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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO**

11 ASHLEY PACULBA,
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13 Plaintiff,
14

15 v.
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17 VANESSA VILLASENOR LICENSED
MARRIAGE AND FAMILY THERAPIST
INC., dba A PLACE FOR GROWTH, a
California Corp., and VANESSA
VILLASENOR, an individual,
18

19 Defendants.
20

Case No. 37-2022-00028449-CU-OE-CTL

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: July 14, 2023
Time: 9:00 a.m.
Dept: C-75
Judge: Hon. James A. Mangione
Action Filed: July 19, 2022

21 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

22 PLEASE TAKE NOTICE that on July 14, 2023 at 9:00 a.m. in Department C-75 of the
23 above-entitled court, Plaintiff ASHLEY PACULBA will move the Court for an Order of
24 Preliminary Approval of the Class Action and PAGA Settlement Agreement (“Agreement”), a
25 copy of which is filed concurrently herewith.

26 The Motion will be made on the grounds that the proposed Agreement is fair, adequate,
27 reasonable, and in the best interest of the Class and the Parties.

28 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
and Authorities, the Declaration of Thomas Daugherty, the Agreement and Release, all other

1 papers and records on file in this action, and on such oral and documentary evidence as may be
2 presented at the hearing on this Motion.

3 KLINEDINST PC

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5 DATED: July 7, 2023

By: 

6 Thomas E. Daugherty

7 Attorneys for Plaintiff ASHLEY PACULBA
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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff ASHLEY PACULBA (“Plaintiff”) submits this Memorandum of Points and Authorities in support of Plaintiff’s Motion for Preliminary Approval of the Class Action and PAGA Settlement Agreement reached between Plaintiff and Defendants VANESSA VILLASENOR LICENSED MARRIAGE AND FAMILY THERAPIST INC., DBA A PLACE FOR GROWTH, a California Corporation, and VANESSA VILLASENOR, individually, (collectively, “Defendants” or “A PLACE FOR GROWTH”) (Plaintiff and Defendants together, the “Parties”).

I. INTRODUCTION

By this Motion, Plaintiff requests that the Court:

A. Grant preliminary approval of the fully-executed Class Action and PAGA Settlement Agreement (“Settlement” or “Agreement”)¹. A true and correct copy of the Agreement is attached hereto as Exhibit “1”;

B. Approve the proposed Notice to Class Members, a copy of which is attached to the Agreement as Exhibit “A,” and direct that the Notice be sent to Class Members in the manner set forth in the Agreement;

C. Schedule a hearing on final approval of the proposed Settlement and Plaintiff’s counsel’s application for an award of attorney’s fees and litigation costs at which Class Members may be heard (“Final Approval Hearing”).

II. FACTUAL BACKGROUND

A. Litigation Overview and Procedural History

On July 19, 2022, Plaintiff filed a Class Action Complaint against Defendant in the Superior Court for the State of California, County of San Diego, Case No. 37-2022-0002849-CU-OE-CTL, seeking recovery for:

1. Failure to Pay Wages and/or Overtime, Labor Code §§ 510, 1194, and 1199
2. Failure to Provide Meal Periods, Labor Code §§ 226.7 and 512
3. Failure to Provide Rest Periods, Labor Code § 226.7

¹ The Parties utilized the model Class Action and PAGA Settlement Agreement utilized by Los Angeles Superior Court.

1 4. Failure to Indemnify, Labor Code § 2802

2 5. Wage Statement Violations, Labor Code § 226(a)

3 6. Waiting Time Penalties, Labor Code § 203

4 7. Business & Professions Code § 17200. (Declaration of Thomas E. Daugherty (“Daugherty
5 Decl.”) ¶3.)

6 Also on July 13, 2022, Plaintiff sent a notice letter, pursuant to California Labor Code §
7 2699, *et seq.*, the Private Attorneys General Act (hereafter, “PAGA”), to the California Labor
8 Workforce Development Agency (hereafter, “LWDA”) regarding her intent to seek civil penalties
9 based on Defendant’s alleged violations of the California Labor Codes enumerated in the Complaint
10 in addition to claims pursuant to Cal. Labor Code §§ 230.8, 233, 246, 248.6, and Cal. IWC Wage
11 Order 4. (Daugherty Decl. ¶4.)

12 The Complaint defines the proposed Class as follows:

- 13
14 a) “All persons Defendants employed in California hourly, non-exempt
15 employees, individuals performing work comparable to the aforementioned,
16 compensated comparably to the aforementioned, individuals in similar
17 positions, at any time during the period beginning four years prior to the filing
of this action and ending on the date that final judgment is entered in this
action.”

18 (Daugherty Decl. ¶5.)

19 On April 10, 2023, the Parties participated in an all-day mediation presided over by Hon.
20 Jan Adler (Retired), and the case settled. (Daugherty Decl. ¶6.)

21 **B. The Discovery Process and Mediation**

22 Plaintiff and Defendant have yet to engage in formal discovery, instead focusing their efforts
23 on resolving this case through early mediation. Defendants informally produced a sampling of time
24 and pay data for members of the Class for mediation purposes only. Plaintiff reviewed and analyzed
25 these records for mediation. (Daugherty Decl. ¶7.)

26 Defendants deny any liability or wrongdoing of any kind associated with the claims alleged
27 in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends that, for
28 any purpose other than settlement, Plaintiff’s claims are not appropriate for class or representative

1 action treatment. (Daugherty Decl. ¶8.) Defendants contend, among other things, that, at all times,
2 they have complied with the California Labor Code, and the Industrial Wage Commission Orders.
3 (*Id.*)

4 Based on their own independent investigation and evaluation, Class Counsel is of the opinion
5 that the Agreement with Defendants is fair, reasonable and adequate, and in the best interest of the
6 settlement Class in light of all known facts and circumstances, including the risk of significant delay,
7 defenses asserted by Defendant, uncertainties regarding a class and representative action trial on the
8 merits, and numerous potential appellate issues. (Daugherty Decl. ¶9.) Although Defendants denies
9 any liability, Defendants are agreeing to this Agreement solely to avoid the cost of litigation. (*Id.*)
10 Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise
11 and discharge all disputes and claims arising from or relating to the Action on the terms set forth
12 here. (*Id.*)

13 **III. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR**
14 **SETTLEMENT PURPOSES**

15 Originally creatures of equity, class actions have been statutorily embraced by the
16 Legislature whenever “the question [in a case] is one of a common or general interest, of many
17 persons, or when the parties are numerous, and it is impracticable to bring them all before the
18 court” (Code Civ. Proc. § 382; *see, e.g., Fireside Bank v. Sup. Court* (2007) 40 Cal.4th 1069,
19 1078.) They serve an important function by “establishing a technique whereby the claims of many
20 individuals can be resolved at the same time” thereby “eliminat[ing] the possibility of repetitious
21 litigation and provid[ing] small claimants with a method of obtaining redress.” (*Richmond v. Dart*
22 *Industries, Inc.* (1981) 29 Cal.3d 462, 469.) Public policy supports the use of class actions to enforce
23 wage and overtime laws for the benefit of workers. (*See Sav-on Drug Stores, Inc. v. Sup. Court*
24 (2004) 34 Cal.4th 319, 340.)

25 The certification question is “essentially a procedural one that does not ask whether an action
26 is legally or factually meritorious.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439–440.) A
27 court ruling on a certification motion must determine “whether . . . the issues which may be jointly
28 tried, when compared with those requiring separate adjudication, are so numerous or substantial that

1 the maintenance of a class action would be advantageous to the judicial process and to the litigants.”
2 (*Collins v. Rocha* (1972) 7 Cal.3d 232, 238.)

3 The California Supreme Court has identified three certification requirements: (1) “the
4 existence of an ascertainable and sufficiently numerous class”; (2) “a well-defined community of
5 interest”; and, (3) “substantial benefits from certification that render proceeding as a class superior
6 to the alternatives.” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.)
7 The “community of interest” requirement includes three additional requirements: (1) common
8 questions of law or fact predominant over individual questions; (2) the class representatives have
9 claims or defenses typical of the class; and (3) the class representatives can adequately represent the
10 class. (*Ibid*, citing *Fireside Bank*, *supra*, 40 Cal.4th at 1089.)

11 Class certification for settlement purposes is proper in this case as the proposed Settlement
12 Class satisfies each of the requirements under Code of Civil Procedure § 382. Accordingly, this
13 Court should certify the putative settlement class.

14 **A. The Proposed Class Are Ascertainable and Sufficiently Numerous**

15 **1. Ascertainability**

16 Putative class members are deemed “ascertainable” when they may be “readily identified
17 without unreasonable expense or time by reference to official records.” (*Rose v. City of Hayward*
18 (1981) 126 Cal.App.3d 926, 932.) In determining whether a class is ascertainable, a court scrutinizes
19 the class definition, the size of the class and the means of identifying class members. (*Miller v.*
20 *Woods* (1983) 148 Cal.App.3d 862, 873.)

21 Here, Plaintiff maintains that the proposed settlement class is ascertainable for several
22 reasons: First, Defendants have agreed in the Agreement to provide a class list to the Administrator
23 containing the name, last known mailing address, last known telephone number, Social Security
24 number, and number of Class Period Workweeks and PAGA Pay Periods for all putative class
25 members after issuance of the preliminary approval order. (Daugherty Decl. ¶10; Ex. 1 at ¶1.8.)
26 Second, the proposed Settlement Class Members consist of Defendant’s employees and Defendant
27 is required to keep records of its employees’ names, home addresses, and social security numbers.
28 (*See Wage Order 4-2001*, subsection 7(c); Daugherty Decl. ¶11.) Third and finally, Defendant

1 informally produced Plaintiff's personnel file and pay statements, relevant policies, sampling time
2 data, pay data, and wage statements for proposed Settlement Class Members, which confirms that
3 all proposed Settlement Class Members may be readily identified based on Defendant's records.
4 (Daugherty Decl. ¶12.)

5 2. Numerosity

6 There is no set number that is required as a matter of law to maintain a class action. (See,
7 *e.g.*, *Rose v. City of Hayward*, *supra*, 126 Cal.App.3d at p. 934.) Here, the proposed Settlement
8 Class contains, based upon information and belief, approximately 73 individuals in the State of
9 California. (Ex. 1 at ¶3.1.) Therefore, Plaintiff is confident she will be able to establish that the
10 proposed settlement class is ascertainable and sufficiently numerous. (Daugherty Decl. ¶13.)

11 **B. There Is a Well-Defined Community of Interest**

12 1. There Are Predominant Questions of Law and Fact

13 In deciding whether questions of common or general interest predominate, a court must
14 determine whether "the issues which may be jointly tried, when compared with those requiring
15 separate adjudication, are so numerous or substantial that the maintenance of a class action would
16 be advantageous to the judicial process and to the litigants." (*Collins v. Rocha* (1972) 7 Cal.3d 232,
17 238; *accord*, *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) As a general
18 matter, if the defendant's liability can be determined by facts common to all members of the class,
19 a class will be certified even if the members must individually prove their damages." (*Hicks v.*
20 *Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916, 107; *accord*, *Knapp v. AT & T*
21 *Wireless Services, Inc.* (2011) 195 Cal.App.4th 932, 941.)

22 Here, Plaintiff argues that there are questions of law and fact common to the proposed
23 settlement class that predominate over any questions affecting only individual Class Members.
24 (Daugherty Decl. ¶14.) These common questions include:

- 25 1) Whether Defendant failed to pay all wages and/or overtime compensation;
26 2) Whether Defendant failed to provide lawfully required meal periods and/or failed to
27 compensate employees one (1) hour's wages in lieu thereof;

- 3) Whether Defendant failed to provide lawfully required rest periods and/or failed to compensate employees one (1) hour's wages in lieu thereof;
- 4) Whether Defendant failed to reimburse business-related expenses;
- 5) Whether Defendant failed to provide accurate itemized wage statements;
- 6) Whether Defendant failed to pay compensation due and owing upon termination of employment;
- 7) Whether Defendant engaged in unfair competition; and,
- 8) Whether Defendant violated § 2699, et seq. of the Labor Code by engaging in the acts previously alleged, including Defendant's misclassification of Plaintiff as an independent contractor; Defendant's failure to pay all wages for a biweekly payroll period within seven (7) calendar days following the close of the payroll period; and Defendant's illegal indemnity in the Independent Contractor agreement.

(Daugherty Decl. ¶14.)

Plaintiff's challenge to Defendant's uniform policies and practices involves common factual and legal issues that are amenable to class treatment. (Daugherty Decl. ¶15.) As the California Supreme Court has emphasized, "[c]laims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment." (*Brinker, supra*, 53 Cal.4th at 1033; *see also Bradley v. Networkers International, LLC* (2012) 211 Cal.App.4th 1129, 1141-1146.) Moreover, a class of similarly situated employees may be certified based on common questions of fact or law, even if each employee has to establish the amount of his or her damages. (*See Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 741; *Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at 340.)

Here, Plaintiff maintains that the proposed Settlement Class Members suffered the same injuries, in the same manner: (1) Settlement Class Members were not paid all wages/overtime; (2) Settlement Class Members did not receive their meal and rest periods as required; (3) Settlement Class Members were not provided accurate itemized wage statements; (4) Settlement Class Members were not reimbursed for business-related expenses; (5) Settlement Class Members did not

1 receive timely wages; and (6) Settlement Class Members were not paid all wages owed upon
2 termination/resignation. (Daugherty Decl. ¶16.) Plaintiff alleges that Settlement Class Members
3 worked in the same capacity for the same employer and were subject to the same employment
4 policies and practices, the questions of fact and claims regarding the status of these employees are
5 the same for each member of the settlement class. Accordingly, for purposes of settlement,
6 certification for settlement purposes is appropriate. (*Ibid.*)

7 2. The Class Representative Has Claims Typical of the Proposed Class

8 A putative class representative's claim must be "typical," but not necessarily identical, to
9 the claims of other class members. The test of typicality "is whether other members have the same
10 or similar injury, whether the action is based on conduct which is not unique to the Class
11 Representatives, and whether other class members have been injured by the same course of
12 conduct." (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus, it is sufficient that
13 the representative is similarly situated so that he or she will have the motive to litigate on behalf of
14 all class members. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus, it is
15 sufficient that the representative is similarly situated so that he or she will have the motive to litigate
16 on behalf of all class members. (*See, e.g., Classen v. Weller* (1983) 145 Cal.App.3d 27, 45.) It is
17 not necessary that the class representative have personally incurred all of the damages suffered by
18 each of the other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
19 238.)

20 Plaintiff worked performed work for Defendants from approximately January 31, 2022
21 through May 30, 2022 as an Associate Marriage & Family Therapist. (Daugherty Decl. ¶17.)
22 Plaintiff alleges that she: (1) worked without being paid all wages and/or overtime; (2) worked
23 without being provided compliant meal/rest periods as required by law; (3) worked without being
24 reimbursed for costs associated with personal cell-phone usage and home internet costs; (4) worked
25 without being provided accurate itemized wage statements; and (5) worked without being paid all
26 wages due upon separation. She also alleges that she experienced derivative claims for unfair
27 business competition (B&P Code §17200) and Labor Code §2699, et seq. (Daugherty Decl. ¶17.)

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1 Plaintiff also contends that her claims are typical of those of the settlement Class. (Daugherty Decl.
2 ¶18.)

3 3. Plaintiff Contends That As The Class Representative She Has and Will
4 Fairly Represent the Interests of the Settlement Class Members

5 A putative class representative must show that she can adequately represent the class.
6 (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.App.4th 1096, 1104.) The representative,
7 through qualified counsel, must be capable of “vigorously and tenaciously” protecting the interests
8 of the class members. (*Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 846.)

9 Plaintiff believes that she is capable of fairly representing and adequately protecting the
10 interests of the proposed Settlement Class Members. (Daugherty Decl. ¶19.) Plaintiff’s interests in
11 this litigation are coextensive with the interests of the proposed Settlement Class Members.
12 Defendant engaged the members of the proposed settlement class to perform work during the
13 relevant time period and Plaintiff contends that all proposed Settlement Class Members incurred the
14 same type of alleged damages with regard to Defendant’s alleged violations of the law. (*Ibid.*)
15 Moreover, Plaintiff has agreed to serve as Class Representative and has retained qualified Counsel
16 who is experienced in prosecuting wage and hour class actions. (*Ibid.*) This demonstrates her
17 commitment to bringing about the best possible results for the benefit of the proposed settlement
18 class. (*Ibid.*) Plaintiff has provided her Counsel with all necessary and pertinent information.
19 (Daugherty Decl. ¶20.) She has been a very active participant in the litigation and worked closely
20 with me to provide detailed facts necessary to develop the theories of liability. (*Ibid.*) She also
21 attended the full-day mediation in this matter and was informed of and involved in all of the
22 Settlement negotiations. Therefore, Plaintiff believes that she has and will continue to adequately
23 represent the proposed Settlement Class Members. (*Ibid.*) Plaintiff has provided her Counsel with
24 all necessary and pertinent information. (*Ibid.*)

25 4. The Class Action Vehicle Is Superior to the Alternatives

26 “The ultimate question in every case of this type is whether . . . the issues which may be
27 jointly tried, when compared with those requiring separate adjudication, are so numerous or
28 substantial that the maintenance of a class action would be advantageous to the judicial process and

1 to the litigants.” (*Lockheed Martin, supra*, 29 Cal.App.4th at 1104–1105.) The California Supreme
2 Court has directed the courts to utilize the class action device to fashion “an effective and inclusive
3 group remedy.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 469.) Normally, in making its
4 class certification decision, the Court must determine that a class action would be superior to
5 alternate means for a fair and efficient adjudication. If the causes of action may be adjudicated in a
6 single proceeding, thereby saving time, reducing waste, and limiting duplication of effort, class
7 certification is superior to individual litigation. (*See, e.g., Vasquez v. Superior Court* (1971) 4 Cal.3d
8 800, 816.) Since the Parties agreed to a settlement in principal and now seek Court approval of that
9 Settlement, Plaintiff submits that there is not as much need as there would be in an ordinary motion
10 for class certification for the Court to determine that the case can be manageably tried.

11 Plaintiff maintains that class treatment would be the superior method of managing this case.
12 A class action is superior to individual litigation “when numerous parties suffer injury of insufficient
13 size to warrant individual action and when denial of class relief would result in unjust advantage to
14 the wrongdoer.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) In cases such as
15 this, where individual damages may be small, the class action device is the most feasible method of
16 recovery. (*See, e.g. Lockheed Martin, supra*, 29 Cal.4th at 1131.) In this regard, the superiority of
17 class treatment is evident here because individual pursuit of class members’ claims may not be
18 economically viable. (Daugherty Decl. ¶21.) The only alternative to certification would be to force
19 over 73 individuals to join this action, file individual, uniform actions, or abandon their legal rights
20 altogether. (*Ibid.*) Plaintiff maintains that this economic reality would result in a windfall for
21 Defendant if this case were not certified. (*Ibid.*)

22 **IV. THE PROPOSED SETTLEMENT**

23 **A. The Settlement Class**

24 For purposes of the Agreement, there is a single proposed Settlement Class:

25 All persons who were employed by Defendants in the State of
26 California as a non-exempt employee at any time from July 19, 2018
27 through the date of Preliminary Approval
(Ex. 1 at ¶1.5.)

28 The proposed Settlement Class Period is July 19, 2018 through the date of Preliminary

1 Approval. (Daugherty Decl. ¶22; Ex. 1 at 1.12.) This Agreement is based on an estimated total of
2 73 Class Members and 4,747 Total Workweeks as of approximately March 15, 2023 which are
3 numbers Defendant has confirmed based on its records. (Daugherty Decl. ¶23; Ex. 1 at ¶9.)

4 **B. Aggrieved Employees**

5 For purposes of the Agreement, the Aggrieved Employees are defined as: “all persons who
6 were employed by Defendants in the State of California as a non-exempt employee at any time from
7 July 13, 2021 through the date of Preliminary Approval. (“Aggrieved Employees” “PAGA Group”
8 or “PAGA Members”) (Daugherty Decl. ¶24; Settlement, Ex. 1 at ¶1.4.)

9 For purposes of this settlement, the PAGA Period is July 13, 2021 though the date of
10 preliminary approval of the Settlement Agreement. (Daugherty Decl. ¶25; Ex. 1 at ¶1.31.) Based
11 on documents and other information produced by Defendant, there are approximately 57 Aggrieved
12 Employees as of approximately March 15, 2023. (Daugherty Decl. ¶25, Ex. 1 at ¶9)

13 **C. Gross Settlement Amount**

14 As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross
15 Settlement Amount of \$175,000.00, which includes the sum of the Individual Class Payments, the
16 Class Representative service award, the Class Counsel Award, PAGA Payment, and the Settlement
17 Administration Costs. (Daugherty Decl. ¶26; Ex. 1 at ¶1.22.)

18 The Net Settlement Amount is the Gross Settlement Amount, less Individual PAGA
19 Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees
20 Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment.
21 (Daugherty Decl. ¶XX; Ex. 1 at ¶1.29.)

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The Parties estimate the amount of the Net Settlement Amount as follows:

Gross Settlement Amount:	\$	175,000.00
Less Class Representative Enhancement:	\$	7,500.00
Less Class Counsel's Fees:	\$	58,333.33
Less Class Counsel's Costs:	\$	8,000.00
Less PAGA Payment:	\$	5,000.00
		<i>(\$3,750.00 to the LWDA and \$1,250.00 to remain in the Net Settlement Amount)</i>
<u>Less Administrator Costs:</u>	<u>\$</u>	<u>8,000.00</u>
Anticipated Net Settlement Amount	\$	88,166.67

(Ex. 1 at ¶2.)

D. Individual Settlement Payments

The Individual Class Payment amount of each Participating Class Member is an individualized amount that is based on the number of Workweeks worked by the Participating Class Member during the Class Period. (Ex. 1 at ¶1.23; *see also* Ex. A to the Agreement [Class Notice].) Specifically, Individual Class Payments will be paid from the Net Settlement Amount and shall be paid pursuant to the settlement formula as follows: (1) First, dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and; (2) Second, multiplying the result by each Participating Class Member's Workweeks. The Administrator will calculate the number of workweeks worked by the Class Members in an hourly-paid or non-exempt position in California during the Class Period ("Compensable Workweeks") based upon the records in Defendant's possession, custody or control, the amount to be paid per workweek, and the individual settlement awards to eligible Class Members. The Compensable Workweeks will be calculated by the Administrator for each Class Member. Defendant's workweek data will be presumed to be correct, unless a particular Class Member proves otherwise to the Administrator by credible evidence. The individual settlement awards will be determined by dividing the Net Settlement Fund by the total number of Compensable Workweeks for the entire Settlement Class resulting in the Workweek Value; and then multiplying the Workweek Value by the number of Compensable Workweeks worked by each Class Member. (Ex. 1 at ¶3.2.4; *Id.* at Ex. A to the Settlement [Class Notice].)

Twenty-five percent (25%) of the Gross Settlement Amount to each Participating Class Member shall be deemed payment for settlement of claims for wages and expenses and will be subject to appropriate deductions and withholdings calculated and made by the Administrator. (Ex. 1 at ¶3.2.4.1.) Seventy-five percent (75%) of the Gross Settlement Amount to each Participating Class Member shall be deemed payment for settlement of claims for penalties and interest and other non-wage payments not subject to withholdings. (*Id.*)

The Agreement provides for a specific and detailed dispute process regarding Individual Class Payments. (*See* Ex. 1 at ¶8.6.)

The Individual PAGA Payment will be an equal payment to all Aggrieved Employees calculated as follows: twenty-five percent (25%) of the PAGA Payment (or \$1,250) divided by the number of Aggrieved Employees. (*See* Ex. 1 at ¶4.2.)

E. Process for Administering Settlement after Preliminary Approval

The detailed Notice Procedure established by the Agreement will efficiently and accurately ensure that Notice is provided to the Settlement Class Members. (Ex. 1 at ¶7.4.) The Parties have agreed to use a reputable third-party claims administrator, Phoenix Class Action Administration Solutions (“Phoenix”), to administer the Agreement. (Ex. 1 at ¶7.1.)

F. Process for Settlement Class Members to Respond to Class Notice

Settlement Class Members will have an opportunity to request exclusion from the Settlement Class (i.e. opt out) and to object to the Settlement at the Final Approval Hearing. (Ex. 1 at ¶7.5; 7.7.)

Settlement Class Members who do not opt out of the Settlement Class may object to the Agreement by mailing written objections to the Administrator no later than sixty (60) calendar days after the mailing of the Notice Packet. (Ex. 1 at ¶7.7.) This deadline applies notwithstanding any argument regarding alleged late receipt or non-receipt of the Notice Packet. (*Ibid.*) Any Settlement Class Member who fails to timely mail written objections in this manner shall be deemed to have waived any objections and shall be foreclosed from making any objection to the Agreement and from filing any appeal from any order granting final approval issued by the Court. (*Ibid.*)

Settlement Class Member who timely and validly return a Request for Exclusion from the Agreement shall have no right to object and shall be foreclosed from making any objection to the

1 Agreement. (*Ibid.*) The Administrator shall promptly provide any such objections to Class Counsel
2 and Defendant’s Counsel, who in turn shall file them with the Court in connection with the final
3 approval motion. (*Ibid.*)

4 Any Settlement Class Member wishing to appear at the final approval hearing to object to
5 the Agreement shall expressly indicate this in his or her written objections. (*Ibid.*) The making of
6 an objection to this Agreement does not affect the Settlement Class Members’ ability to return a
7 valid Claim Form and become a Qualified Claimant if the Agreement is finally approved. (*Ibid.*)

8 PAGA Members will not be provided with the opportunity to opt out of the PAGA
9 Settlement. If the Court approves the PAGA Payment, the Claims Administrator will mail out
10 checks and the PAGA Letter, which shall explain the PAGA Payment, to the PAGA Members at
11 the same time the Settlement Class Members are mailed their Individual Settlement Payments.

12 **G. The Release**

13 The Release by Participating Class Members is defined as: “all claims and/or causes of
14 action that were pled or reasonably could have been pled in this case based on the facts alleged in
15 the original class action complaint, or which reasonably arise out or reasonably relate to such facts,
16 whether known or unknown, including but not limited to the failure to pay wages, the failure to pay
17 for all hours worked, including “off the clock” claims, the failure to pay minimum wages, the failure
18 to pay overtime compensation, the failure to provide meal periods, the failure to pay meal period
19 premium pay, the failure to provide rest periods, the failure to pay rest period premium pay, the
20 failure to pay waiting-time penalties, the failure to timely pay all wages owed during employment,
21 unreimbursed business expenses under Labor Code § 2802, the failure to maintain records, the
22 failure to provide accurate itemized wage statements, including without limitation all related claims
23 for restitution and other equitable relief under Business and Professions Code § 17200 et seq., and
24 related claims for conversion, liquidated damages, punitive damages, penalties, statutory penalties
25 based on the preceding released claims. Any and all federal claims, including but not limited to
26 claims under the Fair Labor Standards Act, shall likewise be released, and shall be barred by the
27 settlement by virtue of res judicata, in accordance with *Rangel v. PLS Check Cashers of Cal., Inc.*,
28 889 F.3d 1106 (9th Cir. 2018). The claims set forth in this Paragraph hereinabove shall be

collectively referred to as the “Released Class Claims.” The Released Claims are those that accrued during the Class Period. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period. Any and all federal claims, including but not limited to claims under the Fair Labor Standards Act, shall likewise be released, and shall be barred by the settlement by virtue of res judicata, in accordance with *Rangel v. PLS Check Cashers of Cal., Inc.*, 889 F.3d 1106 (9th Cir. 2018). The claims set forth in this Paragraph hereinabove shall be collectively referred to as the “Released Claims.” The Released Claims are those that accrued during the Class Period.” (Ex. 1 at ¶5.1)

The Release by Aggrieved Employees and by Non-Participating Class Members Who Are Aggrieved Employees is defined as: “all claims and/or causes of action for PAGA civil penalties that were pled or reasonably could have been pled in this case based on the facts alleged in the original class action complaint or first amended class action complaint, the letter sent on Plaintiff’s behalf to the Labor and Workforce Development Agency, or which reasonably arise out or reasonably relate to such facts, whether known or unknown, including but not limited to the failure to pay wages, the failure to pay for all hours worked, including “off the clock” claims, the failure to pay minimum wages, the failure to pay overtime compensation, the failure to provide meal periods, the failure to pay meal period premium pay, the failure to provide rest periods, the failure to pay rest period premium pay, the failure to pay waiting-time penalties, the failure to timely pay all wages owed during employment, unreimbursed business expenses under Labor Code § 2802, the failure to maintain records, the failure to provide accurate itemized wage statements” (Ex. 1 at ¶5.2.)

V. ARGUMENT

A. Plaintiff Requests Approval of This Class Action Settlement

The case of *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, set forth several factors that the Court should analyze in determining whether to approve a class action settlement. These factors include: (1) the strength of plaintiff’s case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status

1 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage
2 of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
3 participant; and (8) the reaction of the class members to the proposed settlement.

4 In *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 409,
5 the court clarified that a *Kullar* showing does not require the parties to submit the outer reaches of
6 maximum possible recovery without taking into account the actual risks of certification,
7 decertification, dispositive motions, and trial, so long as there is a record which allows “an
8 understanding of the amount that is in controversy and the realistic range of outcomes of the
9 litigation.” *Munoz*, 186 Cal. App. 4th at 409.

10 The proposed settlement satisfies each of these factors. Class Counsel conducted extensive
11 informal discovery before entering into meaningful settlement negotiations in this matter.
12 (Daugherty Decl. ¶28.) This discovery permitted Class Counsel to fairly evaluate the strength of the
13 case and the risks associated with ongoing litigation. (Daugherty Decl. ¶29.) Class Counsel is
14 experienced in handling wage and hour class actions and, after weighing all of the following factors,
15 supports this Agreement. (Daugherty Decl. ¶29.)

16 **B. The Strength of Plaintiff’s Case²**

- 17 1. Defendants failed to adequately document all hours worked by class
18 members.

19 Plaintiff contends that for its class member employees, including Plaintiff, Defendants failed
20 to accurately track and record the employees’ time worked, which resulted in the unlawful
21 underpayment of earned wages to all class members. Defendants did not use any time-clock or
22 time-punch system for tracking the actual working time of its non-exempt employees. There was
23 no requirement that class members punch in at the start of their workday, punch out for a meal break,
24 punch back in at the end of the meal break to restart work, and then punch out at the end of the
25 workday. There was no system in place that even allowed them to do so.

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27 _____
28 ² It is understood that Defendants disagree with Plaintiff’s characterization of the strengths of
Plaintiff’s case, and do not admit the facts or legal positions asserted in this section of the motion.

1 Instead, Defendants estimated its employees’ working hours, not based on the employees’
2 actual working time, but on pre-set, prospective calendar entries in the employee’s “Simple
3 Practice” platform, an online platform used to schedule and provide remote video-conference
4 therapy to Defendants’ clients. The calendar entries, used to schedule an employee’s work day in
5 advance of that day, at best, only provided a rough estimate of the actual time worked. Plaintiff
6 contends that this constituted an unlawful rounding policy, both of the start and stop times at the
7 beginning and end of the workday, but also for meal breaks—because there is no accurate record of
8 when the employees actually started and stopped their meal breaks, or working time. This failure
9 to track non-exempt employees’ working time leads to multiple Labor Code violations in each pay
10 period for each employee.

11 2. Off-the-clock minimum wage violations and liquidated damages

12 Defendants’ failure to accurately track employees’ working time creates liability for off-the-
13 clock work. With no actual time records kept, but only preset, prospective calendar entries to
14 estimate employee working time, Plaintiff contends that Defendants’ practices amount to unlawful
15 rounding of time that is unfavorable to the employees. There is no way for Defendants’ to show
16 that this policy had a neutral effect, because it cannot prove with any accuracy how long employees
17 actually worked. There is no dispute that Lab. Code, § 510, subd. (a), and Cal. Code Regs., tit. 8, §
18 11070, subd. 2(G), require that an employer pay for all time worked. (See *Troester v. Starbucks*
19 *Corp.* (2018) 5 Cal.5th 829 [235 Cal.Rptr.3d 820, 840.] In *Camp v. Home Depot U.S.A., Inc.* (2022)
20 84 Cal.App.5th 638, 638, in noting that the federal de minimis rule did not apply to California wage
21 and hour claims, the court questioned the ongoing validity of case law approving of neutral rounding
22 policies because the guidance provided by more recent California Supreme Court opinions had
23 called into question the efficiencies historically attributed to time rounding, given that advances in
24 technology had enabled employers to track time more precisely.

25 Inevitably, there were many days when Plaintiff was required to work into and during her
26 scheduled lunch break, and/or start earlier or work longer than her scheduled work-day. This
27 additional time was not accounted for--with no formal time-keeping system, Defendants did not
28 track, record, or pay Plaintiff, or any other class member or the extra time they worked. This results

1 in a violation of and claims under Labor Code sections 1194, 1194.2, with attendant civil penalties
2 and liquidated damages and attorneys' fees.

3 California Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198 require
4 employers to pay employees the minimum wage fixed by the Industrial Welfare Commission
5 ("IWC"). The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work
6 time is defined in IWC Wage Orders as "the time during which an employee is subject to the control
7 of an employer, and includes all the time the employee is suffered or permitted to work, whether or
8 not required to do so." Cal. Code. Regs. tit. 8, § 1 1070(2)(G) (defining "Hours Worked").

9 As described above, due to Defendants' company-wide practices of failure to record and
10 compensate its non-exempt employees for all time worked resulted in minimum wage violations.

11 3. Meal and rest break violations with no premium pay.

12 California law requires employers to provide employees a paid, duty-free ten (10) minute
13 rest period for each four (4) hours worked, or major fraction thereof. IWC Wage Order 7-2001,
14 §12(A). Employers must pay employees an additional hour of wages at the employee's regular rate
15 of pay for each missed or improper (e.g., less than 10 minutes, interrupted rest period, rest period(s)
16 at improper time(s) during shift(s)) rest period. Cal. Lab. Code §226.7; Cal. IWC Wage Order 7-
17 2001, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the
18 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
19 employee's regular rate of compensation for each work day that the rest period is not provided").

20 California law requires employers to provide employees a duty-free, uninterrupted thirty
21 (30) minute meal period when an employee works more than five (5) hours in a workday, and it
22 must be provided within the first five (5) hours the employee works. Cal. Lab. Code 512; Cal. IWC
23 Wage Order 4-2001, §11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th
24 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30)
25 minute meal period when an employee works more than (10) hours in a workday, and it must be
26 provided before the end of the 10th hour of work. *Ibid*. Meal periods can be waived, but only under
27 the following circumstances: (1) if an employee's total work period in a day is over five (5) hours
28 but no more than six (6) hours, the required meal period may be waived by mutual consent of the

1 employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours
2 but no more than twelve (12) hours, the required second meal period may be waived by mutual
3 consent of the employer and employee, but only if the first meal period was not waived. *Ibid.*

4 Employers covered by California Industrial Welfare Commission ("IWC") Wage Order 4-2001
5 have an obligation to relieve their employees for at least one meal period for shifts over five hours
6 (see above).

7 Employers must pay employees an additional hour of wages at the employees' regular rate
8 of pay for each missed or improper (e.g., less than 30 minutes, interrupted meal period, first meal
9 period provided after 5 hours, second meal period provided after 10 hours) meal period. Cal. Lab.
10 Code §226.7; Cal. IWC Wage Order 4-2001, §11(B) ("If an employer fails to provide an employee
11 a meal period in accordance with the applicable provisions of this order, the employer shall pay the
12 employee one (1) hour of pay at the employee's regular rate of compensation for each workday that
13 the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

14 Defendants' office staff was responsible for setting a client's initial session with Plaintiff on
15 her Simple Practice calendar. After that, Plaintiff typically set up recurring weekly or bi-weekly
16 appointments with these clients, and entered those appointments into her Simple Practice calendar.
17 Her Simple Practice calendar also set approximated times for 30-minute meal breaks, and training
18 sessions, and time for required administrative work.

19 Defendants' employee handbook described the client session length and documentation
20 required for each client session as follows:

21 Session Length & Client Documentation

22 All sessions will be booked with clients as one hour sessions. Within this one hour,
23 approximately 53 minutes should be hands-on therapeutic work with clients and
24 approximately 3-5 minutes should be allotted to formally document the session. For
25 all in-office sessions, you are required to complete your documentation before the
26 end of each work day. You may not take home your notes to complete documentation
27 at home or otherwise outside of the office, unless agreed to by A Place of Growth.

28 A PLACE OF GROWTH-PACULBA000064

29 Under Defendants' written policy, the therapist employees were required to work 56-58
30 minutes of each hour in which they provided therapy for clients. During the session, Plaintiff took
31 notes, but often needed to review and finish the session notes in the few available minutes following

1 the session, before the next session began. Plaintiff frequently was required to work 4 or 5 client
2 sessions back-to-back, each starting at the top of the hour in the morning, and then 4 more sessions
3 back-to-back in the afternoon. This was a commonplace practice for class members. This made it
4 impossible to take the 10-minute uninterrupted, duty-free rest breaks required under the Labor Code.

5 Notwithstanding the failure to keep accurate time-keeping records, this back-to-back
6 scheduling of clients with no break leads to daily rest period premium pay violations, as well as 226
7 violations and 203 waiting time penalties.

8 Moreover, under Defendants’ business model, Plaintiff was always required to be on-call
9 during all business hours. She was required to respond as quickly as possible to client calls, texts,
10 and emails during her working hours. Additionally, both Defendants’ office staff, Plaintiff’s
11 supervisors, and Defendant Vanessa Villasenor herself, repeatedly called and/or texted Plaintiff’s
12 personal mobile phone without regard to her scheduled meal breaks, or rest breaks—she was
13 expected to pick up or respond immediately, and could be disciplined for failing to do so.

14 Defendants’ Remote Working policy provides in relevant part:

15 Employees must be accessible by phone and/or internet within a reasonable time
16 period during their work schedule. Employees who are not as responsive and/or
productive while working remotely as in the office may be subject to discipline.

17 A PLACE OF GROWTH-PACULBA000015

18 Notably, there is no provision in this policy for waiting until the end of the employee’s meal
19 or rest period to respond, and the company’s meal and rest break policy does not describe the meal
20 and rest breaks as “duty-free” or that the employees were relieved of all work duties. Defendants’
21 employee handbook policy on meal and rest breaks provides as follows:

22 Rest & Meal Periods: As weirdly rigid as it might seem, we are required to adhere to
23 all State and Federal regulations regarding rest and meal periods. Non-exempt
24 employees are provided with an unpaid meal period of 30 minutes each workday.
25 The meal break must be taken within the first 5 hours of the workday, as close as
26 possible to mid-shift (i.e. 12:00 pm, unless you have nonstandard work hours). Two,
27 paid, 10 minute rest periods, one during each 4 hour shift, are also to be taken by all
non-exempt employees. For shifts longer than 10 hours, you will get an additional
30 minute meal break and 10 minute rest breaks in 4 hour increments. It is imperative
that you document each and every rest and meal period in your Simple Practice
calendar.

1 Defendants' Rest & Meal Periods policy does not provide duty-free or uninterrupted meal
2 and rest breaks, and therefore does not comply with California law, which requires duty-free,
3 uninterrupted meal and rest breaks. (*Brinker, supra*, 53 Cal.4th at pp. 1037.) Given Defendants'
4 Remote Work policy requiring timely responsiveness, and Defendants' practice of regularly calling
5 and texting Plaintiff without regard for her meal and rest breaks, Plaintiff and the class members did
6 not receive any off-duty meal or rest breaks, where they were not on-call.

7 Lab. Code § 226.7 provides that if an employer fails to provide an employee a meal or rest
8 period in accordance with a state law, including, but not limited to, an applicable statute or order of
9 the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay
10 at the employee's regular rate of compensation for each workday that the meal or rest or recovery
11 period is not provided. In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260 the
12 Court held that it was a violation of Lab. Code § 226.7 and Industrial Welfare Commission (IWC)
13 wage order No. 4-2001, subd. 12(A) to require that security guards keep their pagers and radio
14 phones on during rest periods and that they remain vigilant and responsive to calls when needs arose,
15 and that California law requires that employers relinquish any control over how employees spend
16 their break time and relieve employees of all duties, including the obligation to remain on call; a
17 rest period must be a period of rest.

18 Accordingly, Plaintiff contends that Defendants violated Lab. Code § 226.7 and Industrial
19 Welfare Commission (IWC) wage order No. 4-2001, subd. 12(A) to require Plaintiff and other class
20 members to remain vigilant and responsive to calls when needs arose, and by not providing meal
21 and rest breaks without relieving them of all work duties. Plaintiff contends that Defendants never
22 paid Plaintiff or other class members meal or rest break premium pay in violation of the Labor Code.

23 Additionally, Defendants' practice of not using any actual time-punches to accurately record
24 when employees took a meal break and then resumed work creates liability for daily meal premium
25 pay. In *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, the California Supreme Court held
26 that in the meal period context, under Cal. Lab. Code, §§ 512, 226.7, employers cannot round time
27 punches because the meal period provisions are designed to prevent even minor infringements on
28 meal period requirements, and rounding is incompatible with that objective, and that records

1 showing noncompliant meal periods raise a rebuttable presumption of meal period violations,
2 including at the summary judgment stage.

3 As applied here, with no accurate record of when Plaintiff's, or any class member's, meal
4 breaks actually started and actually stopped, Defendants' policy of estimating meal breaks based on
5 pre-set, prospective calendar entries constitutes unlawful rounding, and its inaccurate records raise
6 the presumption of meal period violations, for each and every meal period that Plaintiff, and any
7 class member took. None of the wage statements produced in this matter reflect any payment for
8 meal break premium pay. Accordingly, Defendants violated Lab. Code §§ 512, 226.7 and/or
9 2699(a), (f)-(g) for the failure to provide timely, complete, and wholly duty-free meal and rest
10 periods, and any meal or rest break premium pay for failing to do so. Plaintiff contends that
11 Defendants are liable for daily meal break premium pay for each non-exempt employee, civil
12 penalties, attorneys' fees and costs.

13 Defendants argued that Class Members had ample time to take compliant meal and rest
14 breaks, that they were informed of their right to take them, that they were not required to respond to
15 communications immediately, such that they were not always on-call, and that their meal and rest
16 break periods were not interrupted. Plaintiff factored in the possibility that the meal and rest break
17 violations claim would fail, and factored it into the settlement negotiations. (Daugherty Decl. ¶XX.)
18 Additionally, if the meal and rest break claims failed, there is a possibility that that the Labor Code
19 226 wage statement claims would also fail. (Daugherty Decl. ¶30.) This was an additional risk
20 factor for this claim. (*Ibid.*)

21 4. Failure to pay overtime

22 Defendants did not pay overtime. Defendants only paid Plaintiff at her flat hourly rate of
23 \$37 per hour. She never received one and a half times (1.5X) overtime pay, despite working
24 approximately forty 9-hour+ days. Cal. Labor Code section 510(a) requires "[a]ny work in excess
25 of eight hours in one workday and any work in excess of 40 hours in any one workweek and the
26 first eight hours worked on the seventh day of work in any one workweek shall be compensated at
27 the rate of no less than one and one-half times the regular rate of pay for an employee." Further,
28 "[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice

1 the regular rate of pay for an employee” and “any work in excess of eight hours on any seventh day
2 of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an
3 employee.” (Cal. Lab. Code, § 510(a).)

4 Defendants are well aware of the overtime requirements in the State of California.
5 Defendants’ handbook states the following regarding overtime pay:

6 Non-exempt Employees

7 Non-exempt employees are those employees who are entitled to overtime pay at the
8 rate of one and a half times their regular hourly rate of pay (or, for employees with
9 multiple rates of pay, the weighted average of all applicable rates of pay) for all hours
10 worked beyond eight hours per workday, or forty hours per work week, and for the
11 first eight hours worked on the seventh consecutive day of work in a workweek.

12 Regardless of this knowledge and expressed policy, Defendants knowingly and willfully did
13 not pay Plaintiff any overtime when she worked more than 8 hours in a workday. Based on the
14 employee records provided by Defendants, this occurred with all non-exempt employees.

15 5. Waiting time penalties under Labor Code § 203.

16 Given Defendants’ the above described failure to pay class members for all time worked,
17 meal and rest break premium pay, and overtime when employees worked more than 8 hours in a
18 day or 40 hours in a week, Defendants failed to pay class members all wages earned at the time of
19 termination. Accordingly, all employees separated from Defendants within the class period are
20 entitled to 30 days of waiting time penalties, under Labor Code § 203.

21 6. Wage statement violations under Labor Code §§ 226, 1174, and 1198.

22 California Labor Code section 226(a) requires employers to make, keep and provide true,
23 accurate, and complete employment records. Defendants have not provided Plaintiff or the
24 aggrieved employees with accurate or properly itemized wage statements. Labor Code section
25 226(e) provides that if an employer fails to comply with providing an employee with properly
26 itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater
27 of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per
28 employee for each violation in a subsequent pay period, not to exceed \$4,000.

Further, Labor Code section 226.3 provides that any employer who violates section 226(a)
shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial

1 citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer
2 fails to provide the employee a wage statement or fails to keep the required records pursuant to
3 Section 226(a).

4 The recent California Supreme Court decision in *Naranjo v. Spectrum Security Services, Inc.*
5 (2022) 13 Cal.5th 93 held that premium pay premium pay for missed meal and rest breaks under
6 Lab. Code, § 226.7, compensated employees for the work performed during a meal or rest break
7 period and therefore constituted wages within the meaning of Lab. Code, §§ 200, 203, and 226.
8 Therefore, employers are required to report missed-break premium pay earned in each pay period
9 on the employee's wage statement under § 226, and that employers must promptly pay all earned
10 premium pay upon termination or be liable for waiting time penalties under Labor Code §203, and
11 the failure to do so will subject the employer to liability.

12 During the relevant time period, Plaintiff contends that because Defendants failed to track
13 and maintain accurate records of the actual time worked by Plaintiff and all aggrieved employees,
14 failed to pay for all time worked, failed to pay any overtime for work exceeding eight hours in a day
15 or 40 hours in a week, failed to report and pay any meal and rest break premium pay, Defendants
16 knowingly and intentionally provided Plaintiff and all aggrieved employees with incomplete and
17 inaccurate wage statements in violation of Labor Code §226. Defendants issued wage statements to
18 aggrieved employees that fail to correctly list: the gross wages earned, as required by §226(a)(1);
19 the total number of hours worked, as required by §226(a)(2); net wages earned, §226(a)(5); all
20 applicable hourly rates in effect during the pay period, including but not limited to overtime rates of
21 pay and the corresponding number of hours worked at each hourly rate, as required by § 226(a)(9).

22 California Labor Code section 1174(d) provides that “[e]very person employing labor in this
23 state shall [k]eep a record showing the names and addresses of all employees employed and the ages
24 of all minors” and “[keep, at a central location in the state or at the plants or establishments at which
25 employees are employed, payroll records showing the hours worked daily by and the wages paid to,
26 and the number of piece-rate units earned by and any applicable piece rate paid to, employees
27 employed at the respective plants or establishments...”

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1 Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they
2 fail to maintain accurate and complete records as required by section 1174(d). During the relevant
3 time period, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain
4 accurate payroll records for non-exempt, aggrieved employees showing the daily hours they worked
5 and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked
6 and as a result of misclassifying other aggrieved employees.

7 California Labor Code section 1198 provides that the maximum hours of work and the
8 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the
9 applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any
10 employees for longer hours than those fixed by the order or under conditions of labor prohibited by
11 the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep
12 accurate time records showing when the employee begins and ends each work period and meal
13 period. During the relevant time period, Defendants failed, on a company-wide basis, to keep
14 records of meal period start and stop times for non-exempt, aggrieved employees in violation of
15 section 1198. During the relevant time period, Defendants failed, on a company-wide basis, to keep
16 accurate records of meal period start and stop times for non-exempt, aggrieved employees, in
17 violation of section 1198. Also, in light of Defendants’ failure to provide non-exempt, aggrieved
18 employees with 30-minute meal periods to which they were entitled, Defendants kept no records of
19 meal start and end times for first or second meal periods.

20 Because Defendants failed to provide the correct net and gross wages earned, applicable
21 rates of pay, and number of total hours worked on wage statements, class members were prevented
22 from verifying, solely from information on the wage statements themselves, that they were paid
23 correctly and in full. Instead, class members have had to look to sources outside of the wage
24 statements themselves and reconstruct time records to determine whether in fact they were paid
25 correctly and the extent of underpayment, thereby causing them injury.

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7. Violation of Labor Code § 2802: failing to reimburse employees for necessary business expenses.

Defendants hired Plaintiff and class members to work remotely, from their respective homes, typically for eight to nine hours a day. While Defendants provided laptops and phones for use in their work, Defendants did not provide any reimbursement for home internet plans, or home utility costs, such as electricity, gas, or water, which are necessarily used to Defendants' benefit during each aggrieved employee's working day. Because Defendants required its employees to work remotely, it caused them to incur these additional business-related expenses, attributable to performing the job duties from home.

Labor Code § 2802 requires that employers reimburse employees "for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." (Cal. Lab. Code § 2802.) When an employer either knows or has reason to know that the employee has incurred an expense, the employer has the duty to exercise due diligence and take any and all reasonable steps to ensure that the employee is paid for the expense. (See *Wilson v. The La Jolla Group* (2021) 61 Cal.App.5th 897, 919, citing *Stuart v. RadioShack Corp.* (N.D.Cal. 2009) 641 F.Supp.2d 901, 904.)

In *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, the leading case on the requirements of employee reimbursements under Labor Code § 2802, the court held that § 2802 requires an employer to reimburse an employee for the reasonable expense of the mandatory use of a personal cell phone, regardless of the details of the employee's cell phone plan, whether the phone bill is paid for by a third person or at all, and whether the employee changed plans to accommodate worked-related cell phone usage, and that to show liability under § 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and that he or she was not reimbursed.

As applied here, Defendants required Plaintiff and other employees to use their own homes, home internet, and home utilities to perform their work for the benefit of Defendants. Defendants indisputably knew they were incurring these necessary business expenses, and did not reimburse them for the necessary costs of doing so. Despite the mandate of § 2802, Defendants' written

1 Remote Work Program Policy Guidelines disavows responsibility for employees' business-related
2 expenses for using their own homes and equipment to perform their jobs. Defendants' policy states
3 in relevant parts, as follows:

4 A Place of Growth will not be responsible for costs associated with the setup of the
5 employee's home office, such as remodeling, furniture or lighting, nor for repairs or
6 modifications to the home office space. . .
7 . . . A Place of Growth will not be expected to purchase home internet plans or phone
8 services. . .
9 The selection, installation, maintenance, repair or replacement of any employee-
10 owned equipment and software is the responsibility of the employee. . .
11 Employees must be accessible by phone and/or internet within a reasonable time
12 period during their work schedule. Employees who are not as responsive and/or
13 productive while working remotely as in the office may be subject to discipline.

14 In direct violation of § 2802, despite benefiting from its employees incurring home-business
15 costs, Defendants simply did not reimburse Plaintiff, or any class member, for these costs.

16 Additionally, despite providing Plaintiff with a work mobile phone and being well aware of
17 its number, Defendants management, supervisors, and office staff repeatedly initiated
18 communications with Plaintiff through text message and telephone calls directly to her personal
19 mobile phone. Accordingly, just as in *Cochran*, Defendants required Plaintiff to use her personal
20 cell phone to respond to work-related calls and text messages, and Defendants did not reimburse her
21 for doing so. This occurred with other class members as well. Accordingly, Plaintiff contends that
22 Defendants violated § 2802, and class members are entitled to recover damages, civil penalties,
23 attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2802, and/or 2699(f)-
24 (g).

25 Defendant argues that it was not necessary for class members to use their own personal
26 phone, because they were provided with a company mobile phone. Similarly, Defendants argue that
27 class members did not need to use their own home internet, because the company phones provided
28 to class members could be used as mobile hot-spots, to connect class members to the internet at
sufficient speed to conduct their job duties. (Daugherty Decl. ¶31.) This did create a risk for
certification and a merits risk that Plaintiff considered as part of the settlement negotiations. (*Ibid.*)

1 **C. The Risks of Litigating Plaintiff’s Case**

2 1. The Risks Associated with the PAGA Claim

3 California’s Private Attorneys General Act (“PAGA”), Labor Code § 2698, *et seq.*, permits
4 private litigants to recover civil penalties for violations of the Labor Code. PAGA provides that
5 plaintiffs may recover previously established civil penalties (section 2699(a)) or, if none were
6 established, plaintiffs may recover default penalties provided in section 2699(f) in the amount of
7 \$100 per employee per pay period for the initial violation and \$200 for subsequent violations.

8 As a result of Defendant’s conduct alleged above, Plaintiff seeks PAGA penalties available
9 for violations under Cal. Labor Code sections 201, 202, 203, 226(a), 226.7, 226.8, 510, 512, 1194,
10 1199, and 2802. Cal. Labor Code section 2699(f) provides, in relevant part, “[f]or all provisions of
11 this code except those for which a civil penalty is specifically provided, there is established a civil
12 penalty for a violation of these provisions, as follows: one hundred dollars (\$100) for each aggrieved
13 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
14 employee per pay period for each subsequent violation.” In addition, the statute provides that “[a]ny
15 employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and
16 costs.” (Cal. Labor Code § 2699(g)(1).)

17 The Parties discounted the PAGA claim for multiple reasons. First, many of the aggrieved
18 employees’ PAGA claims are derivative of all the foregoing class claims. Second, a court has
19 discretion to award less than the maximum penalty. Labor Code § 2699(e)(2) (“a court may award
20 a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts
21 and circumstances of the particular case, to do otherwise would result in an award that is unjust,
22 arbitrary and oppressive, or confiscatory”). *See e.g., Carrington v. Starbucks Corporation* (2018)
23 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA
24 penalty). As such, the Agreement’s contemplated PAGA payment of \$5,000.00 is appropriate.
25 (Daugherty Decl. ¶32.) *See Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010)
26 (affirming settlement allocating \$0 of \$6.4 million settlement to PAGA penalties).

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1 2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation.

2 There is significant expense associated with the class certification process, which the Parties
3 can avoid by entering into the contemplated Agreement now. (Daugherty Decl. ¶33.) If the Court
4 did eventually certify a class, trial of a case involving approximately 73 Settlement Class Members
5 would require the retention of expensive expert witnesses, the accrual of extensive litigation costs,
6 and a significant time overlay by the parties. (*Ibid.*) Moreover, given the complexity and unsettled
7 nature of the issues in this case it is likely that any outcome at trial would have resulted in a lengthy
8 and costly appeal. (*Ibid.*) An appeal would result in further delay for the Settlement Class Members
9 who are waiting for a resolution in this matter. (*Ibid.*)

10 3. The Risk of Maintaining Class Action Status through Trial

11 This case has not been certified to be tried as a class action. (Daugherty Decl. ¶34.) While
12 Plaintiff believes there is strong evidence to support certification of several possible certification is
13 always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is
14 always a possibility. (*Ibid.*) In attempting to certify a class, the parties would need to conduct
15 multiple depositions, including of the Class Representative and of several person(s) most
16 knowledgeable regarding Defendant's policies. (*Ibid.*) There is a risk for both sides as to what these
17 depositions will reveal and whether they will support class certification to the extent expected. (*Id.*)

18 4. The Amount Offered in Settlement

19 It was very difficult for the Parties to reach this Settlement of \$175,000.00. (Daugherty
20 Decl. ¶35.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations.
21 (*Ibid.*) The Parties arrived at it after extensive investigation and discovery, careful evaluation of the
22 law, risks, and all information substantiating the amount of penalties reasonably likely to be awarded
23 to the class were the trier of fact to find Defendant liable, and the assistance of an experienced retired
24 judge and mediator, Hon. Jan Adler (Retired). (*Ibid.*)

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a) Plaintiff's Assessment of Defendant's Maximum Exposure

Plaintiff assessed full value of the Minimum Wage/Overtime claim, without any discount, at approximately \$145,304.00. This was based on each employee's average hourly rate, and average of 2 hours of off-the-clock work per pay period, and an average of 2 hours of overtime per pay period. (Daugherty Decl. ¶36.)

Plaintiff's estimated full value of the Meal Period claim, without any discount, was approximately \$24,016 (Daugherty Decl. ¶37.) Plaintiff utilized the same hourly rates noted above and determined the shifts that were long enough to necessitate a meal period from Defendant's records. (*Ibid.*)

Plaintiff's estimated full value of the Rest Period claim, without any discount, was approximately \$24,016. (Daugherty Decl. ¶38.) Plaintiff utilized the class members' average hourly rates and determined one hour of premium pay for each day the class members worked, based on Defendant's records. (*Ibid.*)

With regard to the Reimbursement Claim analysis, Plaintiff also utilized \$25.00 per pay period for the reimbursement for cell phone/internet usage. This brought the damages for this claim to \$60,375. (Daugherty Decl. ¶39.)

Plaintiff valued the Wage Statement Claim, without discount, at \$120,650. (Daugherty Decl. ¶40.) Plaintiff used \$50 for the first wage statement violation, within the relevant time period, and \$100 for each wage statement issued (pay period), thereafter, and utilized a \$4,000 cap on wage statement penalties per employee. (*Ibid.*)

Plaintiff valued the Waiting Time Claim at \$456,240.00 based on 45 former employees and an average shift length of approximately 8 hours. (Daugherty Decl. ¶41.)

Finally, Plaintiff calculated the value of the PAGA claims, stacked for each violation at \$714,700. This includes penalties for claims for violations for minimum wage, overtime, meal periods, rest periods, wage statements, and reimbursements for business expenses. (Daugherty Decl. ¶42.) If only one penalty is applied for any of the other violations, the value is \$102,100. (*Ibid.*) As such, there is a high fluctuation in the possible penalties awarded at maximum value. (*Ibid.*) The court also has discretion to decrease these penalties. (*Ibid.*)

1 Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the
2 Settlement Class Members' claims was without including PAGA is \$830,646 (Daugherty Decl.
3 ¶43.) Factoring PAGA, and stacking penalties, the value of the case is close to \$ 1,545,346.00.
4 (*Ibid.*) Given the risks associated with waiting time penalties and PAGA and the risks associated
5 with proving each claim, and the other risks of litigation, Class Counsel believes the Gross
6 Settlement Amount of \$175,000.00 is fair and reasonable. (Daugherty Decl. ¶43.)

7 5. The Experience and Views of Counsel

8 Finally, counsel's experience and success in similar class actions also weigh in favor of
9 preliminary approval. *See Wershba, supra*, 91 Cal.App.4th at 245. Klinedinst PC is very
10 experienced in prosecuting complex employment litigation. (Daugherty Decl. ¶¶XX-XX.) The firm
11 is well versed in class action litigation and has diligently and aggressively pursued this action. (*Id.*)
12 After factoring in the risks explained above, Class Counsel believes that the proposed settlement is
13 fair and reasonable. (Daugherty Decl. ¶XX.)

14 6. The Proposed Plan of Allocation Is Fair and Reasonable

15 Plans of allocation are subject to the same standard of review as class action settlements;
16 they must be "fair, adequate and reasonable." (*See, e.g., Officers for Justice v. Civil Service Comm'n*
17 (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
18 compensates Settlement Class Members pro rata based on the number of Workweeks worked by the
19 Settlement Class Member during the Class Period. The lump sum payment to each Settlement Class
20 Member not excluding him/ herself will be determined by dividing the Net Settlement Amount by
21 the total number of Compensable Workweeks worked by all members of the settlement class during
22 the Class Period and then multiplying the Workweek Value by the number of Compensable
23 Workweeks by the individual class member as determined by the Administrator. This allocation
24 distributes Settlement funds proportionally to each class member's damages, and should therefore
25 be approved as fair, adequate, and reasonable. (Ex. 1 at ¶2.2.4.)

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1 7. The proposed notice fairly apprises the settlement class members of the terms of
2 the settlement and of the class members’ rights under the settlement.

3 Plaintiff requests that the Court approve the proposed plan and form of Class Notice. The
4 standard for determining the adequacy of notice is whether the notice has “a reasonable chance of
5 reaching a substantial percentage of the class members.” (*Cartt v. Superior Court* (1975) 50
6 Cal.App.3d 960, 974.) Pursuant to the Agreement, the Notice will be sent to the last known address
7 of all Settlement Class Members, or to an updated address if one is located in the National Change
8 of Address Database. (Ex. 1 at ¶¶ 1.8, 7.4.2, 7.4.3). If any Notices are returned as undeliverable,
9 the Administrator will undertake another reasonable address verification measure to locate a valid
10 mailing address and will promptly send the Notice to the new address. (*Id.*) As such, the Notice is
11 likely to reach most, if not all, Settlement Class Members.

12 With respect to the contents of the Notice, the “notice given to the class must fairly apprise
13 the class members of the terms of the proposed compromise and of the options open to dissenting
14 class members.” (*Trotsky v. L.A. Fed. Sav. & Loan Ass’n* (1975) 48 Cal.App.3d 134, 151–52.) The
15 purpose of a class notice is to give class members sufficient information to decide whether they
16 should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement.
17 (*Ibid.*)

18 Here, the Notice clearly explains the proposed Agreement and the options to opt out of the
19 Settlement or object to it at the Final Approval Hearing. (Ex. 1 at ¶7.5, 7.7-7.8; *see also* Ex. A to
20 the Agreement at pp. 2, 4, 7 [Class Notice].) In short, the Court should approve the proposed Class
21 Notice because it describes the proposed settlement with enough specificity to allow Settlement
22 Class Members to make an informed choice regarding whether to participate.

23 **VI. THE SERVICE AWARD TO THE NAMED PLAINTIFF**

24 The Class Representative is entitled to an enhancement for her valiant effort and time
25 expended in this matter. (Daugherty Decl. ¶45.) The time spent by ASHLEY PACULBA is
26 significant and includes researching and retaining competent counsel; providing information to
27 Class Counsel regarding the nature of the work at Defendant; compiling relevant documents;
28 working closely with Class Counsel to develop the theories of liability and martial relevant

1 evidence; regularly discussing the status of the case with Class Counsel; discussing the case via
2 telephone with Settlement Class Members; attending a full-day of mediation; and responding
3 promptly to Class Counsel's communications regarding settlement. (*Ibid.*) Thus, in addition to the
4 sums paid to Settlement Class Members, Plaintiff requests a proposed litigation enhancement in the
5 amount of \$7,500.00, to be paid from the Gross Settlement Amount. (Ex. 1 at ¶2.2.1.)

6 Class Counsel considers this to be a fair and reasonable enhancement. (Daugherty Decl.
7 ¶46.) The enhancement takes into consideration the time, effort, and expense incurred by Plaintiff
8 in coming forward to litigate this matter on behalf of all Settlement Class Members. (*Id.*) Plaintiff
9 will provide a detailed declaration with the Final Approval Motion detailing her participation and
10 further justification for the enhancement. (*Ibid.*)

11 **VII. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT**
12 **AGENCY**

13 As indicated on the Proof of Service, Plaintiff's Motion for Approval of Class Action
14 Settlement ("Motion") will be concurrently uploaded to the Labor and Workforce Development
15 Agency's ("LWDA") website on the date this Motion is filed as required by statute. Proof of
16 submission of Plaintiff's Motion, all related documents, and copy of the email from the LWDA
17 confirming receipt is attached to the Declaration of Thomas E. Daugherty as Exhibit "2." (Daugherty
18 Decl. ¶47.)

19 **VIII. DEFENSE COUNSEL DOES NOT OPPOSE THIS MOTION**

20 Class Counsel conferred with Defense Counsel, Noah Woods on the content of this motion.
21 Mr. Woods submitted some changes to the motion, which have been incorporated in this motion.
22 (Daugherty Decl., ¶ 48.) Defense Counsel did not raise any objection to the motion, and Class
23 Counsel understands that Defense Counsel has no opposition to the motion. (*Ibid.*)

24 **VIII. CONCLUSION**

25 Plaintiff respectfully submits that the proposed Agreement is fair, adequate, reasonable, and
26 in the best interest of the Settlement Class Members. Therefore, the Parties respectfully request that
27 the Court (1) grant preliminary approval of the Class Action and PAGA Settlement Agreement, and
28 all of its terms; (2) approve the proposed form of notice, and direct that the Notice be sent to

1 Settlement Class Members in the manner set forth in the Class Action and PAGA Settlement
2 Agreement; and (3) schedule a hearing on final approval of the Agreement and Class Counsel's
3 application for an award of attorney's fees and litigation costs.

4
5 KLINEDINST PC

6
7 DATED: July 7, 2023

8 By:



Thomas E. Daugherty
Attorneys for Plaintiff ASHLEY PACULBA

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4

5 Attorneys for Plaintiff ASHLEY PACULBA
6
7
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO**

11 ASHLEY PACULBA,

12 Plaintiff,

13 v.

14 VANESSA VILLASENOR LICENSED
15 MARRIAGE AND FAMILY THERAPIST
16 INC., dba A PLACE FOR GROWTH, a
California Corp., and VANESSA
VILLASENOR, an individual,

17 Defendants.
18

Case No. 37-2022-00028449-CU-OE-CTL

**DECLARATION OF THOMAS E.
DAUGHERTY IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: July 14, 2023
Time: 9:00 a.m.
Dept: C-75
Judge: Hon. James A. Mangione
Action Filed: July 19, 2022

19 I, Thomas E. Daugherty, do hereby declare:

20 1. I am an attorney at law duly licensed to appear before all courts in the State of
21 California and am a shareholder with Klinedinst PC, attorneys of record for Plaintiff ASHLEY
22 PACULBA ("Plaintiff"), in the above-captioned action.

23 2. I am completely familiar with the present litigation, including the pleadings,
24 discovery, and filings submitted in this matter. I have personal knowledge of the following facts
25 and, if called upon as a witness, could competently testify thereto, except as to those matters
26 which are explicitly set forth as based upon my information and belief and, as to such matters, I
27 am informed and believe that they are true and correct. I make this Declaration in support of
28

1 Plaintiff's Motion for Preliminary Approval of the Class Action Settlement in the above-captioned
2 case.

3 3. On July 19, 2022, on behalf of Plaintiff, I caused to be filed a Class Action
4 Complaint against Defendants VANESSA VILLASENOR LICENSED MARRIAGE AND
5 FAMILY THERAPIST INC., dba A PLACE FOR GROWTH, a California Corp., and VANESSA
6 VILLASENOR, an individual (collectively, "Defendants") in the Superior Court for the State of
7 California, County of San Diego, Case No. 37-2022-0002849-CU-OE-CTL, seeking recovery for:

8 A. Failure to Pay Wages and/or Overtime, Labor Code §§ 510, 1194, and 1199

9 B. Failure to Provide Meal Periods, Labor Code §§ 226.7 and 512

10 C. Failure to Provide Rest Periods, Labor Code § 226.7

11 D. Failure to Indemnify, Labor Code § 2802

12 E. Wage Statement Violations, Labor Code § 226(a)

13 F. Waiting Time Penalties, Labor Code § 203

14 G. Business & Professions Code § 17200.

15 4. On July 13, 2022, I sent a notice letter, pursuant to California Labor Code § 2699, *et*
16 *seq.*, the Private Attorneys General Act (hereafter, "PAGA"), to the California Labor Workforce
17 Development Agency (hereafter, "LWDA") regarding Plaintiff's intent to seek civil penalties based
18 on Defendants alleged violations of the California Labor Codes enumerated in the Complaint in
19 addition to claims pursuant to Cal. Labor Code §§ 230.8, 233, 246, 248.6, and Cal. IWC Wage Order
20 4.

21 5. The Complaint defines two proposed Class as follows:

22 a) "All persons Defendants employed in California hourly, non-exempt
23 employees, individuals performing work comparable to the aforementioned,
24 compensated comparably to the aforementioned, individuals in similar
25 positions, at any time during the period beginning four years prior to the filing
of this action and ending on the date that final judgment is entered in this
action."

26 6. On April 10, 2023, the Parties participated in an all-day mediation presided over by
27 Hon. Jan Adler (Retired), and the case settled.

28 ///

1 7. Prior to mediating this case, I entered into an agreement with Defense counsel to put
2 a hold on formal discovery, to see if we could resolve this case through early mediation. Defendants
3 informally produced a substantial sampling of time and pay data for members of the Class for
4 mediation purposes only. I personally reviewed and analyzed these records in preparation for
5 mediation, and calculated estimated damages and penalties, based on apparent and presumptive
6 Labor Code violations in the records.

7 8. My understanding and belief, based on my conversations and many email exchanges
8 with Defense counsel throughout this process, is that Defendants deny any liability or wrongdoing
9 of any kind associated with the claims alleged in the Action, disputes the damages and penalties
10 claimed by Plaintiff, and further contend that, for any purpose other than settlement, Plaintiff's
11 claims are not appropriate for class or representative action treatment. Defendants contend, among
12 other things, that, at all times, they have complied with the California Labor Code, and the Industrial
13 Wage Commission Orders.

14 9. Based on my independent investigation and evaluation, I believe that the Agreement
15 with Defendants is fair, reasonable and adequate, and in the best interest of the settlement Class in
16 light of all known facts and circumstances, including the risk of significant delay, defenses asserted
17 by Defendant, uncertainties regarding a class and representative action trial on the merits, and
18 numerous potential appellate issues. Although Defendants denies any liability, Defendants are
19 agreeing to this Agreement solely to avoid the cost of litigation. Accordingly, the Parties and their
20 counsel desire to fully, finally, and forever settle, compromise and discharge all disputes and claims
21 arising from or relating to the Action on the terms set forth here.

22 10. The proposed settlement class is ascertainable for several reasons: First, Defendants
23 have agreed in the Agreement to provide a class list to the Administrator containing the name, last
24 known mailing address, last known telephone number, Social Security number, and number of Class
25 Period Workweeks and PAGA Pay Periods for all putative class members after issuance of the
26 preliminary approval order. (Ex. 1 at ¶1.8.)

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28 ///

1 11. Second, the proposed Settlement Class Members consist of Defendant's employees
2 and Defendant is required to keep records of its employees' names, home addresses, and social
3 security numbers. (*See* Wage Order 4-2001, subsection 7(c).)

4 12. Third and finally, Defendant informally produced Plaintiff's personnel file and pay
5 statements, relevant policies, sampling time data, pay data, and wage statements for proposed
6 Settlement Class Members, which confirms that all proposed Settlement Class Members may be
7 readily identified based on Defendant's records.

8 13. The proposed Settlement Class contains, based upon my review of Defendants'
9 employee records and Defendants' representations, approximately 73 individuals in the State of
10 California. (Ex. 1 at ¶13.1.) Therefore, I am confident that I will be able to establish that the proposed
11 settlement class is ascertainable and sufficiently numerous.

12 14. There are questions of law and fact common to the proposed settlement class that
13 predominate over any questions affecting only individual Class Members. These common questions
14 include:

- 15 A. Whether Defendant failed to pay all wages and/or overtime compensation;
- 16 B. Whether Defendant failed to provide lawfully required meal periods and/or failed to
17 compensate employees one (1) hour's wages in lieu thereof;
- 18 C. Whether Defendant failed to provide lawfully required rest periods and/or failed to
19 compensate employees one (1) hour's wages in lieu thereof;
- 20 D. Whether Defendant failed to reimburse business-related expenses;
- 21 E. Whether Defendant failed to provide accurate itemized wage statements;
- 22 F. Whether Defendant failed to pay compensation due and owing upon termination of
23 employment;
- 24 G. Whether Defendant engaged in unfair competition; and,
- 25 H. Whether Defendant violated § 2699, et seq. of the Labor Code by engaging in the
26 acts previously alleged, including Defendant's misclassification of Plaintiff as an
27 independent contractor; Defendant's failure to pay all wages for a biweekly payroll
28

1 period within seven (7) calendar days following the close of the payroll period; and
2 Defendant's illegal indemnity in the Independent Contractor agreement.

3 15. Accordingly, Plaintiff's challenge to Defendant's uniform policies and practices
4 involves common factual and legal issues that are amenable to class treatment.

5 16. Here, Plaintiff maintains that the proposed Settlement Class Members suffered the
6 same injuries, in the same manner: (1) Settlement Class Members were not paid all wages/overtime;
7 (2) Settlement Class Members did not receive their meal and rest periods as required; (3) Settlement
8 Class Members were not provided accurate itemized wage statements; (4) Settlement Class
9 Members were not reimbursed for business-related expenses; (5) Settlement Class Members did not
10 receive timely wages; and (6) Settlement Class Members were not paid all wages owed upon
11 termination/resignation. Plaintiff alleges that Settlement Class Members worked in the same
12 capacity for the same employer and were subject to the same employment policies and practices,
13 the questions of fact and claims regarding the status of these employees are the same for each
14 member of the settlement class. Accordingly, for purposes of settlement, certification for settlement
15 purposes is appropriate.

16 17. Plaintiff worked performed work for Defendants from approximately January 31,
17 2022 through May 30, 2022 as an Associate Marriage & Family Therapist. Plaintiff alleges that
18 she: (1) worked without being paid all wages and/or overtime; (2) worked without being provided
19 compliant meal/rest periods as required by law; (3) worked without being reimbursed for costs
20 associated with personal cell-phone usage and home internet costs; (4) worked without being
21 provided accurate itemized wage statements; and (5) worked without being paid all wages due upon
22 separation. She also alleges that she experienced derivative claims for unfair business competition
23 (B&P Code §17200) and Labor Code §2699, et seq.

24 18. Plaintiff contends that her claims are typical of those of the settlement Class.

25 19. Plaintiff believes that she is capable of fairly representing and adequately protecting
26 the interests of the proposed Settlement Class Members. Plaintiff's interests in this litigation are
27 coextensive with the interests of the proposed Settlement Class Members. Defendant engaged the
28 members of the proposed settlement class to perform work during the relevant time period and

1 Plaintiff contends that all proposed Settlement Class Members incurred the same type of alleged
2 damages with regard to Defendant's alleged violations of the law. Moreover, Plaintiff has agreed to
3 serve as Class Representative and has retained qualified Counsel who is experienced in prosecuting
4 wage and hour class actions. This demonstrates her commitment to bringing about the best possible
5 results for the benefit of the proposed settlement class.

6 20. Plaintiff has provided me with all necessary and pertinent information to assess her
7 ability to represent the class. She has been a very active participant in the litigation and worked
8 closely with me to provide detailed facts necessary to develop the theories of liability. She also
9 attended the full-day mediation in this matter and was informed of and involved in all of the
10 Settlement negotiations. Therefore, Plaintiff believes that she has and will continue to adequately
11 represent the proposed Settlement Class Members.

12 21. I maintain that class treatment would be the superior method of managing this case.
13 A class action is superior to individual litigation "when numerous parties suffer injury of insufficient
14 size to warrant individual action and when denial of class relief would result in unjust advantage to
15 the wrongdoer." (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) In cases such as
16 this, where individual wage and hour damages may be relatively small, the class action device is the
17 most feasible method of recovery. (*See, e.g. Lockheed Martin, supra*, 29 Cal.4th at 1131.) In this
18 regard, the superiority of class treatment is evident here because individual pursuit of class
19 members' claims may not be economically viable. The only alternative to certification would be to
20 force over 73 individuals to join this action, file individual, uniform actions, or abandon their legal
21 rights altogether. This economic reality would result in a windfall for Defendant if this case were
22 not certified.

23 22. For purposes of the Agreement, there is a single proposed Settlement Class:

24 All persons who were employed by Defendants in the State of
25 California as a non-exempt employee at any time from July 19, 2018
26 through the date of Preliminary Approval
(Ex. 1 at ¶1.5.)

27 23. The proposed Settlement Class Period is July 19, 2018 through the date of
28 Preliminary Approval. (Ex. 1 at 1.12.) This Agreement is based on an estimated total of 73 Class

1 Members and 4,747 Total Workweeks, which are numbers Defendant has confirmed based on its
2 records. (Ex. 1 at ¶9.)

3 24. For purposes of the Agreement, the Aggrieved Employees are defined as: “all
4 persons who were employed by Defendants in the State of California as a non-exempt employee at
5 any time from July 13, 2021 through the date of Preliminary Approval. (“Aggrieved Employees”
6 “PAGA Group” or “PAGA Members”) (Settlement, Ex. 1 at ¶1.4.)

7 25. For purposes of this settlement, the PAGA Period is July 13, 2021 through the date of
8 preliminary approval of the Settlement Agreement. (Ex. 1 at ¶1.31.) Based on documents and other
9 information produced by Defendant, there are approximately 57 Aggrieved Employees. (Ex. 1 at
10 ¶9)

11 26. As detailed fully in the Agreement, the Settlement provides for Defendant to pay a
12 Gross Settlement Amount of \$175,000.00, which includes the sum of the Individual Class Payments,
13 the Class Representative service award, the Class Counsel Award, PAGA Payment, and the
14 Settlement Administration Costs. (Ex. 1 at ¶1.22.)

15 27. The Net Settlement Amount is the Gross Settlement Amount, less Individual PAGA
16 Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees
17 Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment.
18 (Ex. 1 at ¶1.29.)

19 28. I conducted extensive informal discovery before entering into meaningful settlement
20 negotiations in this matter. This involved receiving and analyzing the calendar entry/time data and
21 corresponding wage statements for all class members, to assess the potential damages. I also
22 received and reviewed Defendants employee handbook, and relevant wage and hour policies.

23 29. This discovery allowed me to fairly evaluate (1) the strength of Plaintiff’s case; (2)
24 the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining
25 class action status through trial. I have been handling wage and hour class actions and PAGA
26 representative claims cases for approximately ten years, and after weighing all of the following
27 factors, I support this Agreement.

28 ///

1 30. Defendants argued that Class Members had ample time to take compliant meal and
2 rest breaks, that they were informed of their right to take them, that they were not required to respond
3 to communications immediately, such that they were not always on-call, and that their meal and rest
4 break periods were not interrupted. I considered the possibility that Plaintiff's meal and rest break
5 violations claim would fail, and factored it into the settlement negotiations. If the meal and rest
6 break claims failed, there is a possibility that the Labor Code § 226 wage statement claims and
7 possibly the Labor Code § 203 waiting time penalties claims would also fail. This was an additional
8 risk factor for Plaintiff.

9 31. Additionally, in terms of Plaintiff's Labor Code § 2802 failure to reimburse claims,
10 Defendant argues that it was not necessary for class members to use their own personal phone,
11 because they were provided with a company mobile phone. Similarly, Defendants argue that class
12 members did not need to use their own home internet, because the company phones provided to
13 class members could be used as mobile hot-spots, to connect class members to the internet at
14 sufficient speed to conduct their job duties. This did create a risk for certification and a merits risk
15 that I considered as part of the settlement negotiations.

16 32. The Parties discounted the PAGA claim for multiple reasons. First, many of the
17 aggrieved employees' PAGA claims are derivative of all the foregoing class claims. Second, a court
18 has discretion to award significantly less than the maximum penalty. Labor Code § 2699(e)(2) ("a
19 court may award a lesser amount than the maximum civil penalty amount specified by this part if,
20 based on the facts and circumstances of the particular case, to do otherwise would result in an award
21 that is unjust, arbitrary and oppressive, or confiscatory"). *See e.g., Carrington v. Starbucks*
22 *Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of
23 maximum PAGA penalty). As such, the Agreement's contemplated PAGA payment of \$5,000.00
24 is appropriate. *See Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming
25 settlement allocating \$0 of \$6.4 million settlement to PAGA penalties).

26 33. There is significant expense associated with the class certification process, which the
27 Parties can avoid by entering into the contemplated Agreement now. The Court may ultimately
28 agree with Defendants' position and deny certification. If the Court did eventually certify a class,

1 trial of a case involving approximately 73 Settlement Class Members would require the retention of
2 expensive expert witnesses, the accrual of extensive litigation costs, and a significant time overlay
3 by the parties. Moreover, given the complexity and unsettled nature of the issues in this case it is
4 likely that any outcome at trial would have resulted in a lengthy and costly appeal. An appeal would
5 result in further delay for the Settlement Class Members who are waiting for a resolution in this
6 matter.

7 34. This case has not been certified to be tried as a class action. While I believe there is
8 strong evidence to support certification of several possible certification is always hard fought and
9 subject to judicial discretion. Moreover, in class actions, decertification is always a possibility. In
10 attempting to certify a class, the parties would need to conduct multiple depositions, including of
11 the Class Representative and of several person(s) most knowledgeable regarding Defendant's
12 policies. There is a risk for both sides as to what these depositions will reveal and whether they will
13 support class certification to the extent expected.

14 35. It was very difficult for the Parties to reach this Settlement Amount of \$175,000.00.
15 This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. The Parties
16 arrived at it after extensive investigation and discovery, careful evaluation of the law, risks, and all
17 information substantiating the amount of penalties reasonably likely to be awarded to the class were
18 the trier of fact to find Defendant liable, and the assistance of an experienced retired judge and
19 mediator, Hon. Jan Adler (Retired).

20 36. I assessed full value of the Minimum Wage/Overtime claim, without any discount,
21 at approximately \$145,304.00. This was based on each employee's average hourly rate, and average
22 of 2 hours of off-the-clock work per pay period, and an average of 2 hours of overtime per pay
23 period.

24 37. My estimated full value of the Meal Period claim, without any discount, was
25 approximately \$24,016. I utilized the same hourly rates noted above and determined the shifts that
26 were long enough to necessitate a meal period from Defendant's records.

27 ///

28 ///

1 38. My estimated full value of the Rest Period claim, without any discount, was
2 approximately \$24,016. I again utilized the class members' average hourly rates and determined one
3 hour of premium pay for each day the class members worked, based on Defendant's records.

4 39. With regard to the Reimbursement Claim analysis, I estimated \$25.00 per pay period
5 for the reimbursement for cell phone/internet usage. This brought the damages for this claim to
6 \$60,375.

7 40. I valued the Wage Statement Claim, without discount, at \$120,650. Plaintiff used
8 \$50 for the first wage statement violation, within the relevant time period, and \$100 for each wage
9 statement issued (pay period), thereafter, and utilized a \$4,000 cap on wage statement penalties per
10 employee.

11 41. I valued the Waiting Time Claim at \$456,240.00 based on 45 former employees and
12 an average shift length of approximately 8 hours.

13 42. Finally, I calculated the value of the PAGA claims, stacked for each violation at
14 \$714,700. This includes penalties for claims for violations for minimum wage, overtime, meal
15 periods, rest periods, wage statements, and reimbursements for business expenses. If only one
16 penalty is applied for any of the other violations, the value is \$102,100. As such, there is a high
17 fluctuation in the possible penalties awarded at maximum value. The court also has discretion to
18 significantly decrease these penalties.

19 43. Based on my assessment, the maximum potential value of all of Plaintiff's and the
20 Settlement Class Members' claims was without including PAGA is \$830,646. Factoring PAGA,
21 and stacking penalties, the value of the case is close to \$ 1,545,346.00. Given the risks associated
22 with waiting time penalties and PAGA and the risks associated with proving each claim, and the
23 other risks of litigation, Class Counsel believes the Gross Settlement Amount of \$175,000.00 is fair
24 and reasonable.

25 44. Finally, counsel's experience and success in similar class actions also weigh in favor
26 of preliminary approval. *See Wershba, supra*, 91 Cal.App.4th at 245. I have been litigating class
27 action and PAGA representative claims for approximately 10 years. I have been an attorney at
28 Klinedinst since 2012. Klinedinst PC has a dedicated employment group of attorneys, which is very

1 experienced in litigating complex class action and PAGA representative employment claims. The
2 firm is well versed in class action litigation and I have diligently and aggressively pursued this
3 action. After factoring in the risks explained above, I believe that the proposed settlement is fair and
4 reasonable.

5 45. The Class Representative is entitled to an enhancement for her valiant effort and time
6 expended in this matter. The time spent by ASHLEY PACULBA is significant and includes
7 researching and retaining competent counsel; providing detailed, factual information to me
8 regarding the nature of the work at Defendants and her personal experiences while working for
9 Defendants; compiling relevant documents; working closely with me to develop the theories of
10 liability and martial relevant evidence; regularly discussing the status of the case with Class
11 Counsel; attending a full-day of mediation; and responding promptly to my communications
12 regarding settlement. Thus, in addition to the sums paid to Settlement Class Members, Plaintiff
13 requests a proposed litigation enhancement in the amount of \$7,500.00, to be paid from the Gross
14 Settlement Amount.

15 46. I consider this to be a fair and reasonable enhancement. The enhancement takes into
16 consideration the time, effort, and expense incurred by Plaintiff in coming forward to litigate this
17 matter on behalf of all Settlement Class Members. Plaintiff will provide a detailed declaration with
18 the Final Approval Motion detailing her participation and further justification for the enhancement.

19 47. As indicated on the Proof of Service, Plaintiff's Motion for Approval of Class Action
20 Settlement ("Motion") will be concurrently uploaded to the Labor and Workforce Development
21 Agency's ("LWDA") website on the date this Motion is filed as required by statute. Proof of
22 submission of Plaintiff's Motion, all related documents, and copy of the email from the LWDA
23 confirming receipt is attached hereto as Exhibit "2."

24 48. I conferred via email with Defense Counsel, Noah Woods, on the content of this
25 motion. Mr. Woods submitted some changes to the motion, which have been incorporated in this
26 motion. A true and correct copy of this email exchange between Mr. Woods and myself is attached
27 hereto as Exhibit "3". Defense Counsel did not raise any objection to the motion, and I understand
28 and believe that Defense Counsel has no opposition to the motion.

1 49. Attached hereto as Exhibit "1" is a true and correct copy of the fully executed Class
2 Action and PAGA Settlement Agreement.

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

5 Executed on this 7th day of July, 2023, at San Diego, California.

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Thomas E. Daugherty
Attorneys for Plaintiff ASHLEY PACULBA

Exhibit 1

**CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS
NOTICE**

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Ashley Paculba (“Plaintiff” and “Ms. Paculba”) and defendants Vanessa Villasenor Licensed Marriage and Family Therapist, Inc., dba A PLACE OF GROWTH (“A PLACE OF GROWTH”), and Vanessa Villasenor, (“Ms. Villasenor”). The Agreement refers to defendants A PLACE OF GROWTH and Ms. Villasenor collectively as “A PLACE OF GROWTH” or “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 ASHLEY PACULBA v. VANESSA VILLASENOR LICENSED MARRIAGE AND FAMILY THERAPIST INC., dba A PLACE OF GROWTH, a California Corp., and VANESSA VILLASENOR, an individual, Case No. 37-2022-00028449-CU-OE-CTL, initiated on July 19, 2022, and pending in Superior Court of the State of California, County of San Diego.
- 1.2 “Administrator” means Phoenix Class Action Administration Solutions, 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 all persons who were employed by Defendants in the State of California as a non-exempt employee at any time from July 13, 2021 through the date of Preliminary Approval.
- 1.5 “Class” means all persons who were employed by Defendants in the State of California as a non-exempt employee at any time from July 19, 2018 through the date of Preliminary Approval.
- 1.6 “Class Counsel” means Klinedinst PC.
- 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 Defendants’ possession including the Class Member’s name, last-known mailing address, Social Security number, last-known email address, last-known phone number, and number of Class Period Workweeks and PAGA Pay Periods.

- 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 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 July 19, 2018 through the date of Preliminary Approval.
- 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 San Diego.
- 1.16 “Defendants” means named Defendants Vanessa Villasenor Licensed Marriage and Family Therapist, Inc., dba A PLACE OF GROWTH (“A PLACE OF GROWTH”), and Vanessa Villasenor, (“Ms. Villasenor”).
- 1.17 “Defense Counsel” means Littler Mendelson, P.C.
- 1.18 “Effective Date” means the date when all of the following events have occurred: (a) this Agreement has been executed by Plaintiff, Defendants, Class Counsel and Defense Counsel; (b) the Court has given preliminary approval to the Settlement; (c) the Class Notice has been sent to the Class Members, providing them the opportunity to object to the Settlement, and the opportunity to opt out of the Settlement; (d) the Court has held a formal fairness hearing and entered the Court’s Final Order and Judgment; and (e) the later of the following events: (i) when the period for filing any appeal, writ or other appellate proceeding opposing the Settlement has elapsed without any appeal, writ or other appellate proceeding having been filed; (ii) when any appeal, writ or other appellate proceeding opposing the Settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or (iii) when any appeal, writ or other appellate proceeding has upheld the Court’s Final Order and Judgment with no right to pursue further remedies or relief. If the Court declines to approve the

Class and PAGA Settlement, the entire Class and PAGA Settlement is deemed void and unenforceable as if no settlement of any claim was ever reached.

- 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 upon Granting Final Approval of the Settlement.
- 1.22 “Gross Settlement Amount” means One Hundred Seventy-Five Thousand Dollars and No Cents (\$175,000.00), which is the total amount Defendants agree to pay under the Settlement except as provided in Paragraph 9 below. 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 the 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 Pay Periods worked during the PAGA Period.
- 1.25 [intentionally left blank].
- 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 the 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 Pay Period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period.

- 1.31 “PAGA Period” means the period from July 13, 2021 through the date of preliminary approval of the Settlement Agreement.
- 1.32 “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).
- 1.33 “PAGA Notice” means Plaintiff’s July 13, 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 (\$1,250.00) and the 75% to LWDA (\$3,750.00) 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 Ashely Paculba, the named plaintiff in the operative First Amended Complaint.
- 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 and Approval of PAGA Settlement.
- 1.39 “Released Class Claims” means the claims being released as described in Paragraph 6.2 below.
- 1.40 “Released PAGA Claims” means the claims being released as described in Paragraph 6.2 below.
- 1.41 “Released Parties” means: Defendants and each of their former and present directors, officers, agents, principles, employees, heirs, representatives, auditors, consultants, shareholders, owners, attorneys, insurers, and their respective predecessors, successors, and assigns in interest, subsidiaries, affiliates, parents and attorneys, if any.
- 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 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or 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 14 calendar 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 “Pay Period” means any pay period during which a Class Member worked for Defendants for at least one day, during the Class Period.

2. RECITALS.

- 2.1 On July 19, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendants for Failure to Pay Wages and/or Overtime, Labor Code §§ 510, 1194, and 1199; Failure to Provide Meal Periods, Labor Code §§ 226.7 and 512; Failure to Provide Rest Periods, Labor Code § 226.7; Failure to Indemnify, Labor Code § 2802; Wage Statement Violations, Labor Code § 226(a); Waiting Time Penalties, Labor Code § 203; and Business & Professions Code § 17200. On or about May 11, 2023, Plaintiff filed a First Amended Complaint alleging causes of action against Defendants for Failure to Pay Wages and/or Overtime, Labor Code §§ 510, 1194, and 1199; Failure to Provide Meal Periods, Labor Code §§ 226.7 and 512; Failure to Provide Rest Periods, Labor Code § 226.7; Failure to Indemnify, Labor Code § 2802; Wage Statement Violations, Labor Code § 226(a); Waiting Time Penalties, Labor Code § 203; Business & Professions Code § 17200; Violations of Private Attorneys General Act (PAGA), Labor Code §§ 2698, *et seq.* The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”) Defendants denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.
- 2.2 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendants and the LWDA by sending the PAGA Notice.
- 2.3 On April 10, 2023, the Parties participated in an all-day mediation presided over by Hon. Jan Adler (Retired), which led to this Agreement to settle the Action.
- 2.4 Prior to mediation negotiating the Settlement, Plaintiff obtained, through informal discovery, employee time punch and wage statement data for the Class Period and PAGA period, as well as Defendants’ employee handbook and other relevant documents. 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*”).
- 2.5 The Court has not granted class certification.
- 2.6 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.

3. MONETARY TERMS.

- 3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendants promise to pay One Hundred Seventy-Five Thousand Dollars and Zero Cents (\$175,000.00) and no more as the Gross Settlement Amount, 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 6.1 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:
- 3.2.1 To Plaintiff: Class Representative Service Payment to the Class Representative of not more than Seven Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00), in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative 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 no later than 16 court days 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 33 1/3%, which is currently estimated to be Fifty-Eight Thousand, Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$58,333.33), and a Class Counsel Litigation Expenses Payment of not more than Eight Thousand Dollars and Zeros Cents (\$8,000.00). Defendants will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days 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 assumes 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.

3.2.3 To the Administrator: An Administrator Expenses Payment not to exceed \$8,000.00 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 \$8,000.00, 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. 25% 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. The remaining 75% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for alleged unpaid interest (30% allocation), and alleged unpaid civil and statutory penalties (45% allocation), (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 \$5,000.00 to be paid from the Gross Settlement Amount, with 75% (\$3,750.00) allocated to the LWDA PAGA Payment and 25% (\$1,250.00) 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 \$1,250 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 to date, Defendants estimates that as of March 15, 2023, there were approximately 73 Class Members who collectively worked a total of approximately 4,747 Workweeks, and of approximately 57 Aggrieved Employees who worked a total of 1,875 PAGA Pay Periods.
- 4.2 Class Data. Not later than 15 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 has a continuing duty to immediately notify Class Counsel if it discovers 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 30 days after the Effective Date.
- 4.4 Payments from the Gross Settlement Amount. Within 14 days after Defendants funds 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 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 date.
- 4.4.3 For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).
- 4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.
5. **RELEASES OF CLAIMS.** Effective on the Effective Date, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:
- 5.1 Release by Participating Class Members:
- All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims and/or causes of action that were pled or reasonably could have been pled in this case based on the facts alleged in the original

class action complaint, or which reasonably arise out or reasonably relate to such facts, whether known or unknown, including but not limited to the failure to pay wages, the failure to pay for all hours worked, including “off the clock” claims, the failure to pay minimum wages, the failure to pay overtime compensation, the failure to provide meal periods, the failure to pay meal period premium pay, the failure to provide rest periods, the failure to pay rest period premium pay, the failure to pay waiting-time penalties, the failure to timely pay all wages owed during employment, unreimbursed business expenses under Labor Code § 2802, the failure to maintain records, the failure to provide accurate itemized wage statements, including without limitation all related claims for restitution and other equitable relief under Business and Professions Code § 17200 et seq., and related claims for conversion, liquidated damages, punitive damages, penalties, statutory penalties based on the preceding released claims. Any and all federal claims, including but not limited to claims under the Fair Labor Standards Act, shall likewise be released, and shall be barred by the settlement by virtue of res judicata, in accordance with *Rangel v. PLS Check Cashers of Cal., Inc.*, 889 F.3d 1106 (9th Cir. 2018). The claims set forth in this Paragraph hereinabove shall be collectively referred to as the “Released Class Claims.” The Released Claims are those that accrued during the Class Period. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period. Any and all federal claims, including but not limited to claims under the Fair Labor Standards Act, shall likewise be released, and shall be barred by the settlement by virtue of res judicata, in accordance with *Rangel v. PLS Check Cashers of Cal., Inc.*, 889 F.3d 1106 (9th Cir. 2018). The claims set forth in this Paragraph hereinabove shall be collectively referred to as the “Released Claims.” The Released Claims are those that accrued during the Class Period.

- 5.2 Release by Participating Class Members and Non-Participating Class Members Who Are Aggrieved Employees: All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims and/or causes of action for PAGA civil penalties that were pled or reasonably could have been pled in this case based on the facts alleged in the original class action complaint or first amended class action complaint, the letter sent on Plaintiff’s behalf to the Labor and Workforce Development Agency, or which reasonably arise out or reasonably relate to such facts, whether known or unknown, including but not limited to the failure to pay wages, the failure to pay for all hours worked, including “off the clock” claims, the failure to pay minimum wages, the failure to pay overtime compensation, the failure to provide meal periods, the failure to pay meal period premium pay, the failure to provide rest periods, the failure to pay rest period premium pay, the failure to pay waiting-time penalties, the failure to timely pay all wages owed during employment, unreimbursed business expenses under Labor Code § 2802, the failure to maintain records, the failure to provide accurate itemized wage statements.

6. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”).

- 6.1 Plaintiff's Responsibilities. Plaintiff will prepare and 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, and/or the Administrator; (v) a signed declaration from Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (vi) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 6.2 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 14 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.
- 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected Phoenix Class Action Administration Solutions ("Phoenix") to serve as the Administrator and

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

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

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

7.4 Notice to Class Members.

7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Class Workweeks, and PAGA Pay Periods in the Class Data.

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

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

7.4.4 The deadlines for Class Members’ written objections, Challenges to Workweeks, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform

the Class Member of the extended deadline with the re-mailed Class Notice.

- 7.4.5 If the Administrator, Defendants or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

7.5 Requests for Exclusion (Opt-Outs).

- 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

- 7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.4 of this Agreement and are eligible for an Individual PAGA Payment.
- 7.6 Challenges to Calculation of Workweeks. Each Class Member shall have 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or 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 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 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 fax, email, or 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 [60] days after the Administrator's mailing of the Class Notice (plus an additional [14] 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 establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.
- 7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- 7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of 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. Not later than 14 days 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 signed 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 15 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** Based on its records, Defendants estimates that, that as of March 15, 2023, there were approximately 73 Class Members who collectively worked a total of approximately 4,747 Workweeks, and of approximately 57 Aggrieved Employees who worked a total of 1,875 PAGA Pay Periods.
9. **DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 7.5 % of the total of all Class Members, Defendants may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendants withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will 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. Defendants must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.
10. **MOTION FOR FINAL APPROVAL.** Not later than 16 court days before 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 provide drafts of these documents to Defense Counsel not later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, 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 [five] 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.

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. **ADDITIONAL PROVISIONS.**

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

12.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendants and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

12.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be

construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

- 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

- 12.12 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.
- 12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.
- 12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Klinedinst PC
Thomas E. Daugherty
501 W. Broadway, Suite 600,
San Diego, CA 92101

To Defendants:

Littler Mendelson, P.C.
Noah J. Woods
501 W. Broadway, Suite 900
San Diego, CA 92101-3577
nwoods@littler.com

- 12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

[Signature page follows]

Plaintiff:

DATED: Jul 5, 2023

By: 
ashley.paculba (Jul 5, 2023 16:16 PDT)
Ashley Paculba

Defendant: *Vanessa Villasenor*

Vanessa Villasenor Licensed Marriage and
Family Therapist, Inc., dba A PLACE OF
GROWTH

DATED: 07-05-2023

By:
Vanessa Villasenor Licensed Marriage and
Family Therapist, Inc., dba A PLACE OF
GROWTH

Defendant: *Vanessa Villasenor*

Vanessa Villasenor, in her individual capacity

DATED: 07-05-2023

By:
Vanessa Villasenor

APPROVED AS TO FORM:

Counsel for Plaintiff:

Klinedinst PC

DATED: July 5, 2023

By: Thomas E. Daugherty

Counsel for Defendants:

Littler PC

Date: 07-05-2023

By: Noah Woods

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING
DATE FOR FINAL COURT APPROVAL**

The Superior Court for the State of California authorized this Notice. Read it carefully! It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

You may be eligible to receive money from an employee class action lawsuit (“Action”) Against VANESSA VILLASENOR LICENSED MARRIAGE AND FAMILY THERAPIST INC., dba A PLACE OF GROWTH, a California Corp., and VANESSA VILLASENOR, an individual, (collectively referred to as “A PLACE OF GROWTH” and “Defendants”) for alleged wage and hour violations. The Action was filed by a former A PLACE OF GROWTH employee, ASHLEY PACULBA (“Plaintiff”) and alleges claims for Failure to Pay Wages and/or Overtime, Labor Code §§ 510, 1194, and 1199; Failure to Provide Meal Periods, Labor Code §§ 226.7 and 512; Failure to Provide Rest Periods, Labor Code § 226.7; Failure to Indemnify, Labor Code § 2802; Wage Statement Violations, Labor Code § 226(a); Waiting Time Penalties, Labor Code § 203; and Business & Professions Code § 17200. On or about May 11, 2023, Plaintiff filed a First Amended Complaint alleging causes of action against Defendants for Failure to Pay Wages and/or Overtime, Labor Code §§ 510, 1194, and 1199; Failure to Provide Meal Periods, Labor Code §§ 226.7 and 512; Failure to Provide Rest Periods, Labor Code § 226.7; Failure to Indemnify, Labor Code § 2802; Wage Statement Violations, Labor Code § 226(a); Waiting Time Penalties, Labor Code § 203; and violations of Business & Professions Code § 17200 on behalf of herself and a class of hourly, non-exempt employees (“Class Members”) who worked for A PLACE OF GROWTH during the Class Period (July 19, 2018 to [date of preliminary approval]); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all hourly, non-exempt employees who worked for A PLACE OF GROWTH during the PAGA Period (July 13, 2021 to [date of preliminary approval]) (“Aggrieved Employees”).

The Class Period runs from July 19, 2018 to [date of preliminary approval]. The PAGA period runs from July 13, 2021 to [date of preliminary approval].

The proposed Settlement has two main parts: (1) a Class Settlement requiring A PLACE OF GROWTH to fund Individual Class Payments, and (2) a PAGA Settlement requiring A PLACE OF GROWTH to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on A PLACE OF GROWTH’s records, and the Parties’ current assumptions, your Individual Class Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment is estimated to be \$_____. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to PLACE FOR GROWTH’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on PLACE FOR GROWTH’s records showing that you worked _____ Workweeks during the Class Period and you worked _____ Pay Periods during the PAGA Period. If you believe that you worked more Workweeks during the Class

Period or Pay Periods during PAGA Period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

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

If you worked for A PLACE OF GROWTH during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against A PLACE OF GROWTH.
- (2) Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against A PLACE OF GROWTH, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement and thus you will, you will give up your right to assert PAGA Period penalty claims against A PLACE OF GROWTH regardless of whether you opt-out of the Class Settlement.

A PLACE OF GROWTH will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against A PLACE OF GROWTH that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.

The Opt-out Deadline is _____	You cannot opt-out of the PAGA portion of the proposed Settlement. A PLACE OF GROWTH must pay Individual PAGA Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by _____	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel Plaintiff, but every dollar paid to Class Counsel and Plaintiff the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.

You Can Participate in the Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks or Pay Periods Written Challenges Must be Submitted by _____	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period workweeks and number of PAGA Period Pay Periods you worked according to A PLACE OF GROWTH’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former A PLACE OF GROWTH employee. The Action accuses A PLACE OF GROWTH of violating California labor laws by failure to pay wages and/or overtime, failure to provide meal periods, failure to provide rest periods, failure to indemnify employees for necessary business expenses, wage statement violations, waiting time penalties, and Business & Professions Code § 17200 violations. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action: Klinedinst PC (“Class Counsel.”)

A PLACE OF GROWTH strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

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

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

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

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

1. A PLACE OF GROWTH Will Pay \$175,000.00 as the Gross Settlement Amount (Gross Settlement). A PLACE OF GROWTH has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, A PLACE OF GROWTH will fund the Gross Settlement not more than 30 days after the the Effective Date of the Settlement Agreement, which will occur no earlier than 60 days after the date the Court enters Judgment.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$58,333.33 (33 1/3% of the Gross Settlement] to Class Counsel for attorneys’ fees and up to \$8,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$7,500.00 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award

will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.

- C. Up to \$8,000.00 to the Administrator for services administering the Settlement.
- D. Up to \$5,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

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

- 3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Workweeks.
- 4. Taxes Owed on Payments to Class Members. Plaintiff and A PLACE OF GROWTH are asking the Court to approve an allocation of 25% of each Individual Class Payment to taxable wages ("Wage Portion") and 75% to interest and penalties, (the "Non-Wage Portion"). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. (A PLACE OF GROWTH will separately pay employer payroll taxes it owes on the Wage Portion.) The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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

- 5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name. If the monies represented by your check is sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.
- 6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a

letter from a Class Member or his/her representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against A PLACE OF GROWTH.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against A PLACE OF GROWTH based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and A PLACE OF GROWTH have agreed that, in either case, the Settlement will be void: A PLACE OF GROWTH will not pay any money and Class Members will not release any claims against A PLACE OF GROWTH.
8. Administrator. The Court has appointed a neutral company, Phoenix Class Action Administration Solutions (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
9. Participating Class Members' Release. After the Judgment is final Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against A PLACE OF GROWTH or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

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

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims and/or causes of action that were pled or reasonably could have been pled in this case based on the facts alleged in the original class action complaint, or which reasonably arise out or reasonably relate to such facts, whether known or unknown, including but not limited to the failure to pay wages, the failure to pay for all hours worked, including "off the clock" claims, the failure to pay minimum wages, the failure to pay overtime compensation, the failure to provide meal periods, the failure to pay meal period premium pay, the failure to provide rest periods, the failure to pay rest period premium pay, the failure to pay waiting-time penalties, the failure to timely pay all wages owed during employment, unreimbursed business expenses under Labor Code § 2802, the failure to

maintain records, the failure to provide accurate itemized wage statements, including without limitation all related claims for restitution and other equitable relief under Business and Professions Code § 17200 et seq., and related claims for conversion, liquidated damages, punitive damages, penalties, statutory penalties based on the preceding released claims. Any and all federal claims, including but not limited to claims under the Fair Labor Standards Act, shall likewise be released, and shall be barred by the settlement by virtue of res judicata, in accordance with *Rangel v. PLS Check Cashers of Cal., Inc.*, 889 F.3d 1106 (9th Cir. 2018). The claims set forth in this Paragraph hereinabove shall be collectively referred to as the “Released Class Claims.” The Released Claims are those that accrued during the Class Period. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period. Any and all federal claims, including but not limited to claims under the Fair Labor Standards Act, shall likewise be released, and shall be barred by the settlement by virtue of res judicata, in accordance with *Rangel v. PLS Check Cashers of Cal., Inc.*, 889 F.3d 1106 (9th Cir. 2018).

10. Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, all Aggrieved Employees will be barred from asserting PAGA claims against A PLACE OF GROWTH, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against A PLACE OF GROWTH or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees’ Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all all claims and/or causes of action for PAGA civil penalties that were pled or reasonably could have been pled in this case based on the facts alleged in the original class action complaint or first amended class action complaint, the letter sent on Plaintiff’s behalf to the Labor and Workforce Development Agency, or which reasonably arise out or reasonably relate to such facts, whether known or unknown, including but not limited to the failure to pay wages, the failure to pay for all hours worked, including “off the clock” claims, the failure to pay minimum wages, the failure to pay overtime compensation, the failure to provide meal periods, the failure to pay meal period premium pay, the failure to provide rest periods, the failure to pay rest period premium pay, the failure to pay waiting-time penalties, the failure to timely pay all wages owed during employment, unreimbursed business expenses under Labor Code § 2802, the failure to maintain records, the failure to provide accurate

itemized wage statements.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$1,250.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek or Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in A PLACE OF GROWTH's records, are stated in the first page of this Notice. You have until _____ to challenge the number of Workweeks or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept A PLACE OF GROWTH's calculation of Workweeks and/or Pay Periods based on A PLACE OF GROWTH's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and A PLACE OF GROWTH's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

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

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

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as ASHLEY PACULBA v. VANESSA VILLASENOR LICENSED MARRIAGE AND FAMILY THERAPIST INC., dba A PLACE OF GROWTH, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and A PLACE OF GROWTH are asking the Court to approve. At least _____ days before the _____ Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _____ or the Court's website _____.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is _____.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action ASHLEY PACULBA v. VANESSA VILLASENOR LICENSED MARRIAGE AND FAMILY THERAPIST INC., dba A PLACE OF GROWTH, and include your name, current address, telephone number, and approximate dates of employment for A PLACE OF GROWTH and sign the objection. Section 9 of this Notice has the Administrator's contact information.

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

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ at _____ in Department C-75 of the San Diego Superior Court, located at 330 W. Broadway, San Diego, CA

92101. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via <https://www.sdcourt.ca.gov/sdcourt/civil2/civilvirtualhearings>. Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website _____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything A PLACE OF GROWTH and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to _____'s website at _____. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<https://roa.sdcourt.ca.gov/roa/>) and entering the Case Number for the Action, Case No. 37-2022-00028449-CU-OE-CTL. You can also make an appointment to personally review court documents in the Clerk's Office at the Hall of Justice Courthouse by calling (619) 450-7275.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

Name of Attorney: Thomas E. Daugherty

Email Address: tdaugherty@klinedinstlaw.com

Name of Firm: Klinedinst PC

Mailing Address: 501 W. Broadway #600, San Diego CA 92101

Telephone: (619) 400-8000.

Settlement Administrator: _____

Name of Company: Phoenix Class Action Administration Solutions

Email Address:

Mailing Address:

Telephone:

Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund [https://www.sco.ca.gov/upd_msg.html] for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

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

22611371.1

22745957.1

A Place OF Growth Class Action PAGA Settlement Agreement - FINAL (6.29.2023)

Final Audit Report

2023-07-05

Created:	2023-07-05
By:	Karla Hamilton (KHamilton@Klinedinstlaw.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAANI61rZGkm8qswHfyAx2ngRqVuVE_6OSf

"A Place OF Growth Class Action PAGA Settlement Agreement - FINAL (6.29.2023)" History

Document created by Karla Hamilton (KHamilton@Klinedinstlaw.com)

2023-07-05 - 11:05:18 PM GMT

Document emailed to ashley paculba (ashleyjpaculba@gmail.com) for signature

2023-07-05 - 11:06:20 PM GMT

Email viewed by ashley paculba (ashleyjpaculba@gmail.com)

2023-07-05 - 11:15:57 PM GMT

Document e-signed by ashley paculba (ashleyjpaculba@gmail.com)

Signature Date: 2023-07-05 - 11:16:09 PM GMT - Time Source: server

Agreement completed.

2023-07-05 - 11:16:09 PM GMT

Exhibit 2

Exhibit 3

Archived: Friday, July 7, 2023 11:44:06 AM

From:

Sent: Fri, 7 Jul 2023 14:40:01

To: [Woods, Noah](#)

Cc: [Gomez, Pamela](#)

Subject: RE: A Place for Growth Class Action PAGA Settlement Agreement(22611371.1).docx

Importance: Normal

Sensitivity: None

Thank you for the quick turnaround. I accepted those changes and we will file later today.

From: Woods, Noah <NWoods@littler.com>

Sent: Thursday, July 6, 2023 6:33 PM

To: Thomas E. Daugherty <TDaugherty@Klinedinstlaw.com>

Cc: Gomez, Pamela <PGomez@littler.com>

Subject: RE: A Place for Growth Class Action PAGA Settlement Agreement(22611371.1).docx

Warning - External Email

Hi Tom:

Just a few redline edits. Please see attached.

Noah Woods

Shareholder

619.515.1827 direct, 619.847.9566 mobile

NWoods@littler.com

Littler

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Labor & Employment Law Solutions | Local Everywhere

501 W. Broadway, Suite 900, San Diego, CA 92101-3577

From: Thomas E. Daugherty <TDaugherty@Klinedinstlaw.com>

Sent: Thursday, July 6, 2023 6:03 PM

To: Woods, Noah <NWoods@littler.com>

Cc: Gomez, Pamela <PGomez@littler.com>

Subject: RE: A Place for Growth Class Action PAGA Settlement Agreement(22611371.1).docx

Hi Noah,

Attached, please find the draft motion for preliminary approval I plan to file tomorrow. I am finishing up my declaration, so the motion is not finalized. Please let me know if you have any questions, objections, etc.

Thanks,

Tom

\itap3

\itap4**Thomas E. Daugherty**\itap4

\itap4Shareholder

\itap4

[\itap5Biography](#)\itap5 [\itap5Website](#)\itap5 [\itap5Locations](#)

\itap3



\itap4

IRVINE, CA

LAS VEGAS, NV

LOS ANGELES, CA

PHOENIX, AZ

SACRAMENTO, CA

SAN DIEGO, CA

SEATTLE, WA

\itap5 **Klinedinst San Diego**

\itap6501 W Broadway, Suite 600

\itap7San Diego\itap7,\itap7CA\itap7\itap792101

\itap6(619) 400-8000\itap6 Phone

\itap5(312) 213-8117 Mobile

\itap3

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From: Woods, Noah <NWoods@littler.com>

Sent: Wednesday, July 5, 2023 3:26 PM

To: Thomas E. Daugherty <TDaugherty@Klinedinstlaw.com>

Cc: Gomez, Pamela <PGomez@littler.com>

Subject: RE: A Place for Growth Class Action PAGA Settlement Agreement(22611371.1).docx

Warning - External Email

Hi Tom:

Here are copies of the settlement agreements with our signatures added.

Noah Woods

Shareholder

619.515.1827 direct, 619.847.9566 mobile

NWoods@littler.com



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501 W. Broadway, Suite 900, San Diego, CA 92101-3577

1 Thomas E. Daugherty, Bar No. 269063
KLINEDINST PC
2 501 West Broadway, Suite 600
San Diego, California 92101
3 (619) 400-8000/FAX (619) 238-8707
tdaugherty@klinedinstlaw.com
4

5 Attorneys for Plaintiff ASHLEY PACULBA
6
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**
10

11 ASHLEY PACULBA,

12 Plaintiff,

13 v.

14 VANESSA VILLASENOR LICENSED
MARRIAGE AND FAMILY THERAPIST
15 INC., dba A PLACE FOR GROWTH, a
California Corp., and VANESSA
16 VILLASENOR, an individual,

17 Defendants.
18
19

Case No. 37-2022-00028449-CU-OE-CTL

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: July 14, 2023
Time: 9:00 a.m.
Dept: C-75
Judge: Hon. James A. Mangione
Action Filed: July 19, 2022

20 The Motion for Preliminary Approval of the Class Action and PAGA Settlement
21 Agreement ("Agreement"), a copy of which is attached as to the Declaration of Thomas E.
22 Daugherty as Exhibit "1", came before this Court on July 14, 2023. The Court, having considered
23 the papers submitted in support of the motion of the parties, HEREBY ORDERS THE

24 **FOLLOWING:**

25 1. The Court grants preliminary approval of the proposed settlement based upon the
26 terms set forth in the Class Action and PAGA Settlement Agreement ("Agreement") filed
27 herewith. The Agreement appears to be fair, adequate, and reasonable to the Classes. The Court
28 finds that: (a) the Agreement resulted from extensive arm's length negotiations; and (b) the

1 Agreement is sufficient to warrant notice of the Agreement to persons in the Classes and a full
2 hearing regarding final approval of the Agreement.

3 2. For purposes of this Order, the proposed Settlement Class is defined as: all persons
4 who were employed by Defendants in the State of California as a non-exempt employee at any
5 time from July 19, 2018 through the date of Preliminary Approval.

6 3. The Class Period means the period from July 19, 2018 through the date of
7 Preliminary Approval.

8 4. Aggrieved Employee means all persons who were employed by Defendants in the
9 State of California as a non-exempt employee at any time from July 13, 2021 through the date of
10 Preliminary Approval.

11 5. The PAGA Period means the period from July 13, 2021 though the date of
12 preliminary approval of the Settlement Agreement.

13 6. The Agreement falls within the range of reasonableness and appears to be
14 presumptively valid, subject only to any objections that may be raised at the final fairness hearing
15 and final approval by this Court.

16 7. The Court makes the following preliminary findings for settlement purposes only:

17 A. The Class, which consists of approximately 73 persons, is so numerous that
18 joinder of all members is impracticable;

19 B. There appear to be questions of law or fact common to the Classes for
20 purposes of determining whether this Settlement should be approved;

21 C. Plaintiff's claims appear to be typical of the claims being resolved through
22 the proposed settlement;

23 D. Plaintiff appears to be capable of fairly and adequately protecting the
24 interests of the Settlement Class Members in connection with the proposed settlement;

25 E. Common questions of law and fact appear to predominate over questions
26 affecting only individual persons in the Class. Accordingly, the Class appears to be sufficiently
27 cohesive to warrant settlement by representation; and

28 ///

1 F. Certification of the Class appears to be superior to other available methods
2 for the fair and efficient resolution of the claims of the Class.

3 8. The Court approves, as to form and content, the Notice of Class Action Settlement
4 to Settlement Class Members in substantially the form attached to the Agreement as Exhibit "A".

5 9. The Court approves the procedure for Settlement Class Members to opt out to the
6 Agreement as set forth in the Agreement and the Notice of Class Action Settlement.

7 10. The Court approves the procedure for Settlement Class Members to object to the
8 Agreement as set forth in the Agreement and the Notice of Class Action Settlement.

9 11. The Court directs the mailing of the Notice of Class Action Settlement and related
10 documents to members of the Classes by first class mail in accordance with the Agreement and the
11 implementation schedule set forth below. The Court finds that the dates selected for the mailing
12 and distribution of the notice, as set forth in the following implementation schedule, meet the
13 requirements of due process and provide the best notice practicable under the circumstances and
14 shall constitute due and sufficient notice to all persons entitled thereto.

15 12. It is ordered that the Classes are preliminarily certified for settlement purposes
16 only.

17 13. The Court confirms Thomas E. Daugherty of Klinedinst PC as Class Counsel.

18 14. The Court confirms ASHLEY PACULBA as Class Representative.

19 15. The Court approves Phoenix Class Action Administration Solutions as the
20 Administrator.

21 16. The Court orders that pursuant to the California Private Attorneys General Act,
22 Labor Code §§ 2698, et seq. ("PAGA"), statutory notice of this Agreement has been and will
23 continue to be given to the Labor & Workforce Development Agency.

24 17. A final fairness hearing on the question of whether the proposed Agreement,
25 attorneys' fees and costs to Class Counsel, the PAGA payment, and the claims administration costs
26 should be finally approved as fair, adequate, and reasonable as to the members of the Classes is
27 scheduled for _____ at _____ (Pacific Time), in Department C-75.

28 ///

1 18. The Court orders the following Implementation Schedule for further proceedings:

2 A.	Preliminary Approval Granted	_____
3 B.	Deadline for Defendants to Provide Settlement Class Members' Information to Administrator	15 calendar days from Entry of Preliminary Approval
6 C.	Administrator Shall Mail Notice to Settlement Class Members	14 calendar days from receipt of the Class List from Defendants
9 D.	Deadline for Postmark of Any Request for Exclusion	60 Days from Mailing of Notices
11 E.	Deadline for Postmark of Any Objection	60 Days from Mailing of Notices
12 F.	Deadline for Class Counsel to file Motion for Final Approval of Class Settlement	To be determined by the Court _____
14 G.	Deadline for Class Counsel to file Motion for Attorneys' Fees	To be determined by the Court _____
17 H.	Final Approval Hearing	To be determined by the Court _____

19 19. IT IS FURTHER ORDERED that if the Court does not execute and file an Order of
20 Final Approval and Judgment, or if the Effective Date of Settlement, as defined in the Agreement,
21 does not occur for any reason, the Agreement and the proposed Settlement that is the subject of
22 this Order shall become null, void, unenforceable and inadmissible in any judicial, administrative
23 or arbitral proceeding for any purpose, and all evidence, court orders and proceedings had in
24 connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the
25 litigation, as more specifically set forth in the Agreement.

26 20. IT IS FURTHER ORDERED that, pending further Order of this Court, all
27 proceedings in this matter except those contemplated herein and in the Agreement are hereby
28 stayed.

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21. The Court expressly reserves the right to adjourn or continue the Final Fairness Hearing from time to time without further notice to members of the Classes.

DATED: _____
JUDGE OF THE SUPERIOR COURT