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Attorneys for Plaintiff,
APRIL ANDRADE on behalf of herself and all similarly situated employees

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONTEREY

APRIL ANDRADE on behalf of herself and
all similarly situated employees,

Plaintiff,

v.

ATHENA MEDICAL GROUP OF THE
CENTRAL COAST, INC.; OB-GYN
ASSOCIATES OF THE CENTRAL
COAST; and DOES 1 through 50, inclusive,

Defendants.

Case No. 23CV000068

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

**STIPULATION FOR DISMISSAL OF
CLASS AND PAGA CLAIMS WITHOUT
PREJUDICE PURSUANT TO CRC 3.770
AND DISMISSAL OF INDIVIDUAL
CLAIMS WITH PREJUDICE;
DECLARATION OF B. JAMES
FITZPATRICK; [PROPOSED] ORDER RE
DISMISSAL OF ENTIRE ACTION**

Action Filed: January 9, 2023
Trial Date: Not Set

1 Plaintiff April Andrade (“Plaintiff”) and Defendants Athena Medical Group of the Central
2 Coast, Inc. and OB-GYN Associates of the Central Coast (collectively, “Defendants”) (together
3 with Plaintiff, the “Parties”), by and through their undersigned counsel of record, hereby stipulate
4 as follows:

5 WHEREAS, on January 9, 2023, Plaintiff filed a complaint against Defendants in the
6 Superior Court of California for the County of Monterey (the “Action”).

7 WHEREAS, on February 10, 2023, Plaintiff filed her First Amended Complaint (“FAC”)
8 adding individual claims under the FEHA, and representative claims under the Private Attorney
9 General Act, Labor Code § 2698, *et seq.*

10 WHEREAS, the FAC alleges class and representative claims from the First through Eighth
11 Causes of Action for failure to provide meal periods, failure to provide rest periods, failure to pay
12 hourly and overtime wages, failure to comply with itemized employee wage statement
13 requirements, failure to pay all wages upon termination, failure to reimburse business-related
14 expenses, violation of the PAGA, and unfair business practices.

15 WHEREAS, the FAC also alleges individual claims from the Ninth through Fifteen Causes
16 of Action for disability discrimination, failure to accommodate, discrimination on the basis of
17 pregnancy, denial of pregnancy leave, retaliation in violation of the FEHA, wrongful termination
18 in violation of public policy, and intentional infliction of emotional distress.

19 WHEREAS, after review of the discovery responses and documents produced by
20 Defendants, counsel for Plaintiff has concluded that Plaintiff’s claims are not viable to proceed on
21 a class and representative action basis and now seeks to dismiss Plaintiff’s class and PAGA
22 claims and allegations *without prejudice*.

23 WHEREAS, Defendants’ counsel also provided Plaintiff’s counsel with financial
24 documents pertaining to Defendants’ financial status and insolvency.

25 WHEREAS, in light of Defendants’ insolvency and anticipated bankruptcy proceedings,
26 and to avoid the risk, inconvenience, and expense of litigation, Plaintiff has entered into a
27 settlement agreement with Defendants to resolve her individual claims only for \$50,000.

1 WHEREAS, as set forth in the accompanying Declaration of B. James Fitzpatrick filed
2 concurrently herewith, named Plaintiff and her counsel have agreed to release only Plaintiff's
3 individual claims, and are receiving consideration for dismissal of only Plaintiff's individual
4 claims, with prejudice. No consideration is being given for the dismissal of the class and
5 representative PAGA claims.

6 WHEREAS, the terms of the individual settlement require (i) dismissal with prejudice of
7 Plaintiff's individual claims only, and (ii) dismissal *without prejudice* of class and PAGA claims.

8 WHEREAS, in accordance with California Rules of Court, Rule 3.770, the Parties request
9 that the Court dismiss Plaintiff's class and PAGA claims under the First, Second, Third, Fourth,
10 Fifth, Sixth, Seventh, and Eighth Causes of Action as alleged in the FAC, *without prejudice*.

11 WHEREAS, pursuant to California Rules of Court, Rule 3.770(c), "if the court has not
12 ruled on class certification, or if notice of the pendency of the action has not been provided to
13 class members in a case in which such notice was required...the action may be dismissed without
14 notice to the class members if the court finds that the dismissal will not prejudice them."

15 WHEREAS, there has been no determination on the merits of the class allegations, and no
16 class has been certified.

17 WHEREAS, the putative class members and/or aggrieved employees have not yet been
18 provided notice regarding this Action, and there has been no publication or other press coverage
19 of the claims at issue in this Action.

20 WHEREAS, while the Parties did previously agree to send out Belaire opt-out notices,
21 Plaintiff has not been able to move forward with the Belaire notice dissemination process. In this
22 regard, Defendants provided the third-party administrator with data pertaining to the wrong group
23 of individuals. As a result, the Belaire opt-out notices have not been mailed to the actual putative
24 class members and/or aggrieved employees.

25 WHEREAS, the dismissal of the class and PAGA claims will not prejudice the rights and
26 remedies of any of the unnamed putative class members and/or aggrieved employees.

27 WHEREAS, Plaintiff believes that notice to putative class members and/or aggrieved
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employees is not appropriate because there is no prejudice to the putative class members and/or aggrieved employees as dismissal of these claims are being dismissed *without prejudice*.

NOW THEREFORE, the Parties herein stipulate as follows:

1. Upon the entry of this Order, Plaintiff's individual claims under the Ninth through Fifteen Causes of Action as alleged in the FAC shall be dismissed with prejudice as to the named Plaintiff April Andrade, and the class and PAGA claims under the First through Eighth Causes of Action as alleged in the FAC shall be dismissed *without prejudice* as to all unnamed putative class members and aggrieved employees, thereby resulting in the dismissal of this entire action;

2. The Parties agree that each party shall bear its own attorneys' fees and costs incurred in this action as provided for in the settlement agreement;

3. As permitted by California Rules of Court, Rule 3.770(c), no notice shall be required to the putative class and aggrieved employees of said dismissal; and

4. The Court shall retain jurisdiction over the Parties to enforce the settlement until performance in full of the terms of the settlement agreement pursuant to Code of Civil Procedure Section 664.6.

IT IS SO STIPULATED.

Dated: November 7, 2024

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

By: /s/ B. James Fitzpatrick

B. James Fitzpatrick
Larry W. Lee
Attorneys for Plaintiff,
April Andrade on behalf of herself and all
similarly situated employees

Dated: November 7, 2024

FENTON & KELLER

By: /s/ Elizabeth R. Leitzinger

Elizabeth R. Leitzinger
Attorneys for Defendants

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[PROPOSED] ORDER IN Case No. 23CV000068

The Court, having received and reviewed the Stipulation and Proposed Order Dismissing Action and Declaration of B. James Fitzpatrick, and GOOD CAUSE appearing, herein orders as follows:

1. Plaintiff's individual claims under the Ninth through Fifteen Causes of Action as alleged in the FAC are hereby dismissed *with prejudice* as to the named Plaintiff April Andrade;

2. Plaintiff's class and PAGA claims under the First through Eighth Causes of Action as alleged in the FAC are hereby dismissed *without prejudice*;

3. In accordance with the Parties' Agreement, each party shall bear its/her own attorneys' fees and costs incurred in this action; and

4. As permitted by California Rules of Court, Rule 3.770(c), no further notice of this dismissal as to the putative class members or aggrieved persons is necessary.

IT IS SO ORDERED.

DATED: _____

HON. THOMAS W. WILLS
JUDGE OF THE SUPERIOR COURT

1 **PROOF OF SERVICE**

2 I am employed in the County of Monterey, State of California. I am over the age of 18
3 and not a party to the within action; my business address is FITZPATRICK & SWANSTON,
4 555 S. Main Street, Salinas, California 93901.

5 On the date written below, I served the foregoing document(s), described as
6 **STIPULATION FOR DISMISSAL OF CLASS AND PAGA CLAIMS WITHOUT
PREJUDICE PURSUANT TO CRC 3.770 AND DISMISSAL OF INDIVIDUAL
CLAIMS WITH PREJUDICE; DECLARATION OF B. JAMES FITZPATRICK;
[PROPOSED] ORDER RE DISMISSAL OF ENTIRE ACTION**

7 on the interested parties in this action as indicated below and by the following means:

8 Larry W. Lee (SBN: 228175)	Elizabeth R. Leitzinger
9 Max W. Gavron (SBN: 297691)	FENTON & KELLER
10 Kwanporn "Mai" Tulyathan (SBN: 316704)	2801 Monterey-Salinas Highway
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ktulyathan@diversitylaw.com	

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(BY ELECTRONIC SERVICE) Pursuant to CCP § 1010.6, Cal. Rules of Court, Rule 2.251, I caused the document(s) to be served through the Odyssey eFileCA portal (www.california.tylerhost.net), addressed to the person(s) at the e-mail address(es) listed above. I did not receive within a reasonable time after e-service, any electronic message or other indication that e-service was unsuccessful.

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19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct, and that this declaration was executed on November 7, 2024, at
Salinas, California.

21 /s/ Josie Favila

22 Josie Favila