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FILED

By Superior Court of California, County of San Mateo

ON 12/19/2023

By /s/ Correa, Haley

Deputy Clerk

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12/15/2023

CLERK OF THE SUPERIOR COURT
SAN MATEO COUNTY

Attorneys for Plaintiff Ferdinand Abad, on behalf of himself and all "aggrieved employees" pursuant to Labor Code § 2698 *et seq.*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO**

FERDINAND ABAD, on behalf of himself and
all "aggrieved employees" pursuant to Labor
Code § 2698 *et seq.*,

Plaintiffs,

v.

ST. THERESE CONVALESCENT
HOSPITAL, INC., a California corporation,
d/b/a DEVONSHIRE OAKS NURSING
CENTER, and DOES 1 through 10, inclusive,

Defendants.

CASE NO: 22-CIV-02119

*Assigned to the Hon. Nancy L. Fineman,
Dept. 4*

**~~PROPOSED~~ ORDER APPROVING
SETTLEMENT OF CLAIMS BROUGHT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004,
AWARDING ATTORNEYS' FEES,
COSTS, ENHANCEMENT AWARD, AND
REIMBURSEMENT OF SETTLEMENT
ADMINISTRATION EXPENSES, AND
DISMISSING ACTION WITH
PREJUDICE**

Date: December 5, 2023

Time: 2:00 P.M.

Dept.: 4

Complaint Filed: May 26, 2022

Trial Date: None

1 Plaintiff Ferdinand Abad's ("Plaintiff") renewed Motion for an Order: (1) granting
2 approval of the proposed settlement of claims brought pursuant to the Private Attorneys General
3 Act of 2004 (Cal. Labor Code § 2698 *et seq.*) ("PAGA") set forth in the Parties' PAGA Settlement
4 Agreement (the "Settlement" or "Settlement Agreement"); (2) appointing Phoenix Settlement
5 Administrators as the Settlement Administrator and approving payment of its fees not to exceed
6 \$2,000.00 from the PAGA Gross Settlement Amount; (3) directing disbursement of the PAGA
7 Gross Settlement Amount pursuant to the terms of the Settlement Agreement; (4) directing
8 payment of attorneys' fees and litigation costs from the Gross Settlement Amount not to exceed
9 \$33,000.00 to Counsel for Plaintiff; (5) directing an enhancement award from the PAGA Gross
10 Settlement Amount in the amount of \$5,000.00 to Plaintiff; and (6) dismissing this Action with
11 prejudice came on for hearing before this Court in Department 4, the Honorable Nancy L. Fineman
12 presiding, on December 5, 2023. Appearances were noted on the record.

13 Having reviewed the Settlement Agreement and duly considered the Parties' papers and
14 oral argument, and good cause appearing,

15 **THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES AS FOLLOWS:**

16 1. All terms used herein shall have the same meaning as defined in the Settlement
17 Agreement, which is attached hereto as Exhibit 1.

18 2. This Court has jurisdiction over the claims of the Aggrieved Employees and the
19 State of California asserted in this proceeding and over all parties to the Action.

20 3. The Court finds that the Settlement was entered into in good faith, that the
21 Settlement is fair, reasonable and adequate, and that the Settlement satisfies the standards and
22 applicable requirements for approval of PAGA representative actions under California law. The
23 Court finds that the PAGA Gross Settlement Amount of \$60,000.00 represents a fair compromise
24 of the claims alleged in the Action, considering the maximum potential value of the claims asserted
25 and the risks inherent in further litigation.

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1 4. The Court has considered the authorities and evidence presented by Plaintiff and
2 based thereon hereby approves the following awards and deductions from the PAGA Gross
3 Settlement Amount:

4 a. To Plaintiff's Counsel, Gaines & Gaines, APLC, an award of \$18,000.00 in
5 attorneys' fees and \$15,000.00 in reimbursement of litigation costs. The Court finds that
6 these amounts are fair and reasonable and commensurate with applicable California law.

7 b. To Plaintiff, an enhancement award of \$5,000.00. The Court finds that both
8 the time and effort that Plaintiff spent on behalf of other Aggrieved Employees and the
9 State, together with his broad release of all claims, justifies this payment.

10 c. To Phoenix Settlement Administrators, the settlement administrator, a
11 payment of up to \$2,000.00 to administer the Settlement through its conclusion, including
12 disbursement of the PAGA Gross Settlement Amount and all tax reporting associated
13 therewith.

14 5. The amount remaining of the PAGA Gross Settlement Amount following these
15 deductions is the Net Settlement Amount of approximately \$20,000.00. The Net Settlement
16 Amount shall be distributed 75% to the Labor and Workforce Development Agency (the
17 "LWDA") and 25% to the Aggrieved Employees.

18 6. The Court finds that the Settlement has been provided to the LWDA as required by
19 PAGA and Labor Code section 2699, subdivision (1)(2), in particular.

20 7. Upon entry of this Order, the Parties shall effectuate all terms of the Settlement
21 based on the provisions and timelines set forth in the Settlement Agreement.

22 8. This Action is hereby dismissed, with prejudice.

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1 9. As authorized by Code of Civil Procedure section 664.6, the Court retains
2 jurisdiction over of the Action, and the Parties to construe, interpret, implement, and enforce the
3 Settlement Agreement and this Order.

4 **IT IS SO ORDERED.**

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SIGNED

By /s/Fineman, Nancy

12/19/2023

5 Dated: _____
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JUDGE OF THE SUPERIOR COURT

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9 The court incorporates by reference as if set forth fully herein the minutes from the
10 hearing.

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EXHIBIT 1

PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)
SETTLEMENT AGREEMENT

***Ferdinand Abad, et al. v. St. Therese Convalescent Hospital, Inc.,
d/b/a Devonshire Oaks Nursing Center***
San Mateo County Superior Court, Case No. 22-CIV-02119

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties, subject to the approval of the Court, that the settlement of this action with respect to all claims brought in a representative capacity pursuant to the Private Attorneys General Act ("PAGA") (Labor Code § 2698 *et seq.*) shall be effectuated upon and subject to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth in Article I or elsewhere in this PAGA Settlement Agreement ("Agreement").

This Agreement is made by and between Defendant St. Therese Convalescent Hospital, Inc. d/b/a Devonshire Oaks Nursing Center ("Defendant"), Plaintiff Ferdinand Abad ("Plaintiff"), for himself and in his capacity as a representative of the State of California on behalf of other Aggrieved Employees (defined below), and the law firms defined below as "Plaintiff's Counsel" and "Defense Counsel." (Defendant, Plaintiff and Aggrieved Employees, as defined herein, are sometimes collectively referred to as the "Parties.")

The Parties agree that all representative claims brought pursuant to the PAGA in the Superior Court of California, County of San Mateo, Case No. 22-CIV-02119 (the "Litigation" or "Action") shall be, and hereby are, ended, settled, resolved, and concluded by agreement of Defendant to pay the sum of Sixty Thousand Dollars and Zero Cents (\$60,000) (hereinafter referred to as the "PAGA Gross Settlement Amount") for settlement of the PAGA claims and penalties sought in the Litigation, which shall be inclusive of Plaintiff's attorneys' fees and costs in connection with the Litigation, an enhancement payment to Plaintiff, and the expense of the Settlement Administrator. The Parties further agree that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission of liability.

Article I.

Definitions.

Section 1.01 Definitions.

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- (a) "Aggrieved Employees" means all individuals who currently and/or formerly worked for Defendant in California as hourly and/or non-exempt employees at any time from March 22, 2021 through the date the Court grants approval of the PAGA Settlement or May 1, 2023, whichever date comes first (the "PAGA Release Period"). Defendant represents that the total number of Aggrieved Employees is approximately 40 individuals who worked approximately 1,174 pay periods during the PAGA Release Period.

(b) “Complaint” means the operative Complaint filed by Plaintiff in the Action on or about May 26, 2022, which asserts a single cause of action under the PAGA predicated on underlying violations of Labor Code §§ 201, 202, 204, 210, 226(a), 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 2802, 2699, and 2699.3.

(c) “Court” means the Superior Court for the State of California, County of San Mateo.

(d) “Defense Counsel” or “Counsel for Defendant” is:

Collin D. Cook, Esq.
Amaris M. Stich, Esq.
FISHER & PHILLIPS LLP
1 Montgomery Street, Suite 3400
San Francisco, California 94104

(e) “Effective Date” means the date on which the Court approves this Agreement and dismisses the Action, with prejudice.

(f) “Plaintiff’s Counsel” is:

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
GAINES & GAINES, APLC
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, California 91362

Article II.

Background.

Section 2.01 Background.

(a) On March 21, 2022, Plaintiff, on behalf of himself and similarly situated aggrieved employees, submitted a notice to the California Labor & Workforce Development Agency (“LWDA”) memorializing claims against Defendant for violations of the California Labor Code, including claims for failure to compensate for all overtime wages earned in violation of Labor Code sections 510, 558, and 1194; failure to pay all minimum and overtime wages earned in violation of Labor Code sections 510, 558, 1194, and 1194.2; failure to pay for all hours spent on-call in violation of Labor Code sections 510, 558, 1194, and 1194.2, and Industrial Welfare Commission (“IWC”) Wage Order 5-2001; failure to provide rest periods and/or pay premium wages for missed rest periods in violation of Labor Code section 226.7 and IWC Wage Order 5-2001; failure to provide meal periods and/or pay premium wages for missed meal periods in violation of Labor Code sections 226.7, 512, 558, and 1194, and IWC Wage Order 5-2001; failure to reimburse for necessary business expenses in violation of Labor Code section 2802; failure to timely pay all wages owed per pay period in violation of Labor Code sections 204 and 210, failure to provide accurate itemized wage statements in violation of Labor Code sections 226(a) and 226.3; and failure

to pay all wages owed at the time of separation of employment in violation of Labor Code sections 201 and 202.

- (b) On May 26, 2022, Plaintiff filed the Complaint in the Superior Court of the State of California, County of San Mateo, entitled *Ferdinand Abad v. St. Therese Convalescent Hospital, Inc. d/b/a Devonshire Oaks Nursing Center*, Case No. 22-CIV-02119. The Litigation is brought by Ferdinand Abad, on behalf of himself, the State of California, and other aggrieved employees. Through this Settlement, the Parties have agreed to resolve Plaintiff's claims under the PAGA based on alleged violations of Labor Code §§ 201, 202, 204, 210, 226(a), 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 2802, 2699, and 2699.3 premised on Defendant's alleged failure to pay all minimum and overtime wages due, provide all meal and rest periods or premium compensation in lieu thereof, timely pay all wages due during employment and upon separation of employment, reimburse all business expenses, and issue complete and accurate wage statements.
- (c) On February 2, 2023, the Parties engaged in mediation with David Phillips, Esq., an experienced and reputable wage and hour and PAGA action mediator. In advance of mediation, the Parties engaged in informal discovery to determine the total number of aggrieved employees and implicated pay periods at issue, together with a review of the pertinent policies and procedures. At the conclusion of the mediation, the Parties reached an agreement for resolution that was memorialized in a Memorandum of Understanding ("MOU"), which this Agreement now supersedes in full. At all times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length.
- (d) The Parties agree that the investigation and evaluation discussed above, as well as discovery and the information exchanged to date, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Plaintiff's Counsel, Defendant, and Defendant's Counsel have concluded that it is desirable that the PAGA claims asserted in the Action be settled in a manner and upon such terms and conditions set forth herein in order to avoid further expense, inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the Parties potentially face. Plaintiff, Plaintiff's Counsel, Defendant, and Defendant's Counsel are of the opinion that the Agreement for the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and circumstances.
- (e) This Agreement contemplates the (a) entry of an order by the Court approving the payment allocated for settlement of the PAGA Gross Settlement Amount; (b) dismissal of the Action with prejudice; and (c) all Parties bearing their respective fees and costs except as expressly provided in this Agreement. These terms are material provisions of this Agreement.

Defendant denies each and every claim and contention alleged in the Action, and has always maintained that it never engaged in any unlawful acts regarding any of the matters alleged in the Action.

Article III.

Scope of the Aggrieved Employees.

Section 3.01 The scope of individuals encompassed under the Agreement, who are entitled to all benefits as authorized under the Agreement and subject to all obligations and duties required under the Agreement, shall include all Aggrieved Employees as defined in Section 1.01.

Section 3.02 Aggrieved Employees entitled to recover under this Agreement will include only those individuals who are identified in Defendant's records as having worked as an Aggrieved Employee.

Article IV.

Approval and Implementation of Settlement.

Section 4.01 Cooperation.

The Parties will cooperate in obtaining, through a stipulation, or an unopposed motion to be filed by Plaintiff's Counsel, if required, an Order from the Court approving the payment of the PAGA Gross Settlement Amount as described in this Agreement at the earliest possible date. Concurrently with the submission of this Agreement to the Court, Plaintiff shall submit it to the LWDA as required by PAGA.

The Parties agree to use their best efforts to expedite the preparation and submission of the settlement documents. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to, the approval and implementation of the payment of the PAGA Gross Settlement Amount and dismissal of the Litigation as described in this Agreement.

The Court's approval of the payment of the PAGA Gross Settlement Amount as described in this Agreement shall be embodied in a written Order, which shall be transmitted by Plaintiff's Counsel to the LWDA within ten (10) calendar days upon entry, as required by PAGA. Should the Court not grant approval of the payment of the PAGA Gross Settlement Amount as described in this Agreement or decline to dismiss the Action with prejudice, this Agreement shall be null and void and have no further effect, and all sums paid by Defendant, if any, shall be promptly returned to them.

Section 4.02 Settlement Payment Procedures.

(a) Payment of PAGA Gross Settlement Amount and Notice to Aggrieved Employees.

- (1) Defendant shall pay the total amount of Sixty Thousand Dollars (\$60,000) to settle the Action. This amount, *i.e.*, the PAGA Gross Settlement Amount, shall cover, resolve, and fully satisfy any and all amounts owed to Plaintiff, the Aggrieved Employees, the State of California, and Plaintiff's Counsel, including all amounts allocated to attorneys' fees and costs, in settlement of all Released Claims, as defined herein. The Parties agree that

there are no circumstances that would require Defendant to pay any amount greater than the PAGA Gross Settlement Amount in connection with this Agreement unless the escalator clause in paragraph 6.12 herein is invoked. In the event that this Agreement is canceled, rescinded, terminated, voided or nullified, or if for any reason the Effective Date does not occur, however that may occur as permitted herein, or the settlement is barred by operation of law, invalidated, or ordered not to be carried out by a court of competent jurisdiction, Defendant shall have no obligation to pay any of the PAGA Gross Settlement Amount and the Parties' respective positions shall be restored to positions prior to the settlement. Further, in that event, nothing in this Agreement, the negotiations leading to this settlement, nor any papers prepared in connection with this Agreement shall be admissible in any proceeding for any purpose whatsoever.

- (2) Plaintiff's Counsel will apply to the Court for an award of attorneys' fees not to exceed thirty-five percent (35%) of the PAGA Gross Settlement Amount. Plaintiff's Counsel will also seek reimbursement of reasonable litigation costs not to exceed \$15,000 (attorneys' fees and reasonable litigation costs are referred to as "Plaintiff's Counsel Payment"). Defendant will not oppose or object to Plaintiff's Counsel's application for Plaintiff's Counsel Payment. In the event that the Court does not approve an award of attorneys' fees equal to the requested amount, or the Court alters the payment methodology described herein, Plaintiff's Counsel agrees not to seek additional review of the Court's decision regarding attorneys' fees, and this Settlement will be enforceable. Any reduction in this payment by the Court is not grounds to void this Agreement and any funds requested but not awarded as attorneys' fees or costs will be distributed to the LWDA and Aggrieved Employees pursuant to the distribution terms of the Agreement or any terms imposed by the Court.
- (3) The "Net Settlement Fund" shall be calculated by deducting from the PAGA Gross Settlement Amount Plaintiff's Counsel Payment, up to \$5,000 to Plaintiff as an enhancement payment, and up to \$2,500 to compensate the parties' chosen Settlement Administrator. The Net Settlement Fund will be comprised of seventy-five percent (75%) of the Net Settlement Fund, which shall be distributed to the LWDA, and the remaining twenty-five percent (25%) of the Net Settlement Fund shall be distributed to the Aggrieved Employees unless otherwise ordered by the Court. Any reallocation of the Net Settlement Fund directed by the Court is not grounds to void this Agreement.
- (4) The twenty-five percent (25%) of the Net Settlement Fund to be distributed to the Aggrieved Employees will be divided by the total number of pay periods worked by all of them in California during the PAGA Release Period to yield the Pay Period Value. Each Aggrieved Employee will be paid an amount equal to their individual number of pay periods worked in California during the PAGA Release Period multiplied by the Pay Period Value.
- (5) Defendant shall deposit the PAGA Gross Settlement Amount into a Qualified Settlement Fund pursuant to Section 468B(g) of the Internal Revenue Code set up by the Settlement Administrator no later than 30 calendar days after the Effective Date.

- (6) Defendant will provide the Settlement Administrator with a confidential list of the names and addresses of the Aggrieved Employees, together with the number of their individual pay periods worked during the PAGA Release Period, within ten (10) business days after the Effective Date. This information will be provided confidentially to the Settlement Administrator only, and the Settlement Administrator will treat the information as private and confidential and take all necessary precautions to maintain the confidentiality of such information. This information is to be used only to carry out the Settlement Administrator's duties as specified in this Agreement.
- (7) No later than twenty-one (21) calendar days after Defendant's deposit of the PAGA Gross Settlement Amount, the Settlement Administrator shall transmit the Notice of PAGA Settlement (attached hereto as Exhibit "A"), together with settlement checks containing their full individual settlement amounts, with no claims process required, to all Aggrieved Employees by first-class United States mail, postage prepaid, to the last known address of each recipient with directions to the Postmaster to forward the Notice of PAGA Settlement and return all undeliverable Notices. No later than twenty-one (21) calendar days after Defendant's deposit of the PAGA Gross Settlement Amount, the respective shares shall be paid to Plaintiff's Counsel, the Settlement Administrator, Plaintiff for his enhancement payment, and the LWDA to satisfy their payments herein.
- (8) For each settlement check and Notice of PAGA Settlement to Aggrieved Employees that is returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the Aggrieved Employee by using an address refresher database. If no current address is located, the individual payment for that individual will be deemed undeliverable. If any Aggrieved Employees cannot be located within two attempts at mailings by the Settlement Administrator, the individual payment for that individual will be deemed undeliverable. The value of checks uncashed more than 180 days after issuance shall be paid to the Office of the California State Controller – Unclaimed Property Fund, to be held in the name of the respective Aggrieved Employees.
- (9) 100% of the PAGA Gross Settlement Amount is considered penalties and will not be subject to local, state or federal tax withholdings. All recipients of payments under this Agreement have their payments reported on an IRS Form 1099. The Settlement Administrator shall issue IRS Form 1099s (if required) to the Aggrieved Employees.

Article V.

Limitations On Use Of This Settlement.

Section 5.01 No Admission.

Defendant has denied and continues to deny all claims as to liability, damages, liquidated damages, penalties, interest, fees, restitution, injunctive relief, and all other forms of relief asserted in the Action. It is understood and agreed by the Parties that this is a compromise and settlement of all disputed claims, and that the promises and payment in consideration of this Agreement shall not be construed to be an admission of any liability or obligation whatsoever by Defendant or Released Parties to any other party or to any other person whomsoever. Defendant has agreed to

resolve the asserted PAGA claims in the Action via this Agreement, but to the extent this Agreement is deemed void or the Court does not enter an order granting this Agreement, Defendant does not waive, and is expressly reserving, all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability to challenge representative or collective treatment on any grounds, as well as to assert any and all other potential defenses or privileges.

Section 5.02 Non-Evidentiary Use.

This Agreement is made for the sole purpose of settling the PAGA claims asserted in the Action, and may only be used as evidence of the resolution detailed herein. However, neither this Agreement, nor any of its terms, nor any of the negotiations connected with it or proceedings relating to this Agreement, payouts or anything else associated with it, shall be offered or used as evidence by any of the Parties, or their respective counsel in the Litigation or in any other action or proceeding, including to establish any liability or admission on the part of Defendant or any Released Parties or to establish the existence of any condition constituting a violation of, or noncompliance with, federal, state, local or other applicable law; provided, however, this shall not prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it or proceedings relating to this Agreement, payouts or other events associated with it, shall be construed as an admission or concession by Defendant or any Released Parties or establishment of any such violation(s) or failure(s) to comply with any applicable law. If the Court does not enter an order approving the Agreement, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms, and entry of this Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable. Defendant specifically retains the right to defend, on the merits, against any non-settled claims brought by any Aggrieved Employees.

Section 5.03 Nullification.

(a) If the Court should for any reason fail to approve this Agreement, then (a) this Agreement shall be considered null and void, (b) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect, and (c) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court.

(b) Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect. Material terms of this Agreement include: the definition of Aggrieved Employees; the definition of Effective Date; the definition of PAGA Release Period; the definition of Released Claims; the definition of Released Parties; the definition of Net Settlement Fund; the requirement for entry of an order by the Court approving this Agreement and dismissing the Action with prejudice. The following terms are not material to this Agreement: Plaintiff's Counsel Payment; the amount of the Settlement Administration Fee; the allocation within the Net Settlement Fund.

Article VI.

Release and Waiver of Claims.

Section 6.01 Limited Release By Plaintiff and Aggrieved Employees.

Upon Court approval of the Settlement, dismissal of the action, and subject to Defendant's funding in full of the PAGA Gross Settlement Amount, Plaintiff and the Aggrieved Employees will fully and finally release and discharge Defendant and its former, present, and future owners, parents, affiliates, and subsidiaries, and all of their current, former, and future officers, directors, members, managers, partners, shareholders, agents, employees, joint ventures, successors, assigns, attorneys, accountants, insurers, or legal representatives (the "Released Parties"), from all claims, rights, demands, liabilities, and causes of action for civil penalties under the PAGA that arose during the PAGA Release Period that were alleged in the Action, including but not limited to the following claims: (a) failure to pay all wages owed; (b) failure to pay all overtime and/or double time wages owed; (c) failure to pay all overtime and/or double time wages owed at the correct rate(s) of pay; (d) failure to provide compliant meal periods, or premium pay for non-compliant meal periods; (e) failure to authorize and permit complaint rest periods, or premium pay for non-complaint rest periods; (f) failure to provide accurate, itemized wage statements; (g) failure to timely pay wages during employment and/or upon separation of employment; (h) failure to reimburse all necessary business expenses; (i) all claims for PAGA penalties that could have been premised on the facts, claims, causes of action, or legal theories described above; and (j) all other claims under PAGA that could have been premised on the facts, claims, causes of action, or legal theories described above and in Plaintiff's Complaint, including but not limited to California *Labor Code* sections 201, 202, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 2802, 2698, 2699, and 2699.3 (the "Released Claims").

Plaintiff and the State of California shall be deemed to have, and by operation of the Order granting approval of this Agreement, shall have fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from the Released Claims that arose during the PAGA Release Period. As a result of this release, Aggrieved Employees will be unable to bring a claim under, or recover in any other claim brought under the PAGA for any violations of the Released Claims that took place during the PAGA Release Period.

Section 6.02 Tax Treatment and Tax Indemnification.

Aggrieved Employees will assume any tax obligations or consequences which may arise from this Settlement.

If any state or federal taxing authority contacts, investigates, or pursues any action against any Aggrieved Employees for their individual share of taxes related to any payments made under this Agreement, each Aggrieved Employee shall be responsible for his/her own defense of and payment for any claim of unpaid taxes, interest, or penalties brought by any state or federal taxing authority for the Aggrieved Employee's share of any state or federal tax obligation. If an Aggrieved Employee has questions about any liability to any state or federal taxing authority, they

shall contact the Settlement Administrator. The Aggrieved Employees shall not contact Defendant, any of the Released Parties, or Defense Counsel.

Article VI.

Miscellaneous Provisions.

Section 7.01 Voluntariness.

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity.

Section 7.02 Unalleged Claims.

Neither Plaintiff nor Plaintiff's Counsel are aware of any: (a) unalleged claims in addition to, or different from, those which are finally and forever settled and released against the Released Parties by this Agreement; and (b) unalleged facts or legal theories upon which any claims or causes of action could be brought against any Released Parties, except such facts and theories specifically alleged in the Complaint in this Action.

Plaintiff and Plaintiff's Counsel have no current intention of asserting any other claims against any of the Released Parties in any judicial or administrative forum. Plaintiff and Plaintiff's Counsel do not currently know of or represent any persons who have expressed any interest in pursuing litigation or seeking any recovery against any Released Parties. Notwithstanding, Plaintiff and Plaintiff's counsel are aware of Plaintiff's pending workers' compensation case, which claims have not been released pursuant to this Agreement.

Section 7.03 Amendments.

The terms and provisions of this Agreement may be amended only by a written agreement that is both (a) signed by the Plaintiff, Plaintiff's Counsel, Defendant, and Defense Counsel who executed this Agreement and (b) approved by the Court. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise.

Section 7.04 No Modifications and Void *Ab Initio*.

This Agreement may not be changed, altered, or modified, except as provided for in this Agreement, in writing signed by the Parties hereto, and approved by the Court. If the Court does not enter an order granting approval of the Agreement, if the Court's approval of the settlement is reversed, if the Agreement is materially modified by the Court or on appellate review, or if the Effective Date does not occur, this Agreement shall be deemed Void *Ab Initio*. Void *Ab Initio* shall mean the Parties will be returned to the status quo prior to this Agreement being reach and it will be as if the Agreement was never entered into. If Void *Ab Initio*, the Agreement shall be of no force or effect whatsoever, it shall not be referred to or utilized for any purpose whatsoever, and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable. A material modification shall have the same

meaning as that term is used in California law regarding contracts. This Agreement may not be discharged except by performance in accordance with its terms

Section 7.05 Assignment.

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

Section 7.06 Governing Law.

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, and shall in all cases be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties hereto.

Section 7.07 Entire Agreement.

This Agreement contains the entire understanding of the Parties hereto in respect of the subject matter contained herein, except that Plaintiff and Defendant have concurrently entered into an individual general release agreement through which Plaintiff shall release any and all claims against the Released Parties, with a waiver of his rights under California Civil Code section 1542, for additional consideration. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the Litigation.

Section 7.08 Headings and Captions.

Paragraph titles or captions contained in the Agreement are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement, or any provision thereof.

Section 7.09 No Press Release or Publicity Regarding the Terms of the Settlement.

Plaintiff and Plaintiff's Counsel, as well as Defendant and Defendant's Counsel, agree that they will not issue any media or press release, initiate any contact with the media or the press, respond to any media or press inquiry, or have any communications with the media or the press about the fact, amount, or terms of this Agreement, except to (i) Aggrieved Employees, but only upon inquiry, and (ii) the Court and the LWDA, but only as necessary to obtain Court approval of the Settlement.

Section 7.10 Waiver of Compliance.

Any failure of any Party, Defense Counsel, and/or Plaintiff's Counsel hereto to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing,

to the extent permitted under applicable law, by the Party or Parties and their respective counsel hereto entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 7.11 Counterparts.

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

Section 7.12 Attorneys' Fees and Costs.

With respect to this Agreement, neither Plaintiff's Counsel nor any other attorneys acting for, or purporting to act for the Aggrieved Employees, or Plaintiff may recover or seek to recover any amounts for fees, costs, or disbursements from the Released Parties or the PAGA Gross Settlement Amount except as expressly provided herein. Defendant shall bear their own attorney's fees and costs, and neither Plaintiff's Counsel, Aggrieved Employees or the Plaintiff shall be responsible for Defendant's attorney's fees and costs. If any party moves the Court to enforce this Agreement, the prevailing party shall be entitled to recover from the other party all attorneys' fees and costs incurred to enforce this Agreement.

Section 7.13 Dispute(s).

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

Section 7.14 Binding.

The Parties, by signing this Agreement, are bound by the terms herein. The Parties waive their rights to file an appeal, writ, or any challenge whatsoever to the terms of this Agreement. This Agreement shall bind and inure to the benefit of the Parties hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

Section 7.15 Court's Retention of Jurisdiction.

The Court shall retain jurisdiction, pursuant to Code of Civil Procedure section 664.6 and otherwise as permitted by law, to enforce this Settlement.

Section 7.16 Escalator Provision.

This settlement is based on Defendant's representation that there are no more than approximately 1,174 pay periods at issue ("Affected Pay Periods") worked by approximately 40 Aggrieved Employees through February 2, 2023. If the actual number of pay periods or Aggrieved Employees is 10% higher or more on the date the Court grants approval of the Agreement, or May 1, 2023, whichever date comes first, Defendant shall at its option either (a) increase the PAGA Gross Settlement Amount in proportion to the increase in Affected Pay Periods; or (b) cap the end date of the PAGA Release Period on the date before the 10% is exceeded.

Section 7.17 Default; Notice; Cure; Acceleration; Time is of the Essence.

Time is of the essence with respect to all provisions of this Agreement. If Defendant fail to timely make any payment due hereunder, they shall be in default of their obligations. Plaintiff shall thereafter give notice of default and Defendant must cure said default within five (5) business days thereof. In the event of an uncured default, all unpaid amounts shall be accelerated and be all due and payable together with interest at the legal rate from the date of default.

IN WITNESS WHEREOF, the Parties have executed this Private Attorneys General Act Settlement Agreement on the date set forth.

APPROVED AND ACCEPTED.

[SIGNATURES ON FOLLOWING PAGE]

Dated: March __, 2023

ST. THERESE CONVALESCENT
HOSPITAL, INC.

By _____
Its _____

Dated: ~~March __, 2023~~
03/15/2023

By Ferdinand Abad
FERDINAND ABAD

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

GAINES & GAINES, ALPC

Dated: March 15, 2023

By: Dan
Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Attorneys for Plaintiff

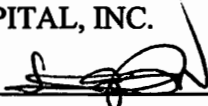
FISHER & PHILLIPS LLP

Dated: March __, 2023

By: _____
Collin D. Cook, Esq.
Amaris M. Stich, Esq.
Attorneys for Defendant

Dated: March 27, 2023

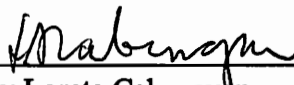
ST. THERESE CONVALESCENT
HOSPITAL, INC.


By Danilo Cabanayan

Its Owner

Dated: March 27, 2023

ST. THERESE CONVALESCENT HOSPITAL,
INC.


By Loreta Cabanayan

Its Owner

Dated: March __, 2023

By _____
FERDINAND ABAD

APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY

GAINES & GAINES, ALPC

Dated: March __, 2023

By: _____
Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Attorneys for Plaintiff

Dated: March 28, 2023


By: _____
Collin D. Cook, Esq.
Amaris M. Stich, Esq.
Attorneys for Defendant

EXHIBIT A

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO**

FERDINAND ABAD, on behalf of himself
and all “aggrieved employees” pursuant to
Labor Code § 2698 *et seq.*,

Plaintiffs,

v.

ST. THERESE CONVALESCENT
HOSPITAL, INC., a California corporation,
d/b/a DEVONSHIRE OAKS NURSING
CENTER, and DOES 1 through 10,
inclusive,

Defendants.

Case No. 22-CIV-02119

**NOTICE OF SETTLEMENT OF
PRIVATE ATTORNEYS GENERAL ACT
CLAIM (CAL. LABOR CODE § 2698 *ET
SEQ.*)**

You have been identified as an individual who currently and/or formerly worked for Defendant St. Therese Convalescent Hospital, Inc., doing business as Devonshire Oaks Nursing Center (“Defendant”) in California as an hourly and/or non-exempt employee at any time between March 22, 2021 and May 1, 2023 (“Aggrieved Employee”) (the “PAGA Release Period”).

On May 26, 2022, Plaintiff Ferdinand Abad (the “Plaintiff”) commenced a lawsuit in the Superior Court of California, County of San Mateo, Case Number 22-CIV-02119 to recover civil penalties (the “Lawsuit”). Plaintiff alleges in the lawsuit that Defendant failed to pay all minimum and overtime wages due, provide all meal and rest periods or premium compensation in lieu thereof, timely pay all wages due during employment and upon separation of employment, reimburse all business expenses, and issue complete and accurate wage statements. For these alleged violations, Plaintiff seeks penalties pursuant to the California Labor Code’s Private Attorneys General Act of 2004, codified at Labor Code § 2698 *et seq.* (“PAGA”).

Defendant denies Plaintiff’s allegations and disputes all of Plaintiff’s claims. The Lawsuit was litigated and following an investigation, the Parties reached a settlement which takes into account the uncertainties and risks of proceeding with litigation.

The Court approved the settlement on [REDACTED] and has determined that the settlement is fair and reasonable. The payment which accompanies this notice is made to you pursuant to the terms of the Settlement.

The Court-approved settlement contains the following release of claims, to which you are bound:

Upon Court approval of the Settlement, dismissal of the action, and subject to Defendant's funding in full of the PAGA Gross Settlement Amount, Plaintiff and the Aggrieved Employees will fully and finally release and discharge Defendant and its former, present, and future owners, parents, affiliates, and subsidiaries, and all of their current, former, and future officers, directors, members, managers, partners, shareholders, agents, employees, joint ventures, successors, assigns, attorneys, accountants, insurers, or legal representatives (the "Released Parties"), from all claims, rights, demands, liabilities, and causes of action for civil penalties under the PAGA that arose during the PAGA Release Period that were alleged in the Action, including but not limited to the following claims: (a) failure to pay all wages owed; (b) failure to pay all overtime and/or double time wages owed; (c) failure to pay all overtime and/or double time wages owed at the correct rate(s) of pay; (d) failure to provide compliant meal periods, or premium pay for non-compliant meal periods; (e) failure to authorize and permit complaint rest periods, or premium pay for non-complaint rest periods; (f) failure to provide accurate, itemized wage statements; (g) failure to timely pay wages during employment and/or upon separation of employment; (h) failure to reimburse all necessary business expenses; (i) all claims for PAGA penalties that could have been premised on the facts, claims, causes of action, or legal theories described above; and (j) all other claims under PAGA that could have been premised on the facts, claims, causes of action, or legal theories described above and in Plaintiff's Complaint, including but not limited to California *Labor Code* sections 201, 202, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 2802, 2698, 2699, and 2699.3 (the "Released Claims").

Plaintiff and the State of California shall be deemed to have, and by operation of the Order granting approval of this Agreement, shall have fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from the Released Claims that arose during the PAGA Release Period. As a result of this release, Aggrieved Employees will be unable to bring a claim under, or recover in any other claim brought under the PAGA for any violations of the Released Claims that took place during the PAGA Release Period.

If you have any questions, please contact Gaines & Gaines, APLC, counsel for Plaintiff, at (866) 550-0855.

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_____ (For messenger) my business address is:

Collin D. Cook, Esq.
Amaris M. Stich, Esq.
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, CA 92614
ccook@fisherphillips.com
astich@fisherphillips.com

____ (BY ☐ U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with United States postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

X (BY ELECTRONIC SERVICE) The above-stated document was submitted for service by electronic transmission via email on the counsel of record listed above.

I certify that the above document was printed on recycled paper.
I declare under penalty of perjury that the foregoing is true and correct.
Executed on December 15, 2023, at Westlake Village, California.

- 1 -

PROOF OF SERVICE