

BIBIYAN LAW GROUP, P.C.

David D. Bibiyán (SBN 287811)

david@tomorrowlaw.com

Vedang J. Patel (SBN 328647)

vedang@tomorrowlaw.com

1460 Westwood Blvd.

Los Angeles, California 90024

Tel: (310) 438-5555; Fax: (310) 300-1705

Attorneys for Plaintiff, JULIO L. PLASCENCIA, on behalf of herself
and all others similarly situated and aggrieved

O'HAGAN MEYER LLP

Megan A. Childress (SBN 266926)

mchildress@ohaganmeyer.com

550 S. Hope Street, Suite 2400

Los Angeles, California 90071

Tel: (213) 250-1800

Fax: (213) 250-7900

Attorneys for Defendants BONNIE BRAE
CONVALESCENT HOSPITAL, INC.,
MICHELLE CAYTON and MARLO CAYTON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

JULIO L. PLASCENCIA, an individual and
on behalf of all others similarly situated,

Plaintiff,

v.

BONNIE BRAE CONVALESCENT
HOSPITAL, INC., a California corporation;
BONNIE BRAE CONVALESCENT INC, a
California corporation; MICHELLE
CAYTON, an individual; MARLO
CAYTON, an individual; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 22STCV08189

[Assigned for all purposes to Honorable
Laura A Seigle in Dept. 17]

**CLASS AND PAGA SETTLEMENT
AGREEMENT**

Action Filed: March 7, 2022

Trial Date: None Set

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Julio L. Plascencia (“Plaintiff”) and defendants Bonnie Brae Convalescent Hospital, Inc., Michelle Cayton, and Marlo Cayton (collectively, “Defendants”). The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS

1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendants, captioned *Julio Plascencia v. Bonnie Brae Convalescent Hospital, Inc., et al.*, Case No. 22STCV08189, initiated on March 7, 2022, and pending in Superior Court of the State of California, County of Los Angeles.

1.2. “Administrator” or “Settlement Administrator” means Phoenix Class Action Administration Solutions (“Phoenix”), the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.

1.4. “Aggrieved Employee” means a person employed by Defendants in California and classified as a non-exempt, hourly-paid employee who worked for Defendants during the PAGA Period.

1.5. “Class” means all persons employed by Defendants in California and classified as a non-exempt, hourly-paid employee who worked for Defendants during the Class Period.

1.6. “Class Counsel” means David D. Bibiyan, Jeffrey D. Klein, and Vedang J. Patel of Bibiyan Law Group, P.C.

1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

1.8. “Class Data” means Class Member identifying information in Defendant’s custody, possession, or control, including the Class Member’s (1) name; (2) last known address(es); (3)

last known telephone number(s); (4) last known Social Security Number(s); and (5) the dates of employment (i.e., hire dates, and, if applicable, re-hire date(s) and/or separation date(s)).

1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).

1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English and Spanish in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12. “Class Period” means the period from March 7, 2018 through June 7, 2024.

1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.

1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.15. “Court” means the Superior Court of California, County of Los Angeles.

1.16. “Defendants” means named defendants Bonnie Brae Convalescent Hospital, Inc., Michelle Cayton, and Marlo Cayton.

1.17. “Defense Counsel” means Megan A. Childress and Joseph C. Ramli of O’Hagan Meyer LLP.

1.18. “Effective Date” means the later of: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the

Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.

1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

1.21. “Final Judgment” means the Judgment entered by the Court based upon the Final Approval.

1.22. “Gross Settlement Amount” means \$600,000.00 (Six Hundred Thousand Dollars and Zero Cents) which is the total amount Defendants agree to pay under the Settlement, except as provided in Paragraph 8.1 below and any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment, and Administrator’s Expenses.

1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.

1.25. “Judgment” means the judgment entered by the Court based upon Final Approval.

1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel

Litigation Expenses Payment, and Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.29. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.30. “PAGA Pay Period” means any bimonthly Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

1.31. “PAGA Period” means the period from May 25, 2021 through the end of the Class Period.

1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

1.33. “PAGA Notice” means plaintiff’s May 25, 2022 letter to defendants and the LWDA, providing notice pursuant to Labor Code section 2699.3 subd. (a).

1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$7,500.00) and the 75% to the LWDA (\$22,500.00) in settlement of PAGA claims.

1.35. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.36. “Plaintiff” means Julio L. Plascencia the named plaintiff in the Action.

1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

1.38. “Preliminary Approval Order” means the proposed Order granting Preliminary Approval the Settlement.

1.39. “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.

1.40. “Released PAGA Claims” means the claims being released as described in Paragraph 5.4 below.

1.41. “Released Parties” means: Defendants, and each of their former, present and future owners, parents, affiliates, and subsidiaries, and all of their current, former, and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers,

agents, predecessors, successors, assigns, accountants, insurers, reinsurers, and/or legal representatives.

1.42. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.43. “Response Deadline” means forty-five (45) days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) mail Requests for Exclusion from the Settlement, or (b) mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 15 days beyond the Response Deadline has expired.

1.44. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

1.45. “Workweek” means any week during which a Class Member worked for Defendants, for at least one day during the Class Period, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

2. RECITALS

2.1. On March 7, 2022, Plaintiff commenced this Action by filing a class action Complaint alleging causes of actions against Defendants for: (1) failure to pay overtime wages (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to provide rest breaks; (5) waiting time penalties; (6) wage statement violations; (7) failure to timely pay wages; (8) violation of labor code section 227.3; and (9) unfair competition (“Action”).

2.2. On May 25, 2022, Plaintiff filed with the LWDA and served on Defendants a notice under Labor Code section 2699.3 stating Plaintiff intended to serve as a proxy of the LWDA to recover civil penalties on behalf of Aggrieved Employees for various Labor Code violations (“PAGA Notice”).

2.3. On July 28, 2022, after sixty-five (65) days had passed without any communication from the LWDA, Plaintiff file a separate complaint in Los Angeles Superior Court, Case No.

22STCV24428, seeking civil penalties under PAGA for the Labor Code violations asserted in the PAGA Notice (“PAGA Action”).

2.4. Thereafter, Plaintiff filed a First Amended Complaint in the Action clarifying his allegations against Defendants, and later a Second Amended Complaint in the Action to correct a fictitious and/or incorrect name.

2.5. On or about September 8, 2023, Plaintiff dismissed Defendant Bonnie Brae Convalescent Hospital, Inc., from the Action without prejudice.

2.6. The Parties agreed to exchange informal discovery and attend mediation.

2.7. Prior to mediation Plaintiff obtained, through informal discovery: (a) time and payroll records for 100% of Class Members and Aggrieved Employees through mediation; (b) wage and hour policy documents; (c) all documents pertaining to Plaintiff available to Defendants.; and (d) financial documentation regarding the profit-and-loss of Defendants.

2.8. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

2.9. On April 8, 2024, the Parties participated in an all-day mediation presided over by Steven Serratore, Esq. The mediation was successful, and the Parties agreed to globally resolve all class claims in the Action and PAGA claims in the PAGA Action.

2.10. On July 1, 2024, Plaintiff filed a Third Amended Complaint adding a cause of action for civil penalties under PAGA in the Action and adding Defendant Bonnie Brae Convalescent Hospital, Inc. back in as a Defendant per the terms of the Parties’ settlement agreement. Plaintiff then dismissed the PAGA Action, thereby effectively consolidating the Action and the PAGA Action. The Third Amended Complaint is the operative complaint in the Action (the “Operative Complaint”).

2.11. The Court has not granted class certification.

2.12. The Parties, Class Counsel, and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. MONETARY TERMS

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8.1 below, Defendants promise to pay \$600,000.00 as the Gross Settlement Amount, unless increased pursuant to Paragraph 8.1 of this Agreement, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval Order:

3.2.1. To Plaintiff: Class Representative Service Payment to Plaintiff of not more than \$7,500.00 in addition to any Individual Class Payment and any Individual PAGA Payment Plaintiff is entitled to receive as a Participating Class Member. Defendants will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 35% of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph 8.1 of this Agreement, is currently estimated to be \$210,000.00 and a Class Counsel Litigation

Expenses Payment of not more than \$30,000.00. Defendants will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will endeavor to file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assume full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments. There will be no additional charge of any kind to either the Settlement Class Members or request for additional consideration from Defendants for such work unless Defendants materially breach this Agreement, including any term regarding funding, and further efforts are necessary from Class Counsel to remedy said breach, including, without limitation, moving the Court to enforce the Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$7,950 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$7,950, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked

by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1. Tax Allocation of Individual Class Payments. 10% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 90% of each Participating Class Member's Individual Class Payment will be allocated evenly to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$30,000.00 to be paid from the Gross Settlement Amount, with 75% (\$22,500.00) allocated to the LWDA PAGA Payment and 25% (\$7,500.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$7,500.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records as of the date of mediation, Defendants estimated there were 189 Class Members who collectively worked a total of 16,126 Workweeks, and 120 of Aggrieved Employees who worked a total of 3,105 PAGA Pay Periods.

4.2. Class Data. Not later than 10 days after the Court grants Preliminary Approval of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if they discover that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator no later than 65 days after the Effective Date and after receiving sufficient information from the Settlement Administrator regarding the total amount in payroll taxes owed by Defendants.

4.4. Payments from the Gross Settlement Amount. Within 7 days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments,

all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments, and the Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void

1 date.

2 4.4.3. For any Class Member whose Individual Class Payment check or Individual
3 PAGA Payment check is uncashed and cancelled after the void date, the Administrator
4 shall transmit the funds represented by such checks to the *cy pres* recipient, Legal Aid
5 at Work, for use in Los Angeles County.

6 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall
7 not obligate Defendants to confer any additional benefits or make any additional
8 payments to Class Members (such as 401(k) contributions or bonuses) beyond those
9 specified in this Agreement.

10 **5. RELEASE OF CLAIMS**

11 Effective upon entry of Judgment, the Order granting Final Approval of this Settlement,
12 and on the date when Defendants fully fund the entire Gross Settlement Amount and fund all
13 employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff,
14 Class Members, and Class Counsel will release claims against all Released Parties as follows:

15 5.1. Plaintiff's Release. Plaintiff and his or her respective former and present spouses,
16 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
17 and discharge Released Parties from all claims, transactions, or occurrences, including, but not
18 limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts
19 contained, in the Operative Complaint; (b) all PAGA claims for civil penalties, costs, interest and
20 attorneys' fees that were, or reasonably could have been, alleged, based on facts contained in the
21 Operative Complaint and Plaintiff's PAGA Notice; and (c) any other claims, debts, liabilities,
22 demands, damages, obligations, actions and causes of actions, of any nature whatsoever, whether
23 known or unknown, or suspected or unsuspected, arising out of their employment with
24 Defendants, the separation of such employment, or any other act, omission or event occurring
25 between the Parties at any time prior to the end of the Class Period. This General Release
26 includes, without limitation: (1) all claims for violation of any federal, state or local statute,
27 ordinance or regulation relating to employment benefits, leaves of absence, or discrimination,
28 harassment, retaliation, or whistleblowing in employment, specifically including, without

1 limitation, the California Fair Employment and Housing Act, the California Family Rights Act,
2 Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act, the Age
3 Discrimination in Employment Act, the Older Workers Benefit Protection Act, the Genetic
4 Information Nondiscrimination Act, the Americans with Disabilities Act, and the Employee
5 Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act, the
6 Securities Act, the Immigration Reform and Control Act the Worker Adjustment and Retraining
7 Notification Act of 1988, the California Worker Adjustment and Retraining Notification Act, the
8 Uniformed Service Employment and Reemployment Rights Act, and any regulation of any
9 administrative agency or governmental authority relating to employment benefits or
10 discrimination or harassment or retaliation in employment; the Fair Labor Standards Act, 29
11 U.S.C. § 201 et seq. and the Portal to Portal Act, 29 U.S.C. § 251 et seq. (2) all claims for failure
12 to pay minimum or overtime wages, failure to timely pay wages, failure to provide accurate
13 itemized wage statements, failure to maintain accurate records, failure to reimburse business
14 expenses, failure to provide meal periods or rest breaks, failure to provide paid sick leave, failure
15 to post notice of paydays and time and place of payment, and any claim for violations of the
16 California Labor Code, California's Business and Professions Code § 17200 et seq., and the
17 applicable California Industrial Welfare Commission Wage Order; (3) any non-statutory tort or
18 contractual claim, including all claims for breach of oral, implied or written contract, breach of
19 implied covenant of good faith and fair dealing, negligent or intentional infliction of emotional
20 distress, and conversion; (4) all claims for wrongful termination of employment; (5) all claims
21 for wages, penalties and/or benefits; and (6) all claims for attorneys' fees and costs. ("Plaintiff's
22 Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement,
23 or to any claims for vested benefits, unemployment benefits, disability benefits, social security
24 benefits, workers' compensation benefits that arose at any time or based on an occurrence outside
25 of the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different
26 from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees,
27 nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding
28 such different or additional facts or Plaintiff's discovery of them. Plaintiff has been advised of

1 and acknowledges the following: (a) this Agreement is written in a manner that Plaintiff
2 understands; (b) Plaintiff is receiving valid consideration for this Agreement in addition to
3 anything of value to which Plaintiff is already entitled; (c) this Agreement does not waive rights
4 or claims that may arise after it is executed; (d) by signing this Agreement, Plaintiff is waiving
5 rights under the Age Discrimination in Employment Act; (e) Plaintiff has been advised to consult
6 with an attorney before signing this Agreement; (f) Plaintiff has twenty-one (21) days to consider
7 this Agreement before signing it, but may sign it earlier if Plaintiff so chooses; and (g) Plaintiff
8 may revoke this Agreement at any time up to seven (7) days after Plaintiff signs it. The
9 Agreement shall not become effective until the revocation period has expired (“Effective Date”).
10 To revoke this Agreement, Plaintiff must deliver a written notice of revocation to Defendants
11 within the seven (7) day period.

12 5.1.1. Plaintiff’s Waiver of Rights Under California Civil Code Section 1542. For
13 purposes of Plaintiff’s Release only, Plaintiff expressly waives and relinquish the
14 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code,
15 which reads:

16 **A general release does not extend to claims that the creditor or releasing**
17 **party does not know or suspect to exist in his or her favor at the time of**
18 **executing the release, and that if known by him or her would have**
19 **materially affected his or her settlement with the debtor or Released Party.**

20 5.2. Release by Participating Class Members: All Participating Class Members, on behalf of
21 themselves and their respective former and present representatives, agents, attorneys, heirs,
22 administrators, successors, and assigns, release Released Parties from all claims, damages, debts,
23 liabilities, demands, obligations, penalties, actions or causes of action of any kind, arising under
24 state, federal or local law, whether statutory, common law, or administrative law, at any time
25 during the Class Period, that were alleged, or reasonably could have been alleged, based on or
26 arising out of the factual allegations in the Operative Complaint to the extent permitted by law,
27 including, without limitation claims for: (1) all claims for failure to pay overtime wages; (2) all
28 claims for failure to pay minimum wages; (3) all claims for failure to provide meal periods, or

1 compensation in lieu thereof; (4) all claims for failure to provide compliant rest periods, or
2 compensation in lieu thereof (5) all claims for the failure to pay wages due upon termination or
3 resignation; (6) all claims for non-compliant wage statements; (7) failure to timely pay wages
4 during employment; (8) failure to pay all vested vacation hours upon termination or resignation;
5 and (9) all claims asserted through California Business & Professions Code section 17200, *et seq.*
6 arising out of the Labor Code violations referenced in the Operative Complaint; claims under
7 California Labor Code sections 200, 201, 202, 203, 204, 226, 226.7, 227.3, 510, 512, 558.1, 1194,
8 1194.2, 1197, and the applicable Wage Orders promulgated thereunder; and claims for injunctive
9 relief, punitive damages, interest, fees, and costs. As to federal claims arising under the FLSA
10 that could have been pleaded based on the facts pleaded in the Operative Complaint, such claims
11 shall not be released unless and until a Participating Class Member signs their settlement check,
12 which will constitute consent to opt into the release of all FLSA claims that could have been
13 pleaded based on the facts pleaded in the Operative Complaint. (“Released Class Claims”).

14 5.3. Except as set forth in Section 5.2 of this Agreement, Participating Class Members do not
15 release any other claims, including claims for vested benefits, wrongful termination, violation of
16 the Fair Employment and Housing Act, unemployment insurance, disability, social security,
17 workers’ compensation, or claims based on facts occurring outside the Class Period.

18 5.4. Release by PAGA Members and the LWDA: All PAGA Members and the LWDA release
19 Released Parties from, and are forever barred from pursuing PAGA civil penalties, interest, fees
20 or costs against Released Parties for, the PAGA claims alleged in the Operative Complaint and/or
21 Plaintiff’s PAGA Notice, or that could have been based on the facts asserted in the Operative
22 Complaint and/or the Plaintiff’s PAGA Notice arising during the PAGA Period, including,
23 without limitation PAGA civil penalties predicated on the underlying alleged violations for:
24 unpaid meal period premiums, unpaid rest period premiums, untimely payment of wages, wage
25 statement violations, waiting time penalties, failure to pay all wages owed each payday, failure
26 to maintain accurate records, California Labor Code sections 96, 98.6, 200, 201, 201.3, 202, 203,
27 204, 210, 221, 223, 226, 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 404, 432, 432.5, 432.6,
28 510, 512, 558, 1102.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5, 1527,

2699, 2802, 2810.5, 3366, 3457, 6409.6, and 8397.4 and the applicable Wage Orders promulgated thereunder (“Released PAGA Claims”). The Released PAGA Claims will have a *res judicata* effect against any PAGA Member who makes a claim against any of the Released Parties for any of the PAGA Released Claims or seeks to participate in any judgment or settlement of claims that are the subject of the Released PAGA Claims in any other PAGA representative action against any of the Released Parties. .

6. MOTION FOR PRELIMINARY APPROVAL

The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals.

6.1. Defendants’ Declaration in Support of Preliminary Approval. Within 7 days of full execution of this Agreement, Defendants will prepare and deliver to Class Counsel a signed declaration from Defendants and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator and Cy Pres Recipient.

6.2. Plaintiff’s Responsibilities. Plaintiff will prepare and to deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members; (v) a signed declaration from each Class Counsel firm attesting to its competency to

1 represent the Class Members; its timely transmission to the LWDA of all necessary PAGA
2 documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative
3 Complaint (Labor Code section 2699, subd. (1)(1)), this Agreement (Labor Code section 2699,
4 subd. (1)(2)); and (vi) all facts relevant to any actual or potential conflict of interest with Class
5 Members and the Administrator.

6 6.3. Responsibilities of Counsel. Class Counsel is responsible for expeditiously finalizing and
7 filing the Motion for Preliminary Approval after the full execution of this Agreement; obtaining
8 a prompt hearing date for the Motion for Preliminary Approval; and for delivering the Court's
9 Preliminary Approval to the Administrator. Class Counsel and Defense Counsel are jointly
10 responsible for appearing in Court to advocate in favor of the Motion for Preliminary Approval.

11 6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
12 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
13 Defense Counsel will expeditiously work together on behalf of the Parties by meeting and
14 conferring, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary
15 Approval or conditions Preliminary Approval on any material change to this Agreement, Class
16 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by
17 meeting and conferring, and in good faith, to modify the Agreement and otherwise satisfy the
18 Court's concerns.

19 7. SETTLEMENT ADMINISTRATION

20 7.1. Selection of Administrator. The Parties have jointly selected Phoenix to serve as the
21 Administrator and verified that, as a condition of appointment, Phoenix agrees to be bound by
22 this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange
23 for payment of Administration Expenses. The Parties and their Counsel represent that they have
24 no interest or relationship, financial or otherwise, with the Administrator other than a professional
25 relationship arising out of prior experiences administering settlements.

26 7.2. Employer Identification Number. The Administrator shall have and use its own Employer
27 Identification Number for purposes of calculating payroll tax withholdings and providing reports
28 state and federal tax authorities.

1 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets
2 the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section
3 468B-1.

4 7.4. Notice to Class Members

5 7.4.1. No later than five (5) business days after receipt of the Class Data, the
6 Administrator shall notify Class Counsel that the list has been received and state the
7 number of Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the
8 Class Data.

9 7.4.2. Using best efforts to perform as soon as possible, and in no event later than 14
10 days after receiving the Class Data, the Administrator will send to all Class Members
11 identified in the Class Data, via first-class United States Postal Service (“USPS”) mail,
12 the Class Notice with Spanish translation, substantially in the form attached to this
13 Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the
14 dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable
15 to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable)
16 used to calculate these amounts. Before mailing Class Notices, the Administrator shall
17 update Class Member addresses using the National Change of Address database.

18 7.4.3. Not later than 3 business days after the Administrator’s receipt of any Class Notice
19 returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice
20 using any forwarding address provided by the USPS. If the USPS does not provide a
21 forwarding address, the Administrator shall conduct a Class Member Address Search,
22 and re-mail the Class Notice to the most current address obtained. The Administrator
23 has no obligation to make further attempts to locate or send Class Notice to Class
24 Members whose Class Notice is returned by the USPS a second time.

25 7.4.4. The deadlines for Class Members’ written objections, Challenges to Workweeks
26 and/or Pay Periods, and Requests for Exclusion will be extended an additional 15 days
27 beyond the 45 days otherwise provided in the Class Notice for all Class Members whose
28 notice is re-mailed. The Administrator will inform the Class Member of the extended

1 deadline with the re-mailed Class Notice.

2 7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
3 discovers any persons who believe they should have been included in the Class Data
4 and should have received Class Notice, the Parties will expeditiously meet and confer,
5 and in good faith in an effort to agree on whether to include them as Class Members. If
6 the Parties agree, such persons will be Class Members entitled to the same rights as other
7 Class Members, and the Administrator will send, via email or overnight delivery, a Class
8 Notice requiring them to exercise options under this Agreement not later than 15 days
9 after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are
10 later.

11 7.5. Requests for Exclusion (Opt-Outs).

12 7.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement
13 must send the Administrator, by mail, a signed written Request for Exclusion not later
14 than 45 days after the Administrator mails the Class Notice (plus an additional 15 days
15 for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter
16 from a Class Member or his/her representative that reasonably communicates the Class
17 Member's election to be excluded from the Settlement and includes the Class Member's
18 name, address and email address or telephone number. To be valid, a Request for
19 Exclusion must be timely postmarked by the Response Deadline.

20 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it
21 fails to contain all the information specified in the Class Notice. The Administrator
22 shall accept any Request for Exclusion as valid if the Administrator can reasonably
23 ascertain the identity of the person as a Class Member and the Class Member's desire
24 to be excluded. The Administrator's determination shall be final and not appealable or
25 otherwise susceptible to challenge. If the Administrator has reason to question the
26 authenticity of a Request for Exclusion, the Administrator may demand additional proof
27 of the Class Member's identity. The Administrator's determination of authenticity shall
28 be final and not appealable or otherwise susceptible to challenge.

1 7.5.3. Every Class Member who does not submit a timely and valid Request for
2 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled
3 to all benefits and bound by all terms and conditions of the Settlement, including the
4 Participating Class Members' Releases under Paragraph 5.2 of this Agreement,
5 regardless whether the Participating Class Member actually receives the Class Notice
6 or objects to the Settlement.

7 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a
8 Non-Participating Class Member and shall not receive an Individual Class Payment or
9 have the right to object to the class action components of the Settlement.

10 7.5.5. Any Class Member who does not affirmatively request exclusion from the
11 Settlement Agreement by submitting a timely and valid Request for Exclusion will be
12 bound by all of its terms, including those pertaining to the Released Claims, as well as
13 any Judgment that may be entered by the Court if it grants final approval of the
14 Settlement. The entry of a final order approving the Settlement of this Action and
15 Judgment which discharges Defendant and Released Parties from liability for any and
16 all of the Released Claims shall have a res judicata effect and bar Plaintiffs and Class
17 Members who did not submit a timely and valid Request for Exclusion from bringing
18 any actions or claims asserting the Released Claims.

19 7.5.6. The Parties agree that there is no statutory right for any Aggrieved Employee to
20 object to, opt out of, or otherwise exclude himself or herself from the settlement of the
21 PAGA claims. Accordingly, any timely objection or exclusion from the Settlement
22 submitted by a Class Member shall be construed as relating only to the putative class
23 action claims and shall have no effect whatsoever on the settlement of the PAGA
24 claims. Because future PAGA claims are subject to claim preclusion upon entry of the
25 Judgment, Non-Participating Class Members who are Aggrieved Employees are
26 deemed to release the claims identified in Paragraph 5.4 of this Agreement and are
27 eligible for an Individual PAGA Payment.

28 7.6. Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after

the Administrator mails the Class Notice (plus an additional 15 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks to Defense Counsel and Class Counsel and the Administrator's determination as to the challenges.

7.7. Objections to Settlement

7.7.1. Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

7.7.2. Participating Class Members may send written objections to the Administrator, by mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 15 days for Class Members whose Class Notice was re-mailed).

7.7.3. Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.8.1. Website, Email Address and Toll-Free Number. The Administrator will maintain

1 and use an internet website to post information of interest to Class Members including
2 the date, time and location for the Final Approval Hearing and copies of the Settlement
3 Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class
4 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment,
5 Class Counsel Litigation Expenses Payment and Class Representative Service Payment,
6 the Final Approval and the Judgment. The Administrator will also maintain and monitor
7 an email address and a toll-free telephone number to receive Class Member calls and
8 emails.

9 7.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
10 promptly review on a rolling basis Requests for Exclusion to ascertain their validity.
11 Not later than 5 days after the expiration of the deadline for submitting Requests for
12 Exclusion, the Administrator shall inform Class Counsel and Defense Counsel of the
13 number of Class Members who have timely submitted valid Requests for Exclusion (if
14 any) and the number of Class Members who have submitted invalid Requests for
15 Exclusion (if any); as well as send an email to Class Counsel and Defense Counsel with
16 a list containing (a) the names and other identifying information of Class Members who
17 have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names
18 and other identifying information of Class Members who have submitted invalid
19 Requests for Exclusion; and (c) copies of all Requests for Exclusion from Settlement
20 submitted (whether valid or invalid).

21 7.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written
22 reports to Class Counsel and Defense Counsel that, among other things, tally the number
23 of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for
24 Exclusion (whether valid or invalid) received, objections received, challenges to
25 Workweeks and/or Pay Periods received and/or resolved, and checks mailed for
26 Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The
27 Weekly Reports must include provide the Administrator’s assessment of the validity of
28 Requests for Exclusion and attach copies of all Requests for Exclusion and objections

received.

7.8.4. Workweek Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.

7.8.5. Administrator's Declaration. Before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel a declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

7.8.6. Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 7 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE

Based on its records, Defendant estimates that, as of the date of this Settlement Agreement, (1) there are 189 Class Members and 16,126 Total Workweeks during the Class Period and (2) there are 120 Aggrieved Employees who worked 3,105 Pay Periods during the PAGA Period.

8.1. Increase in Workweeks. Defendants estimated that there were 16,126 Workweeks worked by Class Members from the start of the Class Period through the date of mediation, April 8, 2024. In the event the number of Workweeks worked by Class Members during the Class Period increases by more than 10%, or more than 1,613 Workweeks, then, at Defendants' election: (1) the Gross Settlement Amount shall be increased proportionally by the Workweeks in excess of 17,739 Workweeks (16,126 [approximate workweek count as of the date of the mediation + 1,613 [10% buffer]]); or (2) the Class Period shall end on the day the number of Workweeks reaches 17,739 Workweeks. (The Workweek Value shall be calculated by dividing the originally agreed-upon Gross Settlement Amount (\$600,000.00) by 16,126, which amounts to a Workweek Value of \$37.21. Thus, for example, should there be 18,000 Workweeks in the Class Period, and Defendants elect option one (1) above, then the Gross Settlement Amount shall be increased by \$49,711.81 ((18,000 Workweeks – 17,739 Workweeks) x \$37.21 per Workweek.)). Defendant shall notify Class Counsel of their election within five (5) days of when the Settlement Administrator informs the Parties that the number of Workweeks during the Class Period has exceeded 17,739 Workweeks.

9. DEFENDANTS' RIGHT TO WITHDRAW

If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendants may, but are not obligated to, elect to withdraw from the Settlement. If Defendants withdraw, the Settlement shall be void ab initio, have no force or effect whatsoever, and neither Party shall have any further obligation to perform under this Agreement; provided, however, Defendants will remain responsible for paying all Settlement Administration Expenses incurred to that point. To elect to withdraw, Defendants must notify Class Counsel and the Court of its election to withdraw not later than 14 days after the Administrator notifies the Parties of a greater than ten percent (10%) opt-out rate.

10. MOTION FOR FINAL APPROVAL

Prior to the calendared Final Approval Hearing, Plaintiff will file in Court a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed

Judgment (collectively “Motion for Final Approval”). Plaintiff shall endeavor to provide drafts of these documents to Defense Counsel prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

10.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the

Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

10.6. Nullification of Settlement Agreement. In the event that the Settlement is barred by operation of law, or invalidated, or ordered not to be carried out by a court of competent jurisdiction, this Settlement Agreement, and any documents generated to bring it into effect, will be null and void. Any order of judgment entered by the Court in furtherance of this Settlement Agreement will likewise be treated as void from the beginning, and all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement has been neither entered into nor filed with the Court. Defendants will cease to have any obligation to pay any portion of the Gross Settlement Amount to the Qualified Settlement Account, or any other party under the terms of this Agreement and all previous disbursements made from Defendants to the Qualified Settlement Account will immediately revert back to Defendants. Any Administration Expenses incurred will be split equally between Plaintiff on one hand and Defendants on the other. However, the Parties expressly agree to cooperate in addressing any Court concerns, including amendment of this Agreement that is mutually acceptable to the Parties.

11. AMENDED JUDGMENT

If any amended judgment is required under Code of Civil Procedure section 384, the

Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. TERMINATION OF SETTLEMENT

Either Party may terminate this Settlement if the Court declines to enter the Preliminary Approval Order, the Final Approval Order or final judgment in substantially the form submitted by the Parties or amended, or the Settlement Agreement as agreed or amended does not become final because of appellate court action. The terminating Party shall give to the other Party (through its counsel) written notice of its decision to terminate no later than ten (10) calendar days after receiving notice that one of the above enumerated events has occurred. Termination shall have the following effects:

- a. The Settlement Agreement shall be terminated and shall have no force or effect, and not Party shall be bound by any of its terms;
- b. In the event the Settlement is terminated, Defendants shall have no obligation to make any payments to any party, Class Member, PAGA Member, or attorney, except that the terminating Party shall pay the Settlement Administrator for services rendered up to the date the Settlement Administrator is notified that the settlement has been terminated;
- c. The Preliminary Approval Order, Final Approval Order and Judgment, including any order of class certification, shall be vacated;
- d. The Settlement Agreement and all negotiations, statements and proceedings relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions in the Action prior to the settlement;
- e. Neither this Stipulated Settlement, nor any ancillary documents, actions, statements or filings in furtherance of settlement (including all matters associated with the mediation) shall be admissible or offered into evidence in the Action or any other action for any purpose whatsoever.

1 f. However, the Parties expressly agree to cooperate in addressing any Court
2 concerns, including amendment of this Agreement that is mutually acceptable
3 to the Parties.

4 **13. ADDITIONAL PROVISIONS**

5 13.1. No Admission of Liability, Class Certification or Representative Manageability for Other
6 Purposes. This Agreement represents a compromise and settlement of highly disputed claims.
7 Nothing in this Agreement is intended or should be construed as an admission by Defendants
8 that any of the allegations in the Operative Complaint have merit or that Defendants have any
9 liability for any claims asserted; nor should it be intended or construed as an admission by
10 Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class
11 certification and representative treatment is for purposes of this Settlement only. If, for any
12 reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants
13 reserve the right to contest certification of any class for any reasons, and Defendants reserve all
14 available defenses to the claims in the Action, and Plaintiff reserves the right to move for class
15 certification on any grounds available and to contest Defendants' defenses. The Settlement, this
16 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be
17 admissible in connection with, any litigation (except for proceedings to enforce or effectuate the
18 Settlement and this Agreement).

19 13.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendants and
20 Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement
21 is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit
22 another person to disclose, disseminate or publicize, any of the terms of the Agreement directly
23 or indirectly, specifically or generally, to any person, corporation, association, government
24 agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom
25 will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the
26 extent necessary to report income to appropriate taxing authorities; (4) in response to a court
27 order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
28 government agency. Each Party agrees to immediately notify each other Party of any judicial or

1 agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel,
2 Defendants and Defense Counsel separately agree not to, directly or indirectly, initiate any
3 conversation or other communication, before the filing of the Motion for Preliminary Approval,
4 any with third party regarding this Agreement or the matters giving rise to this Agreement except
5 to respond only that “the matter was resolved,” or words to that effect. This paragraph does not
6 restrict Class Counsel’s communications with Class Members in accordance with Class
7 Counsel’s ethical obligations owed to Class Members.

8 13.3. No Solicitation. The Parties separately agree that they and their respective counsel and
9 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal
10 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel’s
11 ability to communicate with Class Members in accordance with Class Counsel’s ethical
12 obligations owed to Class Members.

13 13.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
14 together with its attached exhibits shall constitute the entire agreement between the Parties
15 relating to the Settlement, superseding any and all oral representations, warranties, covenants, or
16 inducements made to or by any Party.

17 13.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
18 represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate
19 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
20 its terms, and to execute any other documents reasonably required to effectuate the terms of this
21 Agreement including any amendments to this Agreement.

22 13.6. Cooperation. The Parties and their counsel will cooperate with each other and use their
23 best efforts, in good faith, to implement the Settlement by, among other things, modifying the
24 Settlement Agreement, submitting supplemental evidence and supplementing points and
25 authorities as requested by the Court. In the event the Parties are unable to agree upon the form
26 or content of any document necessary to implement the Settlement, or on any modification of the
27 Agreement that may become necessary to implement the Settlement, the Parties will seek the
28 assistance of a mediator and/or the Court for resolution.

1 13.7. No Prior Assignments. The Parties separately represent and warrant that they have not
2 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
3 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
4 action, or right released and discharged by the Party in this Settlement.

5 13.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense Counsel are
6 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied
7 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR
8 Part 10, as amended) or otherwise.

9 13.9. Modification of Agreement. This Agreement, and all parts of it, may be amended,
10 modified, changed, or waived only by an express written instrument signed by all Parties or their
11 representatives, and approved by the Court.

12 13.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to
13 the benefit of, the successors of each of the Parties.

14 13.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
15 governed by and interpreted according to the internal laws of the state of California, without
16 regard to conflict of law principles.

17 13.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of
18 this Agreement. This Agreement will not be construed against any Party on the basis that the
19 Party was the drafter or participated in the drafting

20 13.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered
21 during Action and in this Agreement relating to the confidentiality of information shall survive
22 the execution of this Agreement

23 13.14. Use of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code
24 §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants
25 in connection with the mediation, other settlement negotiations, or in connection with the
26 Settlement, may be used only with respect to this Settlement, and no other purpose, and may not
27 be used in any way that violates any existing contractual agreement, statute, or rule of court.

28 13.15. Headings. The descriptive heading of any section or paragraph of this Agreement is

1 inserted for convenience of reference only and does not constitute a part of this Agreement.

2 13.16. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall
3 be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
4 weekend or federal legal holiday, such date or deadline shall be on the first business day
5 thereafter.

6 13.17. Execution in Counterparts. This Agreement may be executed in one or more counterparts
7 by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall
8 be accepted as an original. All executed counterparts and each of them will be deemed to be one
9 and the same instrument if counsel for the Parties will exchange between themselves signed
10 counterparts. Any executed counterpart will be admissible in evidence to prove the existence
11 and contents of this Agreement.

12 13.18. Stay of Litigation. The Parties agree that upon the execution of this Agreement the
13 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
14 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend
15 the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
16 process beginning from the date of full execution of this Agreement.

17 13.19. Severability. In the event that one or more of the provisions contained in this Agreement
18 shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,
19 illegality, or unenforceability shall in no way effect any other provision if Defendants’ Counsel
20 and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing
21 to proceed as if such invalid, illegal, or unenforceable provision had never been included in this
22 Agreement.

23 13.20. Acknowledgment that the Settlement is Fair and Reasonable. The Parties believe this
24 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have
25 arrived at this Settlement after arm’s-length negotiations and in the context of adversarial
26 litigation, taking into account all relevant factors, present and potential. The Parties further
27 acknowledge that they are each represented by competent counsel and that they have had an
28 opportunity to consult with their counsel regarding the fairness and reasonableness of this

Agreement. In addition, the Mediator may execute a declaration supporting the Settlement and the reasonableness of the Settlement and the Court may, in its discretion, contact the Mediator to discuss the Settlement and whether or not the Settlement is objectively fair and reasonable.

13.21. Waiver. No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

13.22. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and advice of counsel and reviewed in full. Further, Plaintiffs and Class Counsel warrant and represent that there are no liens on the Settlement Agreement.

13.23. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Agreement, and further intend that this Agreement will be fully enforceable and binding on all parties and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under state or federal law.

IT IS SO AGREED:

DATE:


Julio L Plascencia (Nov 29, 2024 05:53 PST)

Plaintiff Julio L. Plascencia

DATE:

For Bonnie Brae Convalescent Hospital Inc.

DATE:

Defendant, Michelle Cayton

DATE:

Defendant, Marlo Cayton

1 Agreement. In addition, the Mediator may execute a declaration supporting the Settlement and
2 the reasonableness of the Settlement and the Court may, in its discretion, contact the Mediator to
3 discuss the Settlement and whether or not the Settlement is objectively fair and reasonable.

4 13.21. Waiver. No waiver of any condition or covenant contained in this Agreement or failure
5 to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute
6 a further waiver by such party of the same or any other condition, covenant, right or remedy.

7 13.22. Representation By Counsel. The Parties acknowledge that they have been represented
8 by counsel throughout all negotiations that preceded the execution of this Agreement, and that
9 this Agreement has been executed with the consent and advice of counsel and reviewed in full.
10 Further, Plaintiffs and Class Counsel warrant and represent that there are no liens on the
11 Settlement Agreement.

12 13.23. Binding Agreement. The Parties warrant that they understand and have full authority to
13 enter into this Agreement, and further intend that this Agreement will be fully enforceable and
14 binding on all parties and agree that it will be admissible and subject to disclosure in any
15 proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that
16 otherwise might apply under state or federal law.

17 **IT IS SO AGREED:**

18
19
20 DATE:

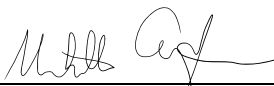
Plaintiff Julio L. Plascencia

21
22 DATE: January 2, 2025



For Bonnie Brae Convalescent Hospital Inc.

23
24
25 DATE: January 2, 2025



Defendant, Michelle Cayton

26
27 DATE:

Defendant, Marlo Cayton

1 Agreement. In addition, the Mediator may execute a declaration supporting the Settlement and
2 the reasonableness of the Settlement and the Court may, in its discretion, contact the Mediator to
3 discuss the Settlement and whether or not the Settlement is objectively fair and reasonable.

4 13.21. Waiver. No waiver of any condition or covenant contained in this Agreement or failure
5 to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute
6 a further waiver by such party of the same or any other condition, covenant, right or remedy.

7 13.22. Representation By Counsel. The Parties acknowledge that they have been represented
8 by counsel throughout all negotiations that preceded the execution of this Agreement, and that
9 this Agreement has been executed with the consent and advice of counsel and reviewed in full.
10 Further, Plaintiffs and Class Counsel warrant and represent that there are no liens on the
11 Settlement Agreement.

12 13.23. Binding Agreement. The Parties warrant that they understand and have full authority to
13 enter into this Agreement, and further intend that this Agreement will be fully enforceable and
14 binding on all parties and agree that it will be admissible and subject to disclosure in any
15 proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that
16 otherwise might apply under state or federal law.

17 **IT IS SO AGREED:**

18
19
20 DATE:

Plaintiff Julio L. Plascencia

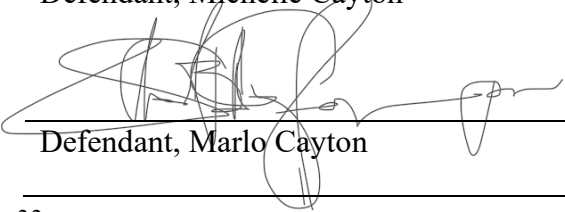
21
22 DATE:

For Bonnie Brae Convalescent Hospital Inc.

23
24
25 DATE:

Defendant, Michelle Cayton

26
27 DATE: January 30, 2025



Defendant, Marlo Cayton

AGREED AS TO FORM ONLY:

DATE: November 29, 2024

Vedang J. Patel

David D. Bibayan
Vedang J. Patel
Counsel for Plaintiff

DATE:

Megan Childress
Counsel for Defendants

AGREED AS TO FORM ONLY:

DATE:

David D. Bibiyan
Vedang J. Patel
Counsel for Plaintiff

DATE: January 30, 2025


Megan Childress
Counsel for Defendants