSNAK LAW OFFICE

By: 
 Alexander S. Rusnak
 Jennifer L. Rusnak

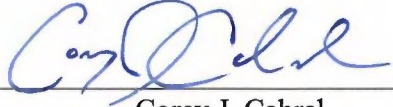
Attorneys for Plaintiff
 ANIETTA C. PETITT

1 Dated: September 15, 2022

CDF LABOR LAW LLP

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By: 

Corey J. Cabral

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Attorneys for Defendants

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EXIGENCY HEALTHCARE SERVICES, LLC,

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FELIXBERTO O. MATAMIS, and KAREN P. PANLILIO

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