

David Mara, Esq. (SBN 230498)
Jill Vecchi, Esq. (SBN 299333)
MARA LAW FIRM, PC
2650 Camino Del Rio North Suite 302
San Diego, California 92108
Telephone: (619) 234-2833
Facsimile: (619) 234-4048

Attorneys for Plaintiff JEANNE BECKMAN,
on behalf of herself, all others similarly
situated, and on behalf of the general public.

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

JEANNE BECKMAN on behalf of herself,
all others similarly situated, and on behalf
of the general public,

Plaintiff,

vs.

BRASWELL LEISURE MANOR LTD. A
CALIFORNIA LIMITED
PARTNERSHIP; and DOES 1-100,

Defendants.

Case No.: CIVSB2209750

*[Assigned for All Purposes to the
Honorable Jessica Morgan, Dept. S-26]*

**DECLARATION OF DAVID MARA, ESQ.,
IN SUPPORT OF PLAINTIFF JEANNE
BECKMAN'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT,
CONDITIONAL CERTIFICATION,
APPROVAL OF CLASS NOTICE,
SETTING OF FINAL APPROVAL
HEARING DATE**

Date: July 30, 2024
Time: 8:30 a.m.

Complaint Filed: May 11, 2022
Trial Date: Not Set Yet

1 I, DAVID MARA, declare as follows:

- 2 1. I am President of Mara Law Firm, PC, and counsel of record for Plaintiff and the putative
3 class in this matter. I am duly admitted to practice before all the courts of the state of
4 California. The following facts are within my personal knowledge and, if called to testify, I
5 could and would competently testify thereto.
- 6 2. I graduated from California Western School of Law and was admitted to practice law in
7 California in May 2004.
- 8 3. I extensively handle employment cases which involve violations of the California Labor Code
9 and Industrial Welfare Commission Wage Orders, such as wage and hour class actions and cases
10 alleging violations of the Private Attorneys General Act of 2004 (“PAGA”). I have litigated over
11 three hundred and fifty (350) class action and PAGA lawsuits over the course of approximately
12 20 years.
- 13 4. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.* (San Diego County Superior
14 Court, Case No. GIC834348) which was the underlying case in the California Supreme
15 Court’s landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th
16 1004, in which the California Supreme Court delineated the scope of employer obligations to
17 provide, and employee rights to receive, meal and rest periods under California law.
- 18 5. I am frequently called upon to author Amicus Curiae briefs on behalf of Consumer Attorneys
19 of California (“CAOC”). For example, I authored the Amicus Curiae briefs on behalf of
20 CAOC in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, (The California
21 Supreme Court ruling that, like meal periods, employers must relieve employees of all duty
22 and relinquish all control to satisfactorily discharge its obligation to authorize and permit rest
23 periods.); *Frlekin v. Apple, Inc.* (2020) 8 Cal.5th 1038 (The California Supreme Court ruling
24 that the time spent on the employer’s premises waiting for, and undergoing, required exit
25 searches of packages, bags, or personal technology devices voluntarily brought to work is
26 compensable hours worked within the meaning of the Wage Orders.); *Oliver v. Superior*
27 *Court* (2021) California Court of Appeal Case No. H049185 (A brief asking the California
28

- 1 Court of Appeal for the Sixth Appellate District to determine whether mandatory drive time
2 of personal vehicles should be considered hours worked within the meaning of the Wage
3 Orders’ suffered or permitted test.). *Davidson v. O’Reilly Auto Enterprises, LLC* (9th Cir.,
4 2020; Docket No. 18-56188)(a brief seeking Review *En Banc* of an order denying class
5 certification in a wage and hour matter).
- 6 6. I am also a member of CAOC’s Amicus Committee that determines the cases in which the
7 organization will agree to provide amicus support.
- 8 7. I have also lectured as a panelist for California Employment Lawyers Association regarding
9 a host of wage and hour issues.
- 10 8. I have been named as class counsel in the following certified cases as a result of the court
11 granting a motion for class certification: *Mario Norona v. B&G Delivery System, Inc.*
12 (Sacramento County Superior Court, Case No. 34-2015-00186826-CU-OE-GDS); *Jerald*
13 *Schroeder v. YRC, Inc.; et al.* (Central District of California, Case No. 12-cv-01374-TJH);
14 *John Martin v. Sysco Corporation, et al.* (Eastern District of California, Case No. 1:16-cv-
15 00990-DAD-SAB); *William Smith v. Werner Enterprises, Inc. d/b/a C.L. Werner, Inc.*
16 (District of Nebraska, Case No. 8:15-cv-287); *Thomas Perez v. City of San Diego* (San Diego
17 County Superior Court, Case No. 37-2014-00016621-CU-OE-CTL); *Denson Sales, et al. v.*
18 *United Road Services, Inc. et al* (Northern District of California, Case No. 19-cv-08404-JST),
19 *Eric Mendez v. M&N Consulting, Inc. dba A-Line Messenger Service* (San Bernardino County
20 Superior Court, Case No. CIVDS1923624); *Denson Sales v. Professional Auto Transport,*
21 *Inc. et al.* (San Bernardino County Superior Court, Case No. CIVDS2010153); *Bobby*
22 *Williams v. Mohsen Transport, Inc.* (San Diego County Superior Court, Case No. 37-2019-
23 00063361-CU-OE-CTL); and *Ashton Harden v. Mushiana Transport Inc.* (Sacramento
24 County Superior Court, Case No. 34-2021-00301950-CU-OE-GDS).
- 25 9. I have also been named as class counsel in numerous cases during the settlement process.
26 Here is a non-exhaustive list of cases where I have been named as class counsel in cases during
27 the settlement process: *Kenneth Cox v. 3PL Worx, et al.* (Yolo County Superior Court, Case

No. CV-18-100); *Brian Davidson v. A&B Trucking Services, Inc.* (Kern County Superior Court Case No. BCV-16-102985); *Alex Vega, et al. v. Advance Beverage Co., Inc.* (Kern County Superior Court, Case No. BCV-16-100848); *Jaime Ruiz v. Altura Centers for Health* (Kern County Superior Court, Case No. BCV-19-101577); *George Zamudio v. AmeriPride Service, Inc.* (Alameda County Superior Court, Case No. RG1809666); *Richard Hendricks v. Antonini Freight Express, Inc.* (San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-6999); *Alton Davis v. Apria Healthcare Group, Inc.* (San Diego County Superior Court, Case No. 37-2014-00004724-CU-OE-CTL); *Alan Atchison v. Ashley Furniture Industries, Inc., et al.* (Central District of California, Case No. 17-cv-00528-JAK-SP); *Bernard Payton v. Atech Logistics, Inc.* (Sonoma County Superior Court, Case No. SCV 258595); *Ramon Jenkins v. Compass Group USA, Inc., et al.* (Yolo County Superior Court, Case No. CVCV-18-747); *Timothy Spikes, et al. v. Bear Trucking, Inc., et al.* (San Bernardino County Superior Court, Case No. CIVDS1715151); *Joshua Turpen v. Benjamin's Transfer Inc.* (Solano County Superior Court, Case No. FCS048845); *Cesar Mendoza v. Bi-Rite Food Service, Inc.* (San Mateo County Superior Court, Case No. 17CIV02044); *Terrance Bailey v. Blue Apron, LLC; et al.* (Northern District of California, Case No. 18-cv-07000-VC); *Jeffrey Weast v. California Aseptic Beverages, LLC* (San Bernardino County Superior Court, Case No. CIVDS1825256); *Michael Valentich v. Hub Construction Specialties, Inc.* (San Bernardino County Superior Court, Case No. JCCPDS4893); *Jose De Jesus Ortega Velazquez v. Hunter Landscape, Inc.; et al.* (San Bernardino County Superior Court, Case No. CIVDS1928062); *Adrian Diaz v. Keystone Automotive Operations, Inc.* (Riverside County Superior Court, Case No. RIC1817450); *Arturo Gonzalez v. NCI Group, Inc. dba NCI Building Systems* (Eastern District of California, Case No. 18-cv-00948-AWI-SKO); *Larry Perez v. The Nielsen Company (US), LLC* (Orange County Superior Court, Case No. 30-2021-01194324-CU-OE-CXC); *Erik Martinez v. Patrick Industries, Inc.* (San Bernardino County Superior Court, Case No. CIVDS2009663); *Randolph Fitch v. Shaw Industries, Inc.; et al.* (San Bernardino County Superior Court, Case No. CIVSB2024674); *Joshua Rael v. Intercontinental Hotels Group*

Resources, Inc. (Los Angeles County Superior Court, Case No. 19STCV16010); and *Aaron Romero v. Vitro Flat Glass, LLC* (Kern County Superior Court, Case No. BCV-21-101357).

10. On May 11, 2022, Plaintiff filed a class action complaint against Defendant. The Complaint alleges the following claims: (1) Failure to Pay All Straight Time Wages, (2) Failure to Pay All Overtime Wages, (3) Failure to Provide Meal Periods (Labor Code §§ 226.7, 512, IWC Wage Order No. 5-2001(11), Cal. Code Regs., tit. 8 § 11050), (4) Failure to Authorize and Permit Rest Periods (Labor Code §§ 226.7, 512, IWC Wage Order No. 5-2001(12), Cal. Code Regs., tit. 8 § 11050), (5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Labor Code §§ 226, 1174, 1175), (6) Failure to Pay All Wages Due at the Time of Termination of Employment (Labor Code §§ 201-203), and (7) Violation of Unfair Competition Law (Business & Professions Code § 17200, *et seq.*). On November 4, 2022, Defendant filed an Answer to the Complaint denying all allegations and asserting affirmative defenses.

11. Plaintiff submitted a Notice of Labor Code Violations to the Labor and Workforce Development Agency (“LWDA”) in accordance with the Private Attorneys General Act of 2004 (“PAGA”) on April 11, 2022. On June 27, 2024, Plaintiff filed a First Amended Complaint. Plaintiff’s First Amended Complaint adds a cause of action for Defendant’s violations of the PAGA.

12. After filing, the Parties engaged in informal discovery. These discovery efforts led to Defendant producing policy documents that covered employees’ employment with Defendant, such as employee handbooks, and time and wage records. Included within these documents were Defendant’s wage and hour policies, including its meal and rest period policies. Defendant also produced time and wage records for a 20% sampling of Class Members. Plaintiff also requested, and Defendant produced, data surrounding the number of current and former employees, as well as the number of workweeks worked by Class Members during the relevant time period, to establish a potential exposure model in preparation for mediation. From this discovery, Plaintiffs and their Counsel were able to analyze Defendant’s

1 liability in this action and prepare a realistic damage model.

2 13. The Parties attended an all-day mediation presided over by wage and hour mediator Lynn

3 Frank on March 12, 2024. This mediation was successful. The Parties then met and conferred

4 over all the terms of the settlement and finalized their settlement in the Parties' Agreement.

5 The Parties' Agreement is attached hereto as **Exhibit 1**.

6 14. Plaintiff contends that Defendant does not provide employees with meal periods that conform

7 with California law. Employers have an obligation under California law to provide employees

8 with thirty (30) minute meal periods. Under California Labor Code § 512(a), "[a]n employer

9 may not employ an employee for a work period of more than five hours per day without

10 providing the employee with a meal period of not less than 30 minutes" Cal. Lab. Code

11 § 512(a). An employer "satisfies this obligation [to provide meal periods] if it relieves its

12 employees of all duty, relinquishes control over their activities and permits them a reasonable

13 opportunity to take an uninterrupted 30-minute break, and does not impede or discourage

14 them from doing so." *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004,

15 1040. Here, Plaintiff contends that Defendant does not provide employees with off-duty meal

16 periods.

17 15. Plaintiff asserts that Defendant requires employees to sign on-duty meal period agreements.

18 Plaintiff contends that an employer is only permitted to provide on-duty meal periods if it

19 satisfies the nature of work exception as set forth in the Wage Order. Plaintiff asserts that

20 Defendant cannot establish that the "nature of the work" justifies on-duty meal periods.

21 Courts must consider the following factors when deciding if the "nature of the work"

22 exception set forth in the Wage Order applies: "(1) [T]he type of work, (2) the availability of

23 other employees to provide relief to an employee during a meal period, (3) the potential

24 consequences to the employer if the employee is relieved of all duty, (4) the ability of the

25 employer to anticipate and mitigate these consequences such as by scheduling the work in a

26 manner that would allow the employee to take an off-duty meal period, and (5) whether the

27 work product or process will be destroyed or damaged by relieving the employee of all duty."

28

June 9, 2009 DLSE Opinion Letter at 7. The Division of Labor Standards Enforcement (“DLSE”) has found the nature of the work requires provision of on-duty meal periods in two types of instances: “(1) where the work has some particular, external force that requires the employee to be on duty at all times, and (2) where the employee is the sole employee of a particular employer.” *Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 945; *see also Abdullah v. U.S. Sec. Assocs.* (2013) 731 F.3d 952, 959.

16. Defendant argues that it meets the nature of the work exception as employees are caring for elderly individuals who need constant care. Defendant argues that in determining whether the “nature of the work” prevents off-duty meal periods, the Court would have to ask each employee the type of work they did, the availability of other employees to relieve them of work, and whether their work product or process would be destroyed if they took a meal break. Defendant contends that doing so would defeat certification as individual issues would predominate.

17. Alternatively, Defendant argues that, under Wage Order 5, “employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods.” IWC Wage Order 5-2001, Section 11(D). Defendant contends that it has written agreements from employees waiving one of their meal periods. Defendant asserts that because employees do not work shifts that qualify for two meal periods and because employees waive their first meal periods under the Wage Order, Defendant does not need to provide employees with any meal periods under California law. Defendant asserts that despite this, it still provides employees with meal periods. Defendant contends that employees sign documents stating that they received lawful meal periods. Should litigation continue, Defendant will rely on these documents, as well as its waivers and on-duty meal period agreements, to show that it complied with California law.

18. If Plaintiff were to prevail on this claim for the entire class period, Plaintiff and the Class Members would be entitled to the following *maximum* potential damages: \$541,683 (35,684 shifts x \$15.18 per hour = \$541,683.12).

1 19. Plaintiff alleges that employees are not provided with lawful rest periods. Employers have
2 an obligation to provide employees with ten (10) minute rest periods. An employer's
3 obligation to provide its employees with rest periods arises under the Industrial Welfare
4 Commission Wage Orders. Wage Order 5-2001, Section 12(A) states, "[e]very employer
5 shall authorize and permit all employees to take rest periods, which insofar as practicable
6 shall be in the middle of each work period. The authorized rest period time shall be based on
7 the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or
8 major fraction thereof." Here, Plaintiff alleges that Defendant requires employees to remain
9 on the premises during rest periods.

10 20. In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, the California Supreme
11 Court ruled that the standards applicable to providing meal periods the Court articulated a
12 few years earlier in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, were
13 equally applicable to the rest period context. Citing *Brinker*, the *Augustus* Court ruled that,
14 like meal periods, "[d]uring required rest periods, employers must relieve their employees of
15 all duties and relinquish any control over how employees spend their break time." *Augustus*,
16 2 Cal.5th at 260. At a minimum, to relinquish employer control over how employees spend
17 their break time, the employee must be "free to leave the premises." *Brinker*, 53 Cal.4th at
18 1036. As the *Augustus* Court reasoned, the employee must be free to travel five minutes away
19 from the work site so that they can get back within the allotted ten-minute time frame of the
20 break. *Augustus*, 2 Cal.5th at 270. Plaintiff contends that, here, Defendant does not permit
21 employees to leave the premises during rest periods.

22 21. Defendant contends that it does not require employees to remain on the premises during rest
23 periods. Defendant argues that to resolve this claim, the factfinder would have to ask whether
24 employees thought they could leave the premises during rest breaks. In addition, Defendant
25 contends that employees did, in fact, leave the premises during rest periods. Defendant
26 asserts that should litigation continue, it would present declarations from employees stating
27 that they were free to leave the premises, and did leave the premises, during rest periods.

1 22. Defendant also counters that even if it did tell employees they are to remain on the premises,
2 a point that Defendant does not concede, the practical limitations the ten (10) minutes allotted
3 for rest periods imposes on an employee's movement are what prevent employees from
4 leaving the premises. In other words, the time limitation of only having ten (10) minutes for
5 rest periods prevents off-premises movement during rest periods, not expressly or impliedly
6 telling employees that rest periods are to be taken on the premises. Based on the practical
7 limitations associated with ten (10) minute rest periods, and not Defendant's policies,
8 Defendant contends its policies are aligned with, and not antagonistic to *Augustus*. Defendant
9 finds support for this in the following language from *Augustus*:

10 Because rest periods are 10-minutes in length (Wage Order 4, subd. 12(A)),
11 they impose practical limitations on an employee's movement. That is, during
12 a rest period an employee generally can travel at most five minutes from a
13 particular work post before returning to make it back on time. Thus, one would
14 expect that employees will ordinarily have to remain on site or nearby.

15 *Augustus, supra*, 2 Cal.5th at 270.

16 23. Defendant further asserts that employees are relieved of all work and employer control during
17 rest periods. And, to the extent there is any limitation placed on rest periods, it is something
18 that arises simply out of the fact that ten (10) minutes is a short amount of time. Therefore,
19 Defendant asserts that the limitations placed on employees, if any, are merely inherent to rest
20 periods and not an exertion of employer control.

21 24. If Plaintiff were to prevail on this claim for the entire class period, Plaintiff and the Class
22 Members would be entitled to the following **maximum** potential damages: \$541,683 (35,684
23 shifts x \$15.18 per hour = \$541,683.12).

24 25. Plaintiff contends that Defendant pays employees non-discretionary bonuses but fails to
25 include these payments in employees' regular rate of pay for purposes of overtime. Defendant
26 argues that the bonuses paid are entirely discretionary and, therefore, do not need to be
27 included in the regular rate of pay. Thus, the Parties have a dispute about whether Defendant
28 was required to adjust the regular rate of pay due to bonuses paid to employees.

1 26. If Plaintiff were to prevail on this claim for the entire class period, Plaintiff and the Class
2 Members would be entitled to *maximum* potential damages in the amount of \$8,654 (\$1.40
3 owed per overtime hour x 1,338 pay periods in which bonuses were paid x 4.62 overtime
4 hours worked in these pay periods = \$8,654.18).

5 27. Plaintiff also pursued claims for failure to provide accurate itemized wage statements and
6 waiting time penalty claims. These claims are derivative of Plaintiff's overtime, meal period,
7 and rest period claims. Should Plaintiff's overtime, meal period, and rest period claims fail,
8 these claims would also fail.

9 28. In addition, Defendant contends that even if Plaintiff were successful in her claims, she would
10 have to prove Defendant "willfully" failed to pay employees the appropriate overtime wages
11 and meal and rest period premiums due upon separation of employment. "A willful failure to
12 pay wages within the meaning of Labor Code Section 203 occurs when an employer
13 intentionally fails to pay wages to an employee when those wages are due. However, a good
14 faith dispute that any wages are due will preclude imposition of waiting time penalties under
15 Section 203." Cal. Code Regs. Tit. 8 § 13520. "A 'good faith dispute' that any wages are due
16 occurs when an employer presents a defense, based in law or fact, which would preclude any
17 recovery on the part of the employee. The fact that a defense is ultimately unsuccessful will
18 not preclude a finding that a good faith dispute did exist." *Id.* Defendant contends that any
19 failure to pay wages due at the separate of employment was not willful. Defendant argues that
20 it would not be liable for waiting time penalties because a "good faith dispute" exists over the
21 payment of those wages. *See* Cal. Code Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No. 2*
22 *(2008)* 163 Cal.App.4th 1157, 1201. Defendant also argues that Plaintiff's overtime, meal
23 period, and rest period claims cannot form the basis of her wage statement claim. Defendant
24 relies on the case *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, for the
25 position that employees do not suffer injury under California Labor Code § 226(a) so long as
26 the wage statements correctly reflected the hours worked and the pay received even if the pay
27 is later determined to be inaccurate.

1 29. If Plaintiff were to prevail on her overtime, meal period, and/or rest period claims, Plaintiff
2 may be entitled to penalties for inaccurate wage statements. The statute of limitations for
3 Plaintiff's wage statement claim is one year. Under California Labor Code § 226(e)(1), the
4 damages for breach of this section are fifty dollars (\$50) for the initial pay period in which a
5 violation occurs and one hundred dollars (\$100) per employee for each violation in a
6 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000).
7 If Plaintiff were to prevail on this claim, the *maximum* damages would be \$182,000 (128 pay
8 periods x \$50 initial violation = \$6,400 plus 1,756 pay periods x \$100 subsequent violation =
9 \$175,600).

10 30. If Plaintiff were to prevail on her overtime, meal period, and/or rest period claims, she and
11 the Class Members may also be entitled to waiting time penalties. Plaintiff calculates the
12 potential *maximum* exposure under her waiting time penalties cause of action as \$484,545
13 (133 former employees within the three-year statute of limitations x 30 days x 8 hour shift x
14 \$15.18 average hourly rate = \$484,545.60).

15 31. Plaintiff also seeks PAGA penalties. PAGA allows the private enforcement of certain
16 California Labor Code sections relating to wage and hour violations. The statute of limitations
17 for PAGA violations go back one year. The maximum potential damages under Plaintiff's
18 PAGA claim is \$510,600.¹

19 32. As Plaintiff's PAGA claims are based on the same alleged unlawful conduct as her class
20 claims, Plaintiff's PAGA claims are subject to the same risks on the merits as Plaintiff's class
21 claims. In addition, the Court may reduce any PAGA penalties awarded under Section 2699,
22 subdivision (e)(2). The likelihood of the Court reducing the PAGA penalties awarded to
23 Plaintiff and the Aggrieved Employees – assuming liability is proven as to each of Plaintiff's
24 claims – is higher in this case where these same individuals may also be receiving money for
25 the same unlawful conduct under the class claims. *See Avila v. Cold Spring Granite Co.* (E.D.

26
27 ¹ \$100 x 2 PAGA violations for meal periods and rest periods x 1,884 pay periods = \$376,800 plus
28 \$100 x 1 PAGA violation for unpaid overtime wages x 1,338 pay periods = \$133,800.

1 Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 *17
2 (“Because the PAGA penalties sought are at least partially duplicative of penalties granted by
3 the underlying Labor Code violations, *see, e.g.*, Cal. Lab. Code §§ 203, 226, 558(a), 1194.2,
4 and because a Court has discretion in whether and in what amount to award PAGA
5 penalties, *see* Cal. Lab. Code § 2699(e)(2), Plaintiff recognizes that the potential PAGA
6 penalties are highly uncertain.”). As such, the Court may reduce any PAGA penalty amount
7 awarded to Plaintiff and the Aggrieved Employees.

8 33. Thus, not taking into account any of its defenses or arguments, Plaintiff estimated that if she
9 were successful in her core claims, Defendant’s total exposure would be approximately
10 \$1,092,020 [\$541,683 (rest period exposure) + \$541,683 (meal period exposure) + \$8,654
11 (overtime wage exposure) = \$1,092,020]. If Plaintiff is successful in her overtime, meal
12 period, and rest period claims, she may also be entitled to damages for wage statements and
13 waiting time penalties in the amount of \$666,545 [\$182,000 (wage statements) and \$484,545
14 (waiting time penalties) = \$294,720]. If Plaintiff’s claims are successful, she may also be
15 entitled to PAGA penalties in the amount of \$510,600.

16 34. In light of the risks Plaintiff’s claims faced, Plaintiff and her Counsel believe that the
17 settlement amount of \$325,000 – with an average settlement share amount estimated at
18 \$919.26 – is a reasonable and fair settlement amount.

19 35. The preliminary approval motion and supporting documents were uploaded to the Labor
20 Workforce Development Agency. Attached hereto as **Exhibit 2** is a confirmation received as
21 a result of this upload.

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

24 DATED: July 8, 2024

MARA LAW FIRM, PC

25 

26 David Mara, Esq.
27 Representing Plaintiff JEANNE BECKMAN on behalf
28 of herself, all others similarly situated, and on behalf
of the general public

Exhibit 1

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this settlement agreement is made between Plaintiff Jeanne Beckman (hereinafter “Plaintiff”) on behalf of herself and the Class and Defendant Braswell Leisure Manor Ltd. a California Limited Partnership (hereinafter “Defendant” or “Braswell”) (collectively Plaintiff and Defendant are referred to in this Agreement as the “Parties”). This agreement is intended to settle the case entitled *Jeanne Beckman v. Braswell Leisure Manor Ltd. a California Limited Partnership* (San Bernardino County Superior Court, Case No. CIVSB2209750) (the “Complaint” or “Lawsuit”).

I. DEFINITIONS

In addition to the other terms defined in this agreement, the terms below have the following meaning:

1. **Administration Costs**: The costs incurred by the Settlement Administrator, Simpluris, to administer this Settlement, which shall not exceed \$10,000. All Administration Costs shall be paid from the Gross Settlement Amount. If the actual administration costs are less than the amount allocated in this agreement, or if the Court awards less than the amount requested, the difference in the amount allocated in this agreement and the amount awarded by the Court will become part of the Net Settlement Amount for distribution to Participating Class Members.
2. **Aggrieved Employees**: All current and former non-exempt employees of Defendant within the State of California who worked for Defendant at any time commencing one (1) year preceding the filing of Plaintiff’s First Amended Complaint through the date the Court grants preliminary approval.
3. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement**: The settlement agreement reflected in this document, titled “Joint Stipulation and Settlement Agreement.”
4. **Attorneys Fee Award**: The amount of attorneys’ fees approved of by the Court and awarded to Class Counsel. This amount shall not exceed 33.33% of the Gross Settlement Amount. The Attorneys Fee Award shall be paid from the Gross Settlement Amount. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
5. **Class**: All current and former non-exempt employees of Defendant within the State of California who worked for Defendant at any time commencing four (4) year preceding the filing of Plaintiff’s initial Complaint (i.e., May 11, 2018) through the date the Court grants preliminary approval.
6. **Class Counsel**: David Mara and Jill Vecchi of Mara Law Firm, PC.

7. **Class Data:** The electronic database Defendant shall deliver to the Settlement Administrator which will list the following information for each Class Member: (1) first and last name; (2) last known mailing address; (3) social security number; (4) telephone number; and (5) the total number of weeks during which the Class Member performed work during the Class Period. The Class Data shall be based on Defendant's payroll, personnel, and other business records.
8. **Class Member:** Each person eligible to participate in this Settlement who is a member of the Class as defined above.
9. **Class Notice:** The Notice of Class Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval.
10. **Class Period:** May 11, 2018 to the date of preliminary approval.
11. **Class Representative or Plaintiff:** Jeanne Beckman.
12. **Class Representative Enhancement Payments:** The amounts the Court awards to Plaintiff, which will not exceed \$10,000. This payment shall be paid from the Gross Settlement Amount. This payment is being offered in consideration for Plaintiff executing a general release of claims against Defendant, a release that is broader than any Participating Class Member will provide in consideration for a settlement share. This payment is also offered in consideration for Plaintiff's actions in conferring a benefit upon the State of California and the Class, and the time and effort Plaintiff put into pursuing the litigation. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
13. **Cost Award:** The amount that the Court orders Defendant to pay Class Counsel for payment of actual litigation costs, which shall not exceed \$20,000. The Cost Award will be paid from the Gross Settlement Amount. The Cost Award is subject to Court approval. If the actual costs incurred are less than the amount allocated in this Agreement, or if the Court awards less than the amount requested, the difference in the amount allocated in this Agreement and the amount awarded by the Court will become part of the Net Settlement Amount for distribution to Participating Class Members.
14. **Counsel for Defendant:** Richard D. Marca and Alisha L. Maline of Varner & Brandt LLP.
15. **Court:** Superior Court of California for the County of San Bernardino.
16. **Defendant:** Braswell Leisure Manor Ltd. a California Limited Partnership.

17. **Disbursement of the Settlement:** Within fourteen (14) days after the Settlement Administrator's receipt of the Gross Settlement Amount, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Net PAGA Settlement Amount to Aggrieved Employees; (3) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (4) the Class Representative Enhancement Payments paid to the Class Representatives, as approved by the Court; (5) the Administration Costs, as approved by the Court; and (6) the LWDA Payment to the LWDA.
18. **Effective Final Settlement Date:** The effective date of this Settlement will be the last to occur of the following: (a) if there are no objections to the settlement, then the date of final approval by the Court; (b) if there are objections to the settlement, and if an appeal, review or writ is not sought from the order granting final approval of the settlement, the 31st day after service of notice of entry of the order; or (c) if an appeal, review or writ is sought from the order, the day after the order is affirmed or the appeal, review or writ is dismissed or denied, and the order is no longer subject to further judicial review.
19. **Employer Taxes:** Defendant's portion of payroll taxes as the Class Members' current or former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) owed to the appropriate local, state, and federal taxing authorities. Defendant will pay its portion of payroll taxes separate and apart from the Gross Settlement Amount.
20. **Final Judgment or Final Approval:** The final order entered by the Court approving this Agreement.
21. **Funding of Settlement:** Defendant shall wire or otherwise provide to the Settlement Administrator the Gross Settlement Amount no later than thirty (30) days of the Effective Final Settlement Date.
22. **Gross Settlement Amount or GSA:** The total value of the Settlement is a non-reversionary \$325,000. This is the gross amount Defendant can be required to pay under this Settlement Agreement, with the exception of its obligation to pay Employer Taxes, or if the Escalator Provision is triggered. The Gross Settlement Amount includes without limitation: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorneys Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payments paid to the Class Representatives, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to Aggrieved Employees, as approved by the Court. Defendant's portion of payroll taxes as the Class Members' current or former employer will be paid outside of and in addition to the Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendant for any reason.

23. **Individual Class Settlement Share(s)**: The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Class Settlement Shares pursuant to this Agreement. Rather, Participating Class Members will receive an Individual Class Settlement Share automatically, without the return of a claim form.
24. **Individual PAGA Settlement Share(s)**: The amount payable to each Aggrieved Employee under the terms of this Settlement Agreement. Aggrieved Employees are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement. Also, even if an Aggrieved Employee requests exclusion from the Class Settlement as described in this Agreement, the Aggrieved Employee will receive an Individual PAGA Settlement Share. Therefore, Aggrieved Employees will receive an Individual PAGA Settlement Share automatically, without the return of a claim form and regardless of whether they request to be excluded from the Class Settlement.
25. **LWDA**: California Labor and Workforce Development Agency ("LWDA"). The LWDA is empowered to enforce the Labor Code Private Attorneys General Act, California Labor Code section 2698, *et seq.*, and has delegated such authority to Plaintiff with regard to the claim in this Action through the procedural mechanisms provided for by statute.
26. **LWDA Payment**: Refers to the Seventy-five percent (75%) of the PAGA Payment of \$25,000 that is to be paid to the LWDA as described in this Settlement.
27. **Net PAGA Settlement Amount or NPSA**: The total amount of money for payout to Aggrieved Employees, which is the PAGA Payment less the LWDA Payment.
28. **Net Settlement Amount or NSA**: The total amount of money available for payout to Participating Class Members, which is the GSA less the Attorneys Fee Award, Cost Award, Class Representative Enhancement Payments, the PAGA Payment, and Administration Costs. In other words, the NSA is the portion of the GSA that will be distributed to Participating Class Members. The payment of employee-side taxes on the portion of the settlement shares earmarked as wages shall be paid out of the Net Settlement Amount. Thus, the Individual Settlement Shares that are paid out of the Net Settlement Amount shall be reduced by the employee's tax liability for the share for the portion of the settlement shares allocated as wages.
29. **PAGA**: The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).

30. **PAGA Data**: The electronic database Defendant shall deliver to the Settlement Administrator which will list the following information for each Aggrieved Employee: (1) first and last name; (2) last known mailing address; (3) social security number; (4) telephone number; and (5) the total number of weeks the total number of weeks during which the Aggrieved Employee performed work during the PAGA Period as an Aggrieved Employee. The PAGA Data shall be based on Defendant's payroll, personnel, and other business records.
31. **PAGA Payment**: Refers to the \$25,000 the Parties have agreed to settle the PAGA claims. 75% of this amount, or \$18,750, shall be paid to the LWDA. The remaining 25% of the \$25,000, or \$6,250, shall become part of the Net PAGA Settlement Amount payable to Aggrieved Employees.
32. **PAGA Period**: One (1) year before the filing of the First Amended Complaint to the date of preliminary approval.
33. **PAGA Release Period**: One (1) year before the filing of the First Amended Complaint to the date of preliminary approval.
34. **PAGA Settlement**: Refers to the settlement of claims included in the Released PAGA Claims, for which Aggrieved Employees will receive an Individual PAGA Settlement Share payment.
35. **Participating Class Members**: All Class Members who do not submit a valid and timely request to exclude themselves from this Settlement.
36. **Parties**: Plaintiff Jeanne Beckman, as an individual and as a Class Representative, and Defendant Braswell Leisure Manor Ltd. a California Limited Partnership.
37. **Preliminary Approval or Preliminary Approval Order**: The Court's order preliminarily approving the Class Settlement.
38. **Released Class Claims**: The Released Class Claims include, for the entire Class Period, any and all claims, debts, liabilities, demands, actions, or causes of action that were either alleged, or that reasonably could have been alleged based on the factual allegations contained in the Lawsuit, including, but not limited to, claims pursuant to Labor Code sections, 201, 201.5, 202, 203, 205.5, 218, 218.5, 222, 223, 224, 226(a), 226.3, 226.7, 510, 512, 1174, *et seq.*, 1194, 1194.2, 1197, 2699, *et seq.*, and the Industrial Welfare Commission Wage Orders, and also any claim for unpaid wages, including under any theory of rounding, unpaid minimum wage, off-the-clock work, meal and rest period violations, waiting time penalties, itemized wage statement penalties, wages for unpaid time, other related wages, restitution, disgorgement, civil or statutory penalties, attorneys' fees, and/or costs and all claims under the Unfair

Competition Law, Business & Professions Code section 17200, *et seq.*, and/or which are alleged in the Lawsuit within the Class Period.

39. **Released PAGA Claims:** The Released PAGA Claims include, for the entire PAGA Period, any and all claims belonging to the State of California, the LWDA, and Plaintiff (as representative of the State of California, the LWDA, and the general public) under the California Private Attorney General Act (“PAGA”), Cal. Lab. Code § 2698, *et seq.* to the extent such claims are predicated on claims that were or reasonably could have been alleged based on the claims, facts and/or allegations that were contained in Plaintiff’s PAGA Letter.
40. **Released Parties:** Defendant, and its past, present and/or future, officers, directors, managers, employees, and agents, including specifically, but not limited to, James H. Braswell.
41. **Release Period:** The period between May 11, 2018 to the date of preliminary approval.
42. **Response Deadline:** Forty-five (45) calendar days from the initial mailing of the Class Notices.
43. **Settlement Administration:** The Settlement Administrator will use the National Change of Address Database to obtain updated addresses for Class Members. The Settlement Administrator will mail the Class Notices by first class U.S. mail to all Class Members at the address resulting from the search of the National Change of Address Database. The Class Notices will inform Class Members that they have until the Response Deadline to either object to the Settlement or to opt-out of the Settlement. Any Class Member who does not receive notice after the steps outlined above have been taken will still be bound by the Settlement and/or judgment.
44. **Settlement Administrator:** The third party administrator agreed upon by Parties to administer this Settlement is Simpluris.

II. **RECITALS**

45. A class action complaint was filed by Plaintiff Jeanne Beckman on May 11, 2022, in San Bernardino County Superior Court (Case No. CIVSB2209750). The Complaint alleges the following claims: (1) Failure to Pay All Straight Time Wages, (2) Failure to Pay All Overtime Wages, (3) Failure to Provide Meal Periods (Labor Code §§ 226.7, 512, IWC Wage Order No. 5-2001(11), Cal. Code Regs., tit. 8 § 11050), (4) Failure to Authorize and Permit Rest Periods (Labor Code §§ 226.7, 512, IWC Wage Order No. 5-2001(12), Cal. Code Regs., tit. 8 § 11050), (5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Labor Code §§ 226,

1174, 1175), (6) Failure to Pay All Wages Due at the Time of Termination of Employment (Labor Code §§ 201-203), and (7) Violation of Unfair Competition Law (Business & Professions Code § 17200, *et seq.*). In the Complaint, Plaintiff seeks to represent a putative class of: “[a]ll California citizens who are employed or have been employed by Defendant in the State of California as hourly non-exempt employees during the period of the relevant statute of limitations.”

46. On November 4, 2022, Defendant filed an Answer to the Complaint denying all allegations and asserting affirmative defenses.
47. Plaintiff Jeanne Beckman submitted her Notice of Labor Code Violations to the LWDA on April 11, 2022.
48. Prior to the mediation, Defendant provided class-wide data, documents, and information permitting Plaintiff and her lawyers to fully evaluate class-wide exposure.
49. On March 12, 2024, the parties participated in a full-day mediation with respected wage and hour mediator, Lynn Frank, which resulted in the settlement that is reflected in this Agreement.
50. As part of this settlement, the Parties stipulate to Plaintiff filing a First Amended Complaint to include a cause of action for civil penalties under the Private Attorneys General Act of 2004 by April 13, 2024.
51. **Number of Class Members and Aggrieved Employees.** There are approximately 165 Class Members who worked approximately 8,921 workweeks from May 11, 2018 through the date of preliminary approval. There are approximately 126 Aggrieved Employees who worked approximately 1,884 pay periods from one year prior to the filing of the First Amended Complaint through the date of preliminary approval.
52. **Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiff and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel have conducted extensive settlement negotiations. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.
53. **Defendant’s Reasons for Settlement.** Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of time,

energy, and resources of Defendant has been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.

54. **Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Action is not appropriate for class or representative treatment. Defendant asserts a number of defenses to the claims, and have denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only.
55. **Plaintiff's Claims.** Plaintiff asserts that Defendant's defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiff, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Action. However, in the event that this Settlement is finally approved by the Court, the Plaintiff, Participating Class Members, and Class Counsel will not oppose Defendant's efforts to use this Agreement to prove that Plaintiff and Participating Class Members have resolved and are forever barred from re-litigating the claims released under this Agreement.

III. SETTLEMENT TERMS AND CONDITIONS

56. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount, that Defendant is obligated to pay under this Settlement Agreement is \$325,000. The Gross Settlement Amount includes, but is not limited to: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorneys Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment, as approved by the Court. Defendant's portion of payroll taxes as the Class Members' current or former employer will be paid outside of and in addition to

the Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendant for any reason.

A. Escalator Provision: It was estimated for purposes of mediation that there are approximately 165 Class Members who worked approximately 8,921 workweeks May 11, 2018, and the date of preliminary approval. As such, this settlement is estimated to encompass approximately 8,921 workweeks. Should the qualifying Workweeks worked by the Class Members during the Class Period ultimately increase by more than 10% (i.e., by more than 892 Workweeks), Defendant shall increase the Gross Settlement Amount on a pro-rata basis equal to the percentage increase in the number of Workweeks worked by the Class Members above 10%. For example, if the number of Workweeks increases by 13%, the Gross Settlement Amount will increase by 3%.

57. **Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Class as defined in this Agreement.
58. **Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiff and Class Members for purposes of this Settlement only. If the Settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context in this Action or in any other lawsuit. If the Settlement does not become effective, Defendant reserves the right to contest any issues relating to class certification and liability.
59. **Appointment of Class Representative.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiff Jeanne Beckman shall be appointed as representative for the Class.
60. **Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.
61. **Individual Class Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Class Settlement Share from the Net Settlement Amount to each Participating Class Member.

A. Calculation.

- i. **Individual Class Settlement Share Calculation.** Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she worked for Defendant, based on the Class Data provided by Defendant, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class Data, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a work week for purposes of this calculation. Therefore, the value of each Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked.

B. Tax Withholdings. Each Class Member's Individual Settlement Share will be apportioned as follows: 20% wages and 80% to interest and penalties/other payments. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. Payment of all amounts will be made subject to backup withholding unless a duly executed W-9 form is received from the payee(s). The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. Only the employee share of payroll tax withholdings shall be paid from each Class Member's Individual Settlement Share. The employer share of payroll tax withholdings shall be paid separate from and in addition to the Gross Settlement Amount.

62. **Individual PAGA Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual PAGA Settlement Share from the Net PAGA Settlement Amount to each Aggrieved Employee.

A. Calculation.

- i. **Individual PAGA Settlement Share Calculation.** Each Aggrieved Employee will receive a proportionate share of the Net PAGA Settlement Amount that is equal to (i) the number of pay periods he or she worked for Defendant, based on the PAGA Data provided by Defendant, divided by (ii) the total number of pay periods worked by all Aggrieved Employees based on the same PAGA data, which is then multiplied by the Net PAGA Settlement Amount. One day worked in a given pay period will be credited as a pay period for purposes of this calculation. Therefore, the value of each Aggrieved Employee's Individual PAGA Settlement Share ties directly

to the amount of pay periods that he or she worked during the
PAGA Period.

B. Tax Withholdings. Each Aggrieved Employee's Individual PAGA Settlement Share will be apportioned as 100% penalties. The Individual PAGA Settlement Shares shall therefore be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms.

63. Constituents of Gross Settlement Amount Disbursement. Subject to the terms and conditions of this Agreement, the Settlement Administrator shall disburse the Gross Settlement Amount as directed later on herein to the following:

A. To the Named Plaintiff: In addition to his Individual Settlement Share, and subject to the Court's approval, the named Plaintiff, Jeanne Beckman, will receive up to \$10,000 in consideration for providing Defendant a General Release, a release that is broader than the claims released by Participating Class Members. The Settlement Administrator will pay the Class Representative Enhancement Payment out of the Gross Settlement Amount. Payroll tax withholdings and deductions will not be taken from the Class Representative Enhancement Payment. An IRS Form 1099 will be issued to Plaintiff with respect to their Class Representative Enhancement Payment.

B. To Class Counsel. At the Final Approval Hearing, Class Counsel will apply to the Court for an Attorneys Fee Award not to exceed 33 1/3 % of the GSA and a Cost Award not to exceed \$20,000. The Settlement Administrator will pay the Court approved amounts for the Attorneys Fee Award and Cost Award out of the Gross Settlement Amount. Payroll tax withholding and deductions will not be taken from the Attorneys Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to the Attorneys Fee Award. In the event the Court does not approve the entirety of the application for the Attorneys Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorneys Fee Award and/or Cost Award, the difference shall become part of the NSA and be available for distribution to Participating Class Members.

C. To the Responsible Tax Authorities. The Settlement Administrator will pay the amount of the Participating Class Members' portion of normal payroll withholding taxes out of each Class Member's Individual Settlement Share. Defendant's portion of payroll taxes as the current or

former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) will be paid outside of and in addition to the GSA. The Settlement Administrator will calculate the amount of the Participating Class Members' and Defendant's portion of payroll withholding taxes and will forward the amount of the Participating Class Members' portion of normal payroll withholding taxes to the appropriate taxing authorities.

D. To the Settlement Administrator. The Settlement Administrator – Simpluris – will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$10,000. This will be paid out of the Gross Settlement Amount. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and be available for distribution to Participating Class Members.

E. To the LWDA and Aggrieved Employees. The Settlement Administrator will pay \$18,750 of the PAGA Payment to the LWDA. This is 75% of the \$25,000 allocated to satisfy the PAGA penalties claim. The remaining 25% of the PAGA Payment (which equates to \$6,250) shall become part of the Net PAGA Settlement Amount payable to Aggrieved Employees

F. To Participating Class Members. The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations set forth above. All payments to Participating Class Members and Aggrieved Employees shall be made from the Gross Settlement Amount.

64. Appointment of Settlement Administrator. Solely for the purposes of this Settlement, the Parties stipulate and agree that Simpluris shall be retained to serve as Settlement Administrator. The Settlement Administrator shall be responsible for preparing, printing, and mailing the Class Notice to Class Members and Aggrieved Employees; performing skip traces and re-mailing notices to Class Members and Aggrieved Employees; calling Class Members and Aggrieved Employees with undeliverable notices to obtain accurate addresses; keeping track of any objections or requests for exclusion from Class Members; calculating any and all payroll tax deductions as required by law; calculating each Class Member's and Aggrieved Employee's Individual Settlement Share; providing weekly status reports to Defendant's Counsel and Class Counsel, which is to include updates on any objections or requests for exclusion that have been received; providing a due diligence declaration for submission to the Court prior to the Final Approval hearing; mailing and re-mailing Individual Settlement Shares to Participating Class Members and Aggrieved Employees; calculating and mailing the LWDA Payment to the LWDA; distributing the Attorneys Fee Award and Cost Award to Class Counsel; printing and providing Participating Class Members, Aggrieved

Employees, and Plaintiff with W-2s and 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Court upon the completion of the Settlement; providing any funds remaining in the QSF as a result of uncashed checks to the Legal Aid Society of San Bernardino in the amounts directed per this Settlement; and for such other tasks as the Parties mutually agree. The Parties each represent that they do not have any financial interest in Simpluris or otherwise have a relationship with Simpluris that could create a conflict of interest.

65. Procedure for Approving Settlement.

A. Cooperation.

- i. All Parties and their counsel shall support the Settlement and take such steps as are reasonably necessary to effectuate the Settlement.

B. First Amended Complaint.

- i. Plaintiff Jeanne Beckman shall prepare and file a stipulated request for leave to amend to add in a cause of action for civil penalties under the Private Attorneys General Act of 2004.

C. Motion for Preliminary Approval and Conditional Certification.

- i. Plaintiff will move for an order: (1) conditionally certifying the Class for settlement purposes only; (2) granting Preliminary Approval of the Settlement; (3) setting a date for the Final Approval hearing; and (4) approving the Class Notice.
- ii. At the same time that Plaintiff files her Motion for Preliminary Approval, Plaintiff shall provide notice of the settlement and submit a copy of the Agreement to the LWDA on or before the date Plaintiff files the motion seeking preliminary approval pursuant to the 2016 amendments to PAGA, and provide proof of submission to the court.
- iii. At the Preliminary Approval hearing, Plaintiff will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representative, Class Counsel, and Settlement Administrator; approving the Class Notice; and setting the Final Approval hearing.
- iv. **Effect of Denial of Preliminary Approval.** Should the Court decline to conditionally certify the Class or to Preliminarily

Approve all material aspects of the Settlement, the Settlement Agreement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement Agreement. Any order or proceeding relating to an application for the Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment shall not operate to terminate or cancel this Settlement Agreement. Nothing in this Agreement shall limit Plaintiff's or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment.

D. Notice to Class Members and Aggrieved Employees. After the Court enters its Preliminary Approval Order, every Class Member and Aggrieved Employee will be provided with the Class Notice in accordance with the following procedure:

- i. **Delivery of Class and PAGA Data.** Within ten (10) business days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator an electronic database, which will list the Class and PAGA Data. If any or all of this information is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will use the National Change of Address Database to obtain updated addresses for Class Members. The Class Data and PAGA Data shall be based on Defendant's payroll, personnel, and other business records. The Settlement Administrator shall maintain the Class and PAGA Data and all information contained within the Class and PAGA Data as private and confidential.
- ii. **Preparation of Class Notices.** Based on the information in the Class and PAGA Data and the formulae set forth in Paragraph 61(A)(i) and 62(A)(i), above, the Settlement Administrator shall promptly calculate the estimated Individual Settlement Share and Individual PAGA Settlement Share for every Class Member and Aggrieved Employee, to be included in the individualized Class

Notices to be sent to that Class Member and/or Aggrieved Employee, and shall prepare and mail a spreadsheet setting forth those calculations to Class Counsel and Defense Counsel no fewer than five (5) days before mailing the Class Notices to Class Members and Aggrieved Employees. The Class Notices will inform each Class Member of his/her right to do nothing, dispute the number of work weeks worked, opt out of the Settlement, or object to the Settlement. It will also inform Class Members that if they first request exclusion from the Settlement and then object, the objections would not be considered valid. In addition, if the Class Members object and then request exclusion from the Class Settlement, the Class Members would be deemed to have waived their objection.

- iii. **Mailing of Class Notices.** Within ten (10) business days after receipt of the Class and PAGA Data, the Settlement Administrator will mail via first-class regular U.S. Mail the Class Notice to all identified Class Members and Aggrieved Employees using the mailing address information provided by Defendant and the results of the search of the National Change of Address Database on all Class Members and Aggrieved Employees.
- iv. **Returned Notices.** If a Class Notice is returned because of an incorrect address, within five (5) business days from receipt of the returned notice, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the National Change of Address Database and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail, performing address searches for all mail returned without a forwarding address, and promptly re-mailing to Class Members for whom new addresses are found.
- v. **Weekly Status Reports.** The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Notices mailed, the number of Notices returned as undeliverable, the number of Notices re-mailed, and the number of requests for exclusion or objections received.

- vi. **Settlement Administrator's Declaration.** No later than fourteen (14) calendar days after the Response Deadline, or on a date mutually agreed upon by the Parties and the Settlement Administrator, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel at the same time as the final approval motion is filed. Before the Final Approval hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

E. Objections to Settlement. The Class Notice will provide that the Class Members who wish to object to the Settlement must do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than the Response Deadline. The timeframe to submit an objection will not be increased for returned mailings.

- a. **Format.** Any Objections shall state: (a) the objecting person's full name, address, and telephone number; (b) the words "Notice of Objection" or "Formal Objection;" (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (e) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing.
- b. **Notice of Intent to Appear.** Objecting Class Members may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector's own counsel. Objecting Class Members are permitted to appear regardless of whether they submitted a written objection.

F. Request for Exclusion from the Settlement ("Opt-Out"). The Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator a written request for exclusion. The written request for exclusion must: (a) state the Class Member's name, address, telephone number, and the last four digits of the Class Member's social security number or employee identification number; (b) state the Class Member's intention to exclude themselves from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member or his or her lawful representative; and (e) be postmarked no later than the Response Deadline.

- i. **Effect of “Opt-Out.”** Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the Settlement and subsequent judgment and will not receive an Individual Settlement Share or any benefit of this Settlement. If the Class Member is also an Aggrieved Employee as defined in this Agreement, however, he or she will still receive an Individual PAGA Settlement Share payment as approved by the Court. Aggrieved Employees have no right to opt-out of the PAGA Settlement.
 - ii. **Confirmation of Authenticity.** If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member’s identity. Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the Settlement and subsequent judgment and will not receive an Individual Settlement Share. A Class Member who does not complete and mail a timely request for exclusion will automatically be included in the Settlement, will receive an Individual Class Settlement Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the subsequent judgment, regardless of whether he or she has objected to the Settlement.
 - iii. **Report.** No later than five (5) business days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notices mailed to Class Members, the number of Notices returned as undeliverable, the number of Notices re-mailed to Class Members, the number of re-mailed Notices returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion.
 - iv. **Defendant’s Option to Terminate.** If five percent (5%) or more of the Class Members opt-out of this settlement, Defendant will have the option to cancel the settlement. Defendant must exercise this option within fourteen (14) days of receiving the Settlement Administrator’s final weekly report at the conclusion of the notice period.
- G. Class Member and Aggrieved Employee Disputes.** If a Class Member or Aggrieved Employee who receives a Class Notice wishes to dispute the number of work weeks listed on the Class Notice, the Class Member or

Aggrieved Employee may notify the Settlement Administrator by mail or telephone no later than the Response Deadline and should produce any available supporting evidence, such as wage statements, offers of employment, termination letters, and/or other employment records, to the Settlement Administrator. The documentation should provide evidence of the dates the Class Member or Aggrieved Employee contends he or she worked for Defendant during the Class or PAGA Period. The Settlement Administrator shall then provide the documentation provided by the Class Member or Aggrieved Employee to Defendant. Defendant shall review its records, the documentation provided by the Class Member or Aggrieved Employee, and shall provide information to the Settlement Administrator in response to any such disputed claim. Defendant's records shall be presumed to be determinative, but the Settlement Administrator shall evaluate the evidence submitted by the Class Member or Aggrieved Employee and make the decision as to which dates should be applied. The determination by the Settlement Administrator shall be final and binding.

H. No Solicitation of Objection or Requests for Exclusion. Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment.

I. Motion for Final Approval.

- i. Class Counsel will file unopposed motions and memorandums in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorneys Fee Award; (2) the Cost Award; (3) Administrative Costs; (4) the Class Representative Enhancement Payment; and (5) PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment) releasing and barring any Released Class and PAGA Claims of the Participating Class Members and LWDA.
- ii. **Denial or Appeal of Final Approval.** If the Court does not grant Final Approval of the Settlement, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement. Further, should this occur, the Parties agree they shall be equally responsible for the Settlement Administrator's Administration Costs through that date. An award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Class Representative

Enhancement Payment, Attorneys Fee Award, Cost Award, and Administration Costs award will not constitute a material modification to the Settlement within the meaning of this paragraph.

- iii. **Proposed Order and Judgment.** Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving of the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing such post-judgment matters as may be appropriate under Court rules and applicable law.

J. Waiver of Right to Appeal. Provided that the judgment is consistent with the terms and conditions of this Agreement, if Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.

K. Vacating, Reversing, or Modifying Judgment on Appeal. If, after a notice of appeal, the reviewing Court vacates, reverses, or modifies the judgment such that there is a material modification to the Settlement Agreement, and that Court's decision is not completely reversed and the judgment is not fully affirmed on review by a higher Court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount, an alteration in the calculation of the Net Settlement Amount, and any change to the calculation of the Individual Settlement Share.

L. Disbursement of Settlement Shares and Payments. Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's Final Approval Order and Judgment. The Settlement Administrator shall keep Defendant's Counsel and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Defendant's Counsel and Class Counsel. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

- i. **Funding the Settlement:** Defendant shall wire or otherwise provide to the Settlement Administrator the Gross Settlement Amount within thirty (30) days of the Effective Final Settlement Date.
 - ii. **Disbursement:** Within fourteen (14) days after the Defendant provides the GSA to the Settlement Administrator, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Net PAGA Settlement Amount to be Paid to Aggrieved Employees; (3) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (4) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (5) the Administration Costs, as approved by the Court; (6) the LWDA Payment to the LWDA; and (7) Defendant's portion of payroll taxes as the Class Members' current or former employer.
 - iii. **Qualified Settlement Fund or QSF:** The Parties agree that the QSF is intended to be a "Qualified Settlement Fund" under Section 468B of the Code and Treasury Regulations § 1.4168B-1, 26 C.F.R. § 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.
- M. Settlement Administrator's Final Report.** Within ten (10) business days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds. The Parties shall file this declaration with the Court. The Settlement Administrator will provide any supplemental declaration required by the Court or the Parties.
- N. Uncashed Checks.** Participating Class Members and Aggrieved Employees must cash or deposit their Individual Settlement Share checks within one hundred and eighty (180) calendar days after the checks are mailed to them.
 - i. **Reminder Postcard.** If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) days, it

will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced.

- ii. If any checks remain uncashed or not deposited by the expiration of the ninety (90) day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks. All funds associated with the Individual Settlement Share checks returned as undeliverable and funds associated with those checks remaining un-cashed shall be tendered to the Legal Aid Society of San Bernardino.

O. Defendant's Legal Fees. Defendant is responsible for paying for all of Defendant's own legal fees, costs, and expenses incurred in this Action outside of the Gross Settlement Amount.

- 66. **Release of Class Claims.** As of the Effective Final Settlement Date, Class Members who do not submit a timely and valid request for exclusion release the Released Parties from the Released Class Claims. Participating Class Members agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released Class Claims.
- 67. **Release of PAGA Claims.** As of the Effective Final Settlement Date, the Released Parties shall be entitled to a release from the LWDA and Plaintiff (as representative of the State of California, the LWDA, and the general public) as to all Released PAGA Claims. Defendant will be entitled to assert this Settlement of the PAGA Claims in this Action as a defense to future claims against it for penalties by the LWDA or under the PAGA on behalf of the LWDA. The Released Parties will also be entitled to assert this release of PAGA Claims to assert claim or issue preclusion or other effects of this Settlement if any Aggrieved Employees bring a subsequent claim on behalf of the LWDA concerning the same primary rights that were at issue in this Action. Aggrieved employees may not opt out of the PAGA Settlement.
- 68. **Plaintiff's Release of Claims and General Release.** As of the Effective Final Settlement Date, and in exchange for the Class Representative Enhancement Payment to the named Plaintiff in an amount not to exceed \$10,000, Plaintiff Jeanne Beckman shall give the following general release of claims for herself and her respective spouse, heirs, successors and assigns, forever release the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, from the beginning of time through the date of their signatures on this Agreement, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all

claims arising out of, based upon, or relating to their employment with Defendant or the remuneration for, or termination of, such employment. Plaintiff's Release of Claims also includes a waiver of California Civil Code section 1542, which provides as follows:

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

This release excludes any release of any claims not permitted to be released by law.

Also, in consideration for providing Defendant with this complete, general release, Defendant agrees to provide a neutral reference (dates of employment and last position held) in response to any inquiries by prospective employers of Plaintiff.

69. Miscellaneous Terms

A. No Admission of Liability. Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Action, or that but for the Settlement, a Class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of liability or wrongdoing. This Settlement and Plaintiff's and Defendant's willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with this Settlement).

B. No Effect on Employee Benefits. The Class Representative Enhancement Payment and/or Individual Settlement Shares paid to Plaintiff and Participating Class Members and/or Aggrieved Employees shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiff or the Participating Class Members or Aggrieved Employees. The Parties agree that any Class Representative Enhancement Payment and/or Individual Settlement Share paid to Plaintiff or the Participating Class Members and/or Aggrieved

Employees under the terms of this Agreement do not represent any modification of Plaintiff's or Participating Class Members' and/or Aggrieved Employees' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Further, any Class Representative Enhancement Payment shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.

- C. Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
- D. Authorization to Enter Into Settlement Agreement.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties under 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 efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.
- E. Exhibits and Headings.** The terms of this Agreement include the terms set forth in the 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 and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- F. Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.

- G. Confidentiality.** The class representative and her Counsel shall not, prior to the filing of a preliminary approval motion, discuss the terms or the fact of the settlement with third parties other than (1) their immediate family members, (2) their respective accountants or lawyers as necessary for tax purposes; or (3) other Class Members. Plaintiff and Class Counsel agree not to publish any of the terms or conditions of this settlement except as necessary to obtain Court approval, or fulfill their fiduciary duties to the Plaintiff and Class Members.
- H. Press.** 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 or have any communication with the press about the fact, amount, or terms of the settlement. If Counsel engages in any advertising or distributes any marketing materials relating to the settlement of this case, including but not limited to any postings on any websites maintained by Class Counsel, the advertising will not identify the case name or case number, any Defendant's name, or any names of putative class members.
- I. Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
- J. Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- K. No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that she has not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.
- L. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
- M. Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
- N. No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations

regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members and Aggrieved Employees will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members and Aggrieved Employees shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member or Aggrieved Employee, such Class Member assumes all responsibility for the payment of such taxes.

O. Jurisdiction of the Court. The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.

P. Invalidity of Any Provision; Severability. Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

Q. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

R. Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

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IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

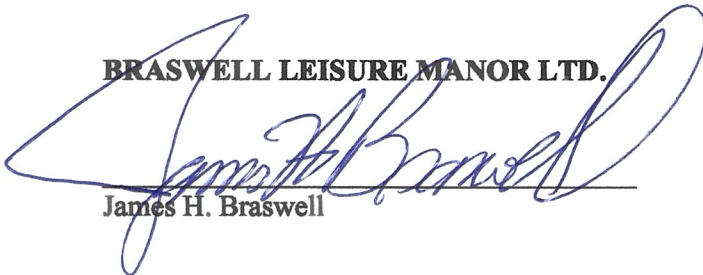
Dated: 4/22/2024

JEANNE BECKMAN

DocuSigned by:
Jeanne Beckman
15044781A4FA474

Dated: 4/30/2024

BRASWELL LEISURE MANOR LTD.


James H. Braswell

Dated: 4/22/2024

MARA LAW FIRM, PC

DocuSigned by:
David Mara
David Mara, Esq.
Jill Vecchi, Esq.
Attorneys for Plaintiff and the Settlement Class

Dated: 4/30/24

VARNER & BRANDT LLP


Richard Marca, Esq.
Alisha L. Maline, Esq.
Attorneys for Defendant

Exhibit *A*

**NOTICE OF PROPOSED CLASS AND PAGA REPRESENTATIVE ACTION
SETTLEMENT**

Jeanne Beckman v. Braswell Leisure Manor Ltd.
San Bernardino County Superior Court Case No. CIVSB2209750

**If you worked for Braswell Leisure Manor Ltd.
("Braswell") in California as a non-exempt employee
at any time between May 11, 2018, through
PRELIMINARY APPROVAL a class action
settlement will affect your rights. You may be entitled
to a payment under this settlement.**

A court authorized this notice. This is not a solicitation from a lawyer.

- A former employee, Jeanne Beckman, filed a proposed class action lawsuit against Braswell. The lawsuit alleges that Braswell failed to provide employees with lawful meal and rest periods, failed to pay employees all wages owed, failed to provide lawful paychecks to employees, and failed to pay all wages due at termination of employment. The lawsuit also seeks to recover penalties pursuant to the California Private Attorneys General Act ("PAGA"). Braswell denies all alleged violations and denies liability. The Court has not made a ruling on the merits of the case. The Parties have agreed to settle the claims set forth in the lawsuit.
- Your legal rights are affected whether you act or do not act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING	Get a settlement payment and give up any rights to sue for the Released Claims (defined below). <u>If you are still employed by Braswell and choose to receive a settlement payment, this will not affect your employment.</u>
EXCLUDE YOURSELF	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Braswell about the legal claims and statutory period alleged in this case. Please note that you are unable to exclude yourself from the PAGA portion of the settlement if you are a PAGA Aggrieved Employee.
OBJECT	If you do not opt out, you may write to the Settlement Administrator, Phoenix Class Action Administration Solutions, about why you object to the settlement, and they

	will forward your concerns to counsel which will then be provided to the Court. If the Court approves the Settlement despite your objection, you will still be bound by the settlement.
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1. *Why Have I Received this Notice?*

Braswell's records indicate that you were employed as a non-exempt employee in California by Braswell at sometime between May 11, 2018, through **PRELIMINARY APPROVAL**. This period of time is referred to as the "Class Period." If you worked for Braswell in California during the "Class Period," you may be entitled to money under this Settlement. This Notice provides you with basic information about the case and advises you of your options with regard to the Settlement.

2. *What is this Case About?*

The class action lawsuit is called *Jeanne Beckman v. Braswell Leisure Manor Ltd. a California Limited Partnership* and is pending in the San Bernardino County Superior Court, Case No. CIVSB2209750. It was commenced by a former employee of Braswell named Jeanne Beckman. Ms. Beckman is what is referred to as the "Plaintiff" or "Class Representative" in this case. Ms. Beckman alleged that Braswell failed to provide employees with lawful meal and rest periods, failed to pay employees all wages owed, failed to provide employees with lawful paycheck stubs, and failed to pay employees who no longer work for Braswell all wages owed at the termination of his or her employment.

Braswell strongly denies liability for all of Plaintiff's claims, and contends that it fully complied with California law during the Class Period.

The Court has not decided whether Plaintiff or Braswell is correct. Plaintiff would still have had to successfully certify the class and prove her claims at trial on a classwide basis. However, the Parties have concluded that it is in their respective best interests and the interests of the Class Members to settle this lawsuit on the terms summarized in this Notice.

3. *How Does this Class Action Settlement Work?*

Plaintiff and her attorneys believe the settlement is fair, adequate, and reasonable. The San Bernardino County Superior Court has preliminarily reviewed the terms of the settlement and determined the settlement is fair, adequate, and reasonable. On [date of ruling on preliminary approval], the Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice.

The Court will hold a Final Fairness Hearing concerning the proposed settlement on [date of final approval hearing], 2024 at [time a.m./p.m.], in Department S26 before Judge Jessica Morgan, located at 247 W 3rd Street, San Bernardino, CA 92415. The date of the Final Fairness Hearing may change without further notice to the Class. You are advised to check the Court's website (instructions on accessing this site are provided in Section 15 of this Notice) to confirm that the date has not been changed.

4. *Who Are the Attorneys Representing the Parties?*

Attorneys for Plaintiff and the Class ("Class Counsel")	Attorneys for Braswell
MARA LAW FIRM, PC David Mara dmara@maralawfirm.com Jill Vecchi jvecchi@maralawfirm.com 2650 Camino Del Rio North, Suite 302 San Diego, CA 92108 Telephone: (619) 234-2833 Facsimile: (619) 234-4048	VARNER & BRANDT LLP Richard D. Marca Alisha L. Maline 3750 University Ave., Ste. 610 Riverside, CA 92501 Telephone: (951) 274-7777 Facsimile: (909) 931-9219

The Court has appointed Mara Law Firm, PC to represent you and all other Class Members simultaneously in this Settlement. You do not need to hire your own attorney because Mara Law Firm, PC, is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

5. *How do I Participate in the Settlement?*

If you do nothing, you will automatically be included as a participant in this Settlement and will not have to take any further action to receive your settlement payment. By participating in the Settlement, you will be bound by the Release. It is your responsibility to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or a settlement payment.

Important Note: Braswell will not retaliate against you in any way for either participating or not participating in this Settlement.

HOW TO GET YOUR MONEY IF YOU ARE A CLASS MEMBER:

If you do nothing, you **will** receive money and **will** be bound by the release of claims stated in this notice.

6. *How Do I Request to be Excluded from the Settlement?*

If you request to be excluded from the settlement, you **will not** receive a settlement payment. This is the only option that allows you to ever be a part of any other lawsuit against Braswell about the legal claims and statutory period alleged in this case. By timely opting out, you will no longer be a part of the Settlement. Except that, because Class Members are unable to exclude themselves from the PAGA portion of the Settlement, you will receive, only if you are a PAGA Aggrieved Employee, a pro rata share of the PAGA allocation to Aggrieved Employees and be bound by the release of PAGA claims, as explained in Section 10 of this notice.

HOW TO REQUEST TO BE EXCLUDED FROM THE SETTLEMENT:

How can I request to be excluded from the settlement?

You can request to be excluded from the settlement by mailing the Settlement Administrator a written request for exclusion.

Is there a deadline to request to be excluded?

If you send a written request to the Settlement Administrator, you must postmark your request by **RESPONSE DEADLINE**.

What information do I need to provide?	Your request for exclusion must include: (a) state the your name, address, telephone number, and the last four digits of the Class Member's social security number or employee identification number; (b) state your intention to exclude yourself from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by you or your lawful representative; and (e) be postmarked no later than RESPONSE DEADLINE .
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The proposed settlement includes the settlement of claims for civil penalties under PAGA. An employee may not request exclusion from the settlement of a PAGA claim. Thus, if the court approves this settlement, then even if you request exclusion from the settlement, you still will receive an individual settlement share for the PAGA claims if you were employed between June 27, 2023, and **PRELIMINARY APPROVAL**. A request for exclusion will preserve your right to individually pursue only the remaining substantive, individual and/or class claims.

7. *How Do I Object to the Settlement?*

You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue.

HOW TO OBJECT TO THE SETTLEMENT:	
How can I object to the settlement?	You can objection to the settlement by mailing the Settlement Administrator a written objection.
Is there a deadline to request to be excluded?	If you send a written objection to the Settlement Administrator, you must postmark your request by RESPONSE DEADLINE .
What information do I need to provide?	Your objection must include: (a) your full name, address, and telephone number; (b) the words "Notice of Objection" or "Formal Objection;" (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) you may call to testify at the Final Approval hearing; and (e) provide true and correct copies of any exhibit(s) you intend to offer at the Final Approval hearing.

Objectors who want to appear at the Final Fairness/Approval Hearing must state the intention to do so at the time of submitting the written objection(s).

Class Members who fail to file timely objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether an appeal or otherwise) to the settlement, unless otherwise ordered by the Court. The Court may excuse this requirement upon a showing of good cause. The Court will only require substantial compliance with the requirements for submitting an objection.

Please note that you cannot both object to the settlement and opt out of the settlement. If the Court rejects the objection, the objector will receive a settlement payment and will be bound by the terms of the settlement and will release claims as defined in Section 8 of this notice and in the settlement agreement.

8. *How Does This Settlement Affect Employees' Rights?*

If the proposed settlement is approved by the Court, a final judgment will be entered by the Court. All Class Members who do not opt out of the settlement will be bound by the Court's final judgment and will release Braswell, and the other Released Parties¹ from the released claims. The claims released under the settlement include, for the entire Class Period, any and all claims, debts, liabilities, demands, actions, or causes of action that were either alleged, or that reasonably could have been alleged based on the factual allegations contained in the Lawsuit, including, but not limited to, claims pursuant to Labor Code sections, 201, 201.5, 202, 203, 205.5, 218, 218.5, 222, 223, 224, 226(a), 226.3, 226.7, 510, 512, 1174, *et seq.*, 1194, 1194.2, 1197, 2699, *et seq.*, and the Industrial Welfare Commission Wage Orders, and also any claim for unpaid wages, including under any theory of rounding, unpaid minimum wage, off-the-clock work, meal and rest period violations, waiting time penalties, itemized wage statement penalties, wages for unpaid time, other related wages, restitution, disgorgement, civil or statutory penalties, attorneys' fees, and/or costs and all claims under the Unfair Competition Law, Business & Professions Code section 17200, *et seq.*, and/or which are alleged in the Lawsuit within the Class Period.

In addition, the proposed settlement includes the settlement of claims for civil penalties under the PAGA. If you worked for Braswell from June 27, 2023, through **PRELIMINARY APPROVAL**, you are a PAGA Aggrieved Employee. PAGA Aggrieved Employees will fully release and discharge Braswell and the Released Parties from the Released PAGA Claims. The Released PAGA Claims include, for the entire PAGA Period, any and all claims belonging to the State of California, the LWDA, and Plaintiff (as representative of the State of California, the LWDA, and the general public) under the California Private Attorney General Act ("PAGA"), Cal. Lab. Code § 2698, *et seq.* to the extent such claims are predicated on claims that were or reasonably could have been alleged based on the claims, facts and/or allegations that were contained in Plaintiff's PAGA Letter.

If you would like to see the settlement documents or complaint on file, you can check the Court's website or contact Class Counsel. Directions for accessing the Court's website are outlined in Section 15 of this notice. Class Counsel's information is outlined in Section 4 of this notice.

¹ "Released Parties" means Braswell and its past, present and/or future, officers, directors, managers, employees, and agents, including specifically, but not limited to, James H. Braswell.

9. *How Much is the Settlement?*

The total maximum amount that Braswell is required to pay under this settlement is \$325,000. This amount is referred to as the “Gross Settlement Amount.” The Gross Settlement Amount includes the following amounts: (1) approximately \$151,678 for disbursement to Class Members who do not request to be excluded from the settlement; (2) \$10,000 to Plaintiff Jeanne Beckman for her efforts in bringing this action; (3) costs to administer the settlement – meaning costs associated with mailing this notice to employees and costs associated with sending out settlement checks – to the Settlement Administrator, Simpluris, which will not to exceed \$10,000; (3) payment of \$25,000 to the Labor and Workforce Development Agency pursuant to the Private Attorneys’ General Act of 2004; and (4) payment to Class Counsel in an amount not to exceed \$108,322 (33.33% of the Gross Settlement Amount) in attorneys’ fees for investigating the facts of the case, litigating the case, and negotiating the settlement, and an amount not to exceed \$20,000 for actual costs spent litigating this case. All of these payments are subject to Court approval.

The Court will not approve any of these requests until the Final Fairness Hearing. If the any of the amounts awarded are less than the amounts requested, the difference shall become part of the amount available for distribution to employees who do not request to be excluded from the settlement.

10. *How Much Can I Expect to Receive from the Settlement?*

Each employee who does not request to be excluded from the settlement will be provisionally assigned an award amount based on his or her tenure as part of the Class. To arrive at these figures, the Net Settlement Amount will be divided by the total number of weeks worked by all Class Members to arrive at a dollar value per week worked. Each Class Member’s provisional award will be equivalent to the number of weeks he or she worked as a non-exempt employee during the Class Period multiplied by the calculated amount to be paid per week worked. The number of workweeks for each Class Member will be determined by adding all the calendar days within the inclusive dates of employment and dividing that number by seven. Any partial workweek will be expressed as a percentage of a full workweek. Therefore, your settlement payment ties directly to the number of workweeks you worked for Braswell between May 11, 2018, through **PRELIMINARY APPROVAL**.

Although your exact settlement share cannot be precisely calculated until employees have had the opportunity to request to be excluded from the settlement, based upon the calculation formula above, your approximate share of the settlement is: \$ [REDACTED] (based on Braswell’s data which shows you worked # of workweeks between May 11, 2018, through **PRELIMINARY APPROVAL**).

You may also be entitled to a payment for your release of PAGA claims if you worked for Braswell on or after June 27, 2023, through **PRELIMINARY APPROVAL**. If you worked for Braswell during this time period, you are a PAGA Aggrieved Employee. Your payment as a PAGA Aggrieved Employee is \$ [REDACTED] (based on Braswell’s data which shows you worked # of pay periods between May 11, 2018, through **PRELIMINARY APPROVAL**).

If you believe the number of workweeks attributed to you is incorrect, you must notify the Settlement Administrator by mail or telephone no later than the **RESPONSE DEADLINE** and should produce any available supporting evidence, such as wage statements, offers of employment, termination letters, and/or other employment records, to the Settlement Administrator. The documentation should provide evidence of the dates you contend you worked for Braswell during the Class or PAGA Period. The Settlement Administrator shall then provide the documentation provided by the Class Member or Aggrieved Employee to Defendant. Defendant shall review its records, the documentation provided by you, and shall provide information to the Settlement Administrator in response to any such disputed claim. Defendant's records shall be presumed to be determinative, but the Settlement Administrator shall evaluate the evidence submitted by the you and make the decision as to which dates should be applied. The determination by the Settlement Administrator shall be final and binding.

Please note that you must cash or deposit your settlement check within 180 calendar days after the check is mailed to you. If you have not cashed or redeemed your check within 90 days after it was mailed, the Settlement Administrator will send you a reminder postcard indicating that unless the check is redeemed or deposited in the next 90 days, it will expire and become non-negotiable. If your check was lost or misplaced, please contact the Settlement Administrator. If any checks remain uncashed or not deposited by the expiration of the 180-day period after mailing, they will be deemed void and of no further force and effect. This means that you will not be able to cash or redeem your settlement check 180 days after its issuance. The funds from settlement checks that are voided will be distributed to a *cy pres* recipient. The *cy pres* recipient shall be the Legal Aid Society of San Bernardino.

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible.

11. Will Taxes be Taken Out of My Settlement Share?

Yes, twenty percent (20%) of each settlement payment is intended to settle employees' claims for unpaid wages. This portion of your settlement share will be reduced by applicable payroll tax withholdings and deductions. Braswell will pay the employer's share of legally required payroll taxes separately and outside of the settlement. The Settlement Administrator will issue you an IRS Form W-2 with respect to this portion of your settlement share.

Eighty percent (80%) of each settlement payment is intended to settle each employees' claims for interest and penalties. This portion will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue you an IRS Form 1099 with respect to this portion of your settlement share.

Payments to PAGA Aggrieved Employees will be allocated as 100% penalties. This portion will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue you an IRS Form 1099 with respect to this portion of your settlement share.

12. *How Will the Attorneys for the Class Be Paid?*

The Court-appointed attorneys for Plaintiff and the employees will be paid from the Gross Settlement Amount, subject to Court approval, in an amount not to exceed 33.33% of the Gross Settlement Amount (\$108,322) in attorneys' fees and an amount not to exceed \$20,000 in actual litigation costs. Braswell has paid and will continue to pay all of its own attorneys' fees and costs.

13. *How Will the Class Representative Be Paid?*

Plaintiff Jeanne Beckman will also be paid, subject to Court approval, an amount not to exceed \$10,000, in consideration for bringing this case, for the time and effort she put into litigating this case and for conferring a benefit upon other employees and the State of California.

14. *What do I do if I Need More Information or Have Questions?*

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, you can receive a copy of the settlement agreement by contacting Class Counsel at (619) 234-2833. You may also ask Class Counsel for a copy of any of the case documents to be mailed to you free of charge. You can also access the settlement agreement by accessing the Court docket in this case through the Court's website at <https://www.sb-court.org>, or by visiting the office of the Court at 247 W 3rd Street, San Bernardino, CA 92415 between 8:30 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. Please refer to the *Braswell* Class Action Settlement when calling the settlement administrator or Class Counsel.

To view the case documents on the Court's website, access the website <https://www.sb-court.org>. Once at this website, click on the "Online Services" link. Then click the link that says "Learn More" under the heading "Case Information and Document Sales." At the bottom of the page, click on the link "Accept (Court Access Portal)." Then, click on the heading "Search" and select "Case Information" under that heading. On the next page, type the case number "CIVSB2209750" into the box with the words Case Number." Then, click the "Search" button. This will take you to the case information. If you select the heading "Documents" on this page you will be able to access all of the documents filed in the case.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

Exhibit 2