

B. James Fitzpatrick (SBN: 129056)
Alison L. Baker (SBN: 193601)
FITZPATRICK & SWANSTON
555 S. Main Street
Salinas, CA 93901
Telephone: (831) 755-1311
Facsimile: (831) 755-1319

Larry W. Lee (SBN: 228175)
Kristen Agnew (SBN: 247656)
Nick Rosenthal (SBN: 268297)
DIVERSITY LAW GROUP, P.C.
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile (213) 488-6554

Attorneys for Plaintiffs, the Class, and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY**

LORENA RAMIREZ, on behalf of herself
and all similarly aggrieved employees,

Plaintiff,

v.

COVENANT SURGICAL PARTNERS,
INC.; SALINAS ENDOSCOPY CENTER,
LLC; AND DOES 1 through 50, inclusive,

Defendants.

Case No.: 22CV000081

(Assigned to the Honorable Thomas W. Wills,
Dept. 15)

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

Date: July 14, 2023

Time: 8:30 a.m.

Dept.: 15

Complaint Filed: January 10, 2022

Trial Date: None

1 I, Kristen M. Agnew, declare as follows:

2 1. I am an attorney at law, duly licensed to practice before all Courts in the State of
3 California, and am with the law firm Diversity Law Group, P.C., counsel of record for Plaintiffs
4 Lorena Ramirez and Teresa Martinez (“Class Representatives” or “Plaintiffs”). I have personal
5 knowledge of the facts set forth below and if called to testify I could and would do so
6 competently.

7 **RELEVANT PROCEDURAL HISTORY**

8 2. From the inception of the case, Class Counsel has zealously represented the
9 interests of the Class. I have no conflicts with the Class and will adequately represent the Class.

10 3. On January 10, 2022, Plaintiff Lorena Ramirez (“Plaintiff Ramirez”) submitted
11 her written notice under Labor Code section 2699.3 (the “PAGA Notice”) to the LWDA and
12 Defendants Covenant Surgical Partners, Inc. and Salinas Endoscopy Center, LLC
13 (“Defendants”). As set forth in the PAGA Notice, Plaintiff Ramirez alleges that Defendants
14 violated Labor Code sections 201, 201.3, 202, 203, 204, 207, 208, 209, 216, 218, 218.5, 218.6,
15 223, 225.5, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2800, and 2802.
16 Attached hereto as **Exhibit A** is a true and correct copy of the PAGA Notice.

17 4. On January 10, 2022, Plaintiff Ramirez filed a putative class and representative
18 action against Defendants.

19 5. On April 7, 2022, Plaintiff Ramirez filed the operative First Amended Complaint
20 for Damages, Penalties and for Injunctive Relief. Plaintiff Ramirez amended the complaint to
21 name Teresa Martinez as an additional plaintiff and class representative.

22 6. As pled in the First Amended Complaint, Plaintiffs’ class and PAGA claims are
23 predicated on multiple wage and hour violations experienced by Plaintiffs and the Class.
24 Plaintiffs alleged that Defendants engaged in a pattern and practice of: (1) failing to provide
25 legally compliant meal periods and breaks, in violation of sections 226.7 and 512; (2) failing to
26 pay hourly and overtime wages, in violation of Labor Code sections 1194 and 1198; (3) failing to
27 provide compliant wage statements, in violation of Labor Code sections 226, 1174 and 1175; (4)
28 failing to pay wages upon separation of employment, in violation of Labor Code sections 201,

202 and 203; and (5) failing to reimburse business expenses, in violation of Labor Code sections 2802. As a result of these alleged violations, Plaintiffs seek damages and derivative statutory penalties and civil PAGA penalties, as well as attorneys' fees and costs.

DISCOVERY & INVESTIGATION

7. On April 11, 2022, Plaintiffs propounded written discovery, including Special Interrogatories (Set One) and Requests for Production of Documents (Set One). The discovery required Defendants to provide documents and information relevant to class certification, including the number of members in the putative class, documents pertaining to Defendants' payroll policies and procedures, and time and payroll records of putative class members. Defendants provided fulsome and substantive responses to the discovery requests.

8. On December 6, 2022, Plaintiffs deposed Defendants' designated person most knowledgeable on topics related to Defendants' meal/rest period policies, calculation of the hours worked by putative class members, "rounding" policy, calculation of the regular rate of compensation and cellphone reimbursement policy.

MEDIATION

9. In or around October 2022, the Parties agreed to participate in private mediation. My office retained Econ One to review the payroll data and perform a comprehensive damage analysis in preparation for mediation. Based on Defendants' prior written discovery responses, Econ One determined the total number of Class Members and Aggrieved Employees, the number of meal and rest period eligible shifts worked during the Class Period and PAGA Period, the number of pay periods in which non-discretionary incentive pay was earned in the same workweek as overtime, sick pay and/or meal period premiums, the aggregate amount of time lost due to the alleged rounding, the number of employees who separated employment, and the average rate of pay for all employees. Thus, I entered mediation with a clear understanding of Defendants' maximum exposure.

10. On February 1, 2023, the Parties engaged in a full-day mediation with mediator Michael J. Loeb, Esq. During the mediation, the Parties spoke at length about the strengths and weaknesses of each sides' claims and defenses, the certifiability of the claims, and the scope of

Defendants' liability.

11. After arms-length negotiation at mediation, the Parties reached a tentative settlement, which was memorialized in the Memorandum of Understanding. The Parties subsequently executed the Joint Stipulation of Class Action Settlement ("Settlement Agreement" or "Agreement"), a true and correct copy of which is attached herewith as **Exhibit B**.

SUMMARY OF THE PROPOSED SETTLEMENT

12. The Settlement Agreement seeks to resolve the claims of "all non-exempt employees who are or previously were employed by Covenant Surgical Partners, Inc. and/or Salinas Endoscopy Center, LLC in California during the period of January 10, 2018 through February 1, 2023." (See SA at § A-4.) Defendants have represented that approximately 820 individuals comprise the Class.

13. The proposed Class includes Aggrieved Employees, which is defined as "all non-exempt employees who are or previously were employed by Covenant Surgical Partners, Inc. and/or Salinas Endoscopy Center, LLC in California during the period of January 10, 2021 through February 1, 2023." (See SA at § A-2.)

14. The Settlement Agreement requires Defendants to pay the Gross Settlement Amount of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00) to resolve the claims of Settlement Class Members (i.e., Class Members who do not opt-out of the Settlement) and Aggrieved Employees. (See SA at §§ A-19, C-1.)

15. The balance of the Gross Settlement Amount remaining after deduction of the approved attorneys' fees and costs, Enhancement Payment to each Class Representative, settlement administration costs, and the PAGA Payment ("Net Settlement Amount"), will be available for distribution to Settlement Class Members. (See SA at § A-20.)

16. The Net Settlement Amount is estimated to be approximately \$1,061,666.67. Because separated employees are entitled to waiting time penalties, which results in higher damages, it is the Parties intention that Settlement Class Members who terminated during the liability period should receive a greater portion of the Net Settlement Amount. To achieve this intent, the Parties have agreed to a distribution formula whereby twenty percent (20%) of the Net

1 Settlement Amount shall be allocated to Settlement Class Members who terminated employment
2 with Defendants during the Class Period. (SA at § C-8.) Each Settlement Class Members who
3 terminated employment with Defendants during the Class Period shall receive the same dollar
4 amount in distribution. (SA at § C-8.) The remaining eighty percent (80%) of the Net Settlement
5 Amount shall be allocated to all Settlement Members. Settlement Class Members will be entitled
6 to receive a portion of this amount on a *pro rata* basis, based upon the total number of pay
7 periods each Participating Class Member worked during the Class Period. (SA at § C-8.) This is
8 fair, as it directly allocates greater recovery to individual Settlement Class Members who have
9 allegedly suffered greater harm, including to those Settlement Class Members who are entitled to
10 waiting time penalties.

11 17. Subject to Court approval, Fifty Thousand Dollars (\$50,000.00) of the Gross
12 Settlement Amount shall be allocated to PAGA penalties (“PAGA Payment”). (See SA at § C-6.)
13 Seventy-Five percent of the PAGA Payment, *i.e.* the sum of Thirty-Seven Thousand Five
14 Hundred Dollars (\$37,500), shall be paid to the LWDA, pursuant to Labor Code section 2699 *et*
15 *seq.* The remaining twenty-five percent of the PAGA Payment, *i.e.* the sum of Twelve Thousand
16 Five Hundred Dollars (\$12,500), shall be distributed to Aggrieved Employees. (See SA at § C-6.)
17 As detailed in the Settlement, the amount of the individual payments to Aggrieved Employees
18 will be determined by the number of pay periods in which the employee worked during the
19 PAGA Period. (SA at § C-7.)

20 18. As part of the Settlement Agreement, Defendants do not object to the payment of
21 a Service Payment in the amount of Five Thousand Dollars (\$5,000.00) to each Class
22 Representative (totaling \$10,000.00). (SA at § C-4.) This amount is intended to compensate
23 Plaintiffs for their efforts and work in prosecuting this case, including meeting and
24 communicating with Class Counsel and reviewing the pleadings and documents in this case,
25 including the PAGA Notice, Complaints and the Settlement Agreement. Moreover, in
26 consideration for the Service Payment, Plaintiffs also executed a general release of all claims
27 including a waiver under California Civil Code § 1542, which other members of the Class did
28

1 not have to do. (SA at § C-32.)¹ Any portion of the Service Payment not approved by the Court
2 shall be added to the Net Settlement Amount for distribution to the Settlement Class. (SA at § C-
3 4.)

4 19. Also, as part of the Settlement Agreement, Defendants do not object to Class
5 Counsel's request for attorneys' fees of not more than 33.33% of the Gross Settlement Amount
6 or Five Hundred Eighty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three
7 Cents (\$583,333.33), as well as declared litigation costs not to exceed Twenty-Five Thousand
8 Dollars (\$25,000.00) in connection with the prosecution of the Action. (SA at § C-3.) Any
9 amount of attorney's fees or costs requested and not approved by the Court shall be added to the
10 Net Settlement Amount for distribution to the Settlement Class. (SA at § C-3.)

11 20. The Settlement Agreement provides for the payment of the fees and expenses
12 reasonably incurred by the Settlement Administrator. (SA at § C-5.) The Parties have selected
13 CPT Group as the Settlement Administrator. (SA at § A-34.) The Settlement Administrator's
14 anticipated costs are Ten Thousand Dollars (\$10,000.00). (SA at § A-33.) I believe that this
15 amount is reasonable in relation to the value of the settlement. The administration costs will be
16 deducted from the Gross Settlement Amount. (SA at § C-5.) Any portion of the administration
17 costs not used or approved by the Court shall be added to the Net Settlement Amount for
18 distribution to the Settlement Class. (SA at § C-5.) Class Counsel believes that the administration
19 fee is reasonable and should be approved.

20 21. The Settlement provide that uncashed checks (upon the expiration date) shall be
21 distributed to Legal Aid at Work and California Rural Legal Assistance, Inc. as the *cy pres*
22 beneficiaries. (See SA at § C-24.) Legal Aid at Work and California Rural Legal Assistance, Inc.
23 are non-profit organizations that provide free legal services and referral information to low-
24 income residents of California, in accordance with California Civil Procedure § 384. I do not
25 have an interest, financial or otherwise, in Legal Aid at Work or California Rural Legal
26

27
28 ¹ However, the general release does not extend to any individual claim that Plaintiff Martinez
may assert against Defendants for whistleblower retaliation and wrongful termination in
violation of public policy. (SA at § C-32.)

Assistance, Inc.

ANALYSIS OF THE CLASS CLAIMS & POTENTIAL RECOVERABLE DAMAGES
AND STATUTORY PENALTIES

22. Class Counsel retained Econ One to calculate the potential damages/penalties at issue. Based on the class data provided by Defendants, Class Counsel estimates that Defendants would face potential liability of up to approximately \$15,187,189 in unpaid wages and statutory penalties, if Plaintiffs succeeded at trial on all class claims.

23. **Meal Period Violations.** Plaintiffs allege that Defendants' meal periods policy is contrary to Labor Code sections 226.7 and 512. Defendants' Associate Handbook states that employees "working 6 or more hours on a workday are allowed a 30-60 minute lunch period as agreed upon between the [employee] and his or her manager." The written policy is consistent with Plaintiffs' experience regarding late meal periods (after the 5th hour of work). The time records produced by Defendants also show late and short meal periods (less than thirty minutes). Even when provided meal periods, Plaintiffs allege that employees remained on-duty, and were required to respond to work-related calls and complete other work during breaks.

24. Defendants maintain that it complied with the law and provided its employees duty-free breaks. Defendants further argue that, even if Plaintiffs were able to establish that some employees experienced a meal period violation, such a claim would not be manageable.

25. Based on the payroll data produced by Defendants and analysis performed by Econ One, Defendants owe \$2,479,045 in unpaid meal period premiums resulting from missed, late or short meal periods. Defendants' time records reflect that Class Members worked approximately 84,879 shifts in which they received a facially non-compliant meal period during the Class Period. Defendants paid a meal period premium for 7,254 of these shifts. The difference between the amount of premiums paid (\$274,294) and the amount owed (\$2,753,339) equals Defendants' maximum potential exposure on this claim.

26. **Rest Period Violations.** Plaintiffs allege that Defendants' rest periods policy violates Labor Code section 226.7. Similar to the alleged meal period violation discussed above, Plaintiffs allege that employees remained on-duty, and were required to respond to work-related

1 calls and complete other work during rest periods. Additionally, Plaintiffs contend that
2 Defendants' policy was to provide a second rest period only after an employee worked eight
3 hours or more.

4 27. Defendants, however, maintain that it complied with the law and provided its
5 employees duty-free rest breaks. Defendants further argued that, even if Plaintiffs were able to
6 establish that some employees experienced a rest period violation, such a claim would not be
7 manageable. As rest periods are not recorded, there are no records that can be used to establish
8 whether a Class Member received a late, short or on-duty rest period.

9 28. Based on the payroll data produced by Defendants and analysis performed by
10 Econ One, Defendants owe \$6,805,462 in unpaid rest period premiums. Defendants' time
11 records reflect that Class Members worked 245,899 rest period eligible shifts during the Class
12 Period. Since, Plaintiffs contend that all rest periods were on-duty and Defendants' payroll
13 records reflect that Defendants did not pay rest period premiums during the Class Period, this
14 calculation assumes a 100% violation rate.

15 29. **Unpaid Time: Rounding Violation.** Plaintiffs contend that Defendants rounded
16 the daily total hours worked by its employees. Despite recording individual time entries to the
17 minute, for the purpose of paying wages, Defendants rounded the total hours worked each day to
18 the nearest 15 minutes. Plaintiffs argue that Defendants' rounding policy resulted in the
19 underpayment of wages. Based on Defendants' time and pay records, Class Counsel has
20 identified 279 uncompensated hours that resulted from Defendants' rounding practice.
21 Defendants, however, contend that its rounding policy complies with California law. Defendants
22 maintain that the cumulative effect of the rounding practice resulted in the overpayment of wages
23 to the Class.

24 30. Based on the payroll data produced by Defendants and analysis performed by
25 Econ One, Defendants owe \$23,406 in unpaid wages resulting from Defendants' rounding
26 practices. There are approximately 526 employees who received an underpayment of wages due
27 to Defendants' rounding practices. These employees worked approximately 279 hours without
28 the payment of wages.

1 31. **Unpaid Time: COVID Screenings.** Plaintiffs allege that beginning in March
2 2020, Defendants required that employees comply with health certification protocols prior to
3 entering the workplace, including temperature screening and a self-certification process. This
4 occurred at the building entrance, prior to employees clocking-in.

5 32. Defendants sharply dispute Plaintiffs' allegation that Class Members were
6 required to submit to off-the-clock health certification protocols prior to entering the workplace.
7 Consistent with its written policy that employees must record all time spent working, Defendants
8 contend that all certification procedures should have taken place after an employee clocked-in
9 for the day. Furthermore, to the extent that an individual Class Member submitted to a screening
10 off-the-clock, Defendants provide all employees with a method to report missed punches or any
11 errors in the time records so that the time records may be corrected. Merits aside, Defendants
12 further argue that the claim is not suitable for class certification. Citing to *Brinker Rest. Corp. v.*
13 *Superior Court* 53 Cal.4th 1004 (2012), Defendants argue that in order to prevail at class
14 certification, Plaintiffs must present evidence that Defendants "know[] or has reason to know"
15 that off-the-clock work occurred. Thus, according to Defendants, an adjudication of the alleged
16 off-the-clock claim would require individualized assessments as to whether managers at its
17 various facilities were aware that employees submitted to the protocol prior to clocking in for the
18 day.

19 33. Based on the payroll data produced by Defendants and analysis performed by
20 Econ One, Defendants owe \$300,908 in unpaid wages resulting from the off-the-clock
21 temperature screening and Covid self-certification process. This amount assumes that Class
22 Members spent approximately three minutes per shift submitting to the health screening
23 protocols.

24 34. **Regular Rate Violations.** Plaintiffs allege that Defendants failed to incorporate
25 non-discretionary bonus payment in the regular rate of pay for purposes of paying overtime,
26 meal/rest period premiums and sick pay. Plaintiffs have identified 197 discrete "Club Card
27 Membership bonus" payments made to Class Members. These annual payments range in price
28 from \$30-\$60.

1 35. The Parties sharply disagree as to whether the “Club Card Membership bonus”
2 should be included in the regular rate of pay. Although Defendants’ handbook describes the
3 payment as a “bonus,” Defendants contend that the “Club Card Membership bonus” is not a non-
4 discretionary wage. As argued by Defendants, the “Club Card Membership bonus” is a
5 reimbursement to employees who maintain a warehouse membership to Costco or Sam’s Club.
6 Furthermore, with respect to the sick pay regular rate claim, Defendants have argued that
7 Plaintiffs cannot recover unpaid sick pay wages because there is no private right of action under
8 the Healthy Workplace Healthy Family Act.

9 36. Based on the payroll data produced by Defendants and analysis performed by
10 Econ One, Defendants owe \$1,160 in unpaid wages resulting from its failure to factor non-
11 discretionary incentive pay into the regular rate of pay used to pay overtime wages, sick pay and
12 meal period penalties. Based on a comparison of Defendants’ time and payroll records, Econ
13 One estimated that there are 108 employees who received an underpayment of wages due to
14 Defendants’ failure to properly calculate the regular rate of pay.

15 37. **Unpaid Business Expenses.** Plaintiffs allege that Defendants failed to reimburse
16 employees for work-related expenses, in violation of Labor Code section 2802. More
17 specifically, Plaintiffs contend that Defendants required employees to use their own cell phones
18 for work-related purposes, including communicating with Defendants’ doctors and staff during
19 breaks and completing Defendants’ off-the-clock COVID screenings.

20 38. Defendants, however, contend that Class Members were not required to use a cell
21 phone to perform any part of their job duties. Thus, as argued by Defendants, no portion of the
22 employees’ cell phone plans can accurately be characterized as a business expense.

23 39. Based on the payroll data produced by Defendants, Defendants owe \$41,350 in
24 damages resulting from its failure to reimburse employees for the use of their personal cell
25 phones for work-related purposes. This amount assumes that each Class Member incurred
26 approximately \$50 in unreimbursed expenses.

27 40. **Derivative Wage Statement Violation.** As a result of the alleged underpayment
28 and/or non-payment of wages to Class Members, Plaintiffs contend that the wage statements

omit information required by Labor Code 226, including all applicable hourly rates, the total hours worked. As argued by Defendants, Plaintiffs' wage statement violation is purely derivative in nature, and therefore vulnerable to a motion for summary judgment. *See Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308 (2018) (finding that the employees did not suffer a violation under 226(a) where their wage statement cause of action was derived from an underlying wage and hour violation for overtime). Additionally, Defendants maintain that any alleged omission of information from the wage statements was not a "knowing and intentional failure" by Defendants to comply with Labor Code section 226(a), and penalties are therefore unwarranted. *See Naranjo v. Spectrum Security Services, Inc.*, 88 Cal.App.5th 937, 949 (2023) (employer's failure to include meal and rest period premium pay on the wage statements was not "knowing and intentional" because it had a good faith belief that it was not in violation of Labor Code section 226); *Harris v. Vector Mktg. Corp.*, 656 F. Supp. 2d 1128, 1145-46 (N.D. Cal. 2009). Based on the payroll data produced by Defendants and analysis performed by Econ One, Defendants owe \$2,376,723 in derivative wage statement penalties under Labor Code section 226(e). This amount takes into consideration the \$4,000 statutory cap.

41. **Derivative Waiting Time Penalties.** Plaintiffs seek waiting time penalties based on Defendants' alleged underpayment and/or non-payment of wages, meal and rest period premiums and sick pay. In order to establish liability for waiting time penalties under Labor Code section 203, it is the plaintiff's burden to prove not only that there was a failure to pay final wages in a timely manner, but also that the failure to pay wages in a timely manner was "willful." Cal. Lab. Code § 203(a); *Granite Outlet, Inc. v. Hartford Cas. Ins. Co.*, 190 F. Supp. 3d 976, 986 (E.D. Cal. 2016) ("The 'willful' factor...is a requisite element to impose penalties under Labor Code section 203"); *Naranjo v. Spectrum Security Services, Inc.*, 88 Cal.App.5th 937, 948 (2023) (holding that trial court properly "denied waiting time penalties under section 203 based on its finding that Spectrum did not 'willfully' fail to pay" meal and rest period premiums). As explained above, Defendants maintain that Plaintiffs cannot establish the predicate fact that any earned wages were not paid at the time of termination. Defendants further contend, that to the extent that Plaintiffs overcome this hurdle, Plaintiffs would need to prove

that Defendants willfully delayed each final payment, and this this is an inherently fact intensive inquiry, which is not susceptible to class-wide adjudication.

42. Based on the payroll data produced by Defendants, Defendants owe \$3,159,135 in waiting time penalties under Labor Code section 203, resulting from the unpaid meal/rest period premiums, Defendants' rounding scheme, off-the-clock COVID screening procedures, and regular rate violations. Econ One estimated that there are 432 Class Members who separated employment during the period of January 10, 2019 through the end of the Class Period. These employees earned an average hourly rate of \$30.48 at the time of separation.

43. The breakdown for the calculation of class damages and statutory penalties is set forth below:

Lab. Code Section	Violation	Unpaid Wages/ Statutory Penalties
Labor Code §§ 226.7 and 512	Meal Period Violation	\$2,479,045
Labor Code § 226.7	Rest Period Violation	\$6,805,462
Labor Code §§ 510, 558 1194	Unpaid Time: Rounding Violations	\$23,406
Labor Code §§ 510, 558 1194	Unpaid Time: COVID Screenings	\$300,908
Labor Code §§ 246, 510, 558, 1194	Regular Rate of Pay Violation	\$1,160
Labor Code § 2802	Unpaid Business Expense Violation	\$41,350
Labor Code § 226	Wage Statement Violation	\$2,376,723
Labor Code §§ 201, 202	Failure to Pay Wages at Termination	\$3,159,135
TOTAL		\$15,187,189

POTENTIAL RECOVERABLE CIVIL PAGA PENALTIES

44. Due to the discretionary nature of PAGA penalties, PAGA civil penalties are difficult to evaluate. Defendants have indicated that there were approximately 31,880 pay periods in which Aggrieved Employees worked during the PAGA Period. Assuming that Plaintiffs were to prevail on the merits of the PAGA claim, applying the standard penalty of \$100 per pay period yields \$3,188,000 in potential liability.

45. In the alternative, if the Court were to “stack” penalties, (*ie*, award multiple PAGA penalties for different Labor Code violations in the same pay period), the potential PAGA penalties could total as high as \$14,119,900:

Lab. Code Section	Violation	Pay Periods	PAGA Penalties
Labor Code §§ 246, 510, 558, 1194	Regular Rate of Pay Violation	930	\$9,300
Labor Code §§ 226.7 and 512	Meal Period Violation	13,384	\$1,338,400
Labor Code § 226.7	Rest Period Violation	31,880	\$3,188,000
Labor Code §§ 510, 558 1194	Unpaid wages, Including Off-the-Clock and Rounding Violations	31,880	\$3,188,000
Labor Code §§ 201, 202	Failure to Pay Wages at Termination	202	\$20,200
Labor Code § 226	Wage Statement Violation	31,880	\$3,188,000
Labor Code § 2802	Unpaid Business Expense Violation	31,880	\$3,188,000
TOTAL			\$14,119,900

46. The above penalty calculations assume that Plaintiffs will prevail on the merits.

1 However, Plaintiffs' claims are contested.

2 47. In negotiating the amount of the settlement, I took into account the inherent
3 uncertainty in the potential recovery in a PAGA action. By statute, the Court can decline to
4 award the full amount of PAGA penalties where "...if, based on the facts and circumstances of
5 the particular case, to do otherwise, would result in an award that is unjust, arbitrary and
6 oppressive, or confiscatory." See Cal. Labor Code § 2699(e)(2). Assuming that Plaintiffs
7 prevailed on liability, under the facts of this case, I appreciate the substantial risk that Defendants
8 could present a persuasive argument to reduce the amount of PAGA penalties at trial.

9 48. In this case, Defendants asserted that a substantial reduction in potential PAGA
10 penalties was warranted because: (1) the alleged violations were inadvertent; (2) when
11 Defendants became aware that some employees were not receiving meal and rest period
12 premiums, it changed its payroll system, so that premiums were automatically paid for late, short
13 or missed breaks; and (3) Aggrieved Employees did not suffer substantial economic harm as a
14 result of the alleged violations of Labor Code. Thus, Defendants contend that no PAGA penalties
15 were needed to punish or deter Defendants for its inadvertent behavior, much less to deter it from
16 committing any future violations that were completely foreclosed by its new payroll practices.

17 49. I am also aware that Courts routinely award far less than the statutory maximum
18 amount of civil penalties, even where an underlying violation of the Labor Code is found. As
19 shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*, while the plaintiff
20 prevailed on his PAGA claim at trial, the trial court reduced the maximum PAGA penalty
21 amount by 90%, citing the employer's good faith attempt at complying with the law. 30 Cal.
22 App. 5th 504, 517 (2018). Upon review, the Court of Appeal found such reduction to be proper.
23 *Id.* at 539; see *O'Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1133 (N.D. Cal.,
24 2016). Thus, assuming that the Court uses *Carrington* as a benchmark and assesses PAGA
25 penalties of approximately 10% of the total maximum, a more realistic estimate of the maximum
26 PAGA penalties at issue—even with "stacking"—is \$1,411,990.

27 50. Here, based on the amounts explained above, the total exposure for Plaintiffs'
28 class and PAGA claims amount to \$29,307,089. However, this figure assumes that the Court

1 would award full PAGA penalties for each proven violation during a pay period. In the
2 alternative, if the Court applies a single penalty per pay period, the PAGA penalties are reduced
3 to \$3,188,000. Taking into account this reduced penalty calculation, the realistic exposure on the
4 class and PAGA claims totals \$18,375,189. The Gross Settlement Amount here is \$1,750,000.00,
5 and thus amounts to approximately 9.52% of the total estimated liability.

6 **ESTIMATED INDIVIDUAL CLASS SETTLEMENT PAYMENTS**

7 51. The Net Settlement Amount is estimated to be approximately \$1,071,666.67. On
8 raw average, each Class Member may potentially recover approximately \$1,306.91. The amount
9 actually paid to each Class Member may increase or decrease depending on whether the
10 employee separated employment (*see* paragraph 16, *supra*), the actual number of pay periods
11 worked during the Class Period and the number of opt-outs received. To the extent that there are
12 valid opt-outs, the Settlement Administrator will proportionately increase the individual
13 settlement payments to each Settlement Class Member so that the amount actually distributed to
14 Settlement Class Members equals 100% of the Net Settlement Amount.

15 **THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

16 52. I believe that Plaintiffs and the Class could prevail at trial. However, I also
17 believe in the fairness of the settlement, which is based on factoring in the uncertainty and risks
18 attendant to not prevailing on one or more theories of liability, the possibility of losing at trial
19 and potential for appeals. Moreover, as Defendants adamantly deny that it should be liable for
20 the full extent of the alleged damages and penalties, there is a possibility that Plaintiffs and the
21 Class would be awarded less or recover nothing at trial. Thus, after taking into account sharply
22 disputed legal issues involved in this litigation, the risks associated with further prosecution,
23 delays caused by potential appeals, and the substantial benefits to be received pursuant to the
24 Settlement Agreement, I believe that the proposed settlement is fair, reasonable, and adequate
25 and is in the best interests of the Class.

26 **ATTORNEY EXPERIENCE**

27 53. Diversity Law Group has a great deal of experience in wage and hour class action
28 litigation and has been approved as class counsel in a number of class actions.

1 54. My qualifications are as follows: I was the 2003 recipient of the Spelman
2 Presidential Scholarship to Emory University School of Law. During law school, I was a summer
3 associate at the law firm of Sonnenschein, Nath and Rosenthal, and clerked with the Atlanta
4 office of the Equal Employment Opportunity Commission. I received my J.D. from Emory
5 University in 2006 and was admitted to the California Bar in December 2006. Following law
6 school, I was an associate at Sonnenschein from September 2006 to May 2009.

7 55. Since 2009, my primary area of practice has been employment litigation. I have
8 practiced law at two preeminent employment defense firms. From May 2009 to June 2011, I was
9 an associate at Ogletree, Deakins, Nash, Smoak & Stewart, P.C. I was also an associate, and then
10 senior associate, in the labor and employment practice group of Seyfarth Shaw, LLP from June
11 2011 to May 2016. At both Ogletree and Seyfarth, I represented a wide array of fortune 500
12 companies in employment litigation in both state and federal courts, as well as before
13 government agencies, including the California Department of Labor. My practice included the
14 defense of single plaintiff and multi-plaintiff lawsuits involving claims under the California Fair
15 Employment and Housing Act, the California Labor Code and the Fair Labor Standards Act. I
16 also handled a number of wage and hour class actions.

17 56. In June 2016, I joined Diversity Law Group, P.C. where I spend most of my time
18 handling employment cases. I primarily represent employees.

19 57. I served as the lead associate on a number of wage and hour class actions,
20 including *Martha Cardenas v. Gold's Gym*, Los Angeles County Superior Court Case No.
21 BC445112; *Nathaniel Werner v. Crown Equipment Corporation*, Los Angeles County Superior
22 Court Case No. BC439428; *Christopher Williams v. Allstate Insurance Co.*, Los Angeles County
23 Superior Court Case No. BC382577; *Hwang v. Caltech*, Los Angeles County Superior Court
24 Case No. BC464894; *Melissa Roberts v. Zale Delaware, Inc.*, Los Angeles Superior Court Case
25 No. BC523610; *Michael Oliver v. Konica Minolta Business Solutions U.S.A., Inc.*, Santa Clara
26 County Superior Court Case No. 114-CV-263183; *Tessa Hodge v. Zale Delaware, Inc., d/b/a*
27 *Piercing Pagoda*, San Bernardino Superior Court Case No CIVVS1301632; *Warren v. Paychex,*
28 *Inc.*, N.D. Cal. Case No. 3:10-cv-02006; *Tapia v. Zale Delaware Inc. et al*, S.D. Cal. Case No.

3:13-cv-01565; and *Benjamin Burgess et al v. Tesoro Refining and Marketing Company et al*,
C.D. Cal. Case No. 2:10-cv-05870.

58. I have been approved as class counsel in a number of class actions by the Superior
Courts of California and United States District Courts, including: *Antonio Becerra-Mata v. PSC
Industrial Outsourcing, LP*, San Benito County Superior Court Case No. CU-15-00030; *Andrew
Vasquez v. Earthbound Farm, LLC*, San Benito County Superior Court Case No. CU-17-00171;
Francisco Pulido v. Westrock Services, Inc., San Benito County Superior Court Case No. CU-
18-00074; *Kosal So v. Owens-Brockway Glass Container, Inc.*, Los Angeles County Superior
Court Case No. BC608609; *John Obiols v. Lockheed Martin Corporation*, Santa Clara County
Superior Court Case No. 17CV314178; and *Eric Chavez v. Converse, Inc.*, N.D. Cal. Case No.
15-cv-03746-NC.

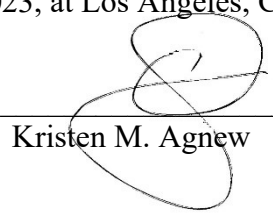
59. I also second chaired two jury trials where I represented the prevailing defendant.
Both cases involved employees who brought claims against their former employers pursuant to
the Fair Employment & Housing Act. The cases are: *Jeff Cowell v. Eaton Aerospace LLC et al*,
Los Angeles County Superior Court Case No. BC401543; and *Richard Gulden v. Pratt &
Whitney Rocketdyne Inc. et al.*, Los Angeles County Superior Court Case No. BC468909.

NOTICE TO LWDA

60. Concurrent with the filing of the Motion to Approve PAGA Settlement, my office
uploaded the Motion, Settlement Agreement, and proposed order to the LWDA's website.
Attached hereto as **Exhibit C** is a true and correct copy of the submission confirmation.

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

Executed on this 21st day of June 2023, at Los Angeles, California.



Kristen M. Agnew

EXHIBIT A

FITZPATRICK & SWANSTON

B. JAMES FITZPATRICK
CHARLES SWANSTON
LAURA L. FRANKLIN

ATTORNEYS AT LAW
555 South Main Street
Salinas, California 93901
Telephone: 831.755.1311
Facsimile: 831.755.1319

January 10, 2022

Via Online Filing

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

Via Certified Mail

Covenant Surgical Partners, Inc.
c/o Agent for Service of Process:
National Registered Agents, Inc.
330 N Brand Blvd Ste 700
Glendale, CA 91203

Via Certified Mail

Salinas Endoscopy Center, LLC
c/o Agent for Service of Process:
National Registered Agents, Inc.
330 N Brand Blvd Ste 700
Glendale, CA 91203

Re: Notice of Labor Law Violations
California Labor Code §§ 2699, 2699.3, 2699.5
Aggrieved Employee: Lorena Ramirez
Our File No.: R0101-600

To Representatives of the Labor and Workforce Development Agency, Covenant Surgical Partners, Inc., and Salinas Endoscopy Center, LLC:

Pursuant to California Labor Code §§ 2699, 2699.3, and 2699.5, aggrieved employee Lorena Ramirez, on behalf of herself and as representatives on behalf of all current and former aggrieved employees (hereinafter shall be collectively referred to as “the employees”) of Covenant Surgical Partners, Inc., and Salinas Endoscopy Center, LLC (hereinafter referred to as “the employer”), hereby notifies you of the labor law violations and facts and circumstances giving rise to them, committed by the employer.

The employer subjected Lorena Ramirez, and the employees to numerous violations based on, among others, the following facts, circumstances and laws:

Lorena Ramirez worked for the employer from approximately November 1, 2018, through approximately April 30, 2021.

The employer maintained and enforced a meal period policy that failed to provide a 30-minute duty-free meal period to the employees that began before more than five hours were worked. Pursuant to this policy and practice maintained by the employer, employees were required to abstain from taking a 30-minute duty-free meal period. Additionally, the employer

failed to compensate the employees one hour of wages at their regular rate of compensation for each meal period not afforded as required by California Labor Code § 226.7, and the applicable Industrial Welfare Commission Wage Order.

The employer maintained and enforced a uniform policy by which they repeatedly failed to authorize, permit and provide the employees with a paid duty-free rest period of at least 10 consecutive uninterrupted minutes during which the employees were relieved of all duties for every four hours worked or major fraction thereof and which were counted as hours worked for which there would be no deduction from wages. The employer required the employees to abstain from taking more than one rest period on workdays lasting longer than six hours. As a consequence of this policy, the employees were forced to work without paid rest periods. Additionally, the employer failed to compensate the employees one hour of wages at their regular rate of compensation for each rest period not afforded as required by California Labor Code § 226.7, and the applicable Industrial Welfare Commission Wage Order.

Additionally, the employer violated Labor Code §§ 510, 558, and 1194 by failing to correctly calculate the correct regular rate of pay when the employees received non-discretionary incentive pay. As a further result of such violations, the correct overtime, vacation and sick rates of pay, as well as the gross and net wages earned as reflected on the employees' itemized wage statements were inaccurately identified, in violation of Labor Code § 226(a). Specifically, because of the miscalculation and under payment of wages, the wrong rate of overtime, vacation, and sick pay was listed, and the gross and net wages earned identified on the wage statements did not accurately reflect correct amount of wages that should have been paid had the overtime, vacation and sick rates of pay been accurately calculated. Finally, as a result of such violations, the employer also violated Labor Code §§ 201-203 by failing to pay all wages in a timely manner upon separation of employment pursuant to the above-referenced violations.

In addition, the employer maintained and enforced a uniform policy by which they regularly and consistently required the employees to keep their cell phone on their person, including but not limited to, during their meal and rest periods and before and after their scheduled work shifts. Consequently, the employer failed to pay the employees wages as required by California Labor Code §§ 1194 and 1197, and the applicable Industrial Welfare Commission Wage Order.

The employer maintained and enforced a policy that did not properly record all hours worked by the employees, and as a result, the employees were not paid for all hours worked in violation of Labor Code section 1174(d).

The employer maintained and enforced a policy by which they repeatedly required the employees to use their personal cell phones to communicate with the employer. The employer failed to reimburse the employees for such work-related expenses in violation of Labor Code section 2802.

The employer issued incomplete and inaccurate wage statements to the employees that included, but not limited to, the total hours worked, overtime hours worked, gross wages earned, net wages earned, all applicable rates of pay and the corresponding number of hours worked under each rate, all deductions, premium wages owed for missed rest and meal periods, reimbursement for work-related expenses, and an accurate accounting for all wages, in violation of Labor Code section 226.

The employer willfully failed to the employees upon the termination of their employment all owing and unpaid wages for work performed by them during their employment and at the end of their employment. Such wages, include, but not limited to, wages for all hours worked,

minimum wages, overtime premium wages for all overtime hours worked, and compensation for missed meal and rest periods.

The employer maintained and enforced a uniform policy by which it violated Labor Code § 204 by failing to pay all employees their earned wages in a timely manner following the end of each pay period within the deadlines set forth in Labor Code section 204.

The legal violations arising from the conduct referenced above and below include, but are not limited to, the following:

1. The employer failed to pay either agreed wages or minimum wage for all hours worked;
2. The employer failed to correctly calculate the correct regular rate of pay for a pay period when the employees were paid non-discretionary incentive payment as required by Labor Code §§ 510, 558, and 1194;
3. The employer failed to pay wages in a timely manner;
4. The employer failed to pay employees who were discharged or who resigned all wages owed within the time required by Labor Code §§ 201 and 202;
5. The employer failed to:
 - a. record in ink or other indelible form, properly dated, showing the month, day, and year, all deductions made from payment of wages of the employees. They also failed to provide the employees with a copy of the statement, and they failed to maintain a record of the deductions on file for at least three years at the place of employment or at a central location within the State of California;
 - b. furnish to the employees, semimonthly or at the time of each payment of wages, a complete and accurate itemized statement in writing showing:
 - 1) Gross wages earned;
 - 2) Total hours worked by the employee;
 - 3) All deductions;
 - 4) Net wages earned;
 - 5) The name and address of the legal entity that is the employer;
 - 6) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; and the employees were injured by the practices, acts, omissions and failures set forth in subparagraphs a. and b. of paragraph 5, and they are informed and believe and thereon allege that said practices, acts, omissions and failures were knowing and intentional. However, in the event that they were not knowing and intentional, the employees continue to complain of all said practices, acts, omissions and failures and contend that they nevertheless violate Labor Code section 226, among others.

6. The employer failed to keep accurate records, including but not limited to time and pay records showing when the employees begin and end each work period, start and stop times for meal periods and the total length of meal periods, the total daily hours worked in each payroll period, the applicable rate of pay and the total wages paid for at least three years at the place of employment or at a central location within the State of California;
7. The employer repeatedly employed the employees for work periods of more than five hours per day without providing them with timely meal periods of not less than 30 minutes during which the employees were relieved of all duties, and failed and refused to pay the employees one hour of pay at the their regular rate of compensation for each work day that such meal periods were not provided;
8. The employer repeatedly employed the employees for work days of at least three and one half hours without authorizing and permitting them to take paid rest periods of at least 10 minutes net rest time for every four hours work time or major fraction thereof in the middle of each work period, insofar as practicable, and failed and refused to pay the employees one hour of pay at the their regular rate of compensation for each work day that one or more rest periods were not provided; and
9. The employer failed to provide the employees with reimbursement for work-related expenses.

The above described conduct by the employer violates numerous provisions of the Labor Code, including but not limited to, Labor Code §§ 201, 201.3, 202, 203, 204, 207, 208, 209, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2800, 2802, 2699, and the applicable California Industrial Welfare Commission Wage Order. The employees seek wages and penalties from the employer.

Very truly yours,

FITZPATRICK & SWANSTON

B. James Fitzpatrick

BJF/jf

EXHIBIT B

B. James Fitzpatrick (SBN: 129056)
 Alison L. Baker (SBN: 193601)
 FITZPATRICK & SWANSTON
 555 S. Main Street
 Salinas, CA 93901
 Telephone: (831) 755-1311
 Facsimile: (831) 755-1319

Larry W. Lee (SBN: 228175)
 Kristen Agnew (SBN: 247656)
 Nick Rosenthal (SBN: 268297)
 DIVERSITY LAW GROUP, P.C.
 515 South Figueroa Street, Suite 1250
 Los Angeles, California 90071
 Telephone: (213) 488-6555
 Facsimile (213) 488-6554

Attorneys for Plaintiffs, LORENA RAMIREZ and TERESA MARTINEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF MONTEREY**

LORENA RAMIREZ, on behalf of herself
 and all similarly aggrieved employees,

Plaintiff,

v.

COVENANT SURGICAL PARTNERS,
 INC.; SALINAS ENDOSCOPY CENTER,
 LLC; and DOES 1 through 50, inclusive,

Defendants.

Case No. 22CV000081

(Assigned to the Honorable Thomas W. Wills,
 Dept. 15)

**JOINT STIPULATION OF CLASS AND
 REPRESENTATIVE ACTION SETTLEMENT**

Complaint Filed: January 10, 2022
 Trial Date: None

JOINT STIPULATION OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

This Joint Stipulation of Class and Representative Action Settlement (“Agreement” or “Settlement Agreement”) is made and entered into by and between Plaintiffs Lorena Ramirez and Teresa Martinez (“Plaintiffs”) and Defendants Covenant Surgical Partners, Inc. and Salinas Endoscopy Center, LLC (“Defendants”). Plaintiffs and Defendants collectively are referred to in the Agreement as “the Parties.”

A. DEFINITIONS

The following definitions are applicable to this Agreement. Definitions contained elsewhere in this Agreement shall also be effective:

1. “Action” means *Lorena Ramirez v. Covenant Surgical Partners, Inc. et. al.*, filed on January 10, 2022, in the Superior Court of the State of California, County of Monterey, Case No. 22CV000081.

2. “Aggrieved Employee(s)” means all non-exempt employees who are or previously were employed by Covenant Surgical Partners, Inc. and/or Salinas Endoscopy Center, LLC in California during the period of January 10, 2021 through February 1, 2023.

3. “Agreement” or “Settlement Agreement” means this Joint Stipulation of Class and Representative Action Settlement.

4. “Class” or “Class Member(s)” means all non-exempt employees who are or previously were employed by Covenant Surgical Partners, Inc. and/or Salinas Endoscopy Center, LLC in California during the period of January 10, 2018 through February 1, 2023.

5. “Class Counsel” means B. James Fitzpatrick and Alison Baker of Fitzpatrick & Swanston, and Larry W. Lee, Kristen M. Agnew, and Nicholas Rosenthal of Diversity Law Group, P.C.

6. “Class Counsel Award” means such award of fees and costs and expenses as the Court may authorize to be paid to Class Counsel for the services they have rendered and will render to Plaintiffs and the Class in the Action. Defendants agree not to oppose Class Counsel Award of up to one-third (33.33%) of the Gross Settlement Amount (\$1,750,000), *i.e.*, the sum of Five Hundred Eighty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents

1 (\$583,333.33), and costs in the amount of up to Twenty-Five Thousand Dollars (\$25,000.00),
2 subject to the Court finally approving this Settlement.

3 7. "Class Data and List" means a true and complete list of all Class Members that
4 Defendants will compile, based on its business records, and provide to the Settlement
5 Administrator within ten (10) business days after the Court grants preliminary approval of the
6 Settlement. The Class List shall be formatted in Microsoft Office Excel and shall include each
7 employee's full name, his or her last known home address, telephone number, Social Security
8 Number, and beginning and ending dates of employment, number of pay periods worked during
9 the Class Period, number of pay periods worked as a RN or LVN during the Class Period, and
10 number of pay periods worked during the PAGA Period.

11 8. "Class Representatives" or "Plaintiffs" means Lorena Ramirez and Teresa
12 Martinez.

13 9. "Complaint" means the operative First Amended Complaint for Damages, Penalties
14 and for Injunctive Relief filed by Plaintiffs in this Action.

15 10. "Counsel for Defendants" or "Defense Counsel" means Andrew S. Naylor and
16 Frederick L. Conrad III of Holland & Knight, LLP (formerly Waller Lansden Dortch & Davis,
17 LLP) and Mark S. Spring and Joel Van Parys of CDF Labor Law LLP.

18 11. "Court" means the Superior Court for the State of California, County of Monterey,
19 or any other court taking jurisdiction of the Action.

20 12. "Class Period" means the period from January 10, 2018 through February 1, 2023.

21 13. "Defendants" means Covenant Surgical Partners, Inc. and Salinas Endoscopy
22 Center, LLC.

23 14. "Effective Date" shall be the latest of the following dates: (a) the Court's final
24 approval of the Settlement, if no objections by or on behalf of Class Members have been filed and
25 not withdrawn; (b) if an objection is filed, the time for appeal has expired and no appeal has been
26 filed or withdrawn; or (c) if a timely appeal is filed, the final resolution of that appeal (including
27 any requests for rehearing and/or petitions for certiorari), resulting in final judicial approval of the
28 Settlement.

1 15. “Enhancement Payment” or “Service Payment” means the amount that the Court
2 authorizes to be paid to Plaintiffs, in addition to their Individual Class Settlement Payments, in
3 recognition of their efforts and risks in assisting with the prosecution of the Action. Subject to the
4 Court granting final approval, the Parties agree that Plaintiffs shall be paid up to Ten Thousand
5 Dollars (\$10,000.00) each (*i.e.* Twenty Thousand Dollars) from the Gross Settlement Amount.

6 16. “Final Approval” means that the Final Approval Order and Judgment have been
7 entered by the Court.

8 17. “Individual Class Settlement Payment” means the amount payable from the Net
9 Settlement Amount to each Settlement Class Member.

10 18. “Individual PAGA Payment” means each Aggrieved Employee’s portion of the
11 PAGA Payment calculated in accordance with the calculations described in Paragraph C-7 of this
12 Settlement.

13 19. “Gross Settlement Amount” means the Gross Settlement Amount of One Million
14 Seven Hundred Fifty Thousand Dollars (\$1,750,000.00) to be paid by Defendants as a result of
15 this Agreement. The Gross Settlement Amount includes all Individual Class Settlement Payments,
16 the Enhancement Payments to Plaintiffs, Settlement Administration Costs to the Settlement
17 Administrator, the PAGA Payment, and Class Counsel Award.

18 20. “Net Settlement Amount” means the balance of the Gross Settlement Amount
19 remaining after deduction of the approved Enhancement Payments to Plaintiffs, Settlement
20 Administration Costs, the PAGA Payment, and Class Counsel Award. The entire Net Settlement
21 Amount is the maximum amount that will be available for distribution to Settlement Class
22 Members.

23 21. “Notice of Objection” means a Class Member’s valid and timely written objection
24 to the Settlement. For the Notice of Objection to be valid, it must include: (a) the objector’s full
25 name, signature, address, and telephone number; (b) a written statement of basis for the objection;
26 and (c) any copies of papers, briefs, or documents upon which the objection is based. The Notice
27 of Objection must be returned by mail to the Settlement Administrator at the specified address
28 indicated in the Notice Packet and must be postmarked by the Response Deadline.

22. “Notice Packet” means the Notice of Proposed Class Action Settlement, substantially in the form attached as Exhibit A.

23. “PAGA Payment” means the portion of the Gross Settlement Amount that the Parties have agreed will be allocated to resolve all claims, penalties, and remedies under the Private Attorneys General Act of 2004 (Cal. Lab. Code § 2698, *et seq.*, “PAGA”). Subject to Court approval pursuant to California Labor Code § 2699(l), the Parties agree that the PAGA Payment shall be Fifty Thousand Dollars (\$50,000.00).

24. “PAGA Period” means the period from January 10, 2021 through February 1, 2023.

25. “Parties” means Plaintiffs, on behalf of themselves and Settlement Class Members, and Defendants collectively.

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

27. “Released Class Claims” means all claims, including penalties, interest, costs, and attorneys’ fees related thereto, that were or could have been brought under the facts and allegations made in the operative First Amended Complaint for Damages, Penalties and for Injunctive Relief for violation of Labor Code sections 201, 202, 203, 204, 226.7, 510, 512, 558, 1194, 1198, 1199 and 2802.

28. “Released PAGA Claims” means all claims for penalties under the California Private Attorneys General Act, including interest, costs and attorneys’ fees related thereto, predicated on the violation of Labor Code sections 201, 201.3, 202, 203, 204, 207, 208, 209, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2800 and 2802 that were alleged in the PAGA Notice and operative First Amended Complaint for Damages, Penalties and for Injunctive Relief.

29. “Released Parties” means Defendants, and their parents, predecessors, successors, subsidiaries, affiliates, partners, and trusts, and all of its employees, officers, agents, attorneys, stockholders, fiduciaries, clients, other service providers, and assigns.

30. “Request for Exclusion” means a timely letter submitted by a Class Member indicating a request to be excluded from the Settlement. The Request for Exclusion must: (1)

1 clearly state that the Class Member does not wish to be included in the Settlement; (2) set forth the
2 name, address, telephone number, and last four digits of the Social Security Number of the Class
3 Member requesting exclusion; (3) be signed by the Class Member; (4) be returned by mail to the
4 Settlement Administrator at the specified address indicated in the Notice Packet; and (5) be
5 postmarked on or before the Response Deadline.

6 31. "Response Deadline" means sixty (60) days after the Settlement Administrator
7 initially mails the Notice Packet to Class Members, and the last date on which Class Members may
8 submit Requests for Exclusion or Notices of Objections to the Settlement.

9 32. "Settlement" means the agreement among the Parties to resolve the Action, as set
10 forth in this Stipulation.

11 33. "Settlement Administration Costs" means the fees and expenses reasonably
12 incurred by the Settlement Administrator as a result of the procedures and processes expressly
13 required by this Agreement, which are estimated at Ten Thousand Dollars (\$10,000.00). Any
14 portion of the Settlement Administration Costs not used or approved by the Court shall be added
15 to the Net Class Settlement Amount.

16 34. "Settlement Administrator" means CPT Group.

17 35. "Settlement Class" or "Settlement Class Members" means all Class Members who
18 do not submit valid and timely Requests for Exclusion.

19 36. "Settlement Payment Check" means the payment of the Individual Class Settlement
20 Payment to Settlement Class Members and Individual PAGA Payment to Aggrieved Employees.

21 **B. FACTUAL BACKGROUND**

22 1. On January 10, 2022, Plaintiff Lorena Ramirez ("Plaintiff Ramirez") filed a written
23 notice to the California Labor & Workforce Development Agency ("LWDA") alleging that
24 Defendants violated Labor Code sections 201, 201.3, 202, 203, 204, 207, 208, 209, 216, 218,
25 218.5, 218.6, 223, 225.5, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2800,
26 and 2802, pursuant to Labor Code section 2699 ("PAGA Notice").

27 2. On January 10, 2022, Plaintiff Ramirez initiated this action in Monterey County
28 Superior Court. The initial complaint asserted class and representative PAGA claims for: (1)

1 violation of Labor Code sections 226.7 and 1198 [failure to provide meals periods]; (2) violation
2 of Labor Code sections 226.7 and 1198 [failure to provide rest periods]; (3) violation of Labor
3 Code sections 1194 and 1198 [failure to pay hourly and overtime wages]; (4) violation of Labor
4 Code sections 226, 1174 and 1175 [failure to comply with wage statement requirements]; (5)
5 violation of Labor Code sections 201, 202 and 203 [failure to pay wages upon termination]; and
6 (6) violation of Labor Code section 2802 [failure to reimburse business expenses]. Plaintiff
7 Ramirez also alleged a claim for violation of Labor Code section 2698, *et seq.*

8 3. On April 7, 2022, Plaintiff Ramirez filed the operative First Amended Complaint
9 for Damages, Penalties and for Injunctive Relief. Plaintiff Ramirez amended the complaint to name
10 Teresa Martinez as an additional plaintiff and class representative.

11 4. The Parties engaged in formal written discovery. On April 11, 2022, Plaintiffs
12 propounded written discovery, including Special Interrogatories (Set One) and Requests for
13 Production of Documents (Set One). The discovery required Defendants to provide documents and
14 information relevant to class certification, including the number of members in the putative class,
15 Defendants' payroll policies and procedures, and time and payroll records of putative class
16 members. Defendants provided fulsome and substantive responses to the discovery requests.

17 5. In or around October 2022, the Parties agreed to participate in private mediation.
18 In connection with the mediation, Defendants produced data relating to the number of Class
19 Members, and time and attendance records for 630 putative class members, which allowed Class
20 Counsel to conduct a full damage analysis.

21 6. On December 6, 2022, Plaintiffs deposed Defendants' designated person most
22 knowledgeable on topics related to Defendant's meal/rest period policies, calculation of the hours
23 worked by putative class members, "rounding" policy, calculation of the regular rate of
24 compensation and cellphone reimbursement policy.

25 7. On February 1, 2023, the Parties engaged in mediation with Michael J. Loeb, Esq.,
26 an experienced wage and hour class action mediator. After the exchange of further information
27 and extended negotiations, Plaintiffs and Defendants reached a tentative settlement of the Action
28 and executed a memorandum of understanding. The Parties thereafter worked to finalize this

1 formal Joint Stipulation of Class and Representative Action Settlement.

2 8. The Parties recognize the risk, expense, and delay in continuing the Action, and
3 therefore believe the Settlement to be fair, reasonable, and adequate. Accordingly, the Parties
4 desire to settle, compromise, and discharge all disputes and claims arising from or relating to the
5 Action.

6 **C. PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT**

7 1. Settlement Consideration. Defendants shall pay the sum of the Gross Settlement
8 Amount as specified in this Agreement, which shall be used to pay: (1) Individual Class Settlement
9 Payments; (2) Class Counsel Award; (3) Enhancement Payments; (4) Settlement Administration
10 Costs; and (5) the PAGA Payment. The Parties agree that this is a non-reversionary Settlement
11 and that no portion of the Gross Settlement Amount shall revert to Defendants. In no event shall
12 Defendants be required to pay more than the Gross Settlement Amount as specified in this
13 Agreement, with the exception of employer-side payroll taxes owed on Individual Class Settlement
14 Payments classified as wages.

15 2. Funding of the Gross Settlement Amount. Within thirty (30) calendar days of the
16 Effective Date, Defendants shall make a one-time deposit of the Gross Settlement Amount into a
17 Qualified Settlement Fund to be established by the Settlement Administrator.

18 3. Class Counsel Award. Defendants agree not to oppose or impede any application
19 or motion by Class Counsel for attorneys' fees of up to one-third (33.33%) of the Gross Settlement
20 Amount (\$1,750,000), i.e., the sum of Five Hundred Eighty-Three Thousand Three Hundred
21 Thirty-Three Dollars and Thirty-Three Cents (\$583,333.33), and costs in the amount of up to
22 Twenty-Five Thousand Dollars (\$25,000.00), which shall be paid from the Gross Settlement
23 Amount. It is understood by Class Counsel that the Court has final discretion in any fee award.
24 The Settlement Administrator shall issue an IRS Form 1099 to Class Counsel reflecting the
25 awarded attorneys' fees, costs, and expenses. Any portion of the Class Counsel Award not
26 awarded to Class Counsel shall be added to the Net Class Settlement Amount and shall be
27 distributed to Settlement Class Members as provided in this Agreement. Notwithstanding any other
28 provision of this Agreement, if the Court should fail to award attorneys' fees to Class Counsel in

the full amount provided for in this Agreement, no order of the Court or modification of any order of the Court concerning the amount of any attorneys' fees to be paid by Defendants to Class Counsel pursuant to this settlement shall constitute grounds for cancellation or termination of the Agreement or grounds for limiting any other provision of the Judgment. It is agreed that no order of the Court, including any order concerning attorneys' fees, may alter or otherwise increase the Gross Settlement Amount.

4. Class Representative Enhancement Payment. Defendants agree not to oppose or impede any application or motion by Plaintiffs for Enhancement Payments of up to Ten Thousand Dollars (\$10,000.00) to each Plaintiff (*i.e.* Twenty Thousand Dollars). The Enhancement Payments shall be paid from the Gross Settlement Amount and shall be paid in addition to Plaintiffs' Individual Class Settlement Payments and Individual PAGA Payments. It is understood by Class Counsel and Plaintiffs that the Court has final discretion in any Enhancement Payment. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiffs reflecting their respective Enhancement Payment. Plaintiffs shall be solely and legally responsible to pay any and all applicable taxes on their respective Enhancement Payment and shall hold harmless Defendants from any claim or liability for taxes, penalties, or interest arising as a result of the Enhancement Payment. Any portion of the Enhancement Payment not awarded to Plaintiffs shall be added to the Net Class Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement.

5. Settlement Administration Costs. The Settlement Administrator shall be paid for the reasonable costs of administration of the Settlement from the Gross Settlement Amount, currently estimated at Ten Thousand Dollars (\$10,000.00). These costs, which shall be paid from the Gross Settlement Amount, shall include, *inter alia*, the required tax reporting on the Individual Class Settlement Payments and Individual PAGA Payments, the issuing of W-2 and 1099 IRS Forms, establishing a Qualified Settlement Fund, administering, and distributing the Gross Settlement Amount and Class Counsel Award, and providing necessary reports and declarations. Any portion of the Settlement Administration Costs not allowed shall be added to the Net Class Settlement Amount and shall be distributed to Settlement Class Members as provided in this

1 Agreement.

2 6. PAGA Payment. Subject to Court approval, the Parties agree that the amount of
3 Fifty Thousand Dollars (\$50,000.00) of the Gross Settlement Amount shall be designated for
4 satisfaction of claims for civil penalties under the PAGA. The Settlement Administration shall pay
5 seventy-five percent (75%) of the PAGA Payment, *i.e.*, the sum of Thirty-Seven Thousand Five
6 Hundred Dollars (\$37,500.00), to the LWDA. The remaining twenty-five percent (25%), *i.e.*, the
7 sum of Twelve Thousand Five Hundred Dollars (\$12,500.00), shall be distributed to Aggrieved
8 Employees ("Net PAGA Penalty").

9 7. Individual PAGA Payment Calculation. The Net PAGA Penalty shall be allocated
10 proportionally to Aggrieved Employees on a pro rata basis, based on the number of pay periods
11 worked during the PAGA Period. The Settlement Administrator will allocate the Individual
12 PAGA Payments by first dividing the Net PAGA Penalty by the total number of pay periods
13 worked by all Aggrieved Employees during the PAGA Period. That value will then be multiplied
14 by the number of pay periods that each respective Aggrieved Employee worked during the
15 PAGA Period. Aggrieved Employees are entitled to 100% of the Net PAGA Penalty. Defendants
16 maintain no reversionary right to any portion of the Net PAGA Penalty.

17 8. Net Settlement Amount. The Net Settlement Amount shall be used to satisfy
18 Individual Class Settlement Payments to Settlement Class Members in accordance with the terms
19 of this Agreement.

20 a. The Settlement Administrator shall allocate twenty percent (20%) of the Net
21 Settlement Amount to Settlement Class Members who terminated
22 employment with Defendants during the Class Period. Each Settlement
23 Class Members who terminated employment with Defendants during the
24 Class Period shall receive the same dollar amount in distribution.

25 b. The Settlement Administrator shall allocate eighty percent (80%) of the
26 Net Settlement Amount to all Settlement Class Members. The Settlement
27 Administrator shall divide this amount by the total number of pay periods
28 worked by all Class Members during the Class Period. That value will then

be multiplied by the number of pay periods that each respective Class Member worked during the Class Period.

- c. It is the Parties' intention that the Individual Class Settlement Payments for Settlement Class Members who worked as a RN or LVN during the Class Period should be given greater weight. To achieve this intent, Settlement Class Members will receive an additional pay period credit for those pay periods where they worked as a RN or LVN, as stated in Paragraph C-8-b above.

Settlement Class Members are entitled to 100% of the Net Settlement Amount. Defendants maintain no reversionary right to any portion of the Net Settlement Amount. If there are any timely submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Class Settlement Payments for each Settlement Class Member so that the amount actually distributed to Settlement Class Members equals 100% of the Net Settlement Amount.

9. Calculation of Gross Settlement Amount. The Gross Settlement Amount was calculated with, and is premised on, Defendants' representation that Class Members worked approximately 60,000 pay periods during the Class Period. In the event the number of pay periods at issue exceeds 60,000 by ten percent (10%) or more (*i.e.*, 66,001), the Gross Settlement Amount shall be increased proportionally to the amount of the total increase beyond ten percent (10%). For instance, a twelve percent (12%) increase in the number of pay periods will result in a two percent (2%) increase in the Gross Settlement Amount.

10. No Credit Toward Benefit Plans. The Individual Class Settlement Payments made to Settlement Class Members, the Individual PAGA Payments made to Aggrieved Employees, the Enhancement Payments made to Plaintiffs, as well as any other payments made pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any benefit plans to which any Class Members and Aggrieved Employees may be eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plans. Rather, it is the Parties' intention that this Settlement

1 will not affect any rights, contributions, or amounts to which any Class Members may be entitled
2 under any benefit plans.

3 11. Settlement Administration Process. The Parties agree to cooperate in the
4 administration of the Settlement and to make all reasonable efforts to control and minimize the
5 costs and expenses incurred in the administration of the Settlement. The Settlement Administrator
6 shall provide the following services:

- 7 a. Establish and maintain a Qualified Settlement Fund account;
- 8 b. Calculate the amount of the Settlement each Class Member/Aggrieved
9 Employee is eligible to receive;
- 10 c. Verify the last known address for each Class Member through a generally
11 utilized, national address update database prior to mailing the Notice Packet;
- 12 d. Print and mail the Notice Packet;
- 13 e. Establish and maintain a toll-free informational telephone support line to
14 assist Class Members who have questions regarding the Notice Packet;
- 15 f. Conduct additional address searches for mailed Notice Packets that are
16 returned as undeliverable and, to the extent new and more current addresses are found, also reprint
17 and re-mail Notice Packets accordingly;
- 18 g. Calculate Settlement Class Members/Aggrieved Employees' settlement
19 share, field inquiries from Class Members, and administer any Requests for Exclusion. This
20 service will include settlement proceed calculations, printing and issuance of checks, and
21 preparation of W-2 and 1099 Forms; and
- 22 h. Provide declarations and/or other information to the Court as requested.

23 12. Delivery of the Class Data and List. Within ten (10) business days of Preliminary
24 Approval, Defendants shall provide the Class Data and List to the Settlement Administrator.

25 13. Notice by First-Class U.S. Mail. Within ten (10) business days after receiving the
26 Class Data and List from Defendants, the Settlement Administrator shall mail a Notice Packet to
27 all Class Members via regular First-Class U.S. Mail, using the most current, known mailing
28 addresses identified in the Class List.

1 14. Confirmation of Contact Information in the Class List. Prior to mailing, the
2 Settlement Administrator shall perform a search based on the National Change of Address
3 Database for information to update and correct for any known or identifiable address changes.

4 15. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice
5 Packet will provide: (1) information regarding the nature of the Action; (2) a summary of the
6 Settlement's principal terms; (3) the Class definition; (4) each Class Member's estimated
7 Individual Class Settlement Payment and the formula for calculating Individual Class Settlement
8 Payments, if they do not request to be excluded; (5) each Aggrieved Employee's estimated
9 Individual PAGA Payment and the formula for calculating Individual PAGA Payments; (6) the
10 dates that comprise the Class Period and PAGA Period; (7) instructions on how to submit valid
11 Requests for Exclusion, or objections; (8) the deadlines by which the Class Member must submit
12 a Request for Exclusion or Notice of Objection to the Settlement; (9) the date for the final approval
13 hearing; and (10) the claims to be released. The Notice Packet will also inform Class Members
14 that, in order to receive the Individual Class Settlement Payment and Individual PAGA Payment,
15 they do not need to do anything except keep the Settlement Administrator apprised of their current
16 mailing addresses.

17 16. Re-Mailing of Returned Notices. Any Notice Packets returned to the Settlement
18 Administrator as non-deliverable on or before the Response Deadline shall be re-sent promptly via
19 regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement
20 Administrator shall indicate the date of such re-mailing on the Notice Packet. If no forwarding
21 address is provided, the Settlement Administrator shall promptly attempt to determine the correct
22 address using a skip-trace, or other search using the name, address and/or Social Security Number
23 of the Class Member involved and shall then perform a re-mailing. Those Class Members who
24 receive a re-mailed Notice Packet shall have their Response Deadline extended fifteen (15) days
25 from the original Response Deadline.

26 17. Request for Exclusion Procedures. Any Class Member, other than Plaintiffs, may
27 opt-out from the Settlement by submitting a written Request for Exclusion to the Settlement
28 Administrator postmarked by the Response Deadline. A Request for Exclusion must: (1) clearly

1 state that the Class Member does not wish to be included in the Settlement; (2) set forth the name,
2 address, telephone number, and last four digits of the Social Security Number of the Class Member
3 requesting exclusion; (3) be signed by the Class Member; (4) be returned by mail to the Settlement
4 Administrator at the specified address indicated in the Notice Packet; and (5) be postmarked on or
5 before the Response Deadline. The date of the postmark shall be the exclusive means to determine
6 whether a Request for Exclusion is timely. By submitting such a Request for Exclusion, a Class
7 Member shall be deemed to have exercised his or her option to opt out of the Settlement and not
8 be bound by this Agreement. Provided, however, that no Class Member may opt out of or be
9 excluded from participating in the settlement of the Released PAGA Claims. At no time shall any
10 of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit a
11 Request for Exclusion. Class Counsel shall not represent any Class Members with respect to any
12 such request.

13 18. No PAGA Opt-Out. No Class Member may opt out of or be excluded from
14 participating in the settlement of the Released PAGA Claims. All Class Members shall be bound
15 by the judgment entered herein and will have released the Released PAGA Claims upon the final
16 approval of this Settlement and the payment of the Maximum Settlement Payment.

17 19. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
18 Member who does not affirmatively opt-out of the Settlement by submitting a valid and timely
19 Request for Exclusion shall be bound by all terms of the Settlement to the fullest possible extent,
20 including those pertaining to the Released Class Claims and Released PAGA Claims, as well as
21 any Judgment that may be entered by the Court.

22 20. Objection Procedures. Any Class Member who does not opt-out of this Settlement
23 shall be entitled to object to the Settlement. To object to the Settlement, a Class Member must
24 return by mail a written statement of objection to the Settlement Administrator at the specified
25 address by the Response Deadline. The Notice of Objection must include: (1) the objector's full
26 name, signature, address, and telephone number; (2) a written statement of the basis for the
27 objection; and (3) any copies of papers, briefs, or documents upon which the objection is based.
28 At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class

Members to submit written objections to the Settlement or appeal from the Order and Judgment. Class Counsel shall not represent any Class Members with respect to any such objections to this Settlement. Any Class Member who submits a valid Request for Exclusion shall not be allowed to object to this Settlement. No later than five (5) business days after the Response Deadline, the Settlement Administrator shall provide Defense Counsel with a complete list of all Class Members who have timely and properly requested exclusion from the Class.

21. Defendants' Right to Rescind. If more than fifteen percent (15%) of Class Members submit a timely and valid Request for Exclusion, Defendants will have the right, but not the obligation, to revoke and void this Agreement at its discretion. Defendants must exercise the option to rescind within ten (10) business days of Defense Counsel receiving notification from the Settlement Administrator of the complete list of all Class Members who have timely and properly requested exclusion from the Class showing that more than fifteen percent (15%) of the Class has submitted timely and valid Requests for Exclusion from the Settlement. If Defendants exercise this right to void the Agreement, then the Parties will have no further obligations under the Agreement, including, without limitation, any obligation by Defendants to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Agreement, except that Defendants shall pay all Settlement Administration Costs incurred by the Settlement Administrator up to the date of Defendants' notice to rescind. In the event the Settlement is terminated, the Parties shall proceed in all respects as if this Agreement had not been executed. The Parties agree that they will not encourage any Class Member to object to the Settlement or to opt out.

22. Settlement Administrator's Reports of Information. The Settlement Administrator shall provide Defense Counsel and Class Counsel a weekly report which certifies the number of Class Members who have submitted valid Requests for Exclusion. Additionally, the Settlement Administrator will provide to counsel for both Parties any updated reports regarding the administration of the Settlement as needed or requested. The Settlement Administrator shall also forward to Parties' counsel any Notices of Objection received immediately upon receipt. Further, the Settlement Administrator shall immediately forward any Request for Exclusion to the Parties'

1 counsel so that they can determine whether the Request for Exclusion is valid and timely.

2 23. Distribution of Payments. Within fifteen (15) calendar days of Defendants funding
3 the Gross Settlement Amount, the Settlement Administrator shall pay: (1) the Individual Class
4 Settlement Payments to Settlement Class Members; (2) the Individual PAGA Payments to
5 Aggrieved Employees; (3) seventy-five percent (75%) of the PAGA Payment to the Labor and
6 Workforce Development Agency; (4) the Enhancement Payments to Plaintiffs; and (5) Class
7 Counsel Award to Class Counsel. The Settlement Administrator shall also issue a payment to itself
8 for services performed in connection with the Settlement.

9 24. Non-Negotiated Settlement Checks. Any checks issued by the Settlement
10 Administrator to Settlement Class Members and Class Members shall be negotiable for one
11 hundred and eighty (180) calendar days. Those funds represented by settlement checks returned as
12 undeliverable and the funds which correspond with the settlement checks that are not negotiated
13 within one hundred and eighty (180) calendar days after issuance shall be paid out pursuant to
14 California Code of Civil Procedure section 384 in equal proportion to the following *cy pres*
15 recipients: Legal Aid at Work and California Rural Legal Assistance, Inc.

16 25. Certification of Completion. Upon completion of administration of the Settlement,
17 the Settlement Administrator shall provide a written declaration under oath to certify such
18 completion to the Court and counsel for all Parties.

19 26. Administration Costs if Settlement Fails or is Delayed. If an objection to the
20 Settlement is filed with the Court, regardless of the ultimate outcome of any appeals taken, or if
21 the Settlement is voided or rescinded, any costs incurred by the Settlement Administrator shall be
22 borne equally by Defendants and Plaintiffs, unless otherwise specified in this Agreement.

23 27. Tax Allocation of Individual Settlement Shares and Individual PAGA Payments.
24 All Individual Class Settlement Payments shall be allocated as 75% penalties and interest, and
25 25% as wages. Individual PAGA Payments shall be allocated as 100% as penalties. The amount
26 of payment shall be reported on IRS Forms W-2 and 1099, as appropriate, by the Settlement
27 Administrator.

28 28. Administration of Taxes by the Settlement Administrator. The Settlement

1 Administrator shall be responsible for issuing to Plaintiffs, Settlement Class Members, Aggrieved
2 Employees, and Class Counsel, W-2 and 1099 Forms or other tax forms as may be required by law
3 for all amounts paid pursuant to this Agreement.

4 29. Tax Liability. Defendants, Defense Counsel, the Settlement Administrator, and
5 Class Counsel make no representation as to the tax treatment or legal effect of the payments called
6 for hereunder, and Plaintiffs, Settlement Class Members and Aggrieved Employees are not relying
7 on any statement, representation, or calculation by Defendants, Defense Counsel, Class Counsel,
8 or by the Settlement Administrator in this regard. Plaintiffs, Settlement Class Members, and
9 Aggrieved Employees understand and agree that they will be solely responsible for the payment
10 of any and all taxes and penalties assessed on their respective payments described herein and will
11 defend, indemnify, and hold Defendants, Defense Counsel, Class Counsel, and the Settlement
12 Administrator free and harmless from and against any claims resulting from treatment of such
13 payments as non-taxable penalties/damages.

14 30. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
15 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
16 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
17 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
18 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
19 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
20 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE
21 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
22 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR
23 PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
24 EXCLUSIVELY UPON HIS OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL
25 FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT,
26 (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
27 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
28 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY

1 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
2 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
3 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
4 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
5 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
6 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
7 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
8 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
9 AGREEMENT.

10 31. No Prior Assignments. The Parties and their counsel represent, covenant, and
11 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to
12 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
13 action, cause of action, or right herein released and discharged.

14 32. Release of Claims by Plaintiffs. As a condition to obtaining the Enhancement
15 Payments provided for herein, Plaintiffs (on behalf of themselves and their spouses, heirs,
16 executors, administrators, trustees, and/or permitted assigns) also agree to a general release of any
17 and all claims against the Released Parties (as defined above)—which shall include without
18 limitation any and all claims which in any way relate to his employment with Defendants, under
19 State or Federal law, in tort, common law, statute, contract, or equity, whether pled in the
20 Complaint or not, including but not limited to any claims under the FLSA, Title VII, ADA, FEHA,
21 ADEA, PAGA, California Labor Code, or any Industrial Welfare Commission Wage Order—now
22 existing or arising in the future, based on any act, omission, event, occurrence, or nonoccurrence
23 from the beginning of time to the date of execution hereof, except for those claims that may be
24 prohibited by law, such as claims for workers' compensation benefits. Plaintiffs further expressly
25 waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of
26 Section 1542 of the California Civil Code, which provides: "**A general release does not extend**
27 **to claims that the creditor or releasing party does not know or suspect to exist in his or her**
28 **favor at the time of executing the release and that, if known by him or her, would have**

1 **materially affected his or her settlement with the debtor or released party.”** However, the
2 release provided for in this section does not extend to any individual claim that Plaintiff Martinez
3 may assert against Defendants for whistleblower retaliation and wrongful termination in violation
4 of public policy.

5 33. Release of Claims by Settlement Class Members. Upon entry of final judgment and
6 the payment of the Gross Settlement Amount, Plaintiffs and all Settlement Class Members, as well
7 as their spouses, heirs, executors, administrators, trustees, and/or permitted assigns, hereby do and
8 shall be deemed to have fully, finally and forever released, settled, compromised, relinquished and
9 discharged, to the fullest extent possible, any and all of the Released Parties of and from any and
10 all Released Class Claims that accrued during the period of January 10, 2018 through May 2, 2023,
11 or the date of preliminary approval, whichever is earlier.

12 34. Release of Claims by Aggrieved Employees. Upon entry of final judgment and the
13 payment of the Gross Settlement Amount, Plaintiffs and all Aggrieved Employees, as well as their
14 spouses, heirs, executors, administrators, trustees, and/or permitted assigns, hereby do and shall
15 be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and
16 discharged, to the fullest extent possible, any and all of the Released Parties of and from any and
17 all Released PAGA Claims that accrued during the period of January 10, 2021 through May 2,
18 2023, or the date of preliminary approval, whichever is earlier.

19 35. Nullification of Settlement. In the event that the Settlement does not become final
20 for any reason, then this Agreement, and any documents generated to bring it into effect, shall be
21 null and void. Any order or judgment entered by the Court in furtherance of this Agreement shall
22 likewise be treated as void from the beginning.

23 36. Disputes Regarding Individual Class Settlement Payments. In the event that Class
24 Members have a dispute as to the data provided by the Defendants, Class Members will have the
25 opportunity to provide documentation and/or an explanation. However, Defendant’s records shall
26 presumptively control unless the Class Member can produce documentation evidence of other pay
27 periods worked during the relevant time period (including partial pay periods). If there is a dispute,
28 the Settlement Administrator will consult with the Parties to determine whether an adjustment is

1 warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of,
2 any Individual Class Settlement Payments or Individual PAGA Payments under the terms of this
3 Agreement, and that determination shall be binding.

4 37. Disputes Regarding Administration of Settlement. Any disputes not resolved by the
5 Settlement Administrator concerning the administration of the Settlement will be resolved by the
6 Court under the laws of the State of California. Prior to any such involvement of the Court, counsel
7 for the Parties will confer in good faith to resolve the disputes without the necessity of involving
8 the Court.

9 38. Preliminary Approval Hearing. Plaintiffs shall obtain a hearing before the Court to
10 request the Preliminary Approval of the Settlement, conditional certification of the Class, and the
11 entry of a Preliminary Approval Order: (i) approving of the proposed Settlement and (ii) setting a
12 date for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order shall
13 provide for the Notice Packet to be sent to all Class Members as specified herein. In conjunction
14 with the Preliminary Approval hearing, Plaintiffs shall submit this Agreement, which sets forth
15 the terms of this Settlement, and will include the proposed Notice Packet, attached to this
16 Agreement as Exhibit A.

17 39. Final Settlement Approval Hearing. Upon expiration of the deadlines to submit
18 Requests for Exclusion or Notices of Objections to the Settlement, and with the Court's
19 permission, a Final Approval/Settlement Fairness Hearing shall be conducted to determine the
20 Final Approval of the Settlement along with the amounts properly payable for (i) Individual Class
21 Settlement Payments; (ii) the PAGA Payment; (iii) the Class Counsel Award; (iv) the
22 Enhancement Payments; and (v) Settlement Administration Costs. Class Counsel will be
23 responsible for drafting all documents necessary to obtain final approval. Class Counsel will also
24 be responsible for drafting the attorneys' fees and costs application to be heard at the Final
25 Approval Hearing.

26 40. Entry of Judgment and Continued Jurisdiction of the Court. Concurrent with the
27 Motion for Final Approval, the Parties shall also jointly seek the entry of Judgment consistent with
28 the terms of this Agreement. After entry of the Judgment, the Court shall have continuing

jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) Settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Agreement.

41. Exhibits Incorporated by Reference. The terms of this Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits to this Agreement are an integral part of the Settlement.

42. Confidentiality Preceding Preliminary Approval. The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry, post information on any social media or website, or have any communication with the press about the fact, amount, or terms of the Settlement.

43. Entire Agreement. This Agreement and any attached Exhibits constitute the entirety of the Parties' Settlement terms. No other prior or contemporaneous written or oral negotiations or agreements may be deemed binding on the Parties.

44. Disputes Regarding Language of Final Settlement Agreement. If the Parties have a dispute with regard to the language of the Agreement, the Parties agree to attempt to informally resolve the dispute by engaging Michael J. Loeb to mediate such dispute.

45. Amendment or Modification. This Agreement may be amended or modified only by a written instrument signed by the Parties or their successors-in-interest.

46. Authorization to Enter into Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate actions required or permitted to be taken by the Parties pursuant to this Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best and good-faith efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

1 47. Binding on Successors and Assigns. This Agreement shall be binding upon, and
2 inure to the benefit of, the successors, heirs, or assigns of the Parties hereto, as previously defined.

3 48. California Law Governs. All terms of this Agreement and Exhibits hereto shall be
4 governed by and interpreted according to the laws of the State of California.

5 49. Execution and Counterparts. This Agreement is subject only to the execution of all
6 Parties. However, the Agreement may be executed in one or more counterparts. All executed
7 counterparts and each of them, including facsimile and scanned copies of the signature page, shall
8 be deemed to be one and the same instrument if counsel for the Parties shall exchange among
9 themselves original signed counterparts.

10 50. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
11 this Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this
12 Settlement after arm's-length negotiations, mediation, and in the context of adversarial litigation,
13 taking into account all relevant factors, present and potential. The Parties further acknowledge that
14 they are each represented by competent counsel and that they have had an opportunity to consult
15 with their counsel regarding the fairness and reasonableness of this Agreement.

16 51. Invalidity of Any Provision. Before declaring any provision of this Agreement
17 invalid, the Court shall first attempt to construe the provision as valid to the fullest extent possible
18 consistent with applicable precedents so as to define all provisions of this Agreement valid and
19 enforceable. Any invalid, illegal, or unenforceable provision determined by the Court shall in no
20 way affect any other provision if Defendants and Class Counsel, on behalf of the Parties and the
21 Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable
22 provision had never been included in this Agreement.

23 52. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however,
24 that Plaintiffs or Class Counsel may appeal any reduction in the Class Counsel Award below the
25 amount Class Counsel requests, and either Party may appeal any order that materially alters the
26 Agreement's terms.

27 53. Class Action Certification. The Parties are agreeing to class certification for
28 settlement purposes only. This Agreement shall not constitute, in this or any other proceeding, an

admission of any kind by Defendants, including without limitation, that certification of a class for trial or any other purpose is appropriate or proper or that Plaintiffs or any Class Member can establish any of the requisite elements for class treatment of any of the claims in this Action. If, for any reason, the Settlement is not finally approved, this Agreement will be void and the Parties will be restored to their respective positions in the lawsuit as if they had not entered into this Agreement. The Parties further agree that this Agreement or any documents or orders issued related to this Settlement will not be admissible, other than according to the Settlement's terms, in this or any other proceeding as evidence that either: (i) a class action should be certified or (ii) Defendants are liable to Plaintiffs or any Class Member.

54. Non-Admission of Liability. The Parties enter into this Agreement to resolve the dispute that has arisen between them and to avoid the burden, expense, and risk of continued litigation. In entering into this Agreement, Defendants do not admit, and specifically deny, that Defendants have violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations, or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to its employees. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendants of any such violations or failures to comply with any applicable law, regulation, or legal requirement. Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission of any nature on the part of Defendants, or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local, or other applicable law.

55. Captions. The captions and section numbers in this Agreement are inserted for the reader's convenience, and in no way define, limit, construe, or describe the scope or intent of the provisions of this Agreement.

56. Waiver. No waiver of any condition or covenant contained in this Agreement or

1 failure to exercise a right or remedy by any of the Parties hereto shall be considered to imply or
2 constitute a further waiver by such party of the same or any other condition, covenant, right, or
3 remedy.

4 57. Enforcement Actions. In the event that one or more of the Parties institutes any
5 legal action or other proceeding against any other Party or Parties to enforce the provisions of this
6 Settlement, or to declare rights and/or obligations under this Settlement, the prevailing Party or
7 Parties shall be entitled to recover from the non-prevailing Party or Parties reasonable attorneys'
8 fees and costs, including expert witness fees incurred in connection with any enforcement actions.

9 58. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
10 and conditions of this Agreement. Accordingly, this Agreement shall not be construed more strictly
11 against one Party than another merely by virtue of the fact that it may have been prepared by
12 counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations
13 between the Parties, all Parties have contributed to the preparation of this Agreement.

14 59. Representation by Counsel. The Parties acknowledge that they have been
15 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
16 and that this Agreement has been executed with the consent and advice of counsel. Further,
17 Plaintiffs and Class Counsel warrant and represent that there are no liens on the Agreement.

18 60. Cooperation and Execution of Necessary Documents. All Parties shall cooperate in
19 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of
20 this Agreement.

21 61. Binding Agreement. The Parties warrant that they understand and have full
22 authority to enter into this Agreement, and further intend that this Agreement shall be fully
23 enforceable and binding on all Parties, and agree that it shall be admissible and subject to
24 disclosure in any proceeding to enforce its terms.

25
26 [Remainder of Page Intentionally Left Blank]
27
28

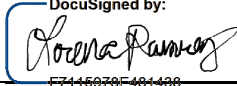
IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class and Representative Action Settlement between Plaintiffs and Defendants as of the date(s) set forth below:

SIGNATURES

READ CAREFULLY BEFORE SIGNING

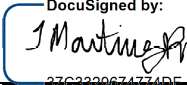
DATED: 04/27/2023 _____

PLAINTIFF LORENA RAMIREZ

DocuSigned by:

77445070E404430...
Plaintiff Lorena Ramirez

DATED: 04/28/2023 _____

PLAINTIFF TERESA MARTINEZ

DocuSigned by:

37C3320674774DF...
Plaintiff Teresa Martinez

DATED: _____

DEFENDANT COVENANT SURGICAL PARTNERS, INC.

Please Print Name of Authorized Signatory

DATED: _____

DEFENDANT SALINAS ENDOSCOPY CENTER, LLC



Jeanne Desautels
Please Print Name of Authorized Signatory

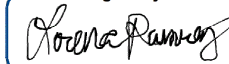
IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class and Representative Action Settlement between Plaintiffs and Defendants as of the date(s) set forth below:

SIGNATURES

READ CAREFULLY BEFORE SIGNING

DATED: 04/27/2023

PLAINTIFF LORENA RAMIREZ

DocuSigned by:

F7445070E404400...

Plaintiff Lorena Ramirez

DATED: 04/28/2023

PLAINTIFF TERESA MARTINEZ

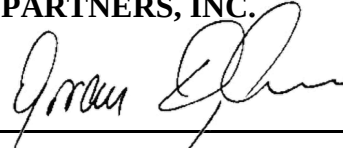
DocuSigned by:

37C9320674774DF...

Plaintiff Teresa Martinez

DATED: May 9, 2023

DEFENDANT COVENANT SURGICAL PARTNERS, INC.


Goran Dragolovic, CEO

Please Print Name of Authorized Signatory

DATED: _____

DEFENDANT SALINAS ENDOSCOPY CENTER, LLC

Please Print Name of Authorized Signatory

APPROVED AS TO FORM

DATED: 4/28/2023

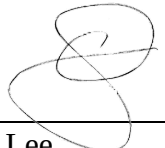
FITZPATRICK & SWANSTON



B. James Fitzpatrick
Attorneys for Plaintiffs and the Class

DATED: May 3, 2023

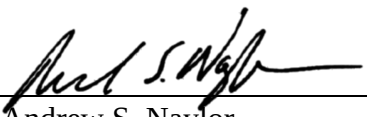
DIVERSITY LAW GROUP, P.C.



Larry W. Lee
Kristen M. Agnew
Nicholas Rosenthal
Attorneys for Plaintiffs and the Class

DATED: May 4, 2023

HOLLAND & KNIGHT, LLP



Andrew S. Naylor
Frederick L. Conrad III
Attorneys for Defendants

DATED: May 11, 2023

CDF LABOR LAW LLP



Mark S. Spring
Joel Van Parys
Attorneys for Defendants

EXHIBIT A

Lorena Ramirez v. Covenant Surgical Partners, Inc. et. al.
SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY
(CASE NO. 22CV000081)

NOTICE OF CLASS ACTION SETTLEMENT (“NOTICE”)

IF YOU WERE EMPLOYED BY COVENANT SURGICAL PARTNERS, INC. AND/OR SALINAS ENDOSCOPY CENTER, LLC AS A NON-EXEMPT EMPLOYEE IN THE STATE OF CALIFORNIA, DURING THE PERIOD OF JANUARY 10, 2018 THROUGH FEBRUARY 1, 2023, YOU MAY BE ELIGIBLE TO RECEIVE MONEY AS PART OF A SETTLEMENT.

The Monterey County Superior Court (“Court”) authorized this Notice to be sent by CPT Group (“Settlement Administrator”). This is not an advertisement. This is not a solicitation from a lawyer.

«BarcodeString»
SIMID «SIMID»

ATTN: «FirstName» «LastName»
«Address1» «Address2»
«City» «Abbrev» «Zip»

**YOU ARE ESTIMATED TO RECEIVE
APPROXIMATELY
\$«MERGED_EstSettAmnt_CALC»
THROUGH THIS CLASS ACTION
SETTLEMENT**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

You Can DO NOTHING

You will receive a payment from the settlement. If you do nothing, you continue your participation in this lawsuit, and you will be impacted by the outcome of this case. You will receive a settlement payment; however, you will **lose** any rights to sue Covenant Surgical Partners, Inc. and/or Salinas Endoscopy Center, LLC separately for the same legal claims made in the lawsuit. The estimated amount of your settlement payment is shown above. To receive your settlement payment, all you need to do is keep the Settlement Administrator informed of your current mailing address. Once the Court grants final approval of the settlement, the Settlement Administrator will mail your check to the address on file for you.

**You Can ASK TO BE
EXCLUDED FROM THE
CLASS SETTLEMENT
(Deadline: _____, 2023)**

If you ask to be excluded from the class settlement, you will get no payment from the class settlement amount, but you will keep any rights to sue Covenant Surgical Partners, Inc. and/or Salinas Endoscopy Center, LLC separately for the same legal claims made in this lawsuit. However, you may not request exclusion from the settlement of the PAGA claim. **Important: You cannot ask to be excluded and still get a settlement payment.**

**You Can OBJECT TO THE
SETTLEMENT
(Deadline: _____, 2023)**

If you do not like the class settlement, you can send a written objection to the Settlement Administrator by the deadline or personally appear at the final approval hearing. If your objection is overruled by the Court, you will still be bound by the terms of the settlement and will receive a class settlement payment. **Important: If you object to the settlement, you cannot also ask to be excluded.**

THESE RIGHTS AND OPTIONS—AND THE DEADLINES TO EXERCISE THEM—ARE EXPLAINED IN THIS NOTICE.

The Court is in charge of this lawsuit and still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after appeals, if any, are resolved. **Please be patient.**

1. Why Should You Read This Notice?

You should read this Notice because you may be entitled to money from a class action settlement.

2. What is this Lawsuit About?

In the lawsuit, the Plaintiffs alleges that Covenant Surgical Partners, Inc. and Salinas Endoscopy Center, LLC (“Defendants”): (1) failed to provide off-duty meal periods, in violation of Labor Code sections 226.7 and 1198; (2) failed to provide off-duty rest periods, in violation of Labor Code sections 226.7 and 1198; (3) failed to pay hourly and overtime wages, in violation of Labor Code sections 1194 and 1198; (4) failed to comply with wage statement requirements, in violation of Labor Code sections 226, 1174 and 1175; (5) failed to pay wages upon termination, in violation of Labor Code sections 201, 202 and 203; and (6) failed to reimburse business expenses, in violation of Labor Code section 2802.

Defendants deny the allegations in the lawsuit and further deny they have engaged in any wrongdoing. Defendants assert that they complied with all legal requirements, but are resolving this action in order to avoid the risk and costs of further legal proceedings.

3. Why is this a Class Action?

This lawsuit is a class action. In a class action, one or more persons, called a class representative (in this case, Lorena Ramirez and Teresa Martinez), sue on behalf of people who allegedly have similar claims. All these people are a class or class members. One case resolves the issues for all class members, except for those who exclude themselves from the class. The Monterey County Superior Court is in charge of the case. The lawsuit is known as *Lorena Ramirez v. Covenant Surgical Partners, Inc. et. al.*, Case No. 22CV000081.

4. Why is there a Settlement?

The Court did not decide in favor of Plaintiffs or Defendants. Plaintiffs think they could have won at trial. Defendants thinks that they would have won before or at trial. But there was no trial or a pretrial determination on the merits of the case by the Court. Instead, both parties agreed to a settlement. That way, they avoid the risks and cost of litigation, and the individuals potentially affected will get compensation. The class representatives and the attorneys think the settlement is best for class members.

5. How Do I Know If I Am Part of the Settlement?

The Court has decided that the following individuals are class members: all non-exempt employees who are or previously were employed by Covenant Surgical Partners, Inc. and/or Salinas Endoscopy Center, LLC in California during the period of January 10, 2018 through February 1, 2023 (“Class” or “Class Members”). If you received this Notice you are a member of the Class.

6. What Does the Settlement Provide?

The proposed settlement provides for a cash payment by Defendants in the amount of \$1,750,000 to fully and finally resolve all claims in the lawsuit (referred to as the “Gross Settlement Amount”). The total amount to be distributed to Class Members who can be located, and who do not exclude themselves from the settlement, will be the Gross Settlement Amount minus the following (the “Net Settlement Amount”): (a) settlement administration costs not to exceed \$10,000.00; (b) class representative Service Payments to Plaintiffs not to exceed \$10,000.00 each for their work and efforts in prosecuting this case, and for undertaking the risks of costs (in the event the outcome was not favorable); (c) Class Counsel’s attorneys’ fees not to exceed \$583,333.33; (d) Class Counsel’s actual litigation costs and expenses as supported by declaration not to exceed \$25,000.00; and (e) PAGA Payment in the amount of \$50,000.00. **Class Counsel’s attorneys’ fees and costs remain subject to Court approval.**

By statute, the Labor and Workforce Development Agency will receive seventy-five percent of the PAGA Payment —*i.e.* the amount of \$37,500.00. Class Members who worked during the period from January 10, 2021 to February 1, 2023 (the “PAGA Period”) will receive a portion of the remaining twenty-five percent of the PAGA Payment (“Net PAGA Penalty”).

No portion of the Net Settlement Amount or Net PAGA Penalty will be returned to Defendants under any circumstances. Instead, any unclaimed portions will be sent to the *cy pres* recipient, Legal Aid at Work.

7. How Much Will My Payment Be?

Twenty percent (20%) of the Net Settlement Amount will be evenly distributed to Class Members who terminated employment with Defendants during the period from January 10, 2018 to February 1, 2023 (“Class Period”).

The remaining eighty percent (80%) of the Net Settlement Amount will be distributed to Class Members based on the number of pay periods the employee worked during the Class Period, as compared to the total number of pay periods worked by all Class Members during the Class Period. However, Class Members will be credited an additional pay period for each pay period where he or she worked as a RN or LVN during the Class Period.

Based on Defendants’ records, you are a **current/former** employee and worked pay periods during the Class Period. Your estimated Individual Class Settlement Payment is .

If you were employed by Defendants during the PAGA Period, you are also entitled to a pro rata share of the Net PAGA Penalty based on the number of pay periods you worked during the PAGA Period. Based on Defendants’ records, you worked pay periods during the PAGA Period. Your estimated Individual PAGA Settlement Payment is .

8. How Do I Receive a Payment?

To qualify for payment, you need not do anything. The Settlement Administrator will mail you a check within approximately forty-five days after the Court enters a judgment based on this settlement, but possibly later depending on whether there is any appeal of the judgment entered by the Court.

9. What Am I Giving Up to Receive a Settlement Payment?

Unless you request to be excluded from the class settlement, you remain a part of the settlement class, and that means you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or the other Released Parties for any legal claims based on the subject matter of the class settlement. Specifically, you will be giving

up or “releasing” the Released Class Claims summarized below:

- All claims, including penalties, interest, costs, and attorneys’ fees related thereto, that were or could have been brought under the facts and allegations made in the operative First Amended Complaint for Damages, Penalties and for Injunctive Relief for violation of Labor Code sections 201, 202, 203, 204, 226.7, 510, 512, 558, 1194, 1198, 1199 and 2802, that accrued during the period of January 10, 2018 through **May 2, 2023, or the date of preliminary approval, whichever is earlier.**

Additionally, if you worked during the period from January 10, 2021 to February 1, 2023, you will be giving up or “releasing” the Released PAGA Claims summarized below:

- All claims for penalties under the California Private Attorneys General Act, including interest, costs and attorneys’ fees related thereto, predicated on the violation of Labor Code sections 201, 201.3, 202, 203, 204, 207, 208, 209, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2800 and 2802 that were alleged in the PAGA Notice and operative First Amended Complaint for Damages, Penalties and for Injunctive Relief, that accrued during the period of January 10, 2021 through **May 2, 2023, or the date of preliminary approval, whichever is earlier.**

10. How Do I Exclude Myself from the Class Settlement?

To exclude yourself from the class settlement (also referred to as “opt-out”), you must mail a letter to the Settlement Administrator saying that you want to be excluded from the *Lorena Ramirez v. Covenant Surgical Partners, Inc. et. al.* settlement.

Be sure to include your name, address, telephone number, last four digits of your Social Security Number, and your signature. You must mail your exclusion letter postmarked no later than **[Response Deadline]**, to the Settlement Administrator at **[Address]**.

If you submit a timely and valid “opt-out” request, you will no longer be a member of the Class and you will not receive any money from the class portion of the settlement, or be able to object to the settlement, but you will not be legally bound by anything that happens regarding the class action portion of this lawsuit. You will keep any rights to sue (or continue to sue) Defendants in the future for the class claims made in this lawsuit, at your own expense.

If you worked during the PAGA Period, you may not opt-out, or request to be excluded, from the settlement of the PAGA claim. Thus, even if you submit a timely and valid “opt-out” request, you will still receive an Individual PAGA Settlement Payment and will be deemed to have released the PAGA claims.

11. How Do I Tell the Court That I Don’t Believe That the Class Settlement Is Fair?

As a Class Member, you can object to the class settlement if you believe that the class settlement is unfair or inadequate. You can give reasons why you think the Court should not approve the class settlement. If you object and follow the procedures set out in this section, your objection will be considered.

If you decide to object to the proposed class settlement, you may do so in writing to the Settlement Administrator. If you submit a timely written objection to the Settlement Administrator or you appear at the final approval hearing for the settlement, either in person or through an attorney, you do so at your own expense. (*See* Question 15.)

All written objections should be signed by you and should include: (1) your full name, address, and telephone number; (2) a written statement of the basis for your objection; and (3) any copies of papers, briefs, or documents

upon which the objection is based. You must mail your objection postmarked no later than [Response Deadline], to the Settlement Administrator at Settlement Administrator at [Address].

There is no right to object to the settlement of the PAGA claim.

12. What is the Difference between Objecting and Excluding?

Objecting is simply telling the Court that you don't like something about the class settlement. You can object only if you stay in the Class. Excluding yourself, on the other hand, is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you. However, if you file an objection, you will still receive settlement benefits under the settlement if it is approved by the Court.

13. Do I Have a Lawyer in this Case?

The Court decided that the law firms of Fitzpatrick & Swanston and Diversity Law Group, which represent the Plaintiffs, are also qualified to represent you and all Class Members. You will not be charged for these lawyers. This law firm is referred to as "Class Counsel." If you want to be represented by your own lawyer, you may hire one at your own expense.

14. How Will the Attorneys for the Class And The Class Representative Be Paid?

The attorneys for the Plaintiffs and the Class will be paid from the Gross Settlement Amount. Class Counsel will ask for up to \$583,333.33 in attorneys' fees and for actual litigation costs incurred up to a maximum of \$25,000.00, the actual amount of which will be determined by the Court at the final approval hearing (see section 15 below for details as to when this hearing will take place). Class Members (like you) do not have to pay the fees and costs of Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

If approved by the Court, Service Payments for the Plaintiffs in an amount up to \$5,000.00 each (*i.e.* \$10,000 together) will be paid from the Gross Settlement Amount for their work and efforts in prosecuting this case, and for undertaking the risks of costs (in the event the outcome of this lawsuit was not favorable).

15. Notice of Hearing on Final Approval and Objections to Class-Action Settlement.

The Court has preliminarily approved the settlement and will hold a final approval hearing to decide whether to give final approval to the settlement. This hearing will be held before the Honorable Thomas W. Wills on [DATE], at [TIME], in Department 15 of the Superior Court of California for the County of Monterey, located at 1200 Aguajito Road, Monterey, California 93940, to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the settlement. We do not know how long this decision will take. The final approval hearing may be continued without further notice. The Court may adjourn or continue the hearing from time to time, without further notification, as the Court may direct.

Once final approval is granted by the Court, the Court will enter judgment, and all Class Members who have not requested exclusion will be deemed to have waived the Released Class Claims set forth above.

16. How Do I Receive More Information?

This Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by contacting Class Counsel.

17. What is the Contact Information for Class Counsel?

The address for Class Counsel is as follows:

FITZPATRICK & SWANSTON

B. James Fitzpatrick
bjfitzpatrick@fandslegal.com
Laura L. Franklin
lfranklin@fandslegal.com
555 S. Main Street
Salinas, CA 93901
Telephone: (831) 755-1311
Facsimile: (831) 755-1319

DIVERSITY LAW GROUP, P.C.

Larry W. Lee
lwlee@diversitylaw.com
Kristen Agnew
kagnew@diversitylaw.com
Nicholas Rosenthal
nrosenthal@diversitylaw.com
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554

WHAT IF I HAVE QUESTIONS?

If you have any questions about the settlement, you may contact the Settlement Administrator:

Lorena Ramirez v. Covenant Surgical Partners, Inc. et. al.
c/o CPT Group
Address
City, CA, Zip
Toll-Free Phone Number: [insert]

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE COURT CLERK FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS.

PLEASE DO NOT CONTACT COVENANT SURGICAL PARTNERS, INC., SALINAS ENDOSCOPY CENTER, LLC, ITS MANAGERS, OR ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS.

EXHIBIT C