

1 Daniel V. Santiago (SBN 206532)
2 LAW OFFICES OF DANIEL V. SANTIAGO, P.C.
3 355 South Grand Avenue, Suite 2450
4 Los Angeles, California 90071
5 Phone: (760) 652-9801
6 Facsimile: (760) 652-9802
7 E-mail: dvs@dvslawoffices.com
8 Attorney for the Plaintiff, Elias Picasso

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
CIVIL COMPLEX CENTER**

ELIAS PICASSO, individually and as
representative of the State of California on
behalf of all aggrieved employees,

Plaintiff,

INNOVATIVE MEDICAL MANAGEMENT,
INC., a Nevada corporation, INNOVATIVE
MEDICAL MANAGEMENT, LLC, a
California limited liability company, and DOES
1 through 20, inclusive,

Defendants.

Case No. 30-2022-01238981-CU-OE-CXC

**MEMORANDUM OF POINTS AND
AUTHORTIES IN SUPPORT OF
PLAINTIFF'S UNOPPOSED MOTION
FOR AN ORDER: (1) APPROVING THE
SETTLEMENT OF PLAINTIFF'S
INDIVIDUAL PAGA CLAIMS AGAINST
THE DEFENDANTS; AND (2)
DISMISSING THOSE PAGA CLAIMS
WITH PREJUDICE**

Court Reservation No: 73729916

Judge: The Honorable James J. Di Cesare
Department: C16
Complaint Filed: January 3, 2022

The Plaintiff, Elias Picasso, by and through his undersigned counsel, respectfully submits
the Memorandum of Points and Authorities in support of Plaintiff's Unopposed Motion for an
Order: (1) approving the settlement of Plaintiff's individual PAGA claims against the Defendants,
Innovative Medical Management, Inc. ("IMM, Inc."), and Innovative Medical Management, LLC
("IMM, LLC"); and (2) dismissing those PAGA claims with prejudice (hereinafter referred to as
"Plaintiff's Unopposed Motion").

1 **SUMMARY OF THE CLAIMS AT ISSUE**

2 Plaintiff filed his Individual and Representative Action Complaint (“Original Complaint”)
3 against the Defendants on January 3, 2022, and his First Amended Individual and Representative
4 Action Complaint (“First Amended Complaint”) against the Defendants on February 8, 2002.
5 (Declaration of Daniel V. Santiago in Support of Plaintiff’s Unopposed Motion [“Santiago Decl.”],
6 ¶3). Plaintiff’s Original and First Amended Complaints contain Plaintiff’s claims as representative
7 of the State of California on behalf of all aggrieved employees for civil penalties under the Private
8 Attorneys’ General Act of 2004 (“PAGA”), California Labor Code §2698 et seq., arising from
9 various alleged violations of the California Labor Code and Industrial Welfare Commission Wage
10 Order No. 4-2001. (Santiago Decl., ¶4). As used herein and in Plaintiff’s Original and First
11 Amended Complaints, the term “aggrieved employees” is defined as all California residents who
12 were employed by IMM, INC. and/or IMM, LLC as non-exempt, hourly rate employees at any time
13 within the time period of one (1) year preceding the filing of the Original Complaint in the Action
14 up to and through the date of the trial of the Action. (Santiago Decl., ¶5).

15 Plaintiff’s claims against Defendants in the Action arise from Defendants’ alleged failures,
16 *inter alia*: (a) to pay Plaintiff any wages (including overtime wages where appropriate) for all hours
17 worked off-the-clock in violation of Labor Code §§204(a), 218.6, 510(a), 1194(a) and 1197; (b) to
18 provide Plaintiff with itemized wage statements accurately identifying his total hours worked, gross
19 wages earned and net wages earned in violation of Labor Code §226(a); (c) to provide Plaintiff his
20 legally requisite meal periods under Labor Code §512(a) and IWC Wage Order No. 4-2001, §11(a)
21 and to pay him meal period premiums in violation of Labor Code §§226.7(c) and IWC Wage Order
22 No. 4-2001, §11(B); (d) to authorize and permit Plaintiff to take rest periods under IWC Wage
23 Order No. 4-2001, §12(A), and to pay him rest period premiums in violation of Labor Code
24 §226.7(c) and IWC Wage Order No. 4-2001, §12(B); and (e) to pay Plaintiff all wages due upon
25 termination of his employment in violation of Labor Code §§201-203. (Santiago Decl., ¶6).
26 Defendants deny the material allegations in Plaintiff’s Original and First Amended Complaints.
27 (Santiago Decl., ¶7). Defendants further deny any violation of the Labor Code or other
28 wrongdoing. (Santiago Decl., ¶7).

1 Plaintiff has filed an Unopposed Motion for an Order: (1) approving the settlement of
2 Plaintiff's individual PAGA claims against the Defendants; and (2) dismissing those PAGA claims
3 with prejudice ("Plaintiff's Unopposed Motion"). Plaintiff respectfully submits that, for the reasons
4 set forth below, the Court should grant the relief requested herein.

5 **II. STATUS OF THE LITIGATION**

6 Plaintiff's First Amended Complaint against Defendants is the operative complaint in the
7 Action. (Santiago Decl., ¶3). If the Court grants the relief requested herein, Plaintiff would
8 respectfully request that the Court vacate all dates on its calendar relating to the Action. (Santiago
9 Decl., ¶8). Of note, an initial status conference has not been scheduled, and this case is not
10 currently set for trial. (Santiago Decl., ¶8).

11 **III. THE PARTIES' SETTLEMENT AGREEMENT**

12 The parties have executed a Confidential Settlement Agreement and Mutual Release of All
13 Claims ("Settlement Agreement") reflecting the settlements of Plaintiff's individual PAGA claims
14 against the Defendants for One Thousand Dollars (\$1,000) and Plaintiff's individual non-PAGA
15 claims against the Defendants for Thirty One Thousand Five Hundred Dollars (\$31,500), for a
16 Gross Settlement Amount of Thirty Two Thousand Five Hundred Dollars (\$32,500). (Santiago
17 Decl., ¶9). A true and correct copy of the parties' Settlement Agreement is attached to the Santiago
18 Decl. as Exhibit 1.

19 More specifically, under the Settlement Agreement, Defendants shall pay a Gross Settlement
20 Amount of Thirty Two Thousand Five Hundred Dollars (\$32,500) as follows: (a) Seven Hundred
21 Fifty Dollars (\$750) to the Labor and Workforce Development Agency ("LWDA") in connection
22 with the settlement of Plaintiff's individual PAGA claims against the Defendants (i.e., 75% of the
23 PAGA settlement in accordance with Labor Code §2699(i)); (b) Two Hundred Fifty Dollars (\$250)
24 to Plaintiff in connection with the settlement of Plaintiff's individual PAGA claims against the
25 Defendants (i.e., 25% of the PAGA settlement in accordance with Labor Code §2699(i)); (c) One
26 Thousand Five Hundred Thirty Nine Dollars and Seventy Cents (\$1,539.70) to Plaintiff in
27 connection with the settlement of Plaintiff's individual non-PAGA / wage-related claims against the
28 Defendants (to be reported on an IRS Form W-2 and its state and local equivalents); (d) Fourteen

1 Thousand One Hundred Seven Dollars and Thirty Cents (\$14,107.30) to Plaintiff in connection with
2 the settlement of Plaintiff's individual non-PAGA / non-wage-related claims and general damages
3 against the Defendants (to be reported on an IRS Form 1099 and its state and local equivalents); and
4 (e) Sixteen Thousand One Hundred and Three Dollars (\$16,103) to Plaintiff's counsel's firm in
5 connection with the settlement of Plaintiff's individual non-PAGA claims against the Defendants
6 (to be reported on an IRS Form 1099 and its state and local equivalents). (Santiago Decl., ¶10).

7 Upon receipt of notice of the Court's entry of an Order granting the relief requested in
8 Plaintiff's Unopposed Motion, Plaintiff's counsel will file a Request for Dismissal of Plaintiff's
9 individual non-PAGA claims against the Defendants. (Santiago Decl., ¶11). Such dismissal will be
10 with prejudice pursuant to the terms of the parties' Settlement Agreement. (Santiago Decl., ¶11).

11 Notably, the parties' Settlement Agreement (including, *inter alia*, the parties' agreement to
12 settle Plaintiff's individual PAGA claims against the Defendants for One Thousand Dollars
13 (\$1,000)) is subject to, and expressly conditioned upon, the Court's entry of an Order: (a) approving
14 of the settlement of Plaintiff's individual PAGA claims against Defendants; (b) dismissing
15 Plaintiff's individual PAGA claims against Defendants with prejudice; and (c) dismissing Plaintiff's
16 PAGA claims against Defendants on behalf of other aggrieved employees of Defendants without
17 prejudice. (Santiago Decl., ¶12).

18 **IV. PLAINTIFF REQUESTS THE COURT'S APPROVAL OF THE PROPOSED**
19 **SETTLEMENT OF HIS INDIVIDUAL PAGA CLAIMS, AS REQUIRED.**

20 The proposed settlement of Plaintiff's individual PAGA claims against the Defendants is
21 fair and reasonable in light of the following factors, among others: (a) Plaintiff's counsel has
22 conducted sufficient investigation of the facts underlying Plaintiff's claims that support Plaintiff's
23 counsel's conclusion that the proposed settlement of Plaintiff's individual PAGA claims is fair and
24 reasonable (such investigation and discovery have included Plaintiff's counsel's, *inter alia*,
25 engaging in numerous, detailed conversations with Plaintiff regarding the underlying facts and the
26 status of the parties' settlement discussions as well as analyzing Plaintiff's timecards and related
27 papers produced by Defendants' counsel); (b) any settlement, including the proposed settlement in
28 the Action, should take into consideration the time, inconvenience and uncertainty of trial that are

1 avoided by the settlement; (c) under Labor Code §2699(i), allegedly aggrieved employees like
2 Plaintiff are entitled to receive only 25% of any PAGA settlement with the remaining 75% to be
3 paid to the LWDA; and (d) as explained in detail in the Santiago Decl. at ¶¶14-15, the proposed
4 settlement of Plaintiff's individual PAGA claims for One Thousand Dollars (\$1,000) exceeds
5 Plaintiff's counsel's evaluation of a fair and reasonable settlement of those PAGA claims.
6 (Santiago Decl., ¶¶13-15).

7 Plaintiff requests the Court's approval of the proposed settlement of his individual PAGA
8 claims against the Defendants in accordance with Labor Code §2699(l)(2) which requires Court
9 approval for every PAGA settlement.¹ Labor Code §2699(l)(2) further requires that the proposed
10 PAGA settlement be submitted to the LWDA at the same time that it is submitted to the Court.
11 Accordingly, Plaintiff's counsel submitted copies of Plaintiff's Unopposed Motion and all related
12 papers to the LWDA (via online filing with the LWDA) immediately before filing those papers in
13 the Orange County Superior Court. (Santiago Decl., ¶29). A true and correct copy of the email
14 Plaintiff's counsel received from the DIR PAGA Unit on behalf of the LWDA confirming his
15 submission of those papers to the LWDA earlier that day is attached to the Santiago Decl. as
16 Exhibit 2. (Santiago Decl., ¶29).

17 Plaintiff's counsel does not anticipate receiving any objection or other communication from
18 the LWDA regarding the relief requested herein. (Santiago Decl., ¶30). Plaintiff's counsel will
19 advise the Court whether he has received any such objection or other communication from the
20 LWDA during the hearing on this Unopposed Motion. (Santiago Decl., ¶30).

21 **V. NECESSITY FOR REQUESTED RELIEF**

22 Plaintiff respectfully submits that this Unopposed Motion is warranted in light of the
23 following factors, among others: (1) the parties are prepared to consummate their Settlement
24 Agreement immediately after the Court approves of the settlement of Plaintiff's individual PAGA
25 claims against the Defendants, dismisses those PAGA claims with prejudice, and dismisses
26

27 ¹ Labor Code §2699(l)(2) provides that "[t]he superior court shall review and approve any settlement of any
28 civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same
time that it is submitted to the court."

1 Plaintiff's PAGA claims against the Defendants on behalf of other aggrieved employees without
2 prejudice; and (2) there is no just reason to delay the consummation of the parties' Settlement
3 Agreement. (Santiago Decl., ¶16).

4 Of note, notice to the other aggrieved employees of the proposed dismissals described herein
5 is not required because, among other reasons, this is not a putative class action, notice of this
6 representative action has not been required to be provided to (and has not been provided to) the
7 other aggrieved employees, and the proposed dismissals described herein will not prejudice any of
8 the other aggrieved employees. (Santiago Decl., ¶17). *See, e.g., Baumann v. Chase Inv. Servs.*
9 *Corp.*, 747 F.3d 1117, 1122 (9th Cir. 2014) ("PAGA has no notice requirements for unnamed
10 aggrieved employees, nor may such employees opt out of a PAGA action); *O'Connor v. Uber*
11 *Techs., Inc.*, 201 F. Supp. 3d 1110, 1134 (N.D. Cal. 2016) ("PAGA does not require class actions
12 procedures, such as notice and opt-out rights."); and *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010
13 WL 134077, at *5 (N.D. Cal. Apr. 2, 2010) ("Unnamed employees need not be given notice of the
14 PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim.")

15 The following factors, among others, support the conclusion that the proposed dismissals
16 described herein will not prejudice any of the other aggrieved employees: (a) the *Baumann*,
17 *O'Connor* and *Ochoa-Hernandez* cases cited above support the proposition that unnamed aggrieved
18 employees need not be given notice of the PAGA claim; (b) Plaintiff's counsel is unaware of any
19 other aggrieved employees' reliance on the Plaintiff or Plaintiff's counsel to prosecute this
20 representative action for his or his benefit; and (c) Plaintiff's counsel is unaware of any factor that
21 prevents any other aggrieved employee from pursuing individual claims against the Defendants, or
22 either of them, if he or she elects to do so. (Santiago Decl., ¶18).

23 VI. REQUESTED RELIEF

24 For the foregoing reasons, Plaintiff respectfully requests that the Court enter an Order, *inter*
25 *alia*: (1) approving the settlement of Plaintiff's individual PAGA claims against the Defendants in
26 the total amount of One Thousand Dollars (\$1,000) and the corresponding payments of Seven
27 Hundred Fifty Dollars (\$750) to the LWDA and Two Hundred Fifty Dollars (\$250) to Plaintiff; (2)
28 dismissing Plaintiff's individual PAGA claims against the Defendants with prejudice; (3) dismissing

1 Plaintiff's PAGA claims against the Defendants on behalf of the other aggrieved employees without
2 prejudice; and (4) granting such additional relief as the Court deems just and appropriate. Plaintiff
3 respectfully files under separate cover a [Proposed] Order reflecting the relief requested herein.

4 Plaintiff's counsel has discussed with Defendants' counsel the relief requested in Plaintiff's
5 Unopposed Motion. (Santiago Decl., ¶27). Plaintiff's counsel has provided Defendants' counsel
6 with almost final drafts of Plaintiff's Unopposed Motion and related papers. (Santiago Decl., ¶28).
7 Defendants' counsel has informed Plaintiff's counsel that Defendants' counsel does not oppose the
8 relief requested herein. (Santiago Decl., ¶29).

9 Dated: March 31, 2022

LAW OFFICES OF DANIEL V. SANTIAGO, P.C.

10 By:


11 Daniel V. Santiago, Esq.
12 Attorney for Plaintiff, Elias Picasso
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