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Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

JAMIE JOHNSON, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

SAN FRANCISCO HEALTH CARE AND
REHAB INC, a California Corporation;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: CGC-22-597785
*[Assigned to Hon. Andrew Y.S. Cheng, Dept.
613, for all purposes]*

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Hearing

Date: July 12, 2024

Time: 9:00 a.m.

Dept.: 613

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment department within my firm where I am also a Partner. I represent Plaintiff in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

1 **COUNSEL'S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled well over 500 employee vs. employer litigation matters during my
7 23 years in practice. Over the last 17 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled well over 300 class action and
10 representative action wage/hour cases, and have been appointed by the court as class counsel and
11 have received final court approval and judgment in over half of those actions to date, and
12 anticipate receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered well in excess of
14 \$250 million in damages for my clients and the class members (who often work as nurses,
15 ambulance drivers, technicians, warehouse workers, truck drivers, sales, professional
16 occupations and countless other trades). My team and I once held the record for the largest
17 PAGA-only case in California's history - a \$12.5 million-dollar court approved settlement,
18 which followed extensive litigation, summary adjudication and writs to the CA Supreme Court
19 against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior Court).

20 5. I have tried two major class and PAGA cases against Fortune 100 companies over
21 the last few years. I was lead counsel in a PAGA case that my firm tried in the Orange County
22 Superior Court and received a \$425,000 judgment. I was co-counsel in a class action case
23 against Walmart that was tried to the jury in District Court, wherein the jury awarded Plaintiffs
24 over \$6 million. Both cases were appealed, and ultimately the jury trial verdict was affirmed and
25 the PAGA case was reversed and remanded.

26 6. I was named by the LA Times as one "Southern California Leading Lawyers" in
27 the May 2023 issue of Consumer Attorney's of Southern California (a recognition given to 17
28 employment/labor law attorneys in 2023). Additionally, over the last 5+ consecutive years, I

1 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that
2 only 5% of lawyers receive.

3 **BRIEF SUMMARY OF THE SETTLEMENT**

4 7. Following a contested litigation process, Plaintiff and Defendant (collectively, the
5 “Parties”) finalized a Class Action and PAGA Settlement Agreement and Release (the
6 “Settlement Agreement” or “S.A.”), which is attached hereto as **Exhibit 1**. The Parties are in the
7 process of getting the Settlement Agreement executed, and I will file a supplemental declaration
8 with the fully signed version as soon as it is available.

9 8. The Settlement Agreement seeks to release and discharge Defendant from the
10 claims brought against it in exchange for Defendant’s agreement to pay \$760,000 on a non-
11 reversionary, non-claims made basis (each Class Member will receive his/her share of the Net
12 Settlement Amount without having to submit a claim form or take any action). As set forth in
13 the motion and Settlement Agreement, Plaintiff seeks to represent “All current and former
14 nonexempt employees employed by Defendant in California during the Class Period.”

15 9. Under the terms of the Settlement Agreement, Defendant will not oppose my
16 firm’s application for a reasonable award of attorneys’ fees not to exceed \$253,333.33 (1/3 of
17 the Settlement Amount), litigation expenses not to exceed \$30,000, Settlement Administrator
18 Costs of \$10,000, PAGA penalties of \$40,000 (75% to the LWDA and 25% to the Aggrieved
19 Employees on a pro rata basis), and a Service Payment not to exceed \$10,000 to Plaintiff Jamie
20 Johnson (“Class Representative”). After subtracting the agreed-upon deductions from the
21 Settlement Amount, approximately \$416,666.67 will be available to pay the individual
22 settlement amounts to approximately the Class Members who do not opt-out of the settlement,
23 as follows:

<i>Settlement Amount</i>	\$ 760,000.00
Attorneys’ Fees (1/3)	\$ 253,333.33
Litigation Costs (not to exceed)	\$ 30,000.00
Administrator Costs	\$ 10,000.00
PAGA Penalties	\$ 40,000.00
Class Representative Service Award	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 416,666.67

10. Assuming 700 Class Members, the average payment will be approximately \$595.24 (\$416,666.67 / 700). However, the actual payments will be calculated on a pro-rata basis according to the number of Weeks Worked by each Class Member during the Class Period, with an estimated net value of \$10.96 per workweek (the Parties settled the Action at \$20 per workweek [$\$20 \times 38,000 = \$760,000$] but, after deductions, the net value per workweek is \$10.96 [$\$416,666.67 / 38,000$ workweeks]). In addition, approximately 420 Aggrieved Employees will receive a share of the \$10,000 PAGA Penalties (25% of the \$40,000 allocation), shared pro-rata based on Weeks Worked during the PAGA Period.

11. Each Class Member will receive the Class Notice, explaining the nature of the case, and the process for participating, objecting and opting-out, and advising of his/her estimated settlement payment and the number of Weeks or Pay Periods he/she is credited with working during the Class Period which is attached hereto as **Exhibit 2**.

PROCEDURAL BACKGROUND

12. My office has performed considerable work and diligently investigated and prosecuted this case to a successful conclusion. Our work has resulted in the creation of a significant settlement fund for the benefit of the Class. We efficiently communicated and exchanged information informally with Defense counsel which enabled the parties to successfully settle the case. Because of the risks involved in litigating the case and the contested legal and factual issues, we believe this settlement to be fair, reasonable, and adequate.

13. After being retained by Plaintiff, we sent a letter to Defendant requesting the production of Plaintiff's personnel and timekeeping records in order to further evaluate her wage and hour claims. On January 21, 2022, we submitted a letter to the California Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act of 2004 (the "PAGA"), which is attached hereto as **Exhibit 3**.

14. Then, on January 24, 2022, my office (on behalf of Plaintiff) filed this class action, alleging that Defendant violated various sections of the Labor Code. After the LWDA declined to assert jurisdiction over the PAGA claims, we filed the operative First Amended Complaint on March 30, 2022, which added PAGA claims to the action.

1 15. SFHCR retained counsel, began to defend the case, and removed the Action to the
2 U.S. District Court for the Northern District of California on March 28, 2022, under § 301 of the
3 Labor Management Relations Act. Defendant filed a motion to dismiss certain causes of action
4 in federal court. Plaintiff also filed a motion to remand the Action back to state court, which was
5 set to be heard concurrently with Defendant’s motion to dismiss. Ultimately, the federal court
6 granted in part and denied in part Defendant’s motion to dismiss and remanded this Action back
7 to this Court. *See Johnson v. San Fran. Health Care* (N.D. Cal. 2022) 2022 U.S. Dist. LEXIS
8 126222.

9 16. After returning to state court, the Parties discussed and scheduled mediation with
10 Mark Rudy in April 2023. However, a dispute arose among the Parties concerning the scope of
11 sampling and pre-mediation data, that mediation was cancelled, and litigation resumed. SFHCR
12 then filed a petition to compel arbitration, which the Hon. Richard Ulmer granted in part and
13 denied in part, effectively sending certain Class Claims to arbitration while leaving certain Class
14 Claims and PAGA Claims for unpaid wages to be adjudicated in this Court.

15 17. Plaintiff and her counsel immediately sought class-wide discovery seeking
16 information relevant to class certification, including class contact information. Defendant
17 disputed the propriety of many of Plaintiff’s discovery requests for various reasons. The Parties
18 thereafter engaged in extensive “meet and confer” efforts, including an Informal Discovery
19 Conference with this Court, on these issues.

20 18. Ultimately, the Parties agreed to table the pending discovery disputes and attend
21 mediation as to all Class and PAGA claims alleged.

22 19. In preparation for mediation, the Parties informally exchanged documents and
23 information which allowed both sides to calculate the potential damages and evaluate potential
24 risk. Defendant produced extensive documents and information to Plaintiff (spanning over 3,000
25 pages of documents), including without limitation: policies and procedures pertaining to the
26 claims, the number of current and former employees, the number of shifts worked, and the
27 number of pay periods worked. Defendant also provided the following: the Employee ID for
28 every Class Member, their hourly rate, job title, hire and termination date (if applicable), the

1 number of pay periods worked, and the amount of pay received in various categories relating to
2 Plaintiff's claims (*e.g.*, shift differential pay, bonuses, hazard pay, amount of meal premiums
3 paid, and so forth). Defendant provided a significant sampling of the Class Members' payroll
4 and timekeeping records spanning more than 1,800 pages to Plaintiff's counsel. This
5 information enabled both parties to delve deeply into the merits of the claims and, during this
6 process, Plaintiff and her counsel analyzed, researched, and investigated the potential issues,
7 including matters related to the calculation of damages, the costs associated with preparing for
8 trial, and potential appellate issues and risks.

9 20. On March 19, 2024, Plaintiff and SFHCR participated in mediation with Hon.
10 Brian Walsh (Ret.), a well-respected employment mediator. At the conclusion of mediation and
11 extensive arms-length negotiations, the Parties entered into the Settlement Agreement. The
12 Parties now seek the Court's preliminary approval of the Settlement.

13 **SUMMARY OF THE CLAIMS AND DEFENSES**

14 21. Here, Plaintiff alleged numerous wage and hour violations on behalf of the Class
15 Members. However, Defendant vigorously contested and denied Plaintiff's material allegations
16 on the merits and as to the propriety of a class action or PAGA representative action. Still,
17 Plaintiff believed there were several strong claims.

18 22. For instance, Plaintiff alleged that Defendant paid Class Members on an hourly
19 basis *plus* additional earned compensation (*i.e.*, shift differentials and bonuses). Plaintiff
20 contended SFHCR failed to include this compensation in the regular rate calculations and, thus,
21 failed to pay all required overtime. Defendant denied this contention in its entirety, and further
22 pointed to affidavits from the stewards of Plaintiff's Union to show Plaintiff was paid in
23 compliance with the Cal. Labor Code. Defendant maintained the hours worked by its employees,
24 and any shift differentials or bonuses, were correctly accounted for in calculating their pay.
25 Moreover, Defendant contended this matter was preempted by Cal. Labor Code §514.

26 23. Second, Plaintiff alleged that Defendant automatically deducted 30 minutes from
27 the Class Members' shifts, without inquiry into whether a meal period was taken. Plaintiff
28 argued that this "auto-deduct" practice resulted in significant unpaid wages because Class

1 Members were frequently denied meal periods, yet SFHCR deducted 30 minutes of pay for a
2 meal which did not occur. Defendant denied this allegation and contended its employees
3 regularly clocked out for their meal breaks, and that Plaintiff herself regularly took such breaks.
4 Defendants further contended that if warranted, its employees knew to, and did, notify
5 management if they were unable to take a meal period, so the company could pay the applicable
6 overtime and meal period premium.

7 24. Third, Plaintiff alleged that SFHCR utilized a practice that “rounded” the Class
8 Members’ timekeeping and paid in quarter-hour increments, and further alleged that this practice
9 underpaid the Class because it did not pay all wages owed. (See *Camp v. Home Depot U.S.A.*
10 *Inc.*, (2022) 84 Cal.App.5th 638, 660.) Defendant denied this allegation and contended that, if
11 any such “rounding” occurred, such “rounding” would have worked to the employees’ favor, not
12 to their detriment.

13 25. Fourth, Plaintiff alleged that, during COVID, SFHCR required the Class to
14 complete pre-shift temperature checks and screenings prior to clocking in, leading to unpaid
15 wages on each such occasion. (See *Boone v. Amazon Servs., LLC* (E.D. Cal. 2022) 562
16 F.Supp.3d 1103 [pre-shift COVID temperature checks constitute “hours worked” and must be
17 compensated].) Defendant denied any such practice occurred.

18 26. Plaintiff also argued these violations resulted in unpaid minimum wages and
19 overtime, waiting time penalties under Labor Code § 203, and other derivative penalties.
20 Defendant opposed each of these unpaid wage claims on numerous grounds, and further,
21 disputed the propriety of adjudicating all of Plaintiff’s claims on a class or representative basis.
22 For instance, Plaintiff also alleged that Class Members were denied compliant meal and rest
23 breaks. However, Defendant argued it provided and made all mandated breaks available to the
24 Class, and any employee who did not take a break did so of their own volition. Thus, Defendant
25 argued these claims were without merit because, for each violation, a factfinder must determine
26 why a break was noncompliant, because if it was by the employee’s choice, no liability attaches
27 to Defendant.
28

1 27. Finally, Plaintiff alleged a variety of other, derivative claims (all of which
2 Defendant disputed), such as the failure to timely pay wages each period (under Labor Code §
3 204), failure to timely pay all wages upon separation of employment (Labor Code §§ 201 – 203),
4 and failure to provide accurate itemized wage statements (Labor Code § 226).

5 28. Despite the disputed nature of the claims, the Parties concluded that further
6 litigation of the Action would be protracted and expensive, and that it is desirable that the Action
7 be fully and finally settled to limit further risk, expense, and protracted litigation.

8 **EVALUATION OF THE SETTLEMENT**

9 29. In preparation for mediation, Peter Carlson, a senior associate with 10 years of
10 litigation experience within my office, and I formulated a damages model and risk analysis based
11 upon detailed data obtained through informal discovery and information exchanges. The
12 summary of the claims below is based on calculations by our expert and us, and the risks that we
13 potentially faced, giving significant credit to the defenses that Defendant raised or would likely
14 raise in further proceedings.

15 30. Following the informal exchange and other information provided by Defendant,
16 we estimated the following data points through the date of mediation: (1) 700 Class Members,
17 (2) 550 *former* Class Members for purposes of Labor Code § 203, (3) 38,000 workweeks, (4)
18 136,800 shifts worked, and (4) approximately 6,000 wage statements during the PAGA Period.

19 31. Here, Plaintiff alleged a variety of claims against Defendant, which boil down to
20 these categories: (1) unpaid wages, (2) meal and rest break violations, (3) waiting time penalties
21 under Labor Code §§ 201 – 203, (4) wage statement penalties under § 226(e), and (5) PAGA
22 civil penalties for the same claims.

23 32. Plaintiff's unpaid wage claims had several distinct theories of liability, including:
24 (1) alleged regular rate issues (*i.e.*, failure to include shift differentials, bonuses, and other
25 payments in overtime and other calculations), (2) Defendant's alleged "auto-deduct" policy, (3)
26 an alleged "rounding policy", and (4) off-the-clock violations for COVID temperature checks.
27 Based on expert calculations and analysis of the pre-mediation data, Plaintiff believed that the
28 maximum class damages for these unpaid wage claims totaled \$735,122 (\$116,436 for regular

1 rate violations, \$425,791 for “auto-deducts”, \$40,000 for rounding, and \$152,895 for COVID
2 temperature checks).

3 33. However, Defendant vehemently opposed these unpaid wage claims on the merits
4 and as to the propriety of class certification. And the maximum values failed to account for the
5 many risks and defenses these claims faced. For example, as to the regular rate issues, Defendant
6 argued that this claim was without merit given LMRA pre-emption, the terms of the applicable
7 collective bargaining agreement (“CBA”), and the exemption under Labor Code § 214. As to the
8 auto-deduct policy, Defendant disputed that this practice simply did not exist, and that Class
9 Members were paid for all hours worked – moreover, Defendant argued that, if there were “auto-
10 deducts” that there would be no liability since this reflected the actual meal periods taken by the
11 Class and this claim is also not proper for certification since it would require a string of
12 individualized issues to determine whether the “auto-deducts” were a common and uniform
13 practice. Then, as to the “rounding policy,” Defendant argued that its policy was neutral on its
14 face and in application, as it rounded to the nearest 15 minutes. Thus, Defendant argued that no
15 liability would attach because it was fair and neutral as required by *See’s Candy*. Finally, as to
16 the COVID temperature checks, Defendant argued that the Class Members were allowed to
17 perform these tasks while on the clock, so any decision by employees to do this while off the
18 clock does not trigger liability since it was of the employee’s own choosing. Defendant also
19 argued that this claim was unmanageable for class certification because it would required
20 individualized testimony and evidence regarding whether a Class Member was subjected to this
21 practice, how often, and how long the process took. Given these risks and defenses, my office
22 calculated the risk-adjusted value of these unpaid wage claims at trial to be \$308,751 (based on a
23 30% risk on these claims at class certification and a 40% risk on the merits).

24 34. Plaintiff also alleged meal and rest break claims against Defendant. Based on the
25 pre-mediation analysis and investigation, and when incorporating violation rates from expert
26 review of the timekeeping records and other evidence, Class Counsel estimated a 39.7%
27 violation rate for meal periods and a 50% violation rate for rest breaks. This results in maximum
28 class damages of \$1,318,094 for meal period violations (136,800 shifts x 39.7% violation rate x

1 \$24.27) and \$1,660,068 for rest break violations (136,800 shifts x 50% violation x \$24.27).

2 35. However, Defendant raised numerous arguments in response to these claims,
3 including that it maintained fully compliant written policies and specifically authorized the Class
4 Members to take meal and rest breaks, meaning that no one had a reason or cause to miss a break
5 or take a short/late break. Therefore, Defendant asserted that a fact-finder would have to
6 determine for each Class Member whether a break was missed and why, and why a break was
7 noncompliant or nonexistent, because if it was the employee's choice, no liability attaches to
8 Defendant. These defenses are factored into Plaintiff's analysis in two ways. First, these issues
9 raise questions regarding whether the meal and rest break claims could be certified. Second,
10 these defenses also go toward the merits given the evidentiary question of proving the number of
11 meal and rest violations. As such, Plaintiff and Class Counsel considered these risks and
12 defenses and applied risks of 50% at class certification and an additional 50% on the merits to
13 arrive at risk-adjusted values of \$329,523 for meal periods and \$415,017 for rest breaks.

14 36. Plaintiff also alleged claims for waiting time penalties and wage statement
15 violations, including failure to accurately state all applicable hourly rates and total hours worked.
16 The maximum potential class damages for these claims were \$3,263,040 for waiting time
17 penalties (\$197.76 average daily pay x 30 days x 550 former employees) and \$579,000 for wage
18 statement violations (6,000 violations multiplied by the formula under Labor Code § 226(e) [\$50
19 for initial violation and \$100 for all subsequent violations]).

20 37. However, these claims were derivative of the claims above, meaning that they
21 only had merit if the claims for unpaid wages or meal/rest breaks were successful. But
22 Defendant raised a variety of defenses to these derivative claims that impacted the valuation.
23 Namely, as to the wage statement violations, Defendant argued that the wage statements did not
24 violate Labor Code § 226 and even if there was a "technical" violation, that Plaintiff would be
25 unable to prove the required "knowing and intentional" and "injury" elements. And this was
26 especially true given the pending decision looming from the California Supreme Court in
27 *Naranjo v. Spectrum Security* which was set to touch on this very topic. Then, as to the waiting
28 time penalty claim, Plaintiff's valuation had to account for the fact that this claim was derivative

1 of the unpaid wage and meal/rest break claims (*e.g.*, the unpaid wage premiums) and, if those
2 claims failed at certification or on the merits, there would be no waiting time penalties owed, so
3 the same risks for those claims applied to this claim. Furthermore, even if the unpaid wage
4 and/or meal/rest claims succeeded at certification and on the merits, Plaintiff would have to
5 prove that the violations (if any existed) were “willful” under the meaning of Labor Code § 203.
6 And, here, Defendant argued that there could not be a finding of a “willful” violation since it had
7 compliant written policies, and any deviations therefrom were inadvertent and unintentional.
8 Thus, for the waiting time penalty claim, Plaintiff assigned a 50% risk at class certification and
9 an additional 50% risk on the merits, resulting in a risk-adjusted value of \$815,760. And, as for
10 the wage statement claim, Plaintiff assigned a 40% risk at class certification and another 40%
11 risk on the merits, resulting in a risk-adjusted value of \$208,440.

12 38. In sum, Plaintiff calculated the maximum potential Class damages as \$7,555,324.
13 However, that figure fails to consider the various risks at class certification, on the merits, and
14 the many evidentiary issues. When considering all relevant factors, Class Counsel estimated the
15 risk-adjusted value of the Class claims at \$2,077,491.

16 39. And while the PAGA penalties had a potential maximum value in the seven
17 figures, this also fails to incorporate the risks above and, further, fails to acknowledge that courts
18 have wide latitude to reduce the civil penalties “based on the facts and circumstances of a
19 particular case” and if “to do otherwise would result in an award that is unjust, arbitrary and
20 oppressive, or confiscatory.” Labor Code § 2699(e)(2). Moreover, Defendant argued against the
21 merits of the underlying claims and particularly that the “willfulness” standard and/or “good
22 faith” defenses mitigated the civil penalty claims and rendered any such penalties as uncertain.
23 Defendant also argued it is improper to stack civil penalty claims on top of underlying statutory
24 claims. For these reasons, the Parties submit that this settlement is fair and reasonable.

25 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

26 40. The settlement was the product of extensive arm’s length negotiations, facilitated
27 by an experienced mediator. Though cordial and professional, the settlement negotiations were
28 adversarial and non-collusive in nature. The settlement reached is the product of substantial

1 effort by the parties and their counsel. Although we believed that there was a possibility of
2 certifying the claims, we recognized the potential risk, expense, and complexity posed by
3 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
4 on the damages awarded, and/or on an appeal that can take several more years to litigate.

5 41. The settlement will result in a fair payment to each Class Member based on the
6 percentage of weeks worked during the Class Period and other factors as set forth in the
7 Settlement Agreement. As set forth hereinabove, Plaintiff and her counsel have diligently
8 investigated the claims and defenses on behalf of the Class Members and worked to achieve a
9 resolution of the claims to maximize the recovery by avoiding further expenditure of attorneys'
10 fees and costs. After evaluating the significant risks attendant with further litigation described
11 above and weighing them against the benefits of a known compromise and settlement as set forth
12 in the Settlement Agreement, settlement on the terms agreed to is believed to be in the best
13 interest of Plaintiff and the Class, and is a fair and reasonable resolution of the claims alleged.

14 42. My office brought to bear a great deal of experience in negotiating the settlement
15 of this case. As detailed herein, my office engaged in the necessary discovery and investigation,
16 making it possible to exercise informed judgment throughout the settlement process, including
17 significant document review (e.g. documents pertaining to Defendant's policies and procedures,
18 personnel documents, among others), and conducted an extensive analysis of the detailed class-
19 wide data provided by Defendant.

20 43. Based on my experience in other cases, including wage and hour matters, I
21 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
22 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
23 settlement at this time is in the best interests of the class. The settlement provides each class
24 member with compensation for the alleged violations when viewed in relation to the costs and
25 risks inherent in obtaining class certification and proceeding to trial.

26 44. Plaintiff's counsel, as well as Defendant's counsel, fully endorse the terms and
27 conditions of the settlement as set forth in the abovementioned Settlement Agreement.
28

1 45. Of course, the settlement amount represents a compromise figure, taking into
2 account the various risks surrounding class certification and the merits of Defendant's asserted
3 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
4 members, with no reversion to Defendant.

5 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENT**

6 46. Plaintiff seeks an enhancement payment of \$10,000 for her service to the class,
7 which I believe is fair and warranted. Plaintiff came forward in an effort to effectuate a policy
8 and practice change that benefitted all other Class Members, and to recover unpaid wages. She
9 assumed significant risk in bringing this litigation—namely, had she lost, she would have been
10 ordered to pay Defendant's costs.

11 47. Plaintiff provided invaluable assistance to my office and the Class in this case,
12 including providing factual background for the Class Complaint; reviewing the litigation
13 documents; providing information and documents about Defendant's policies and practices;
14 participating in phone calls to discuss litigation and settlement strategy; drafting responses to
15 formal discovery; and reviewing the settlement documents. Plaintiff agreed to participate in this
16 case with no guarantee of personal benefit. At final approval, Plaintiff will submit a
17 comprehensive declaration setting forth all of the reasons why she believes that the service award
18 should be approved.

19 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
20 **REQUESTED FEES AND COSTS**

21 48. As set forth above, I have handled over 500 class and representative actions, have
22 been appointed as class counsel and have successfully resolved over half of those cases, and
23 many others remain pending and will successfully resolve in the future.

24 49. When this case was taken on a contingency fee basis, with my firm agreeing to
25 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
26 course of this litigation, my firm paid all costs including filing fees, court costs, research fees,
27 and mediation costs. There was never a guarantee that we would recoup those expenditures.

1 50. It is my experience that attorney fee awards of one-third of a common fund
2 settlement is the standard in California. In this case, my firm agreed to seek one-third of the
3 Settlement Amount for attorneys' fees. Defendant does not oppose this fee request. The fee is
4 further warranted because it is within the range of reasonableness typically awarded in class
5 actions. The costs are reasonably capped at \$30,000 and will be based on the actual amount of
6 costs incurred at the time of final approval.

7 **SETTLEMENT ADMINISTRATOR**

8 51. The parties request that the Court appoint Phoenix Settlement Administrators to
9 serve as the Settlement Administrator. Phoenix is experienced in administering class action
10 settlements and has provided a proposal to administer this settlement for a total of \$10,000,
11 which is attached hereto as **Exhibit 4**.

12 **SUBMISSION TO THE LWDA**

13 52. Plaintiff has concurrently submitted the settlement and motion documents to the
14 LWDA in accordance with Labor Code § 2699(1)(2). The proof of submission is attached hereto
15 as **Exhibit 5**.

16 **EXHIBITS AND CONCLUSION**

17 53. A true and correct copy of the Settlement Agreement is attached as **Exhibit 1**.

18 54. A true and correct copy of the proposed Class Notice is attached hereto as **Exhibit**
19 **2**.

20 55. A true and correct copy of Plaintiff's letter to the LWDA is attached hereto as
21 **Exhibit 3**.

22 56. A true and correct copy of Phoenix's proposal to administer the Settlement is
23 attached as **Exhibit 4**.

24 57. A true and correct copy of the LWDA's confirmation of receipt of this Motion,
25 Declarations and exhibits is attached hereto as **Exhibit 5**.

26 58. For the foregoing reasons, it is respectfully requested that the Court grant
27 preliminary approval of the settlement as being fair, reasonable, and in the best interests of the
28 class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement

1 payment to the Class Representative.

2 I declare under penalty of perjury under the laws of the State of California that the
3 foregoing is true and correct. Executed on June 12, 2024, at Riverside, California.

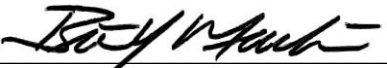
4
5 By: 
6 Brian J. Mankin, Esq.

EXHIBIT “1”

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

JAMIE JOHNSON, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

SAN FRANCISCO HEALTH CARE AND
REHAB, INC., a California Corporation; and
DOES 1 through 20, inclusive;

Defendants.

Case No.: CGC-22-597785
*[Assigned to Hon. Andrew Y.S. Cheng, Dept.
613, for all purposes]*

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

1 This Class Action and PAGA Settlement Agreement and Release of Claims is entered
2 into by and between Plaintiff Jamie Johnson, individually and on behalf of all others similarly
3 situated, and on behalf of the State of California, and Defendant San Francisco Health Care and
4 Rehab, Inc., and is approved by their respective counsel of record, subject to the terms and
5 conditions hereof and the Court's approval.

6 **A. Definitions**

7 1. "Action" or "Lawsuit" means and refers to the case entitled *Johnson, et al. v. San*
8 *Francisco Health Care and Rehab, Inc.*, San Francisco County Superior Court, Case No. CGC-
9 22-597785.

10 2. "Aggrieved Employee(s)" means all current and former nonexempt employees
11 employed by Defendant in California during the PAGA Period.

12 3. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Class
13 Action and PAGA Settlement Agreement and Release of Claims.

14 4. "Class" means and refers to all current and former nonexempt employees
15 employed by Defendant in California during the Class Period.

16 5. "Class Member(s)" refers to individual members of the Class.

17 6. "Class Counsel" refers to Brian Mankin and Peter Carlson of Lauby, Mankin &
18 Lauby LLP.

19 7. "Class Data" means a complete list that Defendant will diligently and in good
20 faith compile from its records and provide to the Settlement Administrator on one spreadsheet
21 which shall include, for each Class Member: the individual's full name, last known address,
22 Social Security Number, and total Weeks Worked during the PAGA Period and the Class Period.

23 8. "Class Period" is deemed to be any time during the period of January 24, 2018,
24 through the Preliminary Approval Date.

25 9. "Class Representative" or "Plaintiff" means and refers to Plaintiff Jamie Johnson.

26 10. "Complaint" refers to the operative first amended complaint, which pleads class
27 action and PAGA representative claims.

28 11. "Court" (or "Judge") means the California Superior Court, County of San

1 Francisco.

2 12. “Defendant” means and refers to Defendant San Francisco Health Care and
3 Rehab, Inc.

4 13. “Defendant’s Counsel” or “Defense Counsel” means and refers to Susan Bishop
5 of Berliner Cohen, LLP, and Jonathan Van Ee of The Law Offices of Jonathan Van Ee.

6 14. “Effective Date” means the latest of the following dates: (i) if no Class Member
7 timely and properly intervenes or files a motion to vacate the Judgment under Code of Civil
8 Procedure § 663, then the date the Court enters an order granting Final Approval of the
9 Settlement; (ii) if a Class Member intervenes or files a motion to vacate the Judgment, then
10 sixty-one (61) calendar days following the date the Court enters an order granting Final
11 Approval, assuming no appeal is filed; or (iii) if a Class Member timely and properly intervenes
12 or files a motion to vacate the Judgment under Code of Civil Procedure § 663 or initiates another
13 collateral attack, and if a timely appeal is filed, then the date of final resolution of that appeal or
14 other collateral attack (including any requests for rehearing and/or petitions for certiorari),
15 resulting in final judicial approval of the Settlement.

16 15. “Escalator Clause:” Defendant represents that there are approximately 700 Class
17 Members who worked approximately 38,000 Work Weeks during the Class Period. The Parties
18 agree that, should the total number of Work Weeks exceed 41,800 (which is 10% more than
19 Defendant’s representation), then the Settlement Amount shall increase by \$20.00 for each
20 additional Work Week above 41,800 (which is the Settlement Amount divided by 38,000).

21 16. “Final Approval” refers to the order of the Court granting final approval of this
22 Settlement Agreement and entering a judgment approving this Agreement on substantially the
23 terms provided herein or as may be modified by subsequent agreement of the Parties.

24 17. “Individual Class Payment” refers to each Participating Class Members’ share of
25 the Net Settlement Amount, as further discussed in Paragraph 48(c) below.

26 18. “Individual PAGA Payment” refers to each Aggrieved Employees’ share of the
27 PAGA Penalties, as further discussed in Paragraph 48(h) below.

28 19. “Net Settlement Amount” is the Settlement Amount less the Attorneys’ Fees and

Costs Award, the Service Payment to the Class Representative as awarded by the Court, the Settlement Administration Costs, and PAGA Penalties, as further discussed in Paragraph 48(b) below.

20. “Notice” means the notice of proposed class settlement that will be sent to the Class Members, and which will advise each Class Member of the settlement and his or her estimated Individual Class Amount, Individual PAGA Amount, total Weeks Worked during the Class and PAGA Period, and will further advise of the setting of a Final Approval Hearing.

21. “Objecting Class Member” means a Class Member, other than Plaintiff, who submits a valid and timely objection to the terms of this Agreement, pursuant to Paragraph 68(c) below.

22. “PAGA Penalties” means the amount that the Parties have agreed to pay to the Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well as the Individual PAGA Payment allocated to each Aggrieved Employee.

23. “PAGA Period” is deemed to be any time during the period of January 24, 2021, through the Preliminary Approval Date.

24. “Participating Class Member” means any and all Class Members who are deemed to participate and receive an Individual Class Payment and do not opt-out by submitting timely valid Requests for Exclusion.

25. “Parties” mean Plaintiff and Defendant, collectively.

26. “Preliminary Approval Date” means the date the Court approves the Settlement Agreement and enters the Preliminary Approval Order.

27. “Preliminary Approval Order” means the judicial Order to be entered by the Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement and providing for the issuance of the Notice to the Class, an opportunity to opt out of the Settlement, an opportunity to submit timely objections to the Settlement, and setting a final approval hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees and costs. Provided that the motion is consistent with the terms herein, Defendant will not object

1 to Plaintiff's motion for preliminary approval but will be provided with an opportunity to review
2 and comment upon the motion before it is filed.

3 28. "QSF" means the Qualified Settlement Fund set up by the Settlement
4 Administrator for the benefit of the Participating Class Members and Aggrieved Employees, and
5 from which the settlement payments shall be made.

6 29. "Released Class Claims" or "Class Claims" means all claims that were alleged in
7 the Complaint, or that reasonably could have been alleged based upon the facts stated in the
8 Complaint, including: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3)
9 failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to timely pay final
10 wages, (6) failure to provide accurate itemized wage statements, and (7) unfair and unlawful
11 competition. This includes all statutory penalties, damages, fees, costs, and interest recoverable
12 under these claims. The time period governing the Released Class Claims shall be the Class
13 Period.

14 30. "Released PAGA Claims" means the PAGA claims alleged in the Complaint, or
15 that reasonably could have been based on the facts stated in the Complaint and in the relevant
16 LWDA notice letter, including all PAGA claims seeking civil penalties premised upon: (1)
17 failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal
18 periods, (4) failure to provide rest breaks, (5) failure to timely pay wages each period, (6) failure
19 to timely pay wages upon separation of employment, (7) failure to provide accurate itemized
20 wage statements, and (8) all other claims for civil penalties recoverable under the Private
21 Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in the
22 LWDA notice letter and Complaint. The time period governing the PAGA Released Claims
23 shall be the PAGA Period. The PAGA Released Claims do not release any Aggrieved
24 Employees' claims for wages or statutory penalties.

25 31. "Released Parties" means Defendant and its parents, subsidiaries, directors,
26 owners, shareholders, officers, agents, attorneys, insurers, servants, joint employers and
27 employees, past and present, and each of them and anyone acting in concert with foregoing.

28 32. "Release" shall mean the release and discharge of the Released Class Claims by

1 Plaintiff and all Participating Class Members and their assignees.

2 33. "Response Deadline" is 45 calendar days from the date the Notice is mailed to the
3 Class Members.

4 34. "Request for Exclusion" shall have the meaning ascribed to it in Paragraph 68(a)
5 below.

6 35. "Settlement Amount" is \$760,000, exclusive of Defendant's obligation to fund its
7 share of payroll taxes, as further discussed in Paragraph 48(d) below.

8 36. "Service Payments" or "Service Awards" means the amount approved by the
9 Court to be paid to Class Representative in addition to their Individual Class Payments as
10 Participating Class Members and Individual PAGA Payments as Aggrieved Employees.

11 37. "Settlement Administrator" or "Administrator" means and refers to Phoenix
12 Settlement Administrators, the third-party class action settlement administrator agreed to by the
13 Parties, that will provide the Notice to the Class Members and distribute the settlement amounts
14 as described in this Agreement.

15 38. "Settlement Administration Costs" means the costs payable from the Settlement
16 Amount to the Settlement Administrator for administering this Settlement, including, but not
17 limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, and
18 deposit of the employee and employer share of payroll taxes, unclaimed property due diligence,
19 reporting and remittance obligations, distributing the Settlement Amount, and providing
20 necessary reports and declarations, as requested by the Parties. The Settlement Administration
21 Costs shall be paid from the Settlement Amount, and shall not exceed the amount approved by
22 the Court, regardless of any additional costs that the Settlement Administrator may request or
23 feel is necessary to administer the Settlement.

24 39. "Work Weeks" or "Weeks Worked" in the context of a Class Members means any
25 and all work weeks during the Class Period during which the Class Member worked at least one
26 day for Defendant in California. Likewise, in the context of Aggrieved Employees, it means any
27 and all weeks worked during the PAGA Period during which the Aggrieved Employee worked at
28 least one day for Defendant in California.

1 **B. General Terms**

2 40. On January 21, 2022, Plaintiff gave written notice by online filing to the Labor
3 and Workforce Development Agency (“LWDA”) and by certified mail to Defendant of the
4 specific provisions of the Labor Code alleged to have been violated, including the facts and
5 theories to support the alleged violations. Then on January 24, 2022, Plaintiff filed the instant
6 putative class action, alleging that Defendant violated various sections of the Labor Code. The
7 LWDA declined to assert jurisdiction over the PAGA claims, so on March 30, 2022, Plaintiff
8 filed the operative first amended Complaint that added PAGA claims to the Action.

9 41. Defendant removed the Action to the United States District Court for the Northern
10 District of California (“District Court”) on March 28, 2022, under § 301 of the Labor
11 Management Relations Act. On April 4, 2022, Defendant filed a motion to dismiss certain
12 causes of action, and on April 14, 2022, Plaintiff filed a motion to remand the Action to state
13 court. Ultimately, on July 15, 2022, the District Court granted in part and denied in part
14 Defendant’s motion to dismiss, and remanded the Action to state Court. On about March 20,
15 2023, Defendant filed a petition to compel arbitration, which the Court granted in part and
16 denied in part, effectively sending certain Class Claims to arbitration while leaving certain Class
17 Claims and PAGA Claims in Court. Ultimately, after extensive discovery, the Parties agreed to
18 submit the entire Action to mediation, inclusive of all Class Claims and PAGA claims.

19 42. Defendant denies Plaintiff’s claims and allegations, and contends that the Action
20 is not suitable for class certification.

21 43. The Class Representative believes that she can proceed with the representative
22 and class claims, that the Action is meritorious, and that class certification is appropriate.

23 44. The Parties have conducted a thorough investigation into the facts of the Action.
24 This includes extensive litigation, motion practice, formal discovery, as well as the exchange of
25 informal discovery, including a sampling of payroll and timekeeping records for Class Members.
26 Class Counsel is both knowledgeable about and has done extensive research with respect to the
27 applicable law and potential defenses to the claims of the Class. Class Counsel has diligently
28 pursued an investigation of the Class Members’ claims against Defendant. Based on the

1 foregoing data and on their own independent investigation and evaluation, Class Counsel is of
2 the opinion that the settlement with Defendant for the consideration and on the terms set forth in
3 this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class
4 Members in light of all known facts and circumstances, including the risk of significant delay
5 and uncertainty associated with litigation, various defenses asserted by Defendant, and numerous
6 potential appellate issues.

7 45. On March 19, 2024, Plaintiff and Defendant participated in a full-day mediation
8 with Hon. Brian Walsh (ret.), a former judge and now a well-respected mediator. At the
9 conclusion of mediation and extensive arms-length negotiations, the Parties reached a global
10 settlement and entered into a Memorandum of Understanding.

11 46. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
12 to be performed or judgment to be entered pursuant to the terms of the Settlement and
13 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
14 any statute or law or liability on the claims or allegations in the Action.

15 47. Stipulation for Class Certification. For settlement purposes only, Defendant will
16 stipulate that the Participating Class Members may be conditionally certified as a Class. This
17 stipulation to certification is in no way an admission that class action certification is proper and
18 shall not be admissible in this action except for the sole purposes of enforcing this Agreement.
19 Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to
20 class certification as part of the Settlement shall become null and void ab initio and shall have no
21 bearing on, and shall not be admissible in this Action in connection with, the issue of whether
22 certification would be appropriate in a non-settlement context. Defendant expressly reserves its
23 rights and declare that it would continue to oppose class certification and the substantive merits
24 of the case should the Court fail to issue Final Approval. Plaintiff expressly reserves her rights
25 and declares that she will continue to pursue class certification and a trial should the Court fail to
26 issue Final Approval.

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1 **C. Terms of Settlement**

2 48. The financial terms of the Settlement are as follows:

3 (a) Settlement Amount: The Parties agree to settle this Action for the
4 Settlement Amount, which is the maximum amount that will be paid by Defendant, except: (1)
5 Defendant shall separately pay the employer's share of applicable payroll tax obligations in
6 addition to the Settlement Amount, and (2) if the Escalator Clause is triggered, the Settlement
7 Amount shall increase as discussed below. The Settlement Amount includes payments to the
8 Participating Class Members, PAGA Penalties (to the Aggrieved Employees and LWDA),
9 Attorneys' Fees and Costs Award, the Service Payment to the Class Representative, and
10 Settlement Administration Costs.

11 (b) Net Settlement Amount: If the Court reduces the Attorneys' Fees and
12 Costs Award, Service Awards, or Settlement Administrator Costs, or either increases or
13 decreases the amount allocated to the PAGA Penalties, the difference shall be placed in the Net
14 Settlement Amount and allocated to the Participating Class Members.

15 (c) Calculation of Individual Class Payments: Individual Class Payments for
16 each Class Member will be calculated by the Administrator using the Class Data provided by
17 Defendant as follows. Compensable workweeks will be all Weeks Worked by the Class
18 Members during the Class Period. The dollars per compensable work week will be calculated by
19 dividing the total Weeks Worked by Class Members into the Net Settlement Amount to
20 determine a per work week value ("Workweek Value"). The Workweek Value will be
21 multiplied by the number of Weeks Worked by a Participating Class Member during the Class
22 Period to determine the distribution for a Participating Class Member. If there are any timely
23 submitted Requests for Exclusion, the Administrator shall proportionately increase the Individual
24 Class Payments for each Participating Class Member so that the amount actually distributed to
25 Participating Class Members equals 100% of the Net Settlement Amount. Class Members are
26 not required to submit a claim form to receive an Individual Class Payment.

27 (d) Tax Allocation of Individual Class Payments: The Individual Class
28 Payments to Participating Class Members will be allocated as follows: one-third (33.33%) will

1 be allocated as wages subject to withholding of all applicable local, state and federal taxes; and
2 two-thirds (66.67%) will be allocated for interest and statutory penalties (pursuant to, *e.g.*,
3 California Labor Code sections 203, 210, 226) from which no taxes will be withheld. The
4 Administrator will issue to each Participating Class Member an Internal Revenue Service Form
5 W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with
6 respect to the penalties and interest allocations. Participating Class Members assume full
7 responsibility and liability for any employee taxes owed on their Individual Class Payment.

8 (e) Service Payment to Class Representative: The amount, if any, awarded to
9 the Class Representative as a Service Payment will be set by the Court in its discretion, not to
10 exceed \$10,000, in exchange for a full release and Civil Code § 1542 waiver as well as for the
11 service that Plaintiff performed on behalf of the Class. Defendant agrees not to oppose this
12 request. The Service Payment to Class Representative will be paid out of the Settlement
13 Amount. The Class Representative will be issued an IRS Form 1099 in connection with this
14 payment. Class Representative shall be solely and legally responsible to pay any and all
15 applicable taxes on this payment. The Parties agree that any amount awarded as the Service
16 Payment to Class Representative less than the requested amount shall not be a basis to void this
17 Settlement Agreement. Should the Court approve a lesser amount for the Service Payment, the
18 difference shall be added to the Net Settlement Amount to be distributed to Participating Class
19 Members.

20 (f) Attorneys' Fees and Costs Award: Defendant agrees to not oppose a
21 request by Class Counsel to the Court for an award of attorneys' fees of one-third of the
22 Settlement Amount, plus reasonable litigation costs not to exceed \$30,000 ("Attorney's Fees and
23 Cost Award"). Defendant agrees not to oppose any contention by Class Counsel that attorneys'
24 fees should be based on the common fund theory. The Attorneys' Fee and Cost Award shall be
25 paid from the Settlement Amount, and, except for this award, Defendant shall have no further
26 obligation to pay any attorneys' fees, costs or expenses to Class Counsel. Should the Court
27 approve a lesser amount than what is sought by Class Counsel, the difference shall be added to
28 the Net Settlement Amount to be distributed to the Participating Class Members. Any Court

1 order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the
2 Settlement Agreement or otherwise void the Settlement. The Settlement Administrator shall
3 issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs
4 awarded by the Court.

5 (g) Settlement Administration Costs: The fees and other charges of the
6 Settlement Administrator will be paid from the Settlement Amount, not to exceed \$10,000,
7 unless otherwise approved by all Parties and the Court.

8 (h) PAGA Penalties: The Parties agree that \$40,000 is allocated to PAGA
9 Penalties, and is to be paid from the Settlement Amount, subject to Court approval. Of this
10 amount, \$30,000 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the
11 Private Attorney General Act of 2004 ("PAGA") and \$10,000 (25%) will form the Individual
12 PAGA Payments to the Aggrieved Employees, which shall be calculated and allocated pro-rata
13 on a Work Week basis, which will be treated entirely as civil penalties and shall be reported as
14 required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA of the
15 Settlement.

16 (i) Tax Liability: Class Counsel and Defendant make no representations as to
17 the tax treatment or legal effect of settlement amounts called for hereunder, and Plaintiff and the
18 Class Members are not relying on any statement or representation by Class Counsel or Defendant
19 in this regard. Plaintiff, Participating Class Members, and Aggrieved Employees understand and
20 agree that they will be solely responsible for the payment of any taxes and penalties assessed on
21 their respective Individual Class Payments and Individual PAGA Payments, described herein.
22 Forms 1099 will be distributed in the manner required by the Internal Revenue Code of 1986 (the
23 "Code") and consistent with this Agreement. If the Code, the regulations promulgated
24 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
25 set forth in this Section may be modified in a manner to bring Defendant into compliance with
26 any such changes. Plaintiff, Participating Class Members, and Aggrieved Employees understand
27 and agree that they will be solely responsible for the payment of any taxes and penalties assessed
28 on their respective payments described herein.

1 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
2 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
3 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
4 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
5 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
6 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
7 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
8 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
9 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
10 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
11 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
12 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
13 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
14 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
15 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
16 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
17 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
18 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
19 ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
20 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR
21 ADVISOR’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
22 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
23 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
24 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

25 (k) “Non-Reversionary” Settlement. This is a “non-reversionary” settlement.
26 Under no circumstances will any portion of the Settlement Amount revert to Defendant.
27 Participating Class Members and Aggrieved Employees will not have to make a claim to receive
28 an Individual Class Payment or Individual PAGA Payment. Distributions, in the form of

1 Individual Class Payment or Individual PAGA Payments will be made directly to each
2 Participating Class Member and Aggrieved Employee. The Settlement Administrator shall be
3 responsible for accurately and timely reporting and remittance obligations with respect to
4 unclaimed funds as a result of a Participating Class Member and/or Aggrieved Employee not
5 cashing any checks delivered pursuant to the Settlement by the check cashing deadline, as set
6 forth herein.

7 (l) Class Counsel and Plaintiff believe that the Settlement is fair and
8 reasonable and will so represent same to the Court.

9 **D. Release by the Participating Class Members**

10 49. Upon entry of the Final Approval Order and Defendant's funding of the
11 Settlement Amount and all employer payroll taxes owed on the wage portion of the Individual
12 Class Payments, and except as to such rights or claims as may be created by this Agreement,
13 Plaintiff and the Participating Class Members will forever completely release and discharge the
14 Released Parties from the Released Class Claims for the Class Period.

15 50. Each Participating Class Member will be deemed to have made the foregoing
16 Release as if by manually signing it.

17 51. Class Representative, on behalf of herself and the Class, acknowledges and agrees
18 that the claims for unpaid wages and untimely payment of wages in the Action are disputed, and
19 that the payments set forth herein constitute payment of all sums allegedly due to her. Class
20 Representative, on behalf of herself and the Class, acknowledges and agrees that California
21 Labor Code § 206.5 is not applicable to the Parties or Settlement. Labor Code § 206.5 provides
22 in pertinent part as follows: "An employer shall not require the execution of any release of any
23 claim or right on account of wages due, or to become due, or made as an advance on wages to be
24 earned, unless payment of those wages has been made."

25 **E. Release of PAGA Claims**

26 52. Upon entry of the Final Approval Order and Defendant's funding of the
27 Settlement Amount and all employer payroll taxes owed on the wage portion of the Individual
28 Class Payments, Plaintiff – in her individual capacities and on behalf of the State of California

1 and LWDA – shall completely release and discharge the Released Parties from the Released
2 PAGA Claims for the PAGA Period.

3 53. Regardless of submitting a valid Request for Exclusion, neither Plaintiff nor any
4 Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from
5 releasing the Released PAGA Claims.

6 54. It is the intent of the Parties that the Final Approval Order shall have full
7 equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law.

8 **F. Release by Plaintiff / Class Representative**

9 55. Upon entry of the Final Approval Order and Defendant’s funding of the
10 Settlement Amount, and all employer payroll taxes owed on the wage portion of the Individual
11 Class Payments, Class Representative does hereby, for herself and her spouses, heirs, successors,
12 beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians,
13 personal representatives, and assigns forever and completely release and discharge the Released
14 Parties from any and all charges, complaints, claims, liabilities, obligations, promises,
15 agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,
16 losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated
17 damages, exemplary damages, interest, attorneys’ fees, and costs) of any nature whatsoever,
18 from the beginning of time through the execution of this Agreement, whether known or
19 unknown, suspected or unsuspected, including but not limited to all claims arising out of, based
20 upon, or relating to Class Representative’s employment with Defendant or the remuneration for
21 or termination of such employment (the “Class Representative’s Claims”).

22 56. Without limiting the generality of the foregoing, this general release by Plaintiff
23 includes all federal, state and local statutory claims, federal and state common law claims
24 (including but not limited to those for contract, tort and equity), including without limitation any
25 claims for breach of any implied or express contract or covenant; claims for promissory estoppel;
26 claims of entitlement to any pay; claims of wrongful denial of insurance and employee benefits
27 (except workers’ compensation benefits); claims for failure to hire, public policy violations,
28 defamation, invasion of privacy, fraud, misrepresentation, emotional distress, assault/battery, or

1 other common law or tort matters; claims of harassment, retaliation or discrimination based on
2 age, race, color, religion, sex, national origin, ancestry, physical or mental disability, protected
3 activity, medical condition, marital status, sexual preference, union activity, or veteran status;
4 claims under the Americans with Disabilities Act, Age Discrimination in Employment Act, Title
5 VII of the Civil Rights Act of 1964 (as amended), the Civil Rights Act of 1991; 42 USC sec.
6 1981, 42 USC sec. 1983, the Older Workers Benefit Protection Act, the Family and Medical
7 Leave Act; claims for unfair competition; claims based on legal restrictions on Defendant's right
8 to terminate, not to hire or promote employees, or to change an employee's compensation; and
9 claims based on any federal, state or other governmental statute, regulation or ordinance, all
10 statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs or
11 expenses, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation
12 costs, restitution, or equitable relief, or any other claims arising under the Fair Labor Standards
13 Act, the Employment Retirement Security Income Act of 1974, the California Constitution, the
14 California Fair Employment and Housing Act, the California Unfair Competition Act (California
15 Business and Professions Code section 17200 et seq.), the California Labor Code, or Industrial
16 Welfare Commission Wage Orders, or arising out of or based upon the following categories of
17 allegations regardless of the forum in which they may be brought, to the fullest extent such
18 claims are releasable by law: (i) all claims for unpaid overtime; (ii) all claims for unpaid wages;
19 (iii) all claims for meal break violations; (iv) all claims for rest period violations; (v) all claims
20 for paid sick leave violations; (vi) all claims for the failure to timely pay wages upon
21 termination; (vii) all claims for the failure to timely pay wages during employment; (viii) all
22 claims for wage statement violations; (ix) all claims for reporting time pay; and (x) all other
23 penalties recoverable for such claims under PAGA.

24 57. Plaintiff agrees that there is a risk that any injury that she may have suffered by
25 reason of the Released Parties' relationship with them might not now be known, and there is a
26 further risk that said injuries, whether known or unknown at the date of this Settlement
27 Agreement, might possibly become progressively worse, and that as a result thereof further
28 damages may be sustained. Nevertheless, Plaintiff agrees to forever and fully release and

1 discharge the Released Parties and understands that by the execution of this Settlement
2 Agreement no further claims for any such injuries that existed at the time of the execution of this
3 Settlement Agreement may ever be asserted by Plaintiff with respect to claims arising in the time
4 period from the beginning of time to the execution of this Settlement Agreement.

5 58. Plaintiff expressly waives and relinquishes all rights and benefits afforded by
6 Section 1542 of the Civil Code of the State of California and do so understanding and
7 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
8 of the State of California states:

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

14 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
15 full and complete release and discharge of all parties, Plaintiff expressly acknowledges that this
16 Settlement Agreement is intended to include in its effect, without limitation, all claims that
17 Plaintiff knew of, as well as all claims that she does not know or suspect to exist in her favor
18 against the Released Parties, or any of them, for the time period from the beginning of time to the
19 execution of this Settlement Agreement, and that this Settlement Agreement contemplates the
20 extinguishment of any such Class Representative's claims. Notwithstanding the above, the
21 general release by Class Representative shall not extend to claims for workers' compensation
22 benefits, claims for unemployment benefits, or other claims that may not be released by law.

23 **G. Interim Stay of Proceedings**

24 59. Pending completion of all prerequisites necessary to effectuate this Settlement,
25 the Parties agree, subject to Court approval, to a stay of all proceedings in the Action except such
26 as are necessary to effectuate the Settlement.

27 **H. Notice Process**

28 60. Appointment of Settlement Administrator. The Parties have agreed to the

1 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
2 including mailing the Notice Packet, using standard devices to obtain forwarding addresses,
3 independently reviewing and verifying documentation associated with any claims or opt-out
4 requests, resolving any disputes regarding the calculation or application of the formula for
5 determining the Individual Class Payments and Individual PAGA Payments, drafting and
6 mailing the settlement checks to Participating Class Members and Aggrieved Employees, issuing
7 all necessary tax forms, and performing such other tasks as set forth herein or as the Parties
8 mutually agree or that the Court orders.

9 61. Disputes Regarding Settlement Administration. Any and all disputes relating to
10 administration of the Settlement by the Settlement Administrator (except for disputes regarding
11 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
12 over the terms and conditions of this Agreement, until Plaintiff and Defendant notify the Court
13 that all payments and obligations contemplated by this Agreement have been fully carried out.
14 Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to
15 resolve the dispute without the necessity of Court intervention. The Settlement Administrator
16 shall also be responsible for issuing to Plaintiff, Participating Class Members, and Aggrieved
17 Employees, and Class Counsel any Tax Forms as may be required by law for all amounts paid
18 pursuant to this Agreement.

19 62. Class Data. Within thirty (30) days after entry of the Preliminary Approval
20 Order, Defendant shall provide the Class Data to the Settlement Administrator. The Settlement
21 Administrator will run a check of the Class Members' addresses against those on file with the
22 U.S. Postal Service's National Change of Address List. The Class Data provided to the
23 Settlement Administrator will remain confidential and will not be used or disclosed to anyone,
24 except as required by applicable tax authorities, pursuant to Defendant's express written consent,
25 or by order of the Court. Although Class Counsel will not be provided with the list of Class Data,
26 nothing herein shall prevent Class Counsel from communicating with Class Members regarding
27 the Action and Settlement.

28 63. Notice. The Notice, as approved by the Court, shall be sent by the Settlement

1 Administrator to the Class Members, by first class mail, in English, within ten (10) calendar days
2 following the Settlement Administrator's receipt of the Class Data. The Settlement
3 Administrator shall use standard devices, including a skip trace, to obtain forwarding addresses
4 of Class Members if any envelopes are returned.

5 64. Returned Notices. The Settlement Administrator will take steps to ensure that the
6 Notice is received by all Class Members, including utilization of the National Change of Address
7 Database maintained by the United States Postal Service to review the accuracy of and, if
8 possible, update a mailing address. Notices will be re-mailed to any Class Member for whom an
9 updated address is located within ten (10) calendar days following both the Settlement
10 Administrator learning of the failed mailing and its receipt of the updated address. The Notice
11 shall be identical to the original Notice, except that it shall notify the Class Member that the
12 exclusion (opt-out) request or objection must be returned by the later of the Response Deadline
13 or fifteen (15) days after the remailing of the Notice.

14 65. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
15 if an envelope has not been returned to Settlement Administrator by the Response Deadline that
16 the Class Member received the Notice.

17 66. Disputes Regarding Class Data. Class Members are deemed to participate in the
18 Settlement unless they opt-out, and Aggrieved Employees may not opt out of the Released
19 PAGA Claims. The Notice will inform Class Members of their estimated Individual Class
20 Payment and Individual PAGA Payment, as well as the number of Weeks Worked during the
21 Class Period and the PAGA Period. Class Members may dispute their Weeks Worked by timely
22 submitting evidence to the Settlement Administrator. Defendant's records will be presumed
23 determinative absent reliable evidence to rebut Defendant's records, but the Settlement
24 Administrator will evaluate the evidence submitted by the Class Member and provide the
25 evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good
26 faith about the evidence to determine the Class Member's actual number of Work Weeks, and
27 estimated Individual Class and PAGA Payments. If Class Counsel and Defense Counsel are
28 unable to agree, they agree to submit the dispute to the Court to render a final decision. Class

Members and Aggrieved Employees will have until the Response Deadline to dispute Weeks Worked, object or opt out, unless extended by the Court.

67. Declaration of Due Diligence. The Settlement Administrator shall provide counsel for the Parties, at least five (5) days after the initial Response Deadline, a declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

68. Class Members' Rights. Each Class Member will be fully advised of the Settlement, the ability to object to the settlement, and the ability to opt-out or request exclusion from the Class Claims portion of the Settlement. The Notice will inform the Class Members of the Court-established deadlines for filing objections or requesting exclusion from the Settlement in accordance with the following guidelines:

(a) Requests for Exclusion from Class. Any Class Member, other than Plaintiff, may request to be excluded from the Class by submitting a "Request for Exclusion" to the Administrator, postmarked on or before the Response Deadline. The Request for Exclusion should state:

"I WISH TO BE EXCLUDED FROM THE CLASS IN THE SF HEALTH CARE & REHAB LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE MY INDIVIDUAL CLASS PAYMENT FROM THIS LAWSUIT."

To be valid, any Request for Exclusion must include the full name, address, telephone number, last four digits of the social security number or date of birth, and signature of the Class Member requesting exclusion. The Request for Exclusion must be returned by mail to the Administrator at the specified address set forth in the Notice. Any such Request must be made in accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if postmarked by the Response Deadline, unless the Parties otherwise agree in writing. Any Class Member who timely requests exclusion in compliance with these requirements: (i) will not have any rights under this Agreement, including the right to object, appeal or comment on the Settlement; (ii) will not be entitled to receive the Individual Class Payment under this Agreement; and (iii) will not be bound by this Agreement, or the Judgment. Any Class Member

1 who is an Aggrieved Employee who requests timely exclusion will still be subject to the
2 Released PAGA Claims to the fullest extent permitted by law and will receive an Individual
3 PAGA Payment. All Parties and their counsel, including Defendant and their agents, shall not
4 encourage or solicit opt-outs or objections, directly or indirectly, through any means.

5 (b) Binding Effect on Participating Class Members. All Participating Class
6 Members will: (i) be bound by the terms and conditions of this Agreement, the Judgment, and
7 the releases set forth herein; and (ii) except as otherwise provided herein, will be deemed to have
8 waived all objections and oppositions to the fairness, reasonableness, and adequacy of the
9 Settlement.

10 (c) Objections to Settlement. Any Class Member, other than Plaintiff, who
11 does not submit a valid and timely Request for Exclusion may object to the terms of this
12 Agreement. To object, a Class Member shall inform the Administrator, in writing, of his or her
13 objection which must be postmarked by the Response Deadline at the address set forth in the
14 Notice. Such objection shall include the Objecting Class Member's full name, address,
15 telephone number, last four digits of the social security number or date of birth, signature, and
16 relevant dates of employment, in addition to the case name and number, the basis for the
17 objection, including any legal support and each specific reason in support of the objection, as
18 well as any documentation or evidence in support thereof, and, if the Objecting Class Member is
19 represented by counsel, the name and address of his or her counsel. The Administrator shall
20 provide objections, if any, to Class Counsel and Defense Counsel within three (3) calendar days
21 of receipt, and the Administrator shall attach the same to its declaration of due diligence and file
22 with the Court prior to the Final Approval Hearing. An Objecting Class Member remains
23 eligible to receive monetary compensation from the Settlement. Plaintiff and Defendant shall not
24 be responsible for any fees, costs, or expenses incurred by an Objecting Class Member and/or his
25 or her counsel related to any objections to the Settlement. Submitting an objection does not
26 preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by
27 becoming a party of record by timely and properly intervening or filing a motion to vacate the
28 judgment under Code of Civil Procedure § 663.

1 (d) Failure to Object. Any Class Member who does not timely and properly
2 become a party of record by intervening or filing a motion to vacate the judgment waives any
3 and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding
4 and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion
5 under California Code of Civil Procedure § 473, and extraordinary writs.

6 (e) Responses to Objections. Counsel for the Parties may file a response to
7 any objections submitted by Objecting Class Members at least five (5) court days before the date
8 of the Final Approval Hearing.

9 (f) Class Members will have until the Response Deadline to object or submit
10 a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement
11 Administrator shall disclose jointly to Class Counsel and Defense Counsel what objections or
12 Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class
13 Counsel or Defense Counsel.

14 69. Funding of the Settlement Amount. Defendant shall deposit the Settlement
15 Amount, plus Defendant's share of payroll taxes, with the Settlement Administrator within thirty
16 (30) days after the Effective Date.

17 70. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
18 Settlement Amount by Defendant, the Settlement Administrator shall mail the Individual Class
19 Payments to the Participating Class Members, the Individual PAGA Payments to the Aggrieved
20 Employees, the payment to Class Counsel for the Attorneys' Fees and Costs Award, any Service
21 Payments to the Class Representative, the payment to the LWDA for PAGA Penalties, and will
22 pay itself the Settlement Administration Costs. To comply with California Rules of Court, rule
23 3.771, settlement checks shall include the following language on the check: "A Court has
24 approved settlement of the class action and PAGA representative actions and entered judgment
25 for claims asserted in *Johnson, et al. v. San Francisco Health Care and Rehab, Inc.*, San
26 Francisco County Superior Court, Case No. CGC-22-597785.

27 71. Deadline for Cashing Settlement Checks. Participating Class Members and
28 Aggrieved Employees shall have 180 calendar days after mailing by the Settlement

1 Administrator to cash their settlement checks. The release will be binding upon all Participating
2 Class Members who do not cash their checks within the 180-day period. In the event that any
3 settlement check is returned to the Settlement Administrator within 180 days of mailing, the
4 Settlement Administrator will, within five (5) business days of receipt of the returned settlement
5 check, perform a skip trace to locate the individual, and notify Defense Counsel and Class
6 Counsel of the results. If a new address is located by these means, the Administrator will have
7 ten (10) business days to re-issue the check. Neither Defendant, Defense Counsel, Class
8 Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen
9 settlement checks, forged signatures on settlement checks, or unauthorized negotiation of
10 settlement checks. Without limiting the foregoing, in the event a Participating Class Member
11 and/or Aggrieved Employee notifies the Settlement Administrator that he or she believes that a
12 settlement check has been lost or stolen, the Settlement Administrator shall immediately stop
13 payment on such check. If the check in question has not been negotiated prior to the stop
14 payment order, the Settlement Administrator will issue a replacement check.

15 a. If any Participating Class Member's check is not cashed within the time
16 periods noted above, the check will be void and a stop-payment will be issued, and the
17 Settlement Administrator shall issue the unclaimed funds to the California State Controller's
18 Office in the name of the Class Member.

19 b. If any Aggrieved Employee's check is not cashed within the time periods
20 noted above, the check will be void and a stop-payment will be issued, and the Settlement
21 Administrator shall issue the unclaimed funds to the California State Controller's Office in the
22 name of the Aggrieved Employee.

23 **I. Duties of the Parties Prior to the Court's Approval**

24 72. Promptly after execution of this Agreement, Plaintiff will move the Court for
25 Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
26 accomplishing the following:

- 27 (a) Approving as to form and content the proposed Notice;
28 (b) Directing the mailing of the Notice by first class mail to the Class

Members;

- (c) Preliminarily approving this Settlement;
- (d) Preliminarily certifying the class for purposes of this Settlement;
- (e) Advising the LWDA of the proposed Settlement; and
- (f) Scheduling the Final Approval Hearing on the issue of whether this

Settlement should be finally approved as fair, reasonable and adequate as to the Class Members and a hearing on fees, costs and the Service Payments.

J. Duties of the Parties Following Court's Final Approval

73. In connection with the Final Approval Hearing provided for in this Agreement, Class Counsel shall submit a proposed Final Approval Order:

- (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
- (b) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, the Service Payment to the Class Representative, and the payment to the Settlement Administrator for costs of administering the settlement; and
- (c) Entering judgment approving settlement.

Voiding the Agreement

74. If the Court fails or refuses to issue the Final Approval Order or fails to approve any material condition of this Agreement which effects a fundamental change of the Settlement, the entire Agreement shall be rendered voidable and unenforceable as to all Parties herein at the option of either Party.

75. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will have no further obligations under the Settlement, including any obligation by Defendant to pay the Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

76. If the Settlement is voided or fails for any reason, any costs incurred by the Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise specified in this Agreement.

1 **K. Other Terms**

2 77. Waiver. The waiver by one Party of any breach of this Agreement by another
3 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

4 78. Parties' Authority. The signatories hereto represent that they are fully authorized
5 to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

6 79. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
7 accomplish the terms of this Agreement, including but not limited to, execution of such
8 documents and to take such other action as may reasonably be necessary to implement the terms
9 of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
10 contemplated by this Agreement and any other efforts that may become necessary by order of the
11 Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as
12 practicable after execution of this Agreement, Class Counsel shall, with the assistance and
13 cooperation of Defendant and Defense Counsel, take all necessary steps to secure the Court's
14 preliminary and final approval of the settlement, and the final entry of judgment.

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

19 81. No Admission. Defendant denies any and all liability to Plaintiff and/or any Class
20 Member and/or Aggrieved Employee in this Action, as to any and all causes of action that were
21 asserted or that might have been asserted in this Action. Nonetheless, Defendant wishes to settle
22 and compromise the matters at issue in the Complaint to avoid further substantial expense and
23 the inconvenience and distraction of protracted and burdensome litigation. Defendant has taken
24 into account the uncertainty and risks inherent in litigation, and without conceding any infirmity
25 in the defenses that they have asserted or could assert against Plaintiff, have determined that it is
26 desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms and
27 conditions set forth in this Agreement.
28

1 82. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
2 Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or
3 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
4 Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this
5 Agreement with the intention of avoiding further disputes and litigation with the attendant
6 inconvenience and expenses. This Agreement is a settlement document, and it, along with all
7 related documents such as the notices, and motions for preliminary and final approval, shall,
8 pursuant to California Evidence Code § 1152 and/or Federal Rule of Evidence 408, be
9 inadmissible in evidence in any proceeding, except an action or proceeding to approve the
10 settlement, and/or interpret or enforce this Agreement. The stipulation for class certification as
11 part of this Agreement is for settlement purposes only and if, for any reason the settlement is not
12 approved, the stipulation will be of no force or effect.

13 83. No Publicity. Plaintiff and her counsel agree not to put information about this
14 lawsuit or the settlement on their websites, their social media or other public forums. This
15 provision does not apply to prevent any necessary disclosure to the Court to seek approval of the
16 settlement, any court filings or notices of settlement to be sent to Class Members by the
17 Settlement Administrator, or the posting of the final judgment of this settlement on the
18 Settlement Administrator's website if, and only if, required by the Court in connection with
19 approval of the settlement. Nothing herein shall be construed to prevent Class Counsel from the
20 public filing of motions or other case materials in the Action related to seeking and obtaining
21 Court approval of this Settlement and the related awards of attorneys' fees and costs, or to
22 communications with Class Members or their representatives about this Settlement, or to prevent
23 the Parties or their representatives from communicating with financial or legal advisors regarding
24 the Settlement.

25 84. Notices. Unless otherwise specifically provided herein, all notices, demands or
26 other communications given hereunder shall be in writing and shall be deemed to have been duly
27 given as of the third business day after mailing by United States registered or certified mail,
28 return receipt requested, addressed:

To the Class:

Brian J. Mankin
brian@lmlfirm.com
Lauby, Mankin & Lauby LLP
5198 Arlington Ave, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

To Defendant:

Susan Bishop
susan.bishop@berliner.com
BERLINER COHEN, LLP
10 Almaden Blvd., Floor 11
San Jose, CA 95113
Tel: (408) 286-5800 | Fax: (408) 998-5388

85. Construction. The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiff and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

86. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof. Each term of this Agreement is contractual and not merely a recital.

87. Modification. This Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

88. Dispute Resolution. Prior to instituting legal action to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, a Party shall

1 provide written notice to the other Party and allow an opportunity to cure the alleged
2 deficiencies, and Plaintiff and Defendant may agree to seek the help of the Mediator to resolve
3 any dispute they are unable to resolve informally. During this period, the Parties shall bear their
4 own attorneys' fees and costs. This provision shall not apply to any legal action or other
5 proceeding instituted by any person or entity other than Plaintiff or Defendant.

6 89. Choice of Law. This Settlement Agreement shall be governed by and construed,
7 enforced and administered in accordance with the laws of the State of California, without regard
8 to its conflicts-of-law rules.

9 90. Integration Clause. This Settlement Agreement replaces the Memorandum of
10 Understanding referenced in Paragraph 45 and contains the entire agreement between the Parties
11 relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous
12 agreements, understandings, representations, and statements, whether oral or written and whether
13 by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived
14 except in writing.

15 91. Binding On Assigns. This Agreement shall be binding upon and inure to the
16 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
17 successors and assigns.

18 92. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
19 because the members of the Class are numerous, it is impossible or impractical to have each
20 Class Member execute this Agreement. The Notice Packet will advise all Class Members of the
21 binding nature of the release provided herein and such shall have the same force and effect as if
22 this Agreement were executed by each Class Member.

23 93. Counterparts. This Agreement may be executed in counterparts, and when each
24 Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
25 original, and, when taken together with other signed counterparts, shall constitute one fully
26 signed Agreement, which shall be binding upon and effective as to all Parties. Electronic
27 signatures shall have the same force and effect as an original.
28

1 Dated: Jun 8, 2024

2 **PLAINTIFF AND CLASS REPRESENTATIVE**

3 
4 JAMIE JOHNSON (Jun 8, 2024 19:39 PDT)

5 Jamie Johnson

6 Dated: _____

7 **DEFENDANT SAN FRANCISCO HEALTH CARE**
8 **AND REHAB, INC.**

9 _____
10 By: _____

11 Title: _____

12 **APPROVED AS TO FORM:**

13 Dated: June 10, 2024

14 **CLASS COUNSEL**
15 **LAUBY, MANKIN & LAUBY LLP**

16 

17 Brian J. Mankin
18 Attorneys for Plaintiff

19 Dated: _____

20 **DEFENSE COUNSEL**
21 **BERLINER COHEN, LLP**

22 _____
23 Susan Bishop
24 Attorneys for Defendant

25 Dated: _____

26 **DEFENSE COUNSEL**
27 **THE LAW OFFICES OF JONATHAN VAN EE**

28 _____
Jonathan Van Ee
Attorneys for Defendant

-- END OF DOCUMENT --

1
2 Dated: _____

PLAINTIFF AND CLASS REPRESENTATIVE

3
4 _____
5 Jamie Johnson

6 Dated: June 7, 2024

**DEFENDANT SAN FRANCISCO HEALTH CARE
AND REHAB, INC.**

7
8
9
10 By: Svetlana Shekar

11 Title: CEO

12 **APPROVED AS TO FORM:**

13
14 Dated: _____

**CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP**

15
16
17 _____
18 Brian J. Mankin
19 Attorneys for Plaintiff

20 Dated: _____

**DEFENSE COUNSEL
BERLINER COHEN, LLP**

21
22
23 _____
24 Susan Bishop
25 Attorneys for Defendant

26 -- END OF DOCUMENT --
27
28

1
2 Dated: _____

PLAINTIFF AND CLASS REPRESENTATIVE

3
4 _____
5 Jamie Johnson

6 Dated: _____

**DEFENDANT SAN FRANCISCO HEALTH CARE
AND REHAB, INC.**

7
8 _____
9 By: _____

10 Title: _____
11

12 **APPROVED AS TO FORM:**

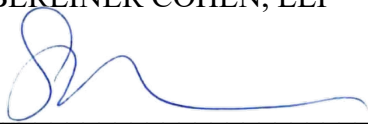
13
14 Dated: _____

**CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP**

15
16 _____
17 Brian J. Mankin
Attorneys for Plaintiff

18 Dated: June 7, 2024

**DEFENSE COUNSEL
BERLINER COHEN, LLP**

19
20 
21 _____
22 Susan Bishop
Attorneys for Defendant

23 Dated: _____

**DEFENSE COUNSEL
THE LAW OFFICES OF JONATHAN VAN EE**

24
25 _____
26 Jonathan Van Ee
Attorneys for Defendant
27
28

-- END OF DOCUMENT --

1
2 Dated: _____

PLAINTIFF AND CLASS REPRESENTATIVE

3
4 _____
5 Jamie Johnson

6 Dated: _____

**DEFENDANT SAN FRANCISCO HEALTH CARE
AND REHAB, INC.**

7
8 _____
9 By: _____

10 Title: _____
11

12 **APPROVED AS TO FORM:**

13
14 Dated: _____

**CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP**

15
16 _____
17 Brian J. Mankin
18 Attorneys for Plaintiff

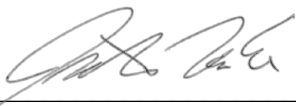
19 Dated: _____

**DEFENSE COUNSEL
BERLINER COHEN, LLP**

20
21 _____
22 Susan Bishop
23 Attorneys for Defendant

24 Dated: June 7, 2024

**DEFENSE COUNSEL
THE LAW OFFICES OF JONATHAN VAN EE**

25
26 
27 _____
28 Jonathan Van Ee
Attorneys for Defendant

-- END OF DOCUMENT --

EXHIBIT “2”

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT

Johnson v. San Francisco Health Care and Rehab Inc.

(San Francisco County Superior Court, Case No. CGC-22-597785)

***The San Francisco County Superior Court authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Defendant San Francisco Health Care and Rehab Inc. (“SFHCR” or “Defendant”) for alleged violations of the California Labor Code.

The Action was filed by Jamie Johnson (“Plaintiff” or “Class Representative”) and seeks payment of (1) unpaid wages, statutory damages and penalties, interest and attorneys’ fees on behalf of a class of nonexempt employees employed by Defendant in California (the “Class Members”) during the Class Period (January 24, 2024, through **INSERT DATE**); and (2) penalties under the California Private Attorneys General Act (“PAGA”) for all nonexempt employees employed by Defendant in California during the PAGA Period (January 24, 2021, through **INSERT DATE**) (the “Aggrieved Employees”). (Plaintiff and Defendant shall be collectively referred to as the “Parties.”)

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payments to Class Members, and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Payments to Aggrieved Employees and pay penalties to the California Labor and Workforce Development Agency (“LWDA”). Based on Defendant’s records, and the Parties’ current assumptions, your Individual Class and PAGA Payments are shown in the charts below, along with the applicable data points from which these estimates are derived.

[*CLASS MEMBER NAME*] [*ID/CONTROL NUMBER*]

<i>Calculations and Data Points for Estimated Individual Class Payment</i>	
Weeks Worked during Class Period	<i>Estimated Individual Class Payment</i>
INSERT	\$INSERT

<i>Calculations and Data Points for Estimated Individual PAGA Payment</i>	
Weeks Worked during PAGA Period	<i>Estimated Individual PAGA Payment</i>
INSERT	\$INSERT

Please note that the actual amount you receive may be different from the above and will depend on several factors. (If no amount is stated for your Individual PAGA Payment then, according to Defendant’s records, you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.) If you believe that you worked more time during the periods discussed above, you can submit a challenge by **DATE, 2024** (“**Response Deadline**”). See **Section 4** of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or do not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you worked for Defendant during the Class Period and/or the PAGA Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive a settlement payment if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section 3 .
EXCLUDE YOURSELF	If you do not wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2024 (see Section 6 for more details on how to opt-out). If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released PAGA Claims. See Section 6 of this Notice.
OBJECT	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an Objection stating why you object to the settlement by [REDACTED], 2024 (see Section 7 for more details on how to object).
DISPUTE THE NUMBER OF WEEKS WORKED	If you believe the number of workweeks that you were credited with working in the chart above is incorrect, you may submit a written dispute to the Administrator (see Section 4 for more details on how to submit a Dispute Form). Defendant’s records will be presumed correct, but you may provide evidence to the Administrator showing how many Work Weeks you believe you should be credited.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT’S NOT REQUIRED

DATE: DATE, 2024 TIME: 9:00 A.M.	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. See Section 8 of this Notice.
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1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of SFHCR. The Action accuses Defendant of violating California labor laws by failing to pay minimum and overtime wages, failure to provide meal and rest breaks, failure to timely pay wages each period and upon separation of employment, and failure to provide accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under PAGA.

Defendant strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

Both Parties are represented by attorneys in the Action. See Section 9 below for their contact information.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendant or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an effort to resolve the Action by negotiating to settle the case rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”), Plaintiff and Defendant have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendant Will Pay \$760,000 as the “Settlement Amount.” Defendant has agreed to pay a total Settlement Amount of \$760,000, and will deposit the Settlement Amount into an account controlled by the Administrator. The Administrator will use the Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s Costs, and PAGA Penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendant will fund the Settlement Amount approximately 30 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if the Judgment is appealed.

2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Settlement Amount, the amounts of which will be decided by the Court at the Final Approval Hearing:

A. Up to one-third of the Settlement Amount (\$253,333.33) to Class Counsel for attorneys' fees and up to \$30,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

B. Up to \$10,000 to the Class Representative as a Service Payment for litigating the Action, working with Class Counsel, and representing the Class.

C. \$10,000 to the Settlement Administrator for services administering the Settlement.

D. Up to \$40,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their share of Weeks Worked during the PAGA Period.

E. Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the remainder (the “Net Settlement Amount”) by making Individual Class Payments to Participating Class Members based on their pro rata share of Weeks Worked during the Class Period.

4. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of one-third (33.33%) of each Individual Class Payment to taxable wages (“Wage Portion”) and two-thirds (66.67%) to penalties and interest (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendant have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's

Unclaimed Property Fund in your name. If the monies represented by your check is sent to the Controller's Unclaimed Property Fund, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Settlement, unless you opt-out of the Settlement, not later than the Response Deadline. See Section 6 of this Notice for details on how to Opt-Out.

7. The Proposed Settlement Will be Void If the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void; Defendant will not pay any money and Class Members will not release any claims against Defendant.

8. Settlement Administrator. The Court has appointed a neutral company, Phoenix Settlement Administrators (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Settlement Administrator will also decide any Disputes over weeks worked, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Settlement Administrator’s contact information is contained in Section 9 of this Notice.

9. Participating Class Members' Release. After the Judgment is final and Defendant has fully funded the Settlement Amount and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or related entities for wages based on the facts alleged in the Action for the duration of the Class Period and PAGA Period, which are resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective representatives, agents, heirs, and assigns, release the “Released Parties” (which includes Defendant and its parents, subsidiaries, directors, owners, shareholders, officers, agents, attorneys, insurers, servants, joint employers and employees, past and present, and each of them and anyone acting in concert with foregoing) from all claims that were alleged in the Complaint, or that reasonably could have been alleged based upon the facts stated in the Complaint, including: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to timely pay final wages, (6) failure to provide accurate itemized wage statements, and (7) unfair and unlawful competition. This includes all statutory penalties, damages, fees, costs, and interest recoverable under these claims. (the “Released Class Claims”). The operative release period for the Released Class Claims is the Class Period. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

10. Release of Released PAGA Claims. After the Court's judgment is final, and Defendant has paid the Settlement Amount (and separately paid the employer-side payroll taxes), Plaintiff on behalf of herself, the State of California and the LWDA shall release the Released Parties of the PAGA claims alleged in the Complaint, or that reasonably could have been based on the facts stated in the Complaint and in the relevant LWDA notice letter, including all PAGA claims seeking civil penalties premised upon: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to timely pay wages each period, (6) failure to timely pay wages upon separation of employment, (7) failure to provide accurate itemized wage statements, and (8) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 et seq. based on the facts or claims alleged in the LWDA notice letter and Complaint. ("Released PAGA Claims.") The time period governing the Released PAGA Claims shall be any time during the PAGA Period.

4. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Weeks Worked for all Participating Class Members during the Class Period, and (b) multiplying the result by the number of Share Points credited to each individual Participating Class Member during the Class Period.

2. Individual PAGA Payments. The Settlement Administrator will calculate Individual PAGA Payments by (a) dividing \$10,000 by the total number of weeks worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of Weeks Worked by each individual Aggrieved Employee during the PAGA Period.

3. Disputing Weeks Worked. The number of weeks you worked during the Class Period and n PAGA Period, as recorded in Defendant's records, are stated in the tables on page 2 of this Notice. You have until **INSERT DATE** ("Response Deadline") to dispute the number of Workweeks credited to you by submitting evidence to the Administrator. Section 9 of this Notice has the Administrator's contact information.

You need to support your dispute by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of weeks worked based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve challenges based on your submission and on input from Class Counsel and Defendant's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members and Aggrieved Employees. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (which includes every Class Member who doesn't opt-out) and Aggrieved Employee. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Aggrieved Employees Only. If you opted out of the Class settlement, but qualify as an Aggrieved Employee, then the Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee, including those who opt out of the Class Settlement.

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Settlement Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

You will be treated as a Participating Class Member, participating fully in the Settlement, unless you opt-out of the Settlement, not later than the Response Deadline.

If you **do not** wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by sending to the Administrator a "Request for Exclusion" letter/card postmarked no later than , 2024 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

"I WISH TO BE EXCLUDED FROM THE CLASS IN THE SF HEALTH CARE & REHAB LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE MY INDIVIDUAL CLASS PAYMENT FROM THIS LAWSUIT."

Any person who submits a timely Request for Exclusion from the Class Claims (1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive an Individual Class Payment; (3) will preserve the right to pursue the Released Class Claims, and (4) will not be bound by this Settlement, or the Judgment.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Claims remain eligible to receive an Individual PAGA Payment.

If you do not want to participate in the Settlement, the Administrator will exclude you based on timely receipt of a writing communicating your request to be excluded. Be sure to personally sign your request, identify the Action as Johnson v. San Francisco Health Care and Rehab, Inc., and include your identifying information (full name, address, telephone number, approximate dates of employment, and last four digits of social security number or your date of birth for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **Send your request to be excluded to the Administrator by [REDACTED], 2024 (the “Response Deadline”), or it will be invalid.** Section 9 of the Notice has the Administrator’s contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. A Participating Class Member who disagrees with any aspect of the Settlement may wish to object. **The deadline for sending written objections to the Administrator is [REDACTED], 2024 (the “Response Deadline”).**

If you wish to object to the proposed Settlement, you or your own attorney must submit a written objection, and the objection must include your full name, address, telephone number, last four digits of the social security number or date of birth, signature, and dates of employment with Defendant, in addition to the case name and number (Johnson v. San Francisco Health Care and Rehab, Inc., Case No. CGC-22-597785), the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof. Additionally, if you are represented by an attorney, the objection must include the name and address of your attorney. This objection and all supporting information must be sent to the Administrator at the address listed in Section 9, **postmarked on or before [REDACTED], 2024.**

If you do not comply with these procedures and the deadline for objections, the Court may not consider your objection at the Final Approval Hearing, and you may lose the right to contest the approval of the Settlement. You are still eligible to receive a settlement payment should the settlement become Final even if you object to the settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. WHEN IS THE FINAL APPROVAL HEARING?

On [REDACTED], 2024, the Court will hold a public hearing in Department 316 of the Superior Court for the State of California, County of San Francisco, 400 McAllister Street, San Francisco, CA 94102, for the purposes of determining whether the proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel’s applications for attorneys’ fees and costs, whether to approve the payments to the LWDA, and whether to approve Plaintiff’s request for the service award. This hearing may be continued or rescheduled by the Court. Objectors to the proposed settlement will be provided notice in the event that the Final Approval Hearing is continued to a later date. Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other action to indicate their approval. Class Members who object to the proposed Settlement are not required to attend the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

If you have questions about this Notice, the process to Opt-Out or Object, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Class, you may contact the Administrator

for more information or to request that a copy of this Notice be sent to you in the mail. And you may also contact Class Counsel. Contact information for both the Administrator and Class Counsel is provided here:

Settlement Administrator	Class Counsel
Name Mailing Address Telephone Number	Brian Mankin, Esq. <i>brian@LMLfirm.com</i> Peter Carlson, Esq. <i>peter@LMLfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444

You may also seek advice and guidance from your own private attorney at your own expense, if you so desire.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed Settlement, which is on file with the Court and attached to the Declaration of Brian J. Mankin in Support of Motion for Preliminary Approval of Class Action Settlement filed on DATE, 2024 and available to be inspected at any time during regular business hours at the Office of the Clerk, San Francisco County Superior Court, located at 400 McAllister Street, San Francisco, CA 94102.

DO NOT TELEPHONE THE COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT “3”



LAUBY, MANKIN & LAUBY LLP

January 21, 2022

Submitted Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

San Francisco Health Care and Rehab Inc
1477 Grove Street
San Francisco, CA 94117

Svetlana Stukov
25 Via Delizia
Hillsborough, CA 94010

Stan Stukov
1455 Buckingham Way
Hillsborough, CA 94010

Re: **PAGA Civil Penalty Claim**
Jamie Johnson v. San Francisco Health Care and Rehab Inc, et al.

To the Labor and Workforce Development Agency, San Francisco Health Care and Rehab Inc, Svetlana Stukov, and Stan Stukov:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Jamie Johnson (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against her former employer(s), San Francisco Health Care and Rehab Inc and/or any affiliated entities, as well as its owners Svetlana Stukov, Stan Stukov, and others (the “Owners”) (collectively, the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, and 1199, among possibly other sections inadvertently omitted, and/or sections of the applicable IWC Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately April through September 2021. Claimant alleges that, at all relevant times, she and all other non-exempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations that Claimant was subjected during her employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. As one such example, the Company required Claimant and the Aggrieved Employees to undergo mandatory temperature checks and screenings prior to clocking in for payroll purposes. However,



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Toll Free 888.959.8508

because this time was spent under the Company's control but before being allowed to clock in, it was uncompensated in violation of California law and led to minimum and overtime wage violations. See *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law "do[es] not allow employers to require employees to routinely work for minutes off the clock without compensation"); See also *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under company's control and where the tasks served the employer's interests).

Additionally, Claimant and the Aggrieved Employees were frequently denied compliant meal periods, and the Company's timekeeping system does not reflect any meal period taken. Yet, despite that Claimant and the Aggrieved Employees did not take such meal periods, and no meal periods were recorded, the Company automatically deducted 30 minutes of time from every shift without making any inquiry into whether a compliant meal period occurred. To illustrate, Claimant often worked 9.5 hours without a meal period, and no meal period was recorded in the Company's timekeeping system. Yet, on these and similar occasions, the Company only paid for 9 hours of work despite that no meal period was taken or recorded, and without making any inquiry into whether a compliant meal period occurred. This resulted in a failure to pay minimum/regular wages (since Claimant was not paid at all for those 30 minutes), as well as a failure to pay overtime wages (since those 30 minutes were in excess of 8 hours and had to be paid at the proper overtime rate). Thus, the Company failed to pay proper minimum, regular, and overtime wages every time it applied its auto-deduct practice.

Also, at all relevant times, Claimant was compensated on an hourly basis plus was entitled to and did receive additional nondiscretionary compensation (such as shift differentials). However, on the occasions when Claimant worked in excess of 8 and/or 12 hours per day and/or 40 hours per week and received additional earned compensation during the workweek, the Company failed to properly include these amounts in the calculations for Claimant's regular rate of pay. Therefore, the Company failed to pay proper overtime wages for the hours worked in excess of 8 and/or 12 per day and/or 40 per week.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, as well as the hectic and demanding workload, Claimant was subjected to meal period violations when she was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal period after the 5th hour of work, and (5) not provided a mandated second meal period for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks, Claimant was unable to leave the premises for breaks, and Claimant was often not authorized and/or permitted to take mandated rest breaks due to the lack of adequate staffing and coverage and being overwhelmed by the hectic workload. Furthermore, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

The Company also failed to comply with the mandates of Labor Code §§ 204 and 210 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, as well as meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201–203 regarding timing of payment of final wages and failed to pay all wages due and owing upon separation of employment including minimum wages, overtime, and vacation wages. Finally, during



her employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that she worked under the joint direction and control of the entities listed herein and their Owners and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that the entities listed herein and the Owners acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, the entities listed herein and their Owners are an integrated enterprise and should be treated as a single employer because the entities and their Owners share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, the entities listed herein and their Owners share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimant alleges that the Owners are now and at all relevant times were the owners of the entities listed herein and were Claimant's and the Aggrieved Employees' actual employer or, in the alternative, were individuals employed by the Company as managerial and/or supervisory employees and/or agents. In addition, Claimant alleges that at all relevant times the Owners had the authority, in the interest of the entities listed herein to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant's chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant's complaint herein. Claimant also alleges that the entities listed herein and the Owners are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, the entities listed herein and the Owners were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges the entities listed herein and the Owners were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others. Claimant further alleges that, at all relevant times, the entities listed herein have been inadequately capitalized to conduct business, have failed to follow appropriate corporate formalities, and have simply been a shell and instrumentality through which the Owners have conducted their personal affairs. Adherence to the fiction of the separate existence of the entities listed herein would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice. Accordingly, the corporate veil should be pierced, and any liability attached to the entities listed herein should be imposed jointly and severally against the Owners.

Finally, in an additional separate, but not necessarily mutually exclusive, alternative theory of liability, the Owners are liable for PAGA civil penalties under Labor Code § 558 as "other person(s)" who caused the violations regarding minimum wage among other claims. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 ("if there is evidence and a finding that a party other than the employer 'violates, or causes to be violated' the overtime laws (§ 558(a)) or 'pays or causes to be paid to any employee' less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer"); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (same)



As a result of these violations, and others described below, Claimant alleges that she and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 210, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company's failure to accurately record and compensate for all hours worked, the failure to compensate for time spent in mandated temperature checks, and the failure to pay overtime and/or properly calculate the regular rate of pay for Claimant and other Aggrieved Employees. This resulted in earned, but unpaid, wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees performed work for the Company without receiving proper payment of the requisite minimum, overtime, and/or doubletime wages.

Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company's policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee's regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums and did not do so at the proper rate. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.



FAILURE TO PAY VESTED VACATION UPON SEPARATION OF EMPLOYMENT

(Labor Code § 227.3)

Pursuant to Labor Code § 227.3, an employer that has implemented a paid vacation, paid time off, or compensated time off policy must, upon an employee's separation from employment, pay to the employee all vested but unused vacation and/or paid time off at her final rate of pay. However, as alleged herein, the Company failed to pay all accrued and unused vacation upon termination. And the Company also only paid vested vacation upon separation at the base rate of pay rather than at the required final rate, leading to a violation on each such occasion. As a result of these violations, penalties may be assessed pursuant to Labor Code § 2699.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 210, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states "[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period."

As a result of the Company's failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code § 202(a) states in pertinent part "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours' previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." Labor Code § 203(a) states "If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days."

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a "waiting time penalty." (Labor Code § 203.) Labor Code § 2699 also imposes a penalty.



**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**
(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee's name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimants and all Aggrieved Employees due to violations including: failure to accurately state total hours worked (the wage statements failed to accurately reflect total compensable hours due to the illegal temperature check policy and the auto-deduct practice); failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state the applicable hourly rates; and failure to accurately state the corresponding number of hours worked at each hourly rate. Accordingly, Claimants are entitled to damages under Labor Code § 226(e), including reasonable attorneys' fees. Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199
(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES
(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees. Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION



Re: Johnson v. San Francisco Health Care and Rehab Inc

January 21, 2022

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Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to her employment and/or other employees of the Company, she reserves the right to add new claims by supplementing this notice letter. Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



By: Peter J. Carlson, Esq.

E-mail: peter@lmlfirm.com



EXHIBIT “4”



CASE ASSUMPTIONS

Class Members	750
Opt Out Rate	1%
Opt Outs Received	12
Total Class Claimants	738
Subtotal Admin Only	\$10,235.80

Flat Fee Total \$10,000.00

For 750 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

April 23, 2024

Case: Johnson vs. SFHCR, Opt-Out & PAGA Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: Brian J. Mankin
Firm: Lauby, Mankin & Lauby, LLP
Contact Number: (951) 320-1444
Email: brian@lmfirm.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.
Estimate is based on **750** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 day

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	2		\$200.00
Toll Free Setup*	\$100.00	1		\$100.00
Call Center & Long Distance	\$2.00	79		\$158.00
NCOA (USPS)	\$150.00	1		\$150.00
Total				\$808.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Website

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Data Merge & Duplication Scrub	\$0.10	750		\$75.00
Notice Packet & Opt-Out Form	\$1.30	750		\$975.00
Estimated Postage (up to 2 oz.)*	\$0.62	750		\$465.00
Static Website	\$200.00	1		\$200.00
Total				\$1,915.00

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	2		\$110.00
Skip Tracing Undeliverables	\$1.00	113		\$112.50
Remail Notice Packets	\$1.00	110		\$109.50
Estimated Postage	\$0.64	110		\$70.08
Programming Undeliverables	\$50.00	2		\$100.00
			Total	\$502.08

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Database	\$150.00	1		\$150.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	5		\$275.00
Deficiency & Dispute Letters	\$10.00	9		\$90.00
Case Manager	\$85.00	3		\$255.00
			Total	\$970.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	1		\$135.00
Disbursement Review	\$135.00	2		\$270.00
Programming Manager	\$95.00	3		\$285.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	7		\$945.00
Mail Class Checks *	\$0.80	738		\$590.40
Estimated Postage	\$0.64	738		\$472.32
			Total	\$2,832.72

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing & Instructions for downloading tax forms from PHX secure portal



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	2		\$230.00
Remail Checks (Postage Included)	\$2.00	129		\$258.00
Case Associate	\$55.00	3		\$165.00
Reconcile Uncashed Checks	\$85.00	5		\$425.00
Conclusion Reports	\$115.00	2		\$230.00
Case Manager Conclusion	\$85.00	3		\$255.00
Final Reporting & Declarations	\$115.00	3		\$345.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting & Escheating to the State of CA Included)	\$1,300.00	1		\$1,300.00
Total				\$3,208.00

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$10,235.80



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT “5”