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individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF PLACER

JESSE DOWNARD, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

SIERRA MENTAL WELLNESS GROUP, a
California Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. S-CV-0049587

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA SETTLEMENT**

Date: June 4, 2024

Time: 8:30 a.m.

Dept.: 42

Judge: Hon. Trisha Hirashima

Filed: December 19, 2022

FAC Filed: March 27, 2023

Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on June 4, 2024, at 8:30 a.m., or as soon thereafter as the matter
3 may be heard in Department 42 of the above-entitled Court, Plaintiff Jesse Downard, individually and
4 on behalf of all other similarly situated individuals, hereby moves for entry of an Order for the
5 following:

- 6 1. Certifying the proposed class herein for purposes of settlement;
- 7 2. Appointing Plaintiff Jesse Downard as class representative for purposes of settlement;
- 8 3. Appointing Shimoda & Rodriguez Law, PC, as Class Counsel for purposes of settlement;
- 9 4. Approving the proposed class action and Private Attorneys General Act settlement, in the
10 amount of \$450,000, which is incorporated herein by reference;
- 11 5. Approving the application for payment of Class Counsel of attorneys' fees in the amount of
12 \$157,500;
- 13 6. Approving the application for payment of Class Counsel of reasonable costs in the amount of
14 \$6,245.68;
- 15 7. Approving the Class Representative Enhancement Payment of \$15,000 to Plaintiff Jesse
16 Downard;
- 17 8. Approving the appointment of ILYM Group, Inc., as the Settlement Administrator and for
18 payment to ILYM Group, Inc., for administering said class action settlement in the amount of
19 \$7,750;
- 20 9. Approving the settlement of claims under the Private Attorneys General Act for the total
21 amount of \$20,000, 75% of which will be paid to the Labor and Workforce Development
22 Agency and 25% of which will be paid to Aggrieved Employees;
- 23 10. Determining that the class notification procedures and process complied with Class
24 Members' due process rights;
- 25 11. Directing that any residue from settlement checks that were not cashed by the check cashing
26 deadline be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers
27 Rights under the doctrine of *cy pres*;
- 28

1 12. Approving and adopting the Proposed Order and its implementation schedule, which is filed
2 herewith and incorporated by reference.

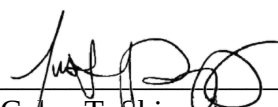
3 This Motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section
4 2699(l), and California Rules of Court 3.769 and 3.764, on the grounds that the proposed class action
5 and Private Attorneys General Act settlement is fair, reasonable, and adequate as to all Class Members
6 and should be approved by the Court. This motion will be based on the notice of motion, memorandum
7 of points and authorities, the Declaration of Justin P. Rodriguez, the Declaration of Jesse Downard, the
8 Declaration of Nathalie Hernandez, exhibits, the record and files of this case, and any further oral or
9 documentary evidence introduced at the hearing of this motion.

10 **Pursuant to Local Rule 20.2.3, the court will issue a tentative ruling for this matter on the court**
11 **day before the hearing. The tentative ruling will be available after 12:00 noon as an audio**
12 **recording accessible at (916) 408-6480; the tentative ruling will also be available at the court's**
13 **website, www.placer.courts.ca.gov. The tentative ruling shall become the final ruling on the**
14 **matter and no hearing will be held unless oral argument is timely requested or the tentative ruling**
15 **indicates otherwise. Requests for oral argument must be made by calling (916) 408-6481 no later**
16 **than 4:00 p.m. on the court day prior to the hearing.**

17 Dated: May 7, 2024

Shimoda & Rodriguez Law, PC

18 By: _____


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Renald Konini
Attorneys for Plaintiff

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Case No. S-CV-0049587

CLASS ACTION

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: June 4, 2024

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14	<i>Singer v. Becton Dickinson & Co.</i> , 2010 U.S. Dist. LEXIS 53416 (S.D. Cal. 2010).....	4
15	<i>Syed v. M-I, L.L.C.</i> , 2017 U.S. Dist. LEXIS 24880 (E.D. Cal. 2017)	4
16	<i>Ingram v. The Coca Cola Co.</i> , 200 F.R.D. 685 (N.D. Ga. 2001)	17
17	<i>Vincent v. Hughes Air West, Inc.</i> , 557 F.2d 759 (9th Cir. 1977)	15
18	<i>Walsh v. CorePower Yoga LLC</i> , 2017 U.S. Dist. LEXIS 163991 (N.D. Cal. 2017).....	7
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I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT

Plaintiff Jesse Downard (“Plaintiff”) seeks final approval of a wage and hour class action and Private Attorneys General Act (“PAGA”) settlement in the gross amount of \$450,000. *See generally* Exhibit A (Joint Stipulation Regarding Class Action and PAGA Settlement and Release [“Agreement”]). Plaintiff brought this class action individually and on behalf of similarly situated employees who worked for Defendant Sierra Mental Wellness Group, (“Defendant”) (Plaintiff and Defendant sometimes collectively referred to as the “Parties”). *See generally* Exhibit B (Plaintiff’s Operative Complaint). There are approximately 335 Class Members.

Plaintiff has alleged that Defendant 1) failed to pay overtime wages, 2) failed to pay minimum wages, 3) failed to provide meal periods, 4) failed to provide rest periods, 5) failed to provide accurate wage statements, 6) failed to timely pay all final wages, 7) failed to reimburse employees for incurred expenses, and 8) engaged in unfair competition. *See generally* Exhibit B; *see also* Declaration of Justin P. Rodriguez (“Decl. Rodriguez”), ¶¶ 2, 9-10. Plaintiff has also alleged Defendant is liable for civil penalties under the PAGA based on these violations. *See id.*; Exhibit C (Plaintiff’s Ltr. to the Labor and Workforce Development Agency [“LWDA”] Regarding PAGA Claims). Defendant has denied all of Plaintiff’s allegations in their entirety and any liability or wrongdoing of any kind. *See* Decl. Rodriguez, ¶ 5. Defendant has also denied that this case is appropriate for class certification other than for purposes of settlement. *See id.* However, subject to Court approval, the Parties have been able to compromise and settle all asserted claims as a result of extensive investigations, document and data exchanges, and extended negotiations. *See* Exhibit A. Plaintiff and Plaintiff’s counsel believe the proposed Agreement is fair, reasonable, and adequate based on the investigations, discovery, employee data exchanges, negotiations, and a detailed knowledge of the issues in this case. *See* Decl. Rodriguez, ¶¶ 6-7, 9-10.

The reaction of Class Members to the preliminarily approved Agreement has been overwhelmingly positive and gives substantial support to the Agreement and all terms and allocations therein being fair, reasonable, and adequate. Only four (4) Class Members opted out of the settlement and there have been zero objections to the Agreement. *See* Declaration of Nathalie Hernandez (“Decl. Hernandez”) ¶¶ 11-12. It is well within the discretion of this Court to grant final approval of the

1 proposed settlement as it satisfied all applicable criteria under California law. Accordingly, Plaintiff
2 requests that the Court: (1) certify the settlement class; (2) grant final approval of the Agreement; (3)
3 find that the procedures used to notify Class Members complied with due process; (4) grant Plaintiff's
4 request for attorney's fees and costs, the Enhancement Payment to the Class Representative and Claims
5 Administrator Costs; and (5) approve and adopt the proposed order granting final approval, which is
6 filed concurrently herewith.

7 **II. PROCEDURAL AND LITIGATION HISTORY**

8 Plaintiff filed a class action complaint on approximately December 19, 2022, in the Placer
9 County Superior Court against Defendant. Plaintiff exhausted administrative remedies under the
10 PAGA by providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code §
11 2699.3(a), (c); Decl. Rodriguez, ¶ 3. Then, Plaintiff filed a First Amended Class Action Complaint on
12 approximately March 27, 2023, to include a PAGA claim. *See id.*; Exhibit B. There is no date set for a
13 motion for certification or trial in this matter. *See* Decl. Rodriguez, ¶ 4.

14 **III. INVESTIGATION AND DISCOVERY CONDUCTED**

15 Plaintiff thoroughly investigated issues affecting certification, the merits of the class claims, and
16 potential damages for such claims. *See id.* at ¶¶ 3, 6-10; Declaration of Jesse Downard ("Decl.
17 Downard") ¶¶ 5-7, 8-9. Plaintiff worked during the time all of Defendant's policies and practices at
18 issue in the Complaint were in effect and provided information regarding these policies and practices,
19 enabling pre-filing investigations to take place. *See* Decl. Downard, ¶¶ 2-3, 5-6. The Parties engaged
20 in informal discovery and exchange of documents, including a representative sampling of employee
21 data, such as timecards, paystubs, payroll data, and relevant policies for the entirety of the statute of
22 limitations applicable to the asserted claims. The discovery covered all aspects of the asserted claims,
23 including certification issues, merits issues, damages, the scope and configuration of Class Members,
24 the content and implementation of the wage and hour policies at issue, issues relating to manageability
25 concerns at trial, among other relevant areas. *See* Decl. Rodriguez, ¶¶ 6-7. The information allowed
26 Plaintiff to determine the extent and frequency of any violations in accordance with Plaintiff's
27 contentions and create an accurate damages model to assess the reasonableness of any settlement. *See*
28 *id.* at ¶¶ 7, 9-10.

1 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

2 **a. Plaintiff and Defendant Engaged in Extensive Arm's Length Negotiations**

3 The final settlement occurred only after extended, arm's length negotiations. Over the course of
4 approximately one (1) year, Plaintiff has been investigating the claims and discussing with Defendant's
5 counsel the merits of the claims and issues present in this case. *See id.* at ¶¶ 5-8. The Parties
6 exchanged substantial amounts of information and legal analysis in connection with these discussions.
7 *See id.* It was only after these extended discussions, which included a full day of mediation with Russ
8 J. Wunderli and several days after mediation of assessing the proposed settlement terms, that the Parties
9 were able resolve all claims and enter into the Agreement. *See id.* at ¶ 8.

10 **b. The Terms of the Agreement**

11 1. The following groups of individuals are covered by the Agreement: (a) Class Members,
12 which include all hourly non-exempt employees who have worked, or continue to work, for Defendant
13 in California as clinicians, nurses, psychologists, or similar positions responsible for providing care to
14 patients at any point between December 19, 2018, to December 9, 2023; and (b) Aggrieved Employees,
15 which include all hourly non-exempt employees who have worked, or continue to work, for Defendant
16 in California as clinicians, nurses, psychologists, or similar positions responsible for providing care to
17 patients at any point between December 16, 2021, up to December 9, 2023. *See Exhibit A, ¶¶ 1.2, 1.5.*
18 There are approximately 335 Class Members and 195 Aggrieved Employees. *See id.*

19 2. Defendant will pay the Gross Settlement Amount of \$450,000, which is exclusive of the
20 employer's share of payroll taxes. *See id.* at ¶ 5.1. Funding of the Gross Settlement Amount shall
21 occur in two installments of \$225,000. *See id.* The first installment shall be due on or before May 14,
22 2024. *See id.* The second installment shall be due by August 14, 2024. *See id.* No portion of the
23 Gross Settlement Amount will revert to Defendant. *See id.* at ¶ 5.6. Aggrieved Employees will still be
24 paid their share of the PAGA Payment regardless of whether they opt out of being Class Members. *See*
25 *id.* at ¶¶ 7.5.1, 7.8.3.

26 3. Up to \$15,000 will be paid to Plaintiff as an Enhancement Payment. This amount will
27 be in addition to any amount Plaintiff may be entitled to under the terms of the Agreement. *See id.* at ¶
28

1 5.4.

2 4. Subject to Court approval, the Parties have selected ILYM Group, Inc. to act as the
3 Settlement Administrator, whose final costs are \$7,750. *See* Decl. Hernandez ¶ 15; Exhibit A, ¶ 1.33;
4 Decl. Rodriguez, ¶ 20.

5 5. The Parties agree that \$20,000 of the Gross Settlement Amount shall be allocated to
6 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to
7 the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. *See* Exhibit A, ¶
8 5.5. Given the risk to proving the claims on the merits, the derivative nature of the penalties, the efforts
9 by Defendant to maintain compliant policies and take corrective action, the presence of what may likely
10 be deemed good faith disputes, and the Court's discretion to reduce any penalty award, Plaintiff
11 believes the \$20,000 PAGA Payment allocation represents a meaningful settlement aimed at deterring
12 non-compliance given the facts of this case. *See* Decl. Rodriguez, ¶¶ 5-10; *see also Nordstrom Com.*
13 *Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA claims
14 based on their being disputed and being part of a class settlement which was evaluated based on the
15 terms of the agreement overall); *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, at *8 n.2
16 (E.D. Cal. 2022) (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v.*
17 *Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA
18 claims at 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016
19 WL 5462451, *7 (N.D. Cal. 2016) (approving \$10,00 PAGA settlement allocation where total PAGA
20 penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox*
21 *Comm'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily
22 approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S.
23 Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award
24 alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D.
25 Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson*
26 *& Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in
27 \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal.
28 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S.

1 Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000
2 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated
3 value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012)
4 (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*,
5 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement
6 fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal. 2011) (approving
7 PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

8 6. The Parties agree that up to Thirty Five Percent (35%) of the Gross Settlement Amount
9 (\$157,500) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendant
10 will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2.
11 Additionally, the Parties agree that Plaintiff will be entitled to the actual litigation costs in the amount
12 \$6,245.68. See Exhibit D (Plaintiff's Counsel's Itemized Costs). *See id.*

13 7. Any allocated amounts under the Agreement for Settlement Administrator Costs, Class
14 Representative Enhancement Payment, and attorney's fees and costs that are not ultimately awarded by
15 the Court will remain part of the Net Settlement Amount and be paid out to Participating Class
16 Members on a pro rata basis as set forth in the Agreement. *See Exhibit A*, ¶¶ 5.1-5.5, 5.8. These
17 amounts will be paid out from the Gross Settlement Amount, not in addition to the Gross Settlement
18 Amount. *See Exhibit A*, ¶¶ 5.1-5.5.

19 8. Class Members who fail to timely opt-out of this settlement will waive all Released
20 Class Claims as set forth in the Agreement. *See Exhibit A*, ¶¶ 1.14, 1.26, 1.30, 1.32, 6.1. Aggrieved
21 Employees will waive all Released PAGA Claims as set forth in the Agreement regardless of whether
22 they opt out of being a Class Member. *See id.* at ¶¶ 1.2, 1.14, 1.31-1.32, 6.2, 7.5.1.

23 9. For any portion of the Net Settlement Amount or PAGA Payment allocated to
24 Participating Class Members and/or Aggrieved Employees that is not claimed by them by cashing their
25 respective settlement checks within 180 calendar days of issuance, that remaining amount shall be
26 donated equally, *i.e.*, 50/50 to Capital Pro Bono, Inc., and the Center for Workers' Rights under the
27 doctrine of *cy pres*. *See Exhibit A*, at ¶ 5.6. Because the Agreement provides for all funds such that
28 there is no residue, the provisions of California Civil Procedure Code section 384 are inapplicable. *See*

1 *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718, 720 (2006). The designated beneficiaries clearly
2 promote the law consistent with the objectives and purposes underlying the lawsuit as they are non-
3 profits aimed at assisting employees with wage and hour claims who cannot afford legal representation,
4 including providing representation for employees in wage claims before the California Labor
5 Commissioner. *See id.* at 722-724; *see also* Decl. Rodriguez, ¶¶ 22-32.

6 **c. Allocation of Settlement Funds**

7 Payment to Participating Class Members and Aggrieved Employees will not require the
8 submission of a claim form. A Net Settlement Amount will be determined by subtracting from the
9 Gross Settlement Amount any attorneys' fees and costs, Enhancement Payment to the Class
10 Representative, Settlement Administrator Costs, PAGA Payment that are approved and/or awarded by
11 the Court. Each Class Member's share will be determined by dividing their total weeks worked within
12 the Class Period by the total weeks worked by all Class Members within the Class Period. That
13 fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's
14 individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion
15 of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA
16 Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period.
17 That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the
18 Aggrieved Employee's individual share. *See* Exhibit A, at ¶¶ 1.17, 5.5, 5.8.

19 **V. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND THE**
20 **SUBSEQUENT CLASS ACTION ADMINISTRATION**

21 Plaintiff's motion for preliminary approval of the class action settlement was approved by the
22 Court on January 22, 2024. To comply with Class Members' due process rights, the parties enlisted an
23 exhaustive method to ensure the best practical means possible was used to provide notice to the class.
24 The parties provided the Settlement Administrator the names, last known address, and social security
25 numbers for the class. The Settlement Administrator then updated this information by doing an address
26 trace for each individual using this information prior to mailing. *See* Decl. Hernandez, ¶¶ 5-6. If the
27 notices were returned as undeliverable, further investigation was performed and they were re-mailed
28 using updated information. *See id.* at ¶¶ 8-9. Of the 339 Notice Packets mailed, only 7 were

1 undeliverable after use of these methods. *See id.* at ¶ 10. The Notice included information regarding
2 the requested attorneys' fees, costs, payment to the LWDA, administration costs, and tax allocations.
3 *See* Exh. A to Decl. Hernandez, ¶ 7. The average distribution to participating class members is
4 approximately \$726.88, the maximum distribution is approximately \$3,034.65. *See id.* at ¶ 14. No
5 objections to the preliminarily approved settlement have been made and only four (4) Class Members
6 opted out. *See* Decl. Hernandez, ¶¶ 11-12.

7 The notice procedures used in the administration of the preliminarily approved settlement have
8 complied with Class Member's due process rights. It is not required that Class Members be given
9 actual notice of a class settlement; instead, the best practicable notice under the circumstances is all that
10 is required. *See Silber v. Mabon*, 18 F.3d 1449, 1453 (9th Cir. 1994); *Briseno v. ConAgra Foods, Inc.*,
11 844 F.3d 1121, 1129 (9th Cir. 2017); *Walsh v. CorePower Yoga LLC*, 2017 U.S. Dist. LEXIS 163991,
12 at *12-14 (N.D. Cal. 2017); *Wright v. Linkus Enters.*, 259 F.R.D. 468, 474-75 (E.D. Cal. 2009). In
13 *Silber v. Mabon*, 18 F.3d 1449 (9th Cir. 1994), the Court rejected a class member's argument that he
14 had not received due process because he did not receive notice until after the opt out period, finding
15 that, so long as the notice process utilized is the best practicable under the circumstances, due process is
16 satisfied even if there is no actual receipt of the notice. *See Silber*, 18 F.3d at 1453-1454. A similar
17 finding was made in *Briseno v. Conagra Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017). With regard to
18 any undeliverable notice in this case, the Court in *Rannis v. Recchia*, 380 F. App'x 646 (9th Cir. 2010)
19 found that class members who did not receive actual notice due to their mailings being deemed
20 undeliverable were still properly held to be part of the class settlement because they received the best
21 notice practicable under the circumstances. *See Rannis v. Recchia*, 380 F. App'x at 650-651. In *Noel*
22 *v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980-984 (2019), the California Supreme Court noted that
23 California has adopted a similar approach regarding providing notice to class members.

24 The notice method in *Rannis* is similar to that used in the present case. For example, the Notice
25 contains all information necessary for a Class Member to assess the litigation, the settlement, and
26 whether they wanted to participate, object, or opt-out. *See* Exh. A to Decl. Hernandez. The Settlement
27 Administrator utilized a national change of address database, forwarding notices, and skip tracing in an
28 effort to ensure that all reasonable means were exhausted in attempting to provide Class Members

notice of this settlement. *See* Decl. Hernandez, ¶¶ 6, 8. The content of the notice provided and the manner in which it was provided to Class Members was the best practicable notice to satisfy due process.

VI. THE AGREEMENT WARRANTS FINAL APPROVAL AS IT IS FAIR, REASONABLE, AND ADEQUATE AS TO ALL CLASS MEMBERS BASED ON THE FACTS OF THIS CASE

A class action may not be dismissed, compromised, or settled without Court approval and the decision to approve or reject a settlement is committed to the Court’s sound discretion. *See* Cal. Rules of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)¹; *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001); *see also* Cal. Lab. Code §§ 2699(1)(2). However, “[d]ue regard should be given to what is otherwise a private consensual agreement between the parties. The inquiry ‘must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.’” *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *see also Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 581 (2010). The law favors settlement of lawsuits, particularly class actions and other complex cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-1118 (2009); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 n.14 (2006); *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 581 (2010); *see also Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992).

a. The Terms of The Settlement Are Fair and Within the Range of Reasonableness

The purpose of the Court’s final evaluation of a proposed class action settlement is to determine only whether it is within the range of reasonableness. *See Wershba*, 91 Cal. App. 4th at 234-35. If the Court finds a proposed settlement falls within “the range of reasonableness,” it should grant final approval of the class action settlement. *See, e.g., North County Contr.’s Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal. App. 4th 1085, 1089-90 (1994); *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116,

¹The California Supreme Court has authorized California’s trial courts to rely on these federal resources to decide class certification issues. *See Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

1 133 (2008). Factors to consider in determining whether the settlement is fair, reasonable, and adequate
2 include the strength of the Plaintiff’s case, the risk, expense, complexity and likely duration of further
3 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
4 extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the
5 presence of a governmental participant, and the reaction of the class members to the proposed
6 settlement. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). However, this Court
7 should begin its analysis with a presumption that the proposed settlement is fair. “A presumption of
8 fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2) investigation
9 and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced
10 in similar litigation; and (4) the percentage of objectors is small.” *Id.* at 1802.

11 **i. The Agreement is a Result of Extensive, Non-Collusive Arm’s Length**
12 **Negotiations Between the Parties**

13 Settlement of this case was reached only after substantial litigation and extensive arm’s length
14 negotiations lasting nearly one (1) year, which included a full day mediation and several days of
15 assessment of the proposed settlement terms. *See Decl. Rodriguez*, ¶¶ 6-10. At all times, the
16 negotiations were adversarial, although still professional in nature. *See id.*

17 **ii. The Extent of Investigation and Discovery Completed Provided Ample**
18 **Information to Enter Into an Informed and Reasonable Settlement**

19 The Parties were in possession of all necessary information during the negotiations. The Parties
20 engaged in substantial informal discovery, which included all necessary components for evaluating the
21 class claims and creating an accurate damages model. *See id.* at ¶¶ 6-10. Plaintiff was in possession of
22 this information prior to calculating any damages in this case. *See id.* As a result, Plaintiff was able to
23 make a reasonable estimation of Defendant’s potential liability. *See id.* For these reasons, the
24 settlement now before the Court was reached at a stage where “the parties certainly have a clear view of
25 the strengths and weaknesses of their cases” sufficient to support the settlement. *See Boyd v. Bechtel*
26 *Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

27 **iii. Plaintiff’s Counsel are Experienced in Similar Litigation**

28 Plaintiff’s counsel have considerable experience in complex litigation such as class and PAGA

actions. *See* Decl. Rodriguez, ¶¶ 12-18. Thus, Plaintiff’s counsel are qualified to evaluate the class claims, the value of settlement versus moving forward with litigation, and viability of possible affirmative defenses. Plaintiff’s counsel believe that the Agreement is fair, reasonable, and adequate in light of the risks associated with the claims, the uncertainties of complex litigation, and the secured benefit to Class Members. *See id.*

iv. No Class Members Objected and Only Four (4) Opted Out Of The Settlement

The reaction by Class Members to the Agreement and all the terms and allocations stated therein is overwhelmingly positive. Zero Class Members have objected to any aspect of the Agreement and only four (4) have opted out. *See* Decl. Hernandez ¶¶ 11-12. This provides strong evidence that the settlement is fair, reasonable, and adequate. *In re Heritage Bond Litig.*, 2005 WL 1594403, at *10 (“It is established that the absence of a large number of objectors to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members”); *Nat’l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) (“That unanimous, positive reaction to the Proposed Settlement is compelling evidence that the Proposed Settlement is fair, just, reasonable, and adequate”).

v. The Settlement is Fair, Reasonable, and Adequate Based on the Strength of Plaintiff’s Case and the Risks and Costs of Further Litigation

Plaintiff’s claims and the ability to obtain and maintain certification all the way through trial were heavily disputed by Defendant. *See* Decl. Rodriguez, ¶¶ 5-9. Based on the records and facts of this case, Plaintiff has secured a gross recovery of approximately 4% of the maximum value of the claims in this matter and between 10% and 22% of the more realistic range of recovery. *See* Decl. Rodriguez, ¶¶ 9-10. The net recovery represents approximately 2% of the maximum value of the claims in this matter and between 5% and 12% of the more realistic range of recovery. The average net award is approximately \$726.88 and the highest recovery is \$3,034.65. *See* Decl. Hernandez ¶ 14.

This settlement is a reasonable compromise of the class and PAGA claims, and is within the percentile ranges of the total available damages that have been approved in other class settlements. *See Wershba*, 91 Cal.App.4th at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1990); *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re*

1 *Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in
2 settlement of 6% of maximum potential recovery after reduction for attorney’s fees was higher than
3 median percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from
4 2000 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017)
5 (approving a settlement where the net recovery to class members was approximately 7.5% of the
6 projected maximum recovery amount); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS
7 130878 (E.D. Cal. 2017) (approving a settlement with a gross recovery of 11% of the projected
8 maximum damages available and a net recovery of approximately 6.7% of the projected maximum
9 recovery); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245 (N.D. Cal. 2015) (approving a
10 settlement where the gross recovery was approximately 8.5% of the projected maximum recovery);
11 *Schiller v. David’s Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal. 2012) (“Class
12 Members will receive an average of approximately \$198.70, with the highest payment to a Class
13 Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is
14 highlighted by the fact that there was no objection to the settlement amount or the attorneys’ fees
15 requested.”); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) (“the
16 results achieved in this case were very favorable. Class members are provided with immediate
17 monetary relief, with an average award of around several hundred dollars and a minimum award of
18 \$50”).

19 **vi. The Proposed Settlement is a Reasonable Compromise of Claims**

20 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), the Court required additional
21 information be presented in class action settlements “to ensure that the recovery represents a reasonable
22 compromise, given the magnitude and apparent merit of the claims being released, discounted by the
23 risks and expenses of attempting to establish and collect on those claims by pursuing the
24 litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399
25 (2010), clarified that *Kullar* does not require an illusory prediction of the outer reaches of exposure
26 without taking into account the actual risks of litigation such as dispositive motions and trial. *Kullar*
27 also does not require an explicit statement of the maximum amount to be recovered if a plaintiff
28 prevailed on all the claims, provided there is a record that allows “an understanding of the amount that

1 is in controversy and the realistic range of outcomes of the litigation.” *Id.* at 409.

2 Plaintiff has thoroughly set forth the realistic range of outcomes in this litigation as well as the
3 data points relied upon in reaching these ranges. *See* Decl. Rodriguez ¶¶ 9-10. The record
4 demonstrates that the compromises made by Plaintiff were reasonable and have resulted in a settlement
5 with recovery percentage well within the range of what has been found to be sufficient in several other
6 cases. *See, supra*, Section VI.a.v; *see also* *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th
7 Cir. 1998) (“The fact that a proposed settlement may only amount to a fraction of the potential recovery
8 does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
9 disapproved”); *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974) (“In fact there is no
10 reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a
11 thousandth part of a single percent of the potential recovery”).

12 **b. Certification of the Class is Appropriate**

13 Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-
14 defined community of interest in the questions of law and fact involved affecting the parties to be
15 represented.” *Dunk*, 48 Cal. App. 4th at 1806. The “community of interest” element “embodies three
16 factors: (1) common questions of law or fact predominate; (2) class representatives with claims or
17 defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.*
18 Here, the Court conditionally certified the settlement class on January 22, 2024, and nothing has
19 happened in the interim that would warrant changing that decision. *See Garcia v. City of King City*,
20 2017 WL 363257, *4 (N.D. Cal. 2017); *Messineo v. Ocwen Loan Servicing, LLC*, 2017 WL 733219, *4
21 (N.D. Cal. 2017). Here, the Parties agree that, for the purposes of settlement, these prerequisites are
22 met. *See* Exhibit A.

23 **i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous**

24 The proposed settlement class is ascertainable because all putative Class Members can be
25 readily identified through employee personnel and payroll files. *See Noel v. Thrifty Payless, Inc.*, 7
26 Cal.5th 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex*,
27 *Inc.*, 166 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are 335
28 individuals who fall within the definition of Class Member, which makes joinder of all members

1 impracticable. *See Gay v. Waiters' & Dairy Lunchmen's Union*, 489 F.Supp. 282 (N.D. Cal. 1980),
2 *aff'd* 694 F.2d 531 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017, 1030 (1972) (noting no
3 set minimum to meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is
4 acceptable). Thus, these requirements are satisfied.

5 **ii. The Commonality, Predominance, and Typicality Requirements are Met**

6 The commonality requirement is met when there are questions of law or fact regarding the class
7 as a whole. *See Hanlon*, 150 F.3d at 1019. Commonality requires only that some common legal or
8 factual questions exist; Plaintiff need not show that all issues in the litigation are identical. *See*
9 *Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d
10 447, 460 (1974). Common questions of law or fact must also predominate over individual questions
11 and class-wide treatment of a dispute must be superior to individual litigation.² *See Richmond*, 29
12 Cal.3d at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication
13 by representation. *See Hanlon*, 150 F.3d at 1022. The typicality requirement is met when claims of the
14 named representative are typical of those of the class, though "they need not be substantially identical."
15 *Id.* at 1020; *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983).

16 The common questions of law and fact in this case stem from Plaintiff's contention that
17 Defendant violated California law by 1) failing to incorporate the value of on-call earnings when
18 calculating the regular rate of pay for premium purposes such as overtime, double time, sick leave, and
19 meal and rest period premiums, 2) failing to have enough staff to provide meal and rest periods to
20 Plaintiff and putative class members, 3) engaging in rounding practices, rounding of putative class
21 members' hours despite being able to record actual hours worked down to the minute, and lack of
22 rounding policy and its failure to inform Plaintiff and putative class members of its rounding practices,
23 and 4) failing to reimburse Plaintiff and putative class members for use of their personal cell phone and
24 internet for work purposes. *See Exhibit B*. The waiting time penalties, unfair competition, and PAGA
25 claims are derivative of these violations. *See id.* Plaintiff and the Class Members seek the same
26 remedies under state law. Under these specific circumstances, the commonality and predominance
27

28 ²When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

requirements are satisfied. Regarding the typicality requirement, Plaintiff contends he suffered from the same unlawful policies, treatment, and circumstances as Class Members did, will request the same remedies, and will rely on the same methods of proof to establish liability and damages. *See id.* Thus, the typicality requirement is also satisfied for settlement purposes.

iii. The Adequacy Requirement is Met

The adequacy of representation requirement is met if the named representative and counsel have no interests adverse to those of the putative class members and are committed to vigorously prosecuting the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60 Cal.App.3d 442, 450-51 (1976). Those standards are met here. Under the proposed Agreement, Plaintiff and the putative Class Members will receive a pro rata share of the settlement based on the number of workweeks they worked for Defendant. *See* Exhibit A. Finally, any settlement class member who wished to opt-out of the settlement was able to do so, and he or she was also able to dispute the number of workweeks stated in the Notice of Settlement.

There is no conflict of interest between Plaintiff and Class Members. Plaintiff and Plaintiff's counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class. Plaintiff's counsel, with Plaintiff's assistance, thoroughly investigated the claims made in this case by speaking with Plaintiff and reviewing substantial amounts of documents. Plaintiff's counsel thereafter engaged Defendant's counsel in settlement discussions over the course of approximately one (1) year. Moreover, Plaintiff's counsel has experience defending and bringing wage and hour claims. Because Plaintiff's counsel has vigorously pursued Plaintiff's and the Class Members' claims, the adequacy requirement is met. *See generally* Decl. Rodriguez.

VII. THE AMOUNTS REQUESTED FOR ATTORNEY'S FEES AND COSTS, AN ENHANCEMENT PAYMENT TO THE CLASS REPRESENTATIVE, AND SETTLEMENT ADMINISTRATOR COSTS ARE REASONABLE AND SHOULD BE APPROVED

The Notice of Settlement sent to Class Members specifically identified the allocations for attorney's fees and costs, the Class Representative Enhancement Payment, and Settlement Administrator Costs. *See* Exh. A to Decl. Hernandez. The reaction of Class Members to these requested amounts provides useful evidence of whether they are reasonable. *See In re Heritage Bond*

1 *Litig.*, 2005 WL 1594403, *21 (“The absence of objections or disapproval by class members to Class
2 Counsel’s fee request further supports finding the fee request reasonable”). As noted above, there were
3 no objections raised to the Agreement or any term or allocation therein whatsoever. *See Decl.*
4 *Hernandez*, ¶ 12. In addition to Class Members’ reactions supporting the requested amount, the facts
5 and applicable case law also support awarding these amounts in full.

6 **i. Awarding Attorneys’ Fees as a Percentage of the Common Fund Is Reasonable**
7 **and Customarily Approved by Courts**

8 California state and federal courts have recognized that when a litigant’s efforts create or
9 preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally
10 among all the beneficiaries to compensate those who created the fund. *See Boeing Co. v. Van Gemert*,
11 444 U.S. 472, 477-481 (1980) (“A lawyer who recovers a common fund for the benefit of persons other
12 than . . . his client is entitled to a reasonable attorney’s fee from the fund as a whole.”); *Vincent v.*
13 *Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375
14 (1970); *see also Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1
15 Cal.5th 480, 506 (2016); *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026, 1027 (9th Cir.
16 1977). Courts have approved use of a percentage of the fund to calculate reasonable attorney fee awards
17 where the amount of the settlement is certain or is an easily calculable sum of money. *See Dunk*, 48
18 Cal.App.4th at 1808. The Ninth Circuit has also held that the common fund doctrine applies when: (1)
19 the class of beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the
20 fee can be shifted with some exactitude to those benefitting. *See Paul, Johnson, Alston & Hunt v.*
21 *Grauly*, 886 F.2d 268, 271 (9th Cir. 1989). These criteria are “easily met” when “each member of a
22 represented group has an undisputed and mathematically ascertainable claim to part of a lump-sum
23 settlement recovered on his behalf.” *Id.* at 271 (citations omitted).

24 The three (3) factors set forth in *Paul, Johnson, Alston & Hunt*, exist in this case because there is
25 a sufficiently identifiable class of beneficiaries (*e.g.* Class Members, Aggrieved Employees and the
26 LWDA), the benefits can be accurately traced to the Agreement Plaintiff and Plaintiff’s counsel were
27 able to negotiate on behalf of the Class Members, Aggrieved Employees, and LWDA, and the fee can be
28

1 shifted with exactitude to those benefiting as the fee request is a specific, lump-sum of the common
2 fund.

3 Historically, attorneys' fee awards in common fund cases in general range from 20% to 50% of
4 the fund, depending on the circumstances of the case. *See* Newberg on Class Actions, (3rd Ed. 1992),
5 §14.03 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are
6 generally approved as reasonable in representative litigation settlements below \$10 million. *See Martin*
7 *v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011) (collecting cases); *Birch v.*
8 *Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a
9 \$16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern
10 District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class
11 action settlement). Plaintiff's request of \$157,500 (35%) falls within these typical fee arrangements and
12 should be awarded based on the excellent results achieved on behalf of the Class Members, Aggrieved
13 Employees and the LWDA. *See* Decl. Rodriguez, ¶ 19.

14 Plaintiff's counsel seeks reimbursement of \$6,245.68 for the expenses they have and will
15 continue to incur while prosecuting this litigation through any compliance hearing(s). This is less than
16 the \$10,000 provided for in the Agreement. An itemization for these costs is being filed with this
17 motion as Exhibit D. All expenses were necessarily incurred to properly litigate this case. *See id.* The
18 appropriate analysis in determining whether particular costs are compensable is whether they are of the
19 type typically billed by attorneys to paying clients in the marketplace. *Harris v. Marhoefer*, 24 F.3d 16,
20 19 (9th Cir. 1994) ("Harris may recover as part of the award of attorney's fees those out-of pocket
21 expenses that 'would normally be charged to a fee paying client.'"); *Abrams v. Lightolier, Inc.*, 50 F.3d
22 1204, 1225 (3d Cir. 1995) (expenses recoverable if customary to bill clients for them); *Bratcher v. Bray-*
23 *Doyle Indep. Sch. Dist. No. 42*, 8 F.3d 722, 725-26 (10th Cir. 1993) (expenses reimbursable if normally
24 billed to client). The categories of expenses for which Plaintiff's counsel seek reimbursement here are
25 categories normally charged to hourly clients and, therefore, should be reimbursed out of the common
26 fund. *See* Decl. Rodriguez, ¶ 19.

1 **ii. The Enhancement Payment to the Named Plaintiff for His Service to the Class**
2 **Members, Aggrieved Employees and the State of California As Well As For His**
3 **General Release of All Individual Claims Is Reasonable**

4 The Enhancement Payment to the named Plaintiff is intended to not only recognize the time and
5 effort expended on behalf of Class Members, Aggrieved Employees and the State of California, but
6 also provide consideration for his general release of all his individual claims, which no other class
7 Member is subject to. Indeed, Courts routinely approve enhancement payments to compensate named
8 plaintiffs for the services they provide and the risks they incurred during the course of representative
9 litigation. *See Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001). In *Ingram*, the
10 Court approved enhancement payments of \$300,000.00 to each named plaintiff in recognition of the
11 services they provided by responding to discovery, participating in the mediation process, and taking
12 the risk of stepping forward on behalf of the class. *See id.* at 694; *see also Van Vranken v. Atlantic*
13 *Richfield Co.*, 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00 enhancement payment).

14 In this case, Plaintiff provided and explained documents, being available at all times to discuss
15 the case with Plaintiff's counsel. *See Decl. Rodriguez*, ¶ 7; *see generally Decl. Downard*. Plaintiff
16 spent a significant amount of time pursuing this litigation for the benefit of all Class Members,
17 Aggrieved Employees and the State of California and has entered into a general release of all claims.
18 *See id.* Payment of \$15,000 to Plaintiff is appropriate given the risk, assistance, and time required in
19 bringing this case to a resolution as well as the fact that it provides consideration for Plaintiff waiving
20 his individual claims.

21 **iii. The Court Should Approve the Payment of Settlement Administrator Costs**

22 Since being preliminarily approved as the Settlement Administrator, ILYM Group, Inc., has
23 carried out its duties as set forth in the Court's order and the Agreement. *See generally See Decl.*
24 *Hernandez*. Under the Agreement, a maximum of \$15,000 was set aside for potential Settlement
25 Administrator Costs. ILYM Group, Inc.'s, final costs are \$7,750, well under the potential maximum
26 Class Members were given notice of. The \$7,750 in Settlement Administrator Costs is also within
27 ranges approved by Courts and should be approved in this case. *See Patel v. Nike Retail Servs., Inc.*,
28 2019 WL 2029061, at *2 (N.D. Cal. 2019) (\$5,261 for settlement administrator's fees was not
 excessive where PAGA group consisted of 40 employees); *Decl. Rodriguez*, ¶ 20. Plaintiff requests

1 that the Court approve payment to the Settlement Administrator in the amount of \$7,750 to compensate
2 it for the costs of administration as part of the final order approving the Settlement.

3 **VIII. CONCLUSION**

4 For all of the foregoing reasons, Plaintiff respectfully requests that this Court certify the class
5 for settlement purposes; grant final approval of the proposed settlement; including the Plaintiff's Class
6 Representative Enhancement Payment, the Settlement Administrative Costs, the payment to the LWDA
7 under PAGA, and Class Counsel's application for reasonable attorneys' fees and costs; find that the
8 Notice of Settlement and the administration process satisfied Class Members' due process rights; and
9 approve proposed order submitted concurrently herewith.

10
11 **Shimoda & Rodriguez Law, PC**

12
13 Dated: May 7, 2024

By: _____

Galen T. Shimoda

Justin P. Rodriguez

Renald Konini

Attorneys for Plaintiff

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Attorneys for Plaintiff JESSE DOWNARD
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF PLACER

JESSE DOWNARD, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

SIERRA MENTAL WELLNESS GROUP, a
California Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. S-CV-0049587

CLASS ACTION

**EXHIBIT LIST AND EXHIBITS IN
SUPPORT OF PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT**

Date: June 4, 2024

Time: 8:30 a.m.

Dept.: 42

Judge: Hon. Trisha Hirashima

Filed: December 19, 2022

FAC Filed: March 27, 2023

Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Joint Stipulation Regarding Class Action and PAGA Settlement and Release
B	Plaintiff's Operative Complaint
C	Plaintiff's Letter to the LWDA Regarding PAGA Claims
D	Plaintiff's Itemized Costs
E	Proof of Submission of Proposed Settlement Agreement to LWDA

Dated: May 7, 2024

Shimoda & Rodriguez Law, PC

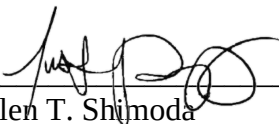
By: 
 Galen T. Shimoda
 Justin P. Rodriguez
 Renald Konini
 Attorneys for Plaintiff

EXHIBIT A

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Attorneys for SIERRA MENTAL WELLNESS GROUP

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF PLACER

JESSE DOWNARD, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

SIERRA MENTAL WELLNESS GROUP, a
California Corporation; and DOES 1 to 100,
inclusive,

Defendant.

Case No.: S-CV-0049587

**JOINT STIPULATION REGARDING CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE**

Filed: December 19, 2022
FAC Filed: March 27, 2023
Trial Date: None Set

1 This Joint Stipulation Regarding Class Action and PAGA Settlement and Release is made and
2 entered into between the Plaintiff Jesse Downard (“Plaintiff”), on behalf of himself, the Labor and
3 Workforce Development Agency, Class Members, and Aggrieved Employees, and Defendant Sierra
4 Mental Wellness Group, (“Defendant”). This Agreement is subject to the terms and conditions set forth
5 below and the approval of the Court.

6 **1. DEFINITIONS**

7 The following terms, when used in this Agreement, have the following meanings:

8 1.1 “Action” means the above stated lawsuit, *Downard v. Sierra Mental Wellness Group*, Placer
9 County Superior Court, Case No. S-CV-0049587, filed December 19, 2022, and the First Amended
10 Complaint filed on March 27, 2023.

11 1.2 “Aggrieved Employee(s)” means all hourly non-exempt employees who have worked, or
12 continue to work, for Defendant in California as clinicians, nurses, psychologists, or similar positions
13 responsible for providing care to patients at any point between December 16, 2021, up to either (1) the date
14 a signed order preliminarily approving the settlement is filed by the Court, or (2) 60 days after the
15 Agreement is signed, whichever is earlier. The estimated number of Aggrieved Employees is 143.

16 1.3 “Agreement” or “Settlement” or “Settlement Agreement” means this Joint Stipulation
17 Regarding Class Action and PAGA Settlement and Release.

18 1.4 “Class Counsel” means Galen T. Shimoda, Justin P. Rodriguez and Renald Konini of
19 Shimoda & Rodriguez Law, PC.

20 1.5 “Class Member(s)” means all hourly non-exempt employees who have worked, or continue
21 to work, for Defendant in California as clinicians, nurses, psychologists, or similar positions responsible
22 for providing care to patients at any point between December 19, 2018, up to either (1) the date a signed
23 order preliminarily approving the settlement is filed by the Court, or (2) sixty (60) days after the Agreement
24 is signed, whichever is earlier. The estimated number of Class Members is 302.

25 1.6 “Class Period” means from December 19, 2018, to the date a signed order preliminarily
26 approving the settlement is filed by the Court, or (2) sixty (60) days after the Agreement is signed,
27 whichever is earlier.

28 1.7 “Class Representative” means Plaintiff Jesse Downard .

1 1.8 “Class Representative's Released Claims” means all claims arising from, could have been
2 asserted, or related in any way to the Class Representative's employment with Defendant, under federal,
3 state, or local laws, and/or ordinances, or tort or contract theories, whether known or unknown, and whether
4 anticipated or unanticipated, including without limitation statutory, constitutional, contractual or common
5 law claims for lost wages, unpaid wages, emotional distress, punitive damages, special damages, damages,
6 unpaid costs, penalties, liquidated damages, interest, attorneys’ fees, litigation costs, restitution, equitable
7 relief or other similar relief or claims. The Class Representative's Released Claims exclude claims for
8 workers’ compensation, unemployment insurance benefits, or other claims that cannot be released as a
9 matter of law.

10 1.9 “Complaint” means the operative Complaint and First Amended Complaint on file in the
11 Action with the Court.

12 1.10 “Court” means the Placer County Superior Court.

13 1.11 “Defendant” means Sierra Mental Wellness Group.

14 1.12 “Defendant's Counsel” means Matheny Sears Linkert & Jaime, LLP.

15 1.13 “Enhancement Payment” means the amount approved by the Court to be paid to the Class
16 Representative in recognition of the time and effort expended on behalf of Class Members for the benefit
17 of Class Members, which is in addition to any Individual Settlement Amount paid to the Class
18 Representative as a Participating Class Member.

19 1.14 “Effective Date” means the Final Approval Date unless there is a timely objection lodged
20 that has not later been withdrawn, in which case the Effective Date will be either (a) the 60th calendar day
21 after a signed order approving this settlement has been filed provided no appellate proceeding having been
22 filed; or (b) seventh (7th) calendar day after any appellate proceeding opposing the settlement has been
23 finally dismissed with no material change to the terms of this settlement and there is no right to pursue
24 further remedies or relief, whichever is later.

25 1.15 “Final Approval Date” means the date a signed order granting final approval of this
26 Agreement is filed with the Court.

27 1.16 “Gross Settlement Amount” is the sum of Four Hundred Fifty Thousand Dollars (\$450,000).
28

1 1.17 “Individual Settlement Amount” means an individual Class Member’s and Aggrieved
2 Employee’s allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in
3 Sections 1.19, 1.23, 5.5, and 5.8.

4 1.18 “LWDA” means the California Labor and Workforce Development Agency.

5 1.19 “Net Settlement Amount” is the portion of the Gross Settlement Amount available for
6 distribution to Class Members, as described in this Agreement, after deduction of Class Counsel’s
7 attorneys’ fees and litigation costs, Settlement Administrator Costs, the PAGA Payment, and Enhancement
8 Payment to the Class Representative.

9 1.20 “Notice of Settlement” means the document substantially in the form attached hereto as
10 Exhibit 1.

11 1.21 “Notice Period” means sixty (60) calendar days from the initial mailing of the Notice of
12 Settlement to Class Members and Aggrieved Employees.

13 1.22 “PAGA” means Private Attorneys General Act.

14 1.23 “PAGA Payment” means the amount allocated from the Gross Settlement Amount towards
15 resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

16 1.24 “PAGA Claim Period” means December 16, 2021, up to either (1) the date a signed order
17 preliminarily approving the settlement is filed by the Court, or (2) sixty (60) days after the Agreement is
18 signed, whichever is earlier.

19 1.25 “Parties” mean Defendant and Plaintiff.

20 1.26 “Participating Class Member” means any and all Class Members who have not made any
21 timely request to opt-out of the Agreement.

22 1.27 “Preliminary Approval Date” means the date a signed order granting preliminary approval
23 of this Agreement is filed with the Court.

24 1.28 “QSF” means a Qualified Settlement Fund set up by the Settlement Administrator for the
25 benefit of the Participating Class Members and/or Aggrieved Employees and from which the payments
26 under this Agreement shall be made. Any amounts Defendant has agreed to pay under this Agreement shall
27 remain the property of Defendant until the payments required under the Agreement are made.

1 1.29 “Qualifying Workweeks” are weeks worked by Class Members and/or Aggrieved
2 Employees during the Class Period and/or PAGA Claim Period, respectively, in California. For Class
3 Members, workweeks shall be defined as the total length of service (in days) in California during the Class
4 Period divided by seven. For Aggrieved Employees workweeks shall be defined as the total length of
5 service (in days) in California during the PAGA Claim Period divided by seven. The calculation of a Class
6 Member’s and/or Aggrieved Employee’s workweeks and a determination as to whether a Class Member
7 and/or Aggrieved Employee was actively employed in California in a particular workweek shall be
8 construed from Defendant's records.

9 1.30 “Released Class Claims” means any and all class claims that are alleged in the Complaint,
10 and any additional wage and hour claims that could have been brought based on the facts alleged in the
11 Complaint, through the Class Period. This release excludes the release of claims not permitted by law.
12 The Released Class Claims exclude claims for workers’ compensation or unemployment insurance
13 benefits. This release will cover all Class Members who do not opt out.

14 1.31 “Released PAGA Claims” means any and all claims that were brought under the Private
15 Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in the Complaint and any additional wage
16 and hour PAGA claims that could have been brought based on the facts alleged in the Complaint during
17 the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

18 1.32 “Released Parties” means Defendant, as well as Defendant's officers, shareholders,
19 directors, agents, employees, attorneys, and insurers.

20 1.33 “Settlement Administrator” means and refers to ILYM Group, Inc., the third-party entity
21 that will administer the Agreement as outlined in Sections 4 and 7, or any other third-party administrator
22 agreed to by the Parties and approved by the Court for the purposes of administering this Agreement. The
23 Parties each represent that they do not have any financial interest in the Settlement Administrator.

24 1.34 “Settlement Administrator Costs” means the fees and expenses reasonably incurred by the
25 Settlement Administrator as a result of the procedures and processes expressly required by this Agreement,
26 and shall include all costs of administering the Agreement, including, but not limited to, all tax document
27 preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees
28 associated with preparing, issuing and mailing any and all notices and other correspondence to Class

Members and/or Aggrieved Employees; all costs and fees associated with communicating with Class Members and/or Aggrieved Employees, Class Counsel, and Defendant's Counsel; all costs and fees associated with computing, processing, reviewing, and paying the Individual Settlement Amounts, and resolving disputes; all costs and fees associated with calculating tax withholdings and payroll taxes, if any, making related payment to federal and state tax authorities, if any, and issuing tax forms relating to payments made under the Agreement; all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency; all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering Individual Settlement Amounts; and any other costs and fees incurred and/or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement.

2. DESCRIPTION OF THE LITIGATION

2.1 On or about December 16, 2022, Plaintiff sent notice to the LWDA to exhaust administrative remedies under the PAGA for (1) Violation of Labor Code §§ 510, 1194; IWC Wage Order 5, § 3 (Failure to Pay Overtime Wage), (2) Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order § 4 (Failure to Pay Minimum Wages), (3) Violation of Labor Code §§ 226.7, 512 and Wage Order No. 5, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premium in Lieu Thereof), (4) Violation of Labor Code § 226.7 and Wage Order No. 5 § 12(A) (Failure to Provide Rest Periods or Pay Premium in Lieu Thereof), (5) Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements), (6) Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages), (7) Violation of Labor Code § 2802 (Failure to Pay Reimbursement for Expenses), (8) Violation of Labor Code §§ 558, 558.1 (Provision Regarding Hours and Days of Work in Any Industrial Welfare Commission Order), (9) Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records), and (10) Violation of Labor Code §§ 246, 246.5 248.5. The LWDA did not respond to the notice within the statutorily required time frame and, as such, Plaintiff became authorized to act as a Private Attorneys General on all alleged PAGA claims.

2.2 On or about December 19, 2022, Plaintiff filed a class action Complaint in Placer County Superior Court on behalf of himself and Class Members alleging claims for (1) Failure to Pay Overtime Wages, (2) Failure to Pay Minimum Wages, (3) Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof, (4) Failure to Provide Rest Periods or Pay Premium in Lieu Thereof, (5) Failure to Provide

1 Accurate Wage Statements, (6) Failure to Pay Final Wages, (7) Failure to Pay Reimbursement for
2 Expenses, and (8) Unfair Competition. Plaintiff filed a First Amended Complaint on approximately March
3 27, 2023 to add a PAGA cause of action based on the violations alleged in the December 16, 2022 notice
4 to the LWDA on behalf of himself and Aggrieved Employees.

5 2.3 Through informal discovery, Defendant and Defendant's Counsel provided Class Counsel
6 with copies of all applicable versions of its policies and procedures, employee handbooks, information on
7 Class Members including, but not limited to, Class Members' workweeks, dates of employment, total
8 number of Class Members, their rates of pay, and pay periods as well as timecard data and payroll reports
9 for a randomly selected sample of Class Members.

10 2.4 After Class Counsel received the data, the Parties engaged in informal settlement
11 negotiations, but were not able to come to a resolution. On August 14, 2023, the Parties participated in a
12 lengthy mediation with private mediator Russ J. Wunderli. After a full day of mediation, the parties were
13 able resolve the matter subject to approval from Defendant's Board of Directors. At all times, the Parties'
14 settlement negotiations have been non-collusive, adversarial, and at arm's length.

15 2.5 Discussions between Plaintiff and Class Counsel, between counsel for the Parties, document
16 productions, extensive legal analysis, the provision of information by Defendant to Plaintiff and the
17 detailed analysis of the records, including expert analysis, have permitted each side to assess the relative
18 merits of the claims and the defenses to those claims.

19 2.6 In the Action, Plaintiff contends that Defendant violated California law by 1) failing to
20 incorporate the value of on-call earnings when calculating the regular rate of pay for premium purposes
21 such as overtime, double time, sick leave, and meal and rest period premiums, 2) failing to have enough
22 staff to provide meal and rest periods to Plaintiff and putative class members, 3) engaging in rounding
23 practices, rounding of putative class members' hours despite being able to record actual hours worked
24 down to the minute, and lack of rounding policy and its failure to inform Plaintiff and putative class
25 members of its rounding practices, and 4) failing to reimburse Plaintiff and putative class members for use
26 of their personal cell phone and internet for work purposes. Defendant has denied each of Plaintiff's claims
27 and Defendant has denied that this Action is appropriate for class certification for anything other than
28 settlement purposes. The agreed upon Gross Settlement Amount was reached after evaluating the Parties'

1 theories of potential exposure for the underlying claims and the class data supporting these claims. The
2 Parties, with the assistance of the mediator, also assessed appropriate discounts to the potential liability
3 based on Defendant's factual and legal contentions and defenses.

4 2.7 The Parties agree that the above-described investigation and evaluation, as well as discovery
5 and the information exchanged to date, are more than sufficient to assess the merits of the respective
6 Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Class Counsel,
7 Defendant, and Defendant's Counsel have concluded that it is desirable that the Action be settled in a
8 manner and upon such terms and conditions set forth herein in order to avoid further expense,
9 inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the
10 Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action.
11 Plaintiff, Class Counsel, Defendant, and Defendant's Counsel are of the opinion that the Agreement for the
12 consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and
13 circumstances.

14 **3. THE CONDITIONAL NATURE OF THIS AGREEMENT**

15 3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose of
16 settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed
17 claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final
18 approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a
19 conditional basis. If the Effective Date does not occur, or if the Court's approval of the settlement is
20 reversed or materially modified on appellate review, this Agreement shall be deemed null and void; it shall
21 be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and
22 the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California
23 Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of
24 evidence that may be applicable.

25 3.2 Defendant has denied all claims as to liability, damages, liquidated damages, penalties,
26 interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendant
27 has agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or
28 the Effective Date does not occur, Defendant does not waive, but rather expressly reserve, all rights to

challenge all such claims and allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability to challenge class or collective treatment on any grounds, as well as to assert any and all other potential defenses or privileges.

4. SCOPE OF THE CLASS

4.1 The scope of the class of individuals encompassed under the Agreement and subject to all obligations and duties required under the Agreement, shall include all Class Members as defined in Section 1.5 and all Aggrieved Employees as defined in Section 1.2. However, it shall not include any Class Members who submit valid and timely requests to opt-out of the Agreement and settlement, as set forth in Section 7.5.1.

4.2 Only Participating Class Members and Aggrieved Employees are entitled to recover under this Agreement.

4.3 Any person who believes that he or she is a Class Member or Aggrieved Employee and wishes to participate in the Agreement, but did not receive a Notice of Settlement because his or her name did not appear on the class list provided to the Settlement Administrator prior to mailing, may submit a data request to the Settlement Administrator. The data request must contain all of the following information: (a) the full name and, if applicable, Social Security Number of the individual making the request; (b) the name used by such employee as of the time his or her employment with Defendant ended; (c) the individual's dates of employment with Defendant; and (d) a return address to which a response may be sent. Every data request must be postmarked on or before the conclusion of the Notice Period or otherwise submitted to the Settlement Administrator such that it is received before the conclusion of the Notice Period. Upon receipt of any data requests, the Settlement Administrator shall promptly (in no event more than two business days) transmit the data requests to Defendant's Counsel and request that Defendant review its records.

4.4 If Defendant agrees that the person listed in a data request is a Class Member and/or Aggrieved Employee, the Settlement Administrator shall promptly mail a Notice of Settlement to the person who submitted the data request, at the address designated for that purpose in the data request. All provisions of this Agreement relating to the Notice of Settlement shall apply to Notice of Settlements sent in response to data requests, and any person who submits a data request and is sent a Notice of Settlement

in response shall be treated by the Settlement Administrator as a Class Member and/or Aggrieved Employee for all other purposes.

4.5 If Defendant does not agree that the person listed in a data request is a Class Member and/or Aggrieved Employee, Defendant's Counsel and Class Counsel shall attempt to resolve any such dispute in good faith within seven (7) calendar days of Class Counsel being advised in writing of the data request dispute. Defendant's records shall control unless the individual submitting the data request provides persuasive evidence to doubt the accuracy of those records. Each data request dispute that Defendant's Counsel and Class Counsel cannot timely resolve shall be resolved by the Settlement Administrator. The Settlement Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve the dispute. The Settlement Administrator must resolve any dispute submitted to it within seven (7) calendar days after Defendant's Counsel and Class Counsel submit the dispute to the Settlement Administrator. The decision by the Settlement Administrator shall be final as between the parties, subject to Court review.

5. TERMS OF THE SETTLEMENT

The Parties agree as follows:

5.1 Gross Settlement Amount: In consideration and exchange for the releases described in Section 6, Defendant shall pay the Gross Settlement Amount (\$450,000). Funding of the Gross Settlement Amount shall occur in two installments of \$225,000. The first installment shall be due on or before May 14, 2024. The second installment shall be due by August 14, 2024. The installments shall be held in trust in a QSF by the Settlement Administrator. The Gross Settlement Amount includes payments to Participating Class Members, Aggrieved Employees, all attorneys' fees, costs and litigation expenses related to the Action incurred to date, as well as all such fees and costs incurred in documenting the Agreement, administering the Agreement (including Settlement Administrator Costs), and obtaining final approval of the Agreement, the Enhancement Payment to the Class Representative and the PAGA Payment. Any monies necessary to satisfy Defendant's tax obligations (e.g. employer FICA, FUTA and SDI contributions on wage payments) on any monies distributed to Participating Class Members will be paid in addition to the Gross Settlement Amount.

1 5.2 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of 35%
2 of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendant has
3 agreed to not oppose Class Counsel's application for attorneys' fees so long as it does not exceed the 35%
4 threshold. Class Counsel will also be entitled to reimbursement for advanced litigation expenses not to
5 exceed \$10,000, which shall be paid from the Gross Settlement Amount. Defendant has agreed to not
6 oppose Class Counsel's request for reimbursement for advanced litigation expenses so long as they do not
7 exceed the \$10,000 threshold. The Settlement Administrator will issue Class Counsel an IRS Form 1099
8 for the attorneys' fees and costs paid under this Agreement. In the event that the Court awards less than
9 the requested attorney's fees and/or costs, the portion of the requested amounts not awarded to Class
10 Counsel shall be added to the Net Settlement Amount to be distributed to Participating Class Members on
11 a pro rata basis.

12 5.3 Settlement Administrator Costs: The Settlement Administrator Costs shall be paid from the
13 Gross Settlement Amount and shall not exceed \$15,000. The difference between any actual costs and the
14 allocated \$15,000 shall be added to the Net Settlement Amount to be distributed to Participating Class
15 Members on a pro rata basis.

16 5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiff, shall apply to the Court for
17 an Enhancement Payment to the Class Representative in an amount not to exceed Fifteen Thousand Dollars
18 (\$15,000) to compensate for the risks, time, and expense of his involvement in the Action and securing the
19 benefits of this Agreement for Class Members. The Enhancement Payment is in addition to the Individual
20 Settlement Amount Plaintiff would otherwise be due under the Agreement as a Participating Class Member.
21 Defendant has agreed to not oppose Class Counsel's request for an Enhancement Payment to Plaintiff so
22 long as it does not exceed the amount stated herein. The Enhancement Payment will be designated as a
23 non-wage payment and reported on an IRS Form 1099-MISC. In the event that the Court awards less than
24 the Enhancement Payment amount requested, then any portion of the requested amount not awarded to the
25 Class Representative shall be added to the Net Settlement Amount to be distributed to Participating Class
26 Members on a pro rata basis.

27 5.5 PAGA Payment: Twenty Thousand Dollars (\$20,000) of the Gross Settlement Amount
28 shall be allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment

1 will be paid to the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees on a pro
2 rata basis as described below in Section 5.8. Any amount not approved by the Court for the allocated
3 PAGA Payment shall be added to the Net Settlement Amount to be distributed to Participating Class
4 Members on a pro rata basis.

5 5.6 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount or PAGA
6 Payment allocated to Participating Class Members and/or Aggrieved Employees that were not claimed by
7 cashing their respective settlement checks before the deadline to do so, that remaining amount shall be
8 donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers' Rights under the doctrine
9 of *cy pres*. No portion of the Gross Settlement Amount will revert to Defendant for any reason.

10 5.7 No Additional Benefits Contributions: All Individual Settlement Amounts paid to
11 Participating Class Members and Aggrieved Employees shall be deemed to be income solely in the year in
12 which such amounts were actually received. It is expressly understood and agreed that the receipt of such
13 Individual Settlement Amounts will not entitle any Participating Class Member or Aggrieved Employee to
14 any new or additional compensation or benefits under any company bonus or other compensation or benefit
15 plan or agreement in place during the period covered by the Agreement, nor will it entitle any Participating
16 Class Member Aggrieved Employee to any increased retirement, 401(k) and/or 403(b) benefits or matching
17 benefits, or deferred compensation benefits. It is the intent of this Agreement that the Individual Settlement
18 Amounts provided for in this Agreement are the sole payments to be made by Defendant to the Participating
19 Class Members and Aggrieved Employees in connection with this Agreement (notwithstanding any
20 contrary language or agreement in any benefit or compensation plan document that might have been in
21 effect during the period covered by this Agreement).

22 5.8 Pro Rata Distribution Formula: Payment to Participating Class Members and Aggrieved
23 Employees of their Individual Settlement Amount will not require the submission of a claim form. A Net
24 Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for
25 approved attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Settlement
26 Administrator Costs, and the PAGA Payment. Each Class Member's share will be initially determined by
27 dividing their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks of
28 all Class Members. That fraction will then be multiplied by the Net Settlement Amount to arrive at the

Class Member's individual share of the Net Settlement Amount. Any funds allocated to Class Members under this formula who timely opt out of the Settlement will be redistributed to Participating Class Members on a pro rata basis, *i.e.* each Participating Class Member's share will be determined by dividing their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks of all Participating Class Members and that fraction will then be multiplied by the Net Settlement Amount to arrive at the Participating Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total Qualifying Workweeks within the PAGA Claim Period by the total Qualifying Workweeks by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share.

5.9 Tax Allocation: The Parties recognize that the Individual Settlement Amounts to be paid to Participating Class Members and/or Aggrieved Employees reflect a settlement of a dispute over claimed penalties and wages. The Settlement Administrator shall calculate the employer's share of payroll taxes on the amounts paid to Participating Class Members as wages as well as calculating all required withholdings and deductions from said wage payments. The characterization of Individual Settlement Amounts to Participating Class Members and Aggrieved Employees are as follows:

5.9.1 One Third (1/3) of each Participating Class Members' Individual Settlement Amount shall be allocated for payment of disputed wages and shall be subject to required employer taxes. Participating Class Members shall receive an IRS Form W-2 for reporting of this portion of their Individual Settlement Amount.

5.9.2 Two Thirds (2/3) of each Participating Class Members' Individual Settlement Amount shall be allocated for disputed statutory penalties and interest, and no amount shall be deducted for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for which the Participating Class Members shall receive an IRS Form 1099-MISC.

5.9.3 The entirety (100%) of each Aggrieved Employee's share of the 25% portion of the PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for which the Aggrieved Employees shall receive an IRS Form 1099-MISC.

1 5.10 Participating Class Members and Aggrieved Employees shall be solely responsible for the
2 reporting and payment of their share of any federal, state and/or municipal income or other taxes on
3 payments made pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendant's
4 Counsel free and harmless from any claims resulting from treatment of such payments as non-taxable,
5 including the treatment of such payments as not subject to withholding or deduction for payroll and
6 employment taxes. No party has made any representation to any of the other Parties as to the taxability of
7 any payments pursuant to this Agreement, including the payments to Participating Class Members, the
8 payments to Aggrieved Employees, the payments to Class Counsel, the payments to the Class
9 Representative, the payroll tax liability of Defendant, or the allocation of the Net Settlement Amount or
10 PAGA Payment to wage and non-wage income as provided in this Section, or otherwise as to tax
11 implications of any provision of this Agreement.

12 5.11 No Additional Contribution by Defendant: Defendant's monetary obligation under this
13 Agreement is limited to the Gross Settlement Amount and any employer side payroll taxes owed on
14 amounts characterized as wages under this Agreement. All other costs and expenses arising out of or in
15 connection with the performance of this Agreement shall be paid from the Gross Settlement Amount, unless
16 expressly provided otherwise herein. However, in the event this agreement is deemed null and void as
17 described in Section 3 because the Court, in its independent determination, finds that the Agreement does
18 not meet the standards for settlement approval, then Defendant and Plaintiff shall be equally responsible
19 for the costs of the Settlement Administrator incurred between the date the Agreement was executed and
20 the date of such event.

21 5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement
22 only, certification of the class as defined in Section 1.5 and 4.1 is appropriate and the requisites for
23 establishing class certification have been met and are met.

24 5.13 Adequacy of Class Counsel and Class Representative: The Parties agree that, for purposes
25 of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members and
26 Aggrieved Employees.

27 **6. RELEASE**
28

1 6.1 Release of Claims by Participating Class Members: Upon the Effective Date, all
2 Participating Class Members will be deemed to fully, finally and forever release the Released Class Claims
3 as to all Released Parties. In addition, on the Effective Date, all Participating Class Members and their
4 successors in interest will be permanently enjoined and forever barred from prosecuting any of Released
5 Class Claims against any of the Released Parties.

6 6.2 Release of Claims by Aggrieved Employees: Upon the Effective Date, all Aggrieved
7 Employees will be deemed to fully, finally and forever release the Released PAGA Claims as to all
8 Released Parties. In addition, on the Effective Date, all Aggrieved Employees and their successors in
9 interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA
10 Claims against any of the Released Parties.

11 6.3 Release by Plaintiff: Upon the Effective Date, Plaintiff will be deemed to fully, finally and
12 forever release the Released Class Claims, Released PAGA Claims, and Class Representative's Released
13 Claims as to all Released Parties. In addition, on the Effective Date, Plaintiff and any successors in interest
14 will be permanently enjoined and forever barred from prosecuting any of the Released Class Claims,
15 Released PAGA Claims, and Class Representative's Released Claims against any of the Released Parties.

16 7. **SETTLEMENT ADMINISTRATION**

17 7.1 Duties of Settlement Administrator: The Settlement Administrator shall be responsible for:
18 1) receiving Class Member and Aggrieved Employee contact information and confirming addresses are
19 valid; 2) calculating estimated Individual Settlement Amounts and any and all taxes associated with the
20 Individual Settlement Amounts, including employer taxes; 3) taking appropriate steps to trace and locate
21 any individual Class Members and Aggrieved Employee whose address or contact information as provided
22 to the Settlement Administrator is inaccurate or outdated and mailing the Notice of Settlement to Class
23 Members; 4) providing notification to the appropriate state and federal officials of this Agreement as
24 required under the law; 5) receiving, independently reviewing, and resolving any challenges (in
25 consultation with Class Counsel and Defendant's Counsel) from Class Members or Aggrieved Employees,
26 including any associated documentation, regarding their Qualified Workweek calculations; 6) receiving
27 and serving on Class Counsel, Defendant's Counsel, and the Court, copies of any written objections, and/or
28 any opt out statements; 7) establishing a toll free telephone line and responding to inquiries and requests

for information or assistance from Class Members and/or Aggrieved Employees; 8) maintaining a QSF; 9) determining and paying the final amounts due to be paid under the Agreement after resolution of all challenges, disputes, opt-outs, awarded attorneys' fees and costs, Settlement Administrator Costs, PAGA Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability to locate Class Members or Aggrieved Employees; 10) determining the validity of any disputes or late opt-outs by previously unidentified Class Members or Aggrieved Employees; 11) paying any residual funds from uncashed checks; 12) reporting to Class Counsel and Defendant's Counsel regarding the statistics of the administration, including (a) the number of initial Notice of Settlements mailed; (b) the number of forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the number of total undeliverable Notice of Settlements; (e) the number of address traces performed for undeliverable Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced addresses; (g) the number of total objections received; (h) the number of opt-out requests received; (i) the number of disputes received; (j) the number of disputes resolved; 13) providing a declaration to the Court regarding the final statistics of the administration and compliance with all payment obligations under the Agreement; 14) completing all necessary tax reporting on the QSF and payment of the Individual Settlement Amounts to Participating Class Members and Aggrieved Employees; and 15) carrying out other related tasks as necessary to effectuate the terms of this Agreement and any Order of the Court. All disputes relating to the Settlement Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until all payments and obligations contemplated by the Agreement have been fully executed.

7.2 Notice to Class Members and Aggrieved Employees: Defendant represent and warrant that Class Members and Aggrieved Employees are able to read and write in English such that no translation of the Notice of Settlement into another language is necessary. The Notice of Settlement will provide Class Members and Aggrieved Employees with a summary of the terms and conditions of the Agreement, how to participate in the settlement, how to object to the Agreement, how to dispute the individual's Qualifying Workweeks, and how to opt-out from the Agreement. The Notice of Settlement will also inform Class Members and Aggrieved Employees of the Gross Settlement Amount, Net Settlement Amount, proposed attorneys' fees and costs allocations, any proposed Enhancement Payments, proposed Settlement

1 Administrator Cost allocations, proposed PAGA Payment allocations, the scope of the class, the nature and
2 extent of the released claims, dates set for a fairness hearing and hearing on Class Counsels' motion for
3 attorneys' fees and costs. The Notice of Settlement shall include information regarding Class Member's
4 and Aggrieved Employee's estimated Individual Settlement Amount. The Notice of Settlement will
5 provide information on how to access electronic copies online of the Notice of Settlement, any motions for
6 approval of the Agreement, any motions for approval of attorneys' fees and costs, and any other documents
7 as the Court directs.

8 7.3 Class Member Data and Mailing: No later than fourteen (14) calendar days after the
9 Preliminary Approval Date, Defendant shall provide the Settlement Administrator with the name, last
10 known mailing address, last known telephone number, Social Security Number, start and end date of
11 employment (if any) of each Class Member and Aggrieved Employee, and any other information the
12 Settlement Administrator needs to effectuate notice to Class Members and Aggrieved Employees as
13 outlined herein. The Settlement Administrator shall review the data to determine the number of Qualifying
14 Workweeks for each Class Member and Aggrieved Employee. No later than fourteen (14) calendar days
15 after receipt of such address information, the Settlement Administrator will perform a national change of
16 address ("NCOA") search, update the addresses per the results of the NCOA search, and then mail the
17 Notice of Settlement, substantially in the form attached as Exhibit 1, to each Class Member and Aggrieved
18 Employee by first-class mail, postage prepaid. The Settlement Administrator shall maintain all information
19 received from Defendant confidential to itself, and Defendant's Counsel. However, Class Counsel shall be
20 able to review the breakdown of Qualified Workweeks and estimated Individual Settlement Amounts for
21 Class Members and Aggrieved Employees prior to mailing for quality assurance provided the personal
22 identifying information is redacted and/or omitted.

23 7.4 Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement
24 is returned to the Settlement Administrator as undeliverable on or before the conclusion of the Notice
25 Period, the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5)
26 calendar days. If no forwarding address is provided, then the Settlement Administrator shall promptly
27 attempt to determine a correct address using a skip-trace, computer or other search using the name, address
28 and/or Social Security number of the individual involved, and shall then perform a single re-mailing within

five (5) calendar days to any more recent address found as a result of the search. Following each search that does not result in a corrected address, for those Class Members who appear to be current employees of Defendant at the time of the Preliminary Approval Date, the Settlement Administrator shall contact Defendant's Counsel for assistance and Defendant shall cooperate in good faith with the Settlement Administrator's reasonable efforts to obtain valid mailing addresses for Class Members to the extent they are active employees of Defendant. In the event the Notice of Settlement is forwarded to a new address and/or re-mailed to a Class Member, the deadline for the Class Member to submit any request to opt-out, a dispute, or an objection shall be the end of the Notice Period or 10 days from the date of the re-mailing/forwarding to a new address, whichever is later. In the event the procedures in this Section are followed and the Class Member does not timely and properly request to opt-out, the Class Member shall be bound by all terms of the Agreement, including the releases contained in Section 6.

7.5 Responses to Notice of Settlement:

7.5.1 *Opt-Outs:* The Notice of Settlement shall provide that Class Members who wish to exclude themselves from the Agreement must submit a request to opt-out as provided in this Section. The request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that he or she does not want to be a Class Member, does not want to participate in the settlement, and/or wants to be excluded from the settlement; (c) identify the case name and number (i.e. Downard v. Sierra Mental Wellness Group, Case No. S-CV-0049587); (d) be signed; and (e) be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4. The Class Member must personally sign the request to opt-out. No request to opt-out may be made on behalf of a group of Class Members. The date of the postmark on the return-mailing envelope shall be the exclusive means used to determine whether a request to opt-out has been timely submitted. Any Class Member who requests to opt-out of the Agreement will not be entitled to any portion of the Net Settlement Amount nor will they have any right to object, appeal or comment thereon. The name of any Class Member who submits a valid and timely opt out request will be specifically identified in any proposed order granting final approval. Class Members who fail to submit a valid and timely request to opt-out shall be bound by all terms of the Agreement and any order or final judgment thereon. Regardless of whether an Aggrieved Employee opts

1 out of being a Class Member, they will still receive their share of the PAGA Payment as Aggrieved
2 Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims.

3 7.5.2 *Objection Procedures:* Any Class Member who does not opt-out but who wishes to
4 object to this Agreement or otherwise to be heard concerning this Agreement shall send their written
5 objections to the Settlement Administrator and also serve copies of the objections on Class Counsel and
6 Defendant's Counsel. The Notice of Settlement shall make clear that the Court can only approve or deny
7 the Agreement, not change the terms of the Agreement. The objection must (a) state the Class Member's
8 full name and date of birth; (b) provide evidence that the individual is, in fact, a Class Member; (c) state
9 the reasons for the objection(s), including any supporting documentation; (d) identify the case name and
10 number (*i.e.* Downard v. Sierra Mental Wellness Group, Case No. S-CV-0049587) (e) be signed; and (f)
11 be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section
12 7.4. The Notice of Settlement will inform the Class Member that they should also file a notice of intent to
13 appear with the Court and serve the notice on Class Counsel and Defendant's Counsel, if they intend to
14 appear at the final approval hearing.

15 7.5.3 *Dispute Procedures:* Any Class Member who disputes the number of Qualifying
16 Workweeks on the Notice of Settlement shall contact the Settlement Administrator. The dispute must (a)
17 identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c)
18 be signed; and (d) be post-marked no later than the conclusion of the Notice Period or the re-mailing
19 timeline stated in Section 7.4. The Settlement Administrator shall promptly (in no event more than two
20 business days) forward all such disputes to Defendant's Counsel and request that Defendant review the
21 dispute. Defendant's records shall presumptively control unless the Class Member can produce
22 documentation evidencing other periods of employment worked. If Defendant agrees with submitted
23 information, the Class Member shall be credited or subtracted Qualifying Workweeks in accordance with
24 their submitted dispute and that final number of Qualified Workweeks shall govern the calculation of that
25 Class Member's Individual Settlement Amount. If Defendant disagrees with the submitted information,
26 Defendant's Counsel will promptly advise Class Counsel of the dispute, which includes turning over any
27 documentation submitted by the Class Member as part of the dispute. Defendant's Counsel and Class
28 Counsel shall attempt in good faith to resolve any such dispute within five (5) calendar days of Class

Counsel being advised of the dispute. Each dispute that Defendant's Counsel and Class Counsel cannot timely resolve shall be resolved by the Settlement Administrator, subject to Court review.

7.5.4 *Deficient Opt-Outs, Objections, or Disputes:* In the event that a deficient opt-out, objection, or dispute is received on or before the conclusion of the Notice Period, the Settlement Administrator shall mail a letter to the Class Member within five (5) calendar days informing them of the deficiency. If a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure the deficiency shall be the end of the Notice Period or 10 calendar days from the date of the deficiency letter, whichever is later.

7.6 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class Counsel or Defendant's Counsel to provide notice of the proposed Agreement.

7.7 Settlement Administrator Declaration Regarding Notice Period: Within fourteen (14) calendar days after the conclusion of the Notice Period, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete and detailed report regarding the statistics and responses of settlement administration to date and all the Settlement Administrators' obligations under Sections 5.8 to 5.9.3 and 7.1 to 7.5.4.

7.8 Settlement Administrator Payments to Participating Class Members, Class Counsel and Plaintiff: Within seven (7) calendar days after the Effective Date and the Court's determination of the amount of attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to Plaintiff, the PAGA Payment, and Settlement Administrator Costs, the Settlement Administrator shall calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendant's Counsel. Defendant shall wire the Gross Settlement Amount and applicable taxes necessary to fund the Settlement as described in Section 5.1 to the Settlement Administrator within twenty-one (21) calendar days after the Effective Date to be to be held in trust in a QSF. Within seven (7) calendar days after Defendant fund the settlement, the Settlement Administrator shall deliver payment of Class Counsels' attorney's fees and costs, the Enhancement Payment payable to

1 Plaintiff, the 75% portion of the PAGA Payment payable to the LWDA, Settlement Administrator Costs,
2 and payment to Participating Class Members and/or Aggrieved Employees as required under this
3 Agreement and approved by Court.

4 7.8.1 The Settlement Administrator shall wire the Court-approved attorneys' fees and
5 costs to Class Counsel unless another method is requested by Class Counsel. Class Counsel shall provide
6 the Settlement Administrator with the pertinent taxpayer identification number and payment instructions
7 after the Final Approval Date.

8 7.8.2 The Settlement Administrator shall send a check by mail for the Court-approved
9 Enhancement Payment to the Class Representative, care of Class Counsel unless another method is
10 requested by Class Counsel.

11 7.8.3 Only Participating Class Members and Aggrieved Employees will receive their
12 Individual Settlement Amount.

13 7.8.4 The Settlement Administrator shall remit and report the applicable portions of the
14 payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this
15 Agreement. Defendant agree to reasonably cooperate with the Settlement Administrator to the extent
16 necessary to determine the amount of the payroll tax payment required.

17 7.9 Settlement Check Expiration and Uncashed Checks: The Settlement Administrator shall
18 issue Individual Settlement Amounts to Participating Class Members and Aggrieved Employees in the
19 form of a check, which shall become null and void if not deposited within one hundred eighty (180)
20 calendar days of issuance. After one hundred eighty (180) calendar days of issuance, the checks shall be
21 voided and funds from all uncashed checks shall be transmitted in accordance with Section 5.6. The
22 Settlement Administrator shall deliver these funds within fourteen (14) calendar days after the check
23 cashing deadline.

24 7.10 Settlement Administrator Declaration Regarding Compliance and Settlement
25 Administration: Within twenty-one (21) calendar days after the last day for Participating Class Members
26 and Aggrieved Employees to cash their settlement checks, the Settlement Administrator shall provide Class
27 Counsel and Defendant's Counsel with a signed declaration under penalty of perjury providing a complete
28 and detailed report regarding the settlement administration documenting that all payments under the

Agreement have been made, that the Court's final approval order has been complied with, and that all the obligations of the Settlement Administrator have been completed.

8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE

8.1 The schedule may be modified depending on whether and when the Court grants necessary approvals, orders notice to Class Members and Aggrieved Employees, and sets further hearings. The schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures as expeditiously as reasonably practicable. The preliminary schedule for notice, approval, and payment procedures carrying out the Agreement is as follows:

Last day for Defendant to provide Settlement Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
Last day for Settlement Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendant
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
Last day for Defendant to fund first installment payment	May 14, 2024

Last day for Defendant to fund second installment payment	August 14, 2024
Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after Defendant has fully funded the settlement
Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

9. DUTIES OF THE PARTIES

9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final approval. Within one week of signing this Agreement Class Counsel shall provide a draft of the Preliminary Approval Motion to Defendant's Counsel. Defendant's Counsel will provide comments and/or proposed revisions within one week after receipt of the draft Preliminary Approval Motion from Class Counsel. With regard to the final approval documents, a similar one-week maximum review and response

time shall be observed by the Parties. The Parties will request that the Court's preliminary approval of this Agreement be embodied in an Order Granting Preliminary Approval of Class Action and PAGA Settlement.

9.1.1 Plaintiff's motion shall seek an order: 1) Preliminarily approving the Agreement; 2) Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the Notice of Settlement by first class mail to Class Members and Aggrieved Employees; 4) Preliminarily appointing Plaintiff and Class Counsel as representatives of Class Members; 5) Preliminarily approving settlement administration services to be provided by the Settlement Administrator; 6) Preliminarily approving the proposed Enhancement Payment to Plaintiff; 7) Preliminarily approving the application for payment of reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8) Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally approved as fair, reasonable and adequate as to the Class Members.

9.1.2 Defendant shall not oppose Plaintiff's motion for approval of the proposed Agreement.

9.1.3 The Parties shall cooperate with each other and the Settlement Administrator during the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and appropriate to assure effective communication to individual Class Members of information about their rights and obligations under this Agreement.

9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the Agreement, a declaration by the Settlement Administrator of due diligence and proof of mailing of the Notice of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results of the Settlement Administrator's mailings including tracing and re-mailing efforts. The Settlement Administrator declaration shall identify, by name, any Class Member who submitted a timely and valid request to opt out during the Notice Period.

9.2.1 Class Counsel and Defendant shall work in good faith to draft a mutually agreeable Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment. The

1 Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment shall
2 include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair, reasonable
3 and adequate, and directing that its terms and provisions be carried out; 2) Approving the payment of an
4 Enhancement Payment to the Class Representative; 3) Approving Class Counsel's application for an award
5 of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4) Approving the Settlement
6 Administrator Costs; and 5) Providing that the Court will retain jurisdiction to oversee administration and
7 enforcement of the terms of the Agreement and the Court's orders.

8 9.2.2 Following entry of the Court's order granting final approval of the Agreement, the
9 Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the following:
10 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside the judgement
11 be filed, all parties will support the final approval order on appeal or otherwise; 2) Class Counsel will assist
12 the Settlement Administrator as needed or requested in the process of identifying and locating Participating
13 Class Members and Aggrieved Employees entitled to payments under the Agreement and assuring delivery
14 of such payments; 3) Class Counsel and Defendant's Counsel will cooperate with each other and assist the
15 Settlement Administrator as needed or requested in completing the distribution of any residual amounts, as
16 specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction with the Settlement
17 Administrator, will certify to the Court completion of all payments required to be made by this Agreement.

18 9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness
19 hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action and
20 PAGA Settlement and Final Judgment.

21 9.4 Notice to LWDA: Plaintiff will provide notice to the Labor and Workforce Development
22 Agency ("LWDA") of this settlement in accordance with Labor Code § 2699(1)(2).

23 **10. MISCELLANEOUS TERMS**

24 10.1 Defendant's Right to Withdraw Based on Opt-Outs: If, prior to the Final Approval Date,
25 15% or more of the Class Members have submitted proper and timely requests to opt-out in accordance
26 with the provisions of the Agreement, Defendant may rescind the Agreement and all actions taken in its
27 furtherance will be thereby null and void. Defendant must exercise this right of rescission, in writing, to
28 Class Counsel, within seven (7) calendar days after the Settlement Administrator notifies the Parties of the

total number of opt-outs. If the option to rescind is exercised, then any Settlement Administrator Costs shall be paid by Defendant. Defendant has represented that there are no more than 19,717 workweeks during the Class Period. In the event the number of workweeks during the Class Period is more than 22,674.5 (i.e., greater than 15% more than 19,717), then the Gross Settlement Amount shall be increased proportionally by the workweeks in excess of 22,674.5, multiplied by the workweek value; or Defendant has the option of shortening the Class Period end date so that the total number of workweeks does not exceed 115% of 19,717. For example, if there were 19,717 workweeks represented to exist during the Class Period, but there are actually 25,000 workweeks in the Class Period, and the actual workweek value is \$5.00 per workweek, Defendant would have to increase the Gross Settlement Amount by \$11,627.5 (25,000 workweeks – 22,674.5 workweeks = 2,325.5 workweeks x \$5.00/workweek).

10.2 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX

1 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
2 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
3 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY
4 THIS AGREEMENT.

5 10.3 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
6 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
7 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
8 and discharged in this Agreement.

9 10.4 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by
10 signing this Agreement Defendant is waiving any rights to appeal from the Court's approval of the
11 settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement
12 Plaintiff is waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.

13 10.5 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
14 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
15 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

16 10.6 Judgment and Retention of Jurisdiction to Enforce: Upon the Effective Date, judgment will
17 be entered according to this Agreement. The Parties stipulate and agree that the Placer County Superior
18 Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil Procedure
19 Code section 664.6 and that the prevailing party any action necessary to enforce the terms of the Agreement
20 after default by the other party may recover reasonable attorney's fees and costs related thereto.

21 10.7 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
22 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to, execution
23 of such other documents and the taking of such other action as may reasonably be necessary to fulfill the
24 terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
25 contemplated by this Agreement and any other efforts that may become necessary by Court order, or
26 otherwise, to effectuate this Agreement and the terms set forth herein.

27 10.8 No Admission of Liability: Neither the acceptance nor the performance by Defendant of
28 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to

be, construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in the Complaint, the representative character of the Action, the validity of any of the claims that were or could have been asserted by Plaintiff and/or Class Members in the Action, or of any liability or guilt of Defendant in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by Defendant of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members, or any other person, and Defendant specifically disclaim any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members, or any other person. Each of the Parties has entered into this Stipulation with the intention to avoid further disputes and litigation.

10.9 Notices: Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States certified mail, return receipt requested, addressed as follows:

To Plaintiff and the Class:

Galen T. Shimoda,
Justin P. Rodriguez
Renald Konini
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624

To Defendant:
Ronald E. Enabnit
Matheny Sears Linkert & Jaime, LLP
3638 American River Drive
Sacramento, CA 95864
Telephone: (916) 978-3434
Facsimile: (916) 978-3430

10.10 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its counsel participated in the drafting of this Agreement.

10.11 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys acting for, or purporting to act for, the Class, Class Members, or Plaintiff, may recover or seek to recover

any amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except as expressly provided in this Agreement.

10.12 No Modifications: This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be discharged except by performance in accordance with its terms.

10.13 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and 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 required to effectuate the terms of this Agreement.

10.14 Class Member Signatories: Because the Action has not yet been certified, and the Class Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement may be executed on behalf of all Class Members by the Class Representative.

10.15 Counterparts: This Agreement shall become effective upon its execution by all of the undersigned. Plaintiff, Class Counsel, Defendant and Defendant's Counsel may execute this Agreement in counterparts, and execution of counterparts shall have the same force and effect as if each had signed the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force and effect of originals.

10.16 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with, and governed by, the substantive laws of the State of California without giving effect to that State's choice of law principles.

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

10.18 No Retaliation or Discouragement: The Parties agree they will take no action that could be construed as retaliation against any Class Members for participating or seeking to participate in this class action settlement. The Parties will not discourage any class member from participating or seeking to participate in this class action settlement. This is a material term of the Agreement and non-breaching Parties will seek court intervention if this provision is breached.

10.19 Integrated Agreement: This Agreement sets forth the entire understanding between the Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof. Each party acknowledges that there is no representation, inducement, promise or agreement which has been made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

10.20 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

10.21 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

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

IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

For Plaintiff:

Date: 10/6/2023

DocuSigned by:

Jesse Downard

47B3BD9042D544D...

Jesse Downard

FOR Defendant:

Date: 10-10-23

By:

For SIERRA MENTAL WELLNESS GROUP

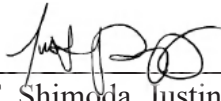
JON KIRSCHNER

EXECUTIVE DIRECTOR

APPROVED AS TO FORM

Dated: 10/10/2023

Shimoda & Rodriguez Law, PC

By: 
Galen T. Shimoda, Justin P. Rodriguez and
Renald Konini
Attorney for Plaintiff and Aggrieved
Employees

APPROVED AS TO FORM

Dated: October 10, 2023

**MATHENY SEARS LINKERT & JAIME,
LLP**

By: 
Ronald E. Enabnit
Attorney for Defendant

Exhibit 1

**CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF PLACER**

JESSE DOWNARD, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

SIERRA MENTAL WELLNESS GROUP, a
California Corporation; and DOES 1 to 100,
inclusive,

Defendant.

Case No. **S-CV-0049587**

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT, AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: All hourly non-exempt employees who have worked, or continue to work, for Defendant in California as clinicians, nurses, psychologists, or similar positions responsible for providing care to patients at any point from December 19, 2018, to [REDACTED] (the "Class Members").

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE IN OR OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

You are receiving this notice pursuant to an order from the Placer County Superior Court ("Court") granting Plaintiff's motion for preliminary approval of a Joint Stipulation of Regarding Class Action PAGA Settlement and Release ("Agreement" or "Settlement") as fair, reasonable, and adequate. The Settlement was entered into between Plaintiff Jesse Downard ("Plaintiff" or "Class Representative"), and Defendant SIERRA MENTAL WELLNESS GROUP ("Defendant") on behalf of Class Members as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Defendant's records indicate you fall within the definition of "Class Member." Defendant's records also indicate that you worked [REDACTED] weeks during the applicable Class Period (as defined below), which means your total share of the settlement proceeds is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court's order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On December 19, 2022, Plaintiff filed a Complaint against Defendant in the Placer County Superior Court of California on behalf of himself and Class Members. The term "Action" means this putative class action pending in Placer County Superior Court, Case No. S-CV-0049587. The Class Period all hourly non-exempt employees who have worked, or continue to work, for Defendant in California as clinicians, nurses, psychologists, or similar positions responsible for providing care to patients at any point from December 19, 2018, is to [REDACTED] (the "Class Period").

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself, Class Members, and Aggrieved Employees. Plaintiff alleged that Defendant violated California law by 1) failing to pay overtime wages, 2) failing to pay minimum wages, 3) failing to provide meal periods or pay premiums in lieu thereof, 4) failing to provide rest periods or pay premiums in lieu thereof, 5) failing to provide accurate wage statements, 6) failing to timely pay all final wages, 7) failing to reimburse employees for incurred expenses, 8) failing to provide paid sick leave, 9) failing to maintain accurate records, 10) engaging in unfair competition, and 10) committing PAGA violations. Defendant has denied all of Plaintiff's allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party.

Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant continue to deny all allegations and claims. Defendant has entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, which are defined as all hourly non-exempt employees who have worked, or continue to work, for Defendant in California as clinicians, nurses, psychologists, or similar positions responsible for providing care to patients at any point from December 19, 2018, to [REDACTED]. The Agreement also applies to Aggrieved Employees, which are defined as all hourly non-exempt employees who have worked, or continue to work, for Defendant in California as clinicians, nurses, psychologists, or similar positions responsible for providing care to patients at any point between December 16, 2021, to [REDACTED]. If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself ("opt out") from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant has agreed to pay a total sum of Four Hundred Fifty Thousand Dollars (\$450,000) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 35% of the Gross Settlement Amount, attorneys' costs not to exceed \$10,000, Settlement Administrator Costs estimated not to exceed \$15,000, Class Representative's Enhancement Payment of \$15,000, and \$20,000 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$20,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees.

The number of weeks you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment ("Individual Settlement Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by Participating Class Members (i.e., those who do not opt out of the Settlement), the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees' allocations for the PAGA claims.

B. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Individual Settlement Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 2/3 for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC and 1099-INT will issue and 1/3 for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Participating Class Members and Aggrieved Employees will not require the submission of a claim form. Each Participating Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Participating Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. The PAGA Claim Period is defined as December 16, 2021 up to [REDACTED]. Defendant's records indicate that you worked [REDACTED] weeks during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount

stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendant's Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than [REDACTED]. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released any and all class claims that are alleged in the Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the Complaint, through the Class Period. This release excludes the release of claims not permitted by law. The Released Class Claims exclude claims for workers' compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

Aggrieved Employees will be deemed to have released any and all claims that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in the Complaint and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the Complaint during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released ("Released Parties") include Defendant, as well as Defendant's officers, shareholders, directors, agents, employees, attorneys, and insurers.

Class Members and/or Aggrieved Employees can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if they have questions about the released claims and what they mean.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

If you wish to be a Participating Class Member and believe your workweek information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement as a Class Member

The Court will exclude you from the being a Class Member if you request this by [REDACTED]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (*i.e.*, "opt out") by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or wants to be excluded from this Settlement; (c) identify the case name and number (*i.e.* Downard v. Sierra Mental Wellness Group, S-CV-0049587); (d) be signed; and (e) be post-marked no later than [REDACTED]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

If you submit a request to opt out which is not postmarked by [REDACTED], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not received their share of the Net Settlement Amount. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (i.e. Downard v. Sierra Mental Wellness Group, S-CV-0049587) (e) be signed; and (f) be postmarked no later than [REDACTED]. The objection must be sent to the Settlement Administrator at the address identified in Section III.B and to counsel for Plaintiff and Defendant at the addresses identified in Section VI of this notice.

If you have submitted a written objection as outlined above, you may also appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney. You should also file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendant.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and Aggrieved Employee, will release Defendant and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department ____, [address] on [REDACTED] at [REDACTED] to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representative's Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court at the Settlement Administrator's website: [admin web address]. You can also contact Class Counsel or Defendant's Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

Ronald E. Enabnit
Matheny Sears Linkert & Jaime, LLP
3638 American River Drive
Sacramento, CA 95864
Telephone: (916) 978-3434
Facsimile: (916) 978-3430
On behalf of Defendant

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT

EXHIBIT B

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Renald Konini (Cal. State Bar No. 312080)
4 **Shimoda & Rodriguez Law, PC**
5 9401 East Stockton Boulevard, Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

ELECTRONICALLY FILED
Superior Court of California,
County of Placer
03/27/2023 at 12:36:59 PM
By: Ashley A Nichols
Deputy Clerk

9 Attorneys for Plaintiff JESSE DOWNARD,
10 Individually and on behalf of all other similarly situated employees

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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF PLACER

JESSE DOWNARD, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

SIERRA MENTAL WELLNESS GROUP, a
California Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. S-CV-0049587

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Meal Period Violations
4. Rest Period Violations
5. Wage Statement Violations
6. Waiting Time Penalties
7. Failure to Reimburse Expenses
8. Unfair Competition
9. Private Attorneys General Act

DEMAND FOR JURY TRIAL

1 Plaintiff JESSE DOWNARD (“Plaintiff”), on behalf of himself and all other similarly
2 situated employees, hereby files this First Amended Complaint against Defendants SIERRA
3 MENTAL WELLNESS GROUP, a California Corporation; and DOES 1 to 100, inclusive
4 (hereinafter all collectively referred to as “Defendants”). On information and belief, Plaintiff allege
5 the following:

6 **INTRODUCTION**

7 1. This is a class action and Private Attorneys General Act (“PAGA”) lawsuit brought by
8 Plaintiff for failure to provide overtime wages, failure to provide minimum wages, meal and rest period
9 violations, wage statement violations, waiting time penalties, failure to reimburse expenses, failure to
10 pay appropriate sick leave wages, and unfair competition.

11 **JURISDICTION AND VENUE**

12 2. The Placer County Superior Court has jurisdiction in this matter pursuant to California
13 Code of Civil Procedure section 410.10 to determine alleged violations of the California Labor Code,
14 California Business and Professions Code, and Wage Order No. 5.

15 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), and 395.5, in that
16 Defendants reside in Placer County. In addition, some of the wrongful acts and violations of law
17 asserted herein occurred within Nevada County, and Defendants’ obligation to pay wages arose in
18 Nevada County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

19 4. Plaintiff sought permission pursuant to California Labor Code section 2699 *et seq.* to
20 pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf
21 of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3,
22 Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency
23 (“LWDA”) on approximately December 16, 2022. Plaintiff provided facts and legal bases for his claims
24 within the notice to the LWDA on all violations asserted under the Private Attorneys General Act cause
25 of action. Plaintiff also submitted the \$75.00 filing fee. The December 16, 2022, notice was also sent
26 via certified mail to Defendants on the same day. To date, the LWDA has not provided any response to
27 Plaintiff’s notice correspondence. Accordingly, Plaintiff has exhausted all administrative remedies
28 pursuant to the Private Attorneys General Act (“PAGA”) and may bring this action on behalf of himself

1 and all similarly situated employees, *i.e.* Aggrieved Employees. See Cal. Lab. Code § 2699.3(a)(2)(A),
2 (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005).
3 Aggrieved Employees include, but is not limited to the following: all non-exempt employees who have
4 worked, or continue to work, for Defendants in California as clinicians, nurses, psychologists, or similar
5 positions responsible for providing care to patients from December 16, 2021 to present.

6 PARTIES

7 5. JESSE DOWNARD is an individual over the age of eighteen (18) and is a resident of
8 the State of California.

9 6. On information and belief, Plaintiff alleges, SIERRA MENTAL WELLNESS
10 GROUP, is now and/or at all times mentioned in this Complaint was a California Corporation and
11 the owner and operator of an industry, business and/or facility doing business in the State of
12 California.

13 7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the
14 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and
15 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true
16 names and capacities of these DOE Defendants when they are ascertained.

17 8. At all times mentioned herein, each Defendant was the agent or employee of each of the
18 other Defendants and was acting within the course and scope of such agency or employment. The
19 Defendants are jointly and severally liable to Plaintiff.

20 9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
21 were members of and/or engaged in a joint employment, joint venture, partnership and common
22 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
23 joint venture, partnership and common enterprise.

24 10. Defendants, and each of them, now and/or at all times mentioned in this Complaint
25 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

26 11. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
27 wrongs, complaints, injuries and/or damages alleged in this Complaint.

28 //

1 **CLASS ALLEGATIONS**

2 12. Plaintiff brings the First through Eighth Causes of Action on behalf of himself and all
3 others similarly situated as a class action pursuant to California Code of Civil Procedure section 382.

4 The class which Plaintiff seeks to represent is composed of, and defined, as follows:

5 All hourly non-exempt employees who have or continue to work for
6 Defendant in California as clinicians, nurses, psychologists, or similar
7 positions responsible for providing care to patients from December 19,
8 2018, to the present.

9 13. This action has been brought and may be properly maintained as a class action,
10 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
11 defined community of interests in the litigation and the proposed class is easily ascertainable.

12 (a) Numerosity: The putative class is so numerous that the individual joinder of all members
13 is impracticable under the circumstances of this case. While the exact number of class
14 members is unknown to Plaintiff at this time, Plaintiff is informed and believes that
15 Defendants have employed as many as one hundred fifty (150) individuals falling within
16 the above stated class definition throughout the State of California during the applicable
17 statute of limitations, who were subjected to the policies and practices outlined in this
18 Complaint. As such, joinder of all members of the putative class is not practicable.

19 (b) Common Questions Predominate: Common questions of law and fact exist as to all
20 members of the putative class and predominate over questions that affect only individual
21 members of the class. These common questions of law and fact include, without
22 limitation, the following:

- 23 (1) Whether Defendants had rounded employees' hours worked despite being able to
24 and actually recording actual hours worked down to the minute;
25 (2) Whether Defendants violated the law by only paying employees for their rounded
26 hours rather than all actual hours worked, including minimum wages and
27 overtime;
28 (3) Whether Defendants paid the putative class members for all hours worked;
(4) Whether Defendants maintained accurate payroll records;

- 1 (5) Whether, as a result of Defendants' policies and practices, Plaintiff and putative
2 class members were not paid all minimum and overtime wages owed;
- 3 (6) Whether Defendants failed to correctly calculate the regular rate of pay for
4 premium wage purposes such as overtime, double time, meal and rest period
5 premiums, and sick leave wages;
- 6 (7) Whether, as a result of Defendants' policies and practices, Plaintiffs and putative
7 class members received all wages, due and owing, at the time of their termination
8 or separation;
- 9 (8) Whether, as a result of Defendants' policies and practices, Plaintiff and putative
10 class members were not authorized and permitted to take all meal and rest periods
11 owed;
- 12 (9) Whether Defendant failed to reimburse Plaintiff and putative class members for
13 work-related cell phone use and internet use; and
- 14 (10) Whether Defendants provided Plaintiff's and putative class members with wage
15 statements that complied with Labor Code section 226.
- 16 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
17 class. The putative class also sustained damages arising out of Defendants' common
18 course of conduct in violation of the law as complained of herein. Plaintiff and all
19 members of the putative class were non-exempt employees who were not paid minimum
20 and overtime wages, meal and rest period premiums, and reimbursement of expenses as a
21 result of Defendants' policies and practices. Additionally, Defendants issued Plaintiff
22 and all members of the putative class wage statements that did not comply with Labor
23 Code section 226. As a result, Plaintiff and each member of the putative class will have
24 suffered the same type of harm and seek the same type of recovery based on the same
25 legal theories.
- 26 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
27 putative class. For all relevant times, Plaintiff resided in California and worked for
28 Defendants in California. Moreover, Plaintiff is an adequate representative of the

1 putative class as Plaintiff has no interests that are adverse to those of putative class
2 members. Additionally, Plaintiff has retained counsel who has substantial experience in
3 complex civil litigation and wage and hour matters.

- 4 (e) Superiority: A class action is superior to other available means for the fair and efficient
5 adjudication of the controversy since individual joinder of all members of the putative
6 class is impracticable. Class action treatment will permit a larger number of similarly
7 situated persons to prosecute their common claims in a single forum simultaneously,
8 efficiently, and without the unnecessary duplication of effort and expense that numerous
9 individual actions would engender. Further, as damages suffered by each individual
10 member of the class may be relatively small, the expenses and burden of the individual
11 litigation would make it difficult or impossible for individual members of the class to
12 redress the wrongs done to them, and an important public interest will be served by
13 addressing the matter as a class action. The cost to the court system of adjudication of
14 such individualized litigation would be substantial. Individualized litigation would also
15 present the potential for inconsistent or contradictory judgments.

16 14. Plaintiff is unaware of any difficulties that are likely to be encountered in the
17 management of this action that would preclude its maintenance as a class action.

18 **GENERAL ALLEGATIONS**

19 15. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14 as though fully
20 set forth herein.

21 16. Defendants provide mental health services to patients and employ various health care
22 professionals to provide these services, including clinicians, nurses, and psychologists, across California.
23 Defendants contract with several counties to provide these services at health care facilities therein,
24 including San Luis Obispo County, Glenn County, Nevada County, Placer County, and Colusa County.

25 17. Plaintiff worked for Defendants as a non-exempt employee from approximately
26 December 12, 2020, to September 9, 2022. Plaintiff was employed by Defendants as a non-exempt
27 employee from approximately December 21, 2020, to approximately September 9, 2022, working as a
28

1 crisis clinician. Similarly, similarly situated employees worked as clinicians, nurses, psychologists, or
2 similar positions responsible for providing care to patients.

3 18. Defendants paid Plaintiff and similarly situated employees under an on-call/roll out pay
4 system. Under this pay system, Plaintiff and similarly situated employees were given set shifts in which
5 they were required to be ready to respond to calls for care at any number of healthcare facilities in the
6 area, including, potentially, going to the facility to perform services. Plaintiff and similarly situated
7 employees were paid approximately \$13-\$15 per hour during the time in which they were subject to
8 being called. When Plaintiff and similarly situated employees were actually responding to calls over the
9 phone, actually in the facility in response to a call, or working during a regularly scheduled shift, they
10 were paid a higher amount, approximately \$33-\$36 per hour. Plaintiff and similarly situated employees
11 regularly worked more than eight (8) hours a day and forty (40) hours a week. When Defendants
12 calculated Plaintiff and similarly situated employees' regular rate of pay for premium purposes such as
13 overtime, double time, sick leave, they failed to incorporate the value of on-call earnings when
14 calculating the regular rate of pay. This resulted in overtime, double time, and sick leave wage
15 payments that were substantially lower than they otherwise should be, sometimes \$12-\$24 lower per
16 hour than required under the law.

17 19. For example, Defendants paid Plaintiff and similarly situated employees bi-monthly and
18 utilized a defined workweek for overtime/regular rate calculation purposes of Sunday 12:00 a.m. to
19 Saturday 11:59:59 p.m. During the pay period of August 1, 2022, to August 15, 2022, Plaintiff's basic
20 hourly rate was \$36 and he was paid overtime at the rate of \$54. But, Plaintiff also earned \$105 in on-
21 call pay during the first week of this pay period (7 hours x \$15/hr), which also included 3.5 hours of
22 overtime. His regular rate for this week should have been \$38.41, which would equal a \$57.62 overtime
23 rate of pay. Thus, Plaintiff was underpaid \$12.67 in this week alone. Plaintiff and similarly situated
24 employees earning records are replete with these types of errors. In or around January 2022, Plaintiff
25 raised this issue with his supervisor, stating he believed the overtime calculation was wrong. However,
26 his supervisor simply stated that she would pass on the information. Nothing was ever done to correct
27 the issue. Thus, Plaintiff and similarly situated employees were not paid all overtime, double time, and
28 sick leave wages due. Plaintiff is informed and believes that, due to the systemic nature of this pay

1 practice, any meal and rest period premiums paid also failed to include the failure of on-call time when
2 calculating the regular rate of pay.

3 20. Defendants regularly understaffed its operations such that there were many scheduled
4 shifts where only one individual was working at a time. For example, Plaintiff and similarly situated
5 employees covered hospitals and were mobile crisis responders where they would go to residences, the
6 side of a highway, community centers, schools, or other locations where a patient requiring emergency
7 care might be. The length of time for these trips and ensuring care prevented timely meal or rest periods
8 from occurring. Furthermore, due to the nature of the services, Plaintiff and similarly situated
9 employees were not able to take meal periods because there was no one else scheduled to cover for them
10 during this time. Plaintiff and similarly situated employees missed many rest periods due to similar
11 reasons. Plaintiff and similarly situated employees would also receive many work-related phone calls
12 from the hospital or county during their meal and rest periods. As a result, Defendants did not authorize
13 and permit Plaintiff and similarly situated employees to take all meal and rest periods owed to them.
14 Plaintiff and similarly situated employees did not receive all uninterrupted thirty (30) minute meal
15 periods every five (5) hours and ten (10) minute rest periods every four (4) hours or major fraction
16 thereof. The lack of compliant meal periods is confirmed by Defendants' time records, which show
17 many instances where no meal period clock in/outs occurred on shifts lasting greater than five (5) hours
18 and no meal period was paid either. Defendants did not pay Plaintiff and similarly situated employees
19 all meal and rest period premiums owed to them.

20 21. Plaintiff and similarly situated employees used their personal cell phone for work related
21 matters. Plaintiff and similarly situated employees used their cell phones to address patient placements,
22 communicate with coworkers and management, communicate with county members, enter timecards,
23 text messages, and for searching diagnosis codes and criteria. Plaintiff informed his supervisor that he
24 was getting work-related phone calls when he was not working a regularly scheduled shift shift and was
25 not clocked in during on call hours. The calls occurred several times per week and lasted approximately
26 5-10 minutes each time. Defendants told Plaintiff that Defendants would reimburse Plaintiff for cell
27 phone use, but Defendants never did. Plaintiff was also not reimbursed for work-related internet usage
28 from home. Plaintiff's cell phone bill was approximately \$60.00 per month and his internet bill was

1 approximately \$100 per month. Plaintiff is informed and believes that similarly situated employees were
2 not reimbursed for work-related cell phone and internet usage.

3 22. In addition, Plaintiff and similarly situated employees would enter their hours worked
4 using their cell phone in Paycom, a service used by Defendants for time reporting. Plaintiff's supervisor
5 would review his timecards and approve them. However, Defendants engaged in rounding despite being
6 able to record actual hours worked down to the minute through Paycom. Defendants does not have a
7 policy regarding its rounding practices and failed to inform Plaintiff of its rounding practices.
8 Defendants' rounding resulted in Plaintiff and similarly situated employees not receiving pay for all
9 actual hours worked, including overtime and minimum wages.

10 23. As a result of Defendants' failure to pay Plaintiff and similarly situated employees all
11 overtime, double time, sick leave wages, and meal and rest period premiums owed, the wage statements
12 Defendants issued were inaccurate. The paystubs that Defendants issued did not itemize accurate
13 regular and overtime hours worked, accurate missed meal and rest period premiums owed, and accurate
14 gross and net wages earned. Furthermore, the total hours stated on the paystub were incorrect and did
15 not even correspond to the actual total hours worked that Defendant was paying Plaintiff and similarly
16 situated employees for. For example, Defendants included the number of on call hours paid as part of
17 total hours worked, when, in fact, the time spent being on-call not actively responding to calls ("roll out
18 time") was not considered hours worked. This practice masked Defendants failure to appropriately
19 calculate the regular rate of pay for overtime and other premium pay purposes. Furthermore, time
20 periods for which the wage statements purport to be paying for are incorrect. Due to Defendants' bi-
21 monthly pay system, there were several instances where overtime or regular hours from a prior pay
22 period were included in a current pay period and where overtime or regular hours worked during a
23 current pay period were not paid because they would be paid in the future pay period. However, those
24 hours and wages paid that were affected by this practice were not itemized on Plaintiff and similarly
25 situated employees' paystubs. Consequently, Plaintiff and similarly situated employees were not able to
26 determine the total wages owed to them from their paystubs alone.

27 24. As of this date of this letter, Defendants has not paid Plaintiff and similarly situated
28 employees all overtime wages, minimum wages, meal and rest period premiums, sick leave wages and

1 reimbursement expenses owed to them. As of this date of this letter, Defendants have not paid Plaintiff
2 and similarly situated employees all overtime wages, minimum wages, meal and rest period premiums,
3 and reimbursement expenses owed to them.

4 **CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION**
6 **FAILURE TO PAY OVERTIME WAGES**
7 **(As to all Defendants)**

8 25. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 24 as though fully
9 set forth herein.

10 26. During the period Plaintiff was employed by Defendants, Defendants were required to
11 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
12 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
13 hours worked in excess of twelve (12) hours per day. *See, e.g.*, IWC Wage Order No. 5, section (3)(A);
14 Cal. Lab. Code §§ 510, 1194.

15 27. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
16 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
17 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
18 worked at their regular rate of pay.

19 28. Plaintiff and similarly situated employees were not exempt from overtime protections
20 employees under the California Wage Orders and Labor Code.

21 29. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
22 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
23 the extent pertinent as if set forth here in full.

24 **SECOND CAUSE OF ACTION**
25 **FAILURE TO PAY MINIMUM WAGES**
26 **(As to all Defendants)**

27 30. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 29 as though fully
28 set forth herein.

31. For the period preceding the filing of this Complaint, Defendants were required to
compensate Plaintiff and similarly situated employees with at least California's applicable minimum for

every hour worked. See MW-Order 2019; IWC Wage Order, No. 5, section 4(A); Cal. Lab. Code § 1194.

32. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants aware of their obligation to pay the minimum wage for each hour worked but failed to do so.

33. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(As to all Defendants)

34. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 33 as though fully set forth herein.

35. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

36. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 5, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

37. California Labor Code section 512 and Wage Order No. 5 section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

38. Defendants employed Plaintiff and similarly situated employees for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated employees to take their first meal period before the completion of their fifth hour of work and failed to allow Plaintiff and similarly situated employees to take their second meal period before the

1 completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their
2 rights to all meal periods throughout their employment.

3 39. Defendants further failed to pay Plaintiff and similarly situated employees the
4 applicable meal period premiums for any such missed meal breaks.

5 40. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
6 employees have been damaged as stated in the section below entitled "DAMAGES," which is
7 incorporated here to the extent pertinent as if set forth here in full.

8 **FOURTH CAUSE OF ACTION**
9 **REST PERIOD VIOLATIONS**
10 **(As to all Defendants)**

11 41. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 40 as though fully
12 set forth herein.

13 42. An employer must provide an employee a rest period in accordance with the
14 applicable Wage Order and California Labor Code section 226.7.

15 43. California Labor Code section 226.7 and Wage Order No. 5, section 12(A) require an
16 employer to provide a rest period of not less than ten (10) minutes for each work period of more than
17 four (4) hours or a major fraction thereof.

18 44. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly
19 situated employees to take paid rest periods of at least ten (10) minutes for each work period that
20 they worked more than four (4) hours or a major fraction thereof.

21 45. Defendants further failed to pay Plaintiff and similarly situated employees the
22 applicable rest period premiums for any such missed rest periods.

23 46. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
24 employees have been damaged as stated in the section below entitled "DAMAGES," which is
25 incorporated here to the extent pertinent as if set forth here in full.

26 **FIFTH CAUSE OF ACTION**
27 **WAGE STATEMENT VIOLATIONS**
28 **(As to all Defendants)**

47. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 46 as though fully
set forth herein.

1 48. Pursuant to California Labor Code section 226(a), an employer must provide an itemized
2 statement to an employee, semimonthly or at the time of each payment of wages, showing:

3 *(1) gross wages earned, (2) total hours worked by the employee, except for*
4 *any employee whose compensation is solely based on a salary and who is*
5 *exempt from payment of overtime under subdivision (a) of Section 515 or*
6 *any applicable order of the Industrial Welfare Commission, (3) the*
7 *number of piece-rate units earned and any applicable piece rate if the*
8 *employee is paid on a piece-rate basis, (4) all deductions, provided that*
9 *all deductions made on written orders of the employee may be aggregated*
10 *and shown as one item, (5) net wages earned, (6) the inclusive dates of the*
11 *period for which the employee is paid, (7) the name of the employee and*
12 *the last four digits of his or her social security number or an employee*
13 *identification number other than a social security number, (8) the name*
14 *and address of the legal entity that is the employer and, if the employer is*
15 *a farm labor contractor, as defined in subdivision (b) of Section 1682, the*
16 *name and address of the legal entity that secured the services of the*
17 *employer, and (9) all applicable hourly rates in effect during the pay*
18 *period and the corresponding number of hours worked at each hourly rate*
19 *by the employee. The deductions made from payment of wages shall be*
20 *recorded in ink or other indelible form, properly dated, showing the*
21 *month, day, and year, and a copy of the statement and the record of the*
22 *deductions shall be kept on file by the employer for at least three years at*
23 *the place of employment or at a central location within the State of*
24 *California.*

25 49. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
26 itemized statement or failed to provide an accurate and complete itemized statement showing the
27 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not
28 accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime
and double time hours worked and corresponding rates of pay, and gross and net wages earned. The
paystubs also did not accurately itemize Plaintiff's and similarly situated employees' total hours
worked due to Defendants' rounding, non-counting of on-call hours towards the amount of overtime
hours, nonpayment of meal and rest period premiums, and work-related calls that resulted in off-the-
clock work. Plaintiff and similarly situated employees were not able to promptly and easily
determine their total hours worked from their paystubs alone. Additionally, Plaintiff and similarly
situated employees suffered confusion over whether they received all wages owed and were
prevented from effectively challenging information on their wage statements.

50. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES
(As to all Defendants)

51. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 50 as though fully set forth herein.

52. An employer must pay an employee who is terminated all unpaid wages immediately upon termination. See Cal. Lab. Code § 201.

53. An employer must pay an employee who resigns all unpaid wages within seventy-two (72) hours of their resignation. See Cal. Lab. Code § 202.

54. Plaintiff and similarly situated employees did not receive all wages, including minimum and overtime wages, meal and rest period premiums, and reimbursement expenses at their termination or within the required time after their separation from employment.

55. An employer who willfully fails to pay an employee wages in accordance with California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. See Cal. Lab. Code § 203.

56. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees' their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff and similarly situated employees were not paid all regular and overtime wages, as well as meal and rest period premiums, and sick leave wages because Defendants authorized the violating practices to occur in the first place. Also, Defendants knew of the number of regular hours, overtime hours, and on call hours that Plaintiff worked because Plaintiff's timecards were reviewed and approved by Plaintiff's supervisor. Furthermore, Defendants knew that Plaintiff was the only crisis worker on the shift or on call and that Plaintiff received and responded to many phone calls while off the clock. Plaintiff informed his management that he was receiving phone calls outside of his work shift and that he used his cell phone to communicate regarding work related matters. Defendants promised Plaintiff to reimburse him for his cell phone use, but they never did. Also, Plaintiff communicated via his cell

1 phone with Defendants and management regarding work issues while Plaintiff was off the clock. As a
2 result, Defendants knew that Plaintiff was using his cell phone for work purposes. Plaintiff also
3 submitted many work-related documents from his home using his internet connection. Defendants knew
4 that submitting work documents regarding patient care required internet connection. Such conduct
5 shows Defendants had knowledge of earned, but unpaid wages at the time of separation, yet Defendants
6 still refused to pay the remaining wages owed.

7 57. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
8 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by
9 thirty (30) days for Defendants' failure to pay all wages due.

10 **SEVENTH CAUSE OF ACTION**
11 **FAILURE TO REIMBURSE EXPENSES**
12 **(As to all Defendants)**

13 58. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 57 as though fully
14 set forth herein.

15 59. California Labor Code section 2802(a) states that "An employer shall indemnify his or
16 her employee for all necessary expenditures or losses incurred by the employee in direct consequence of
17 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
18 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
19 unlawful."

20 60. Defendants required Plaintiff and similarly situated employees to use their cell phones
21 but failed to reimburse them for such use. Also, Plaintiff had to use his internet connection at home to
22 work from home and respond to calls, inquires, and submit documents for different work issues, such as
23 patient management and placement. Plaintiff used his cell phone to respond to calls, communicate
24 regarding patient placement, communicate with coworkers, management, and county members. Plaintiff
25 also used his cell phone to report his working hours via Paycom, send text messages, and for searching
26 diagnoses codes and criteria. Plaintiff informed his supervisor that he was getting work-related phone
27 calls when he was not working in the shift and was not clocked in. Plaintiff had to use his laptop at
28 home to assess for danger of patient to self and others and to address diagnoses and patient placement
matters. Defendant told Plaintiff that Defendant would reimburse Plaintiff for cell phone use, but

1 Defendant never did. Plaintiff was also not reimbursed for work-related internet usage from home.
2 Plaintiff's cell phone bill was approximately \$60.00 per month and his internet bill was approximately
3 \$100 per month. Plaintiff is informed and believes that similarly situated employees were not
4 reimbursed for work-related cell phone and internet usage.

5 61. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
6 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
7 the extent pertinent as if set forth here in full.

8 **EIGHTH CAUSE OF ACTION**
9 **UNFAIR COMPETITION**
10 **(As to all Defendants)**

11 62. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 61 as though fully
12 set forth herein.

13 63. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act
14 or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1
15 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. See
16 California Business and Professions ("B&P") Code § 17200.

17 64. Plaintiff and similarly situated employees were not paid all wages owed, including
18 minimum and overtime wages, sick leave wages, and meal and rest period premiums, or reimbursed for
19 business expenses, during their employment or any time thereafter. Moreover, through Defendants'
20 conduct Plaintiff and similarly situated employees were denied statutory protections regarding meal and
21 rest periods.

22 65. Plaintiff further alleges that such actions and/or conduct constitute a violation of the
23 California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to
24 *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

25 66. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the
26 UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
27 restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code
28 sections 17203, 17208, violations of California Labor Code sections 226.7, 245 *et seq.*, 510, 512, and

1 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing
2 of this Action.

3 **NINTH CAUSE OF ACTION**
4 **PRIVATE ATTORNEYS GENERAL ACT**
5 **(As to all Defendants)**

6 67. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 66 as though fully
7 set forth herein.

8 68. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
9 following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated
10 current and former employees:

- 11 • Violation of Labor Code §§ 510, 1194; IWC Wage Order 5, § 3 (Failure to Pay Overtime
12 Wages)
- 13 • Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 5, § 4 (Failure to Pay
14 Minimum Wages)
- 15 • Violation of Labor Code §§ 226.7, 512 and Wage Order No. 5, §§ 11(A) and 11(B)
16 (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- 17 • Violation of Labor Code § 226.7 and Wage Order No. 5, § 12(A) (Failure to Provide Rest
18 Periods or Pay Premiums in Lieu Thereof)
- 19 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- 20 • Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- 21 • Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- 22 • Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of
23 Work in Any Industrial Welfare Commission Order)
- 24 • Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- 25 • Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)

26 69. Plaintiff seeks civil penalties against Defendants as provided in the California Labor
27 Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section
28 2699(f)(2).

70. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

71. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
 - d. Liquidated damages pursuant to California Labor Code section 1194.2;
4. As to the Third Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
5. As to the Fourth Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
6. As to the Fifth Cause of Action:

- 1 a. Penalties as provided for in Labor Code section 226, including the greater of all
2 actual damages or fifty dollars (\$50.00) for the initial pay period in which the
3 violation occurred and one hundred dollars (\$100.00) per employee for each
4 violation in the subsequent pay periods, but not to exceed four thousand dollars
5 (\$4,000.00);
6 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
7 226(e);

8 7. As to the Seventh Cause of Action:

- 9 a. Unreimbursed expenses in an amount to be proven at trial;
10 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

11 8. As to the Ninth Cause of Action:

- 12 a. For civil penalties as provided in the Labor Code for each enumerated
13 violation;
14 b. For those Labor Code sections where there is no civil penalty provided for their
15 violation, the default penalty provided in Labor Code section 2699(f): for any
16 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
17 period; For any subsequent violation, two hundred dollars (\$200) for each
18 aggrieved employee per pay period;
19 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
20 d. For any other remedies as allowed by law and/or deemed appropriate by the
21 Court;

22 //

23 //

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28 //

Downard v Sierra Mental Wellness Group
Placer County Superior Court of California S-CV-0049587

**PROOF OF SERVICE — CCP §§ 1010.6, 1013a and 2015.5
and California Rules of Court, Rule 1.21, Rule 2.150, and Rule 2.251**

I, Elias Tapia, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action.

On March 27, 2023, I served the following documents on the party below:

- FIRST AMENDED COMPLAINT FOR DAMAGES

Ronald E. Enabnit Matheny Sears Linkert & Jaime, LLP 3638 American River Dr Sacramento, CA 95864 Telephone: 916-978-3434 Facsimile: 916-978-3430 E-mail: renabnit@mathenysears.com msilva@mathenysears.com	
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[] [By Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Sacramento, California, addressed as set forth above.

[] [By Personal Service] By personally delivering a true copy thereof to the office of the addressee above.

[XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:_____.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 27, 2023, at Elk Grove, California.


Elias Tapia

EXHIBIT C



Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd.
Suite #120
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

December 16, 2022

For Online Filing:

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Downard v. Sierra Mental Wellness Group*

Dear Labor Commissioner,

As counsel for Jesse Downard (“Plaintiff”), I am writing to provide you and the following “employers” notice pursuant to California Labor Code section 2699.3:

Sierra Mental Wellness Group
406 Sunrise Ave., Ste. 300
Roseville, CA 95661

Julia Arnold
210 Manzanita
Roseville, CA 95678

Bryan Wagner
8001 Folsom Blvd.
Sacramento, CA 95826

Don Hutchinson
P.O. Box 1042
Loomis, CA 95650

We are setting forth the “facts and theories” to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against Sierra Mental Wellness Group, Julia Arnold, Bryan Wagner, Don Hutchinson (“Defendants”). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to the following: all non-exempt employees who have worked, or continue to work, for Defendants in California as clinicians, nurses, psychologists, or similar positions responsible for providing care to patients. Plaintiff is clearly entitled to bring a Private Attorneys General Act (“PAGA”) claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services*



USA, Inc., 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).

A. FACTS

Defendants provide mental health services to patients and employ various health care professionals to provide these services, including clinicians, nurses, and psychologists, across California. Defendants contract with several counties to provide these services at health care facilities therein, including San Luis Obispo County, Glenn County, Nevada County, Placer County, and Colusa County. Plaintiff worked for Defendants as a non-exempt employee from approximately December 12, 2020, to September 9, 2022. Plaintiff was employed by Defendants as a non-exempt employee from approximately December 21, 2020, to approximately September 9, 2022, working as a crisis clinician. Similarly, Aggrieved Employees worked as clinicians, nurses, psychologists, or similar positions responsible for providing care to patients.

Defendants paid Plaintiff and Aggrieved Employees under a on-call/roll out pay system. Under this pay system, Plaintiff and similarly situated employees were given set shifts in which they were required to be ready to respond to calls for care at any number of healthcare facilities in the area, including, potentially, going to the facility to perform services. Plaintiff and Aggrieved Employees were paid approximately \$13-\$15 per hour during the time in which they were subject to being called. When Plaintiff and Aggrieved Employees were actually responding to calls over the phone, actually in the facility in response to a call, or working during a regularly scheduled shift, they were paid a higher amount, approximately \$33-\$36 per hour. Plaintiff and Aggrieved Employees regularly worked more than eight (8) hours a day and forty (40) hours a week. When Defendants calculated Plaintiff and Aggrieved Employees' regular rate of pay for premium purposes such as overtime, double time, sick leave, they failed to incorporate the value of on-call earnings when calculating the regular rate of pay. This resulted in overtime, double time, and sick leave wage payments that were substantially lower than they otherwise should be, sometimes \$12-\$24 lower per hour than required under the law. For example, Defendant paid Plaintiff and Aggrieved Employees bi-monthly and utilized a defined workweek for overtime/regular rate calculation purposes of Sunday 12:00 a.m. to Saturday 11:59:59 p.m. During the pay period of August 1, 2022, to August 15, 2022, Plaintiff's basic hourly rate was \$36 and he was paid overtime at the rate of \$54. But, Plaintiff also earned \$105 in on-call pay during this week (7 hours x \$15/hr), which also included 3.5 hours of overtime. His regular rate for this week should have been \$38.41, which would equal a \$57.62 overtime rate of pay. Thus, Plaintiff was underpaid \$12.67 in this week alone. Plaintiff and Aggrieved Employees earning records are replete with these types of errors. In or around January 2022, Plaintiff raised this issue with his supervisor, stating he believed the overtime calculation was wrong. However, his supervisor simply stated that she would pass on the information. Nothing was ever done to correct the issue. Thus, Plaintiff and Aggrieved Employees were not paid all overtime, double



time, and sick leave wages due. Plaintiff is informed and believes that, due to the systemic nature of this pay practice, any meal and rest period premiums paid also failed to include the failure of on-call time when calculating the regular rate of pay.

Defendants regularly understaffed its operations such that there were many scheduled shifts where only one individual was working at a time. For example, Plaintiff and Aggrieved Employees covered hospitals and were mobile crisis responders where they would go to residences, the side of a highway, community centers, schools, or other locations where a patient requiring emergency care might be. The length of time for these trips and ensuring care prevented timely meal or rest periods from occurring. Furthermore, due to the nature of the services, Plaintiff and Aggrieved Employees were not able to take meal periods because there was no one else scheduled to cover for them during this time. Plaintiff and Aggrieved Employees missed many rest periods due to similar reasons. Plaintiff and Aggrieved Employees would also receive many work-related phone calls from the hospital or county during their meal and rest periods. As a result, Defendants did not authorize and permit Plaintiff and Aggrieved Employees to take all meal and rest periods owed to them. Plaintiff and Aggrieved Employees did not receive all uninterrupted thirty (30) minute meal periods every five (5) hours and ten (10) minute rest periods every four (4) hours or major fraction thereof. The lack of compliant meal periods is confirmed by Defendants' time records, which show many instances where no meal period clock in/outs occurred on shifts lasting greater than five (5) hours and no meal period was paid either. Defendants did not pay Plaintiff and Aggrieved Employees all meal and rest period premiums owed to them.

Plaintiff and Aggrieved Employees used their personal cell phone for work related matters. Plaintiff and Aggrieved Employees used their cell phones to address patient placements, communicate with coworkers and management, communicate with county members, enter timecards, text messages, and for searching diagnosis codes and criteria. Plaintiff informed his supervisor that he was getting work-related phone calls when he was not working a regularly scheduled shift and was not clocked in during on call hours. The calls occurred several times per week and lasted approximately 5-10 minutes each time. Defendants told Plaintiff that Defendants would reimburse Plaintiff for cell phone use, but Defendants never did. Plaintiff was also not reimbursed for work-related internet usage from home. Plaintiff's cell phone bill was approximately \$60.00 per month and his internet bill was approximately \$100 per month. Plaintiff is informed and believes that Aggrieved Employees were not reimbursed for work-related cell phone and internet usage.

In addition, Plaintiff and Aggrieved Employees would enter their hours worked using their cell phone in Paycom, a service used by Defendants for time reporting. Plaintiff's supervisor would review his timecards and approve them. However, Defendants engaged in rounding despite being able to record actual hours worked down to the minute through Paycom. Defendants does not have a policy regarding its rounding practices and failed to inform Plaintiff



of its rounding practices. Defendants' rounding resulted in Plaintiff and Aggrieved Employees not receiving pay for all actual hours worked, including overtime and minimum wages.

As a result of Defendants' failure to pay Plaintiff and Aggrieved Employees all overtime, double time, sick leave wages, and meal and rest period premiums owed, the wage statements Defendants issued were inaccurate. The paystubs that Defendants issued did not itemize accurate regular and overtime hours worked, accurate missed meal and rest period premiums owed, and accurate gross and net wages earned. Furthermore, the total hours stated on the paystub were incorrect and did not even correspond to the actual total hours worked that Defendant was paying Plaintiff and Aggrieved Employees for. For example, Defendants included the number of on call hours paid as part of total hours worked, when, in fact, the time spent being on-call not actively responding to calls ("roll out time") was not considered hours worked. This practice masked Defendants failure to appropriately calculate the regular rate of pay for overtime and other premium pay purposes. Furthermore, time periods for which the wage statements purport to be paying for are incorrect. Due to Defendants' bi-monthly pay system, there were several instances where overtime or regular hours from a prior pay period were included in a current pay period and where overtime or regular hours worked during a current pay period were not paid because they would be paid in the future pay period. However, those hours and wages paid that were affected by this practice were not itemized on Plaintiff and Aggrieved Employees' paystubs. Consequently, Plaintiff and Aggrieved Employees were not able to determine the total wages owed to them from their paystubs alone.

As of this date of this letter, Defendants has not paid Plaintiff and Aggrieved Employees all overtime wages, minimum wages, meal and rest period premiums, sick leave wages and reimbursement expenses owed to them.

B. ALLEGATIONS AND CHARGES

Count One – Violation of Labor Code §§ 510, 1194; IWC Wage Order 5, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week and were not paid all overtime wages owed. Plaintiff and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.



Count Two – Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 5, § 4 (Failure to Pay Minimum Wages)

During the period Plaintiff and Aggrieved Employees were employed by Defendants they were entitled to be paid at least the State’s minimum wage rate for each hour that they worked. *See, e.g.*, IWC Wage Order MW-2019; IWC Wage Order No. 5, § (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendants did not pay Plaintiff and Aggrieved Employees for all hours worked. Thus, Plaintiff and Aggrieved Employees were not paid at least the applicable state minimum wage for those hours worked. This is against the law.

Count Three - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 5, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 5, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 5, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. To the extent any meal period premiums were paid, they were not paid at the regular rate of pay. This was in violation of the law.

Count Four – Violation of Labor Code § 226.7 and Wage Order No. 5, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 5, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. To the extent any meal and rest period premiums were paid, they were not paid at the regular rate of pay. This was in violation of the law.

Count Five – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on



written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee . . .” For the reasons stated above, Defendants failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This is in violation of the law.

Count Six – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including overtime wages, minimum wages, sick leave wages, and meal and rest period premiums, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.

Count Seven – Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

Labor Code section 2802(a) states that “An employer shall indemnify his or her employee 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, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Defendants failed to pay any reimbursements for work-related cell phone use and internet use by Plaintiff and Aggrieved Employees. This was in violation of the law.

Count Eight – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf on an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. From February 10, 2020, to present Julia Arnold was Defendants CEO, Bryan Wagner was Defendants Secretary, and Don Hutchinson was Defendants CFO. These individuals had supervisory responsibility for the policies and practices put into place by Defendants, including those alleged herein Plaintiff contends are unlawful.



Furthermore, Julia Arnold, Bryan Wagner, and Don Hutchinson were responsible for training subordinate staff and managers who carried out these practices as well and ratified their unlawful conduct by failing to take any corrective action when reviewing their own documents and pay practices. Defendants, by and through Defendants agents, violated Plaintiff and Aggrieved Employees' rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. This is against the law.

Count Nine – Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

Labor Code sections 246, *et seq.*, mandate that employers must provide California employees, who work thirty (30) or more days within a year for the employer, paid sick leave of at least one (1) hour for every thirty (30) hours worked that begins to accrue at the commencement of employment. An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than twenty-four (24) hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. An employer may limit the use of sick leave to either twenty-four (24) hours or the equivalent of three (3) days, whichever is greater, during a year period. However, employers using an accrual method rather than a lump sum method must allow employees to accrue up to forty-eight (48) hours or the equivalent of six (6) days at any given time. Employers must authorize employees to take paid sick leave under the conditions set forth in the Healthy Workplaces, Healthy Families Act of 2014 ("HWHFA") for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member. Any sick leave taken must be paid at the employee's regular rate of pay. For the reasons state above, Defendants failed to pay Plaintiff and Aggrieved Employees all sick leave owed because they failed to correctly calculate the regular rate of pay for those payments.

Count Ten – Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)

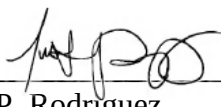
Labor Code section 226.3 provides that any employer who fails to maintain records required by Labor Code section 226(a) or provide records required by 226(a) shall be subject shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation. Labor Code section 1174(d) provides that employers must keep and maintain accurate payroll records showing the hours worked daily by, and the wages paid to, employees. Defendants failed to maintain the accurate records required by law and, instead, maintained incomplete, inaccurate records regarding Plaintiff and Aggrieved Employees' wage records and hours worked. This was against the law.



If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda & Rodriguez Law, PC

By: _____
Justin P. Rodriguez

JPR:rk
cc: Client via e-mail

Downard v Sierra Mental Wellness Group

**PROOF OF SERVICE — CCP §§ 1010.6, 1013a and 2015.5
and California Rules of Court, Rule 1.21, Rule 2.150, and Rule 2.251**

I, Elias Tapia, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action.

On December 16, 2022, I served the following documents on the party below:

- PAGA LETTER (PRIVATE ATTORNEYS GENERAL ACT)

Sierra Mental Wellness Group 406 Sunrise Ave., Ste. 300 Roseville, CA 95661	Julia Arnold 210 Manzanita Roseville, CA 95678
Bryan Wagner 8001 Folsom Blvd. Sacramento, CA 95826	Don Hutchinson P.O. Box 1042 Loomis, CA 95650

[XXX] [By Certified Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Sacramento, California, addressed as set forth above.

[] [By Personal Service] By personally delivering a true copy thereof to the office of the addressee above.

[] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown above. No error was reported by the e-mail service that I used.

[] [By Overnight Courier] By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:_____.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 16, 2022, at Elk Grove, California.


Elias Tapia

EXHIBIT D

Date	Description	Amount
12/16/2022	Payment to LWDA - PAGA Filing Fee	\$75.00
12/16/2022	Administration/Copy Fee - Phone, Fax, Scan, Copying, Westlaw Legal Research Fees	\$500.00
12/20/2022	Complaint 19493466 - \$1435 court fee, \$55.26 filing fee \$1.95 tech fee	\$1,492.21
1/11/2023	One Legal Service Fee - Proof of service 19619131	\$14.88
3/15/2023	One Legal Service Fee - Stipulation 19984937	\$13.33
3/22/2023	One Legal Service Fee - Stipulation 20019448	\$35.93
3/29/2023	Complaint: 1st Amended 20092543	\$15.34
4/3/2023	One Legal Service Fee - Case Management Conference Statement 20123270	\$15.34
4/12/2023	Placer County remote appearance	\$27.50
4/17/2023	Other - Placer County remote appearance fee refund	(\$22.50)
4/18/2023	Mediation	\$3,675.00
7/7/2023	One Legal Service Fee - Case management conference order 20752491	\$15.34
7/13/2023	Placer County remote appearance	\$27.50
7/31/2023	Placer County remote appearance	\$27.50
8/30/2023	Parking - Mediation JR	\$43.77
10/23/2023	One Legal Service Fee - Case management statement 21457279	\$14.00
10/30/2023	Placer County remote appearance	\$27.50
10/31/2023	One Legal Service Fee - Motion order 21516961	\$75.77
1/25/2024	Expenses - Placer County Remote Appearance Fee	\$27.50
Anticipated	One Legal Service Fee - Final Approval Motion	\$75.77
Anticipated	Expenses - Placer County Remote Appearance Fee	\$27.50
Anticipated	One Legal Service Fee - Compliance Hearing Declarations	\$14.00
Anticipated	Expenses - Placer County Remote Appearance Fee	\$27.50

Total: \$6,245.68

EXHIBIT E

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff JESSE DOWNARD
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF PLACER

JESSE DOWNARD, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

SIERRA MENTAL WELLNESS GROUP, a
California Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. S-CV-0049587

CLASS ACTION

**DECLARATION OF JUSTIN P. RODRIGUEZ
IN SUPPORT OF PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: June 4, 2024

Time: 8:30 a.m.

Dept.: 42

Judge: Hon. Trisha Hirashima

Filed: December 19, 2022

FAC Filed: March 27, 2023

Trial Date: None Set

1 I, Justin P. Rodriguez, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiff Jesse Downard (“Plaintiff”) herein. I am making this
4 declaration on behalf of the named Plaintiff, the putative class members, and in support of Plaintiff’s
5 Motion for Final Approval of Class Action and PAGA Settlement (“Motion”). A true and correct copy
6 of the Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement”) in
7 this matter is filed with this Motion as Exhibit A.

8 2. This case was brought as a wage and hour class action based on Plaintiff’s contention
9 that Defendant Sierra Mental Wellness Group, (“Defendant”) violated California law by 1) failing to
10 pay overtime wages, 2) failing to pay minimum wages, 3) failing to provide meal periods, 4) failing to
11 provide rest periods, 5) failing to provide accurate wage statements, 6) failing to timely pay all final
12 wages, 7) failing to reimburse employees for incurred expenses, and 8) by engaging in unfair
13 competition. Plaintiff also alleged liability for civil penalties under the Private Attorneys General Act
14 (“PAGA”). These claims were based allegations that Defendant violated California law by 1) failing to
15 incorporate the value of on-call earnings when calculating the regular rate of pay for premium purposes
16 such as overtime, double time, sick leave, and meal and rest period premiums, 2) failing to have enough
17 staff to provide meal and rest periods to Plaintiff and putative class members, 3) engaging in rounding
18 practices, rounding of putative class members’ hours despite being able to record actual hours worked
19 down to the minute, and lack of rounding policy and its failure to inform Plaintiff and putative class
20 members of its rounding practices, and 4) failing to reimburse Plaintiff and putative class members for
21 use of their personal cell phone and internet for work purposes. The PAGA, waiting time penalty, wage
22 statement violation, and unfair competition claims also derive from these violations.

23 3. Plaintiff is the only named representative in this matter. From our initial investigations
24 of Plaintiff’s claims and documents, we believed these claims had merit and could be maintained as a
25 class action. We filed the action on or about December 19, 2022. Plaintiff exhausted administrative
26 remedies through the Labor and Workforce Development Agency (“LWDA”) prior to amending the
27 Complaint to add a PAGA claim. Plaintiff filed a notice with the LWDA on December 16, 2022,
28 setting forth the facts and theories of liability. A true and correct copy of the notice filed with the

1 LWDA is being filed with this Motion as Exhibit C. A copy of the notice was also sent to Defendant
2 via certified mail and the \$75.00 filing fee was remitted to the LWDA at that time. There was no
3 response by the LWDA regarding its intent to investigate the claims alleged in Plaintiff's notice for
4 more than 65 days. As such, Plaintiff became authorized to commence a civil action under the PAGA
5 and filed a First Amended Complaint on March 27, 2023. A true and correct copy of Plaintiff's
6 operative Complaint is filed with this Motion as Exhibit B. A copy of the Complaint was uploaded to
7 the LWDA on March 27, 2023, after we received an endorsed copy back from Court.

8 4. Currently, there is no date set for a motion to certify the class and there is no trial date.

9 5. Defendant is represented in this matter by Ronald E. Enabnit of Matheny Sears Linkert
10 & Jaime, LLP. From the beginning, Defendant has contested the merits of this case, the suitability of
11 the case for class action or representative treatment, the manageability of the case at trial, and
12 Plaintiff's ability to prove a violation in each pay period for each employee among other defenses and
13 contentions they made challenging the propriety of this action. Defendant further contended, even
14 assuming there was a finding supporting the imposition of PAGA penalties, that the Court would likely
15 exercise its discretion to substantially reduce any such penalties owed based on evidence of good faith
16 attempts to comply with California Labor Code obligations by Defendant. Notwithstanding its
17 agreement to settle this matter, Defendant believe the practices Plaintiff is contending are unlawful
18 either do not exist or, to the extent they do exist, fully comply with all state and federal employment
19 laws with respect to Plaintiff and Class Members. Also, Defendant has contended that this matter is not
20 appropriate for class certification outside of this proposed class settlement.

21 6. Based on the expected testimony from Plaintiff and Class Members, a review of
22 Defendant's policies and procedures and other documents relating to the alleged claims, information on
23 the number of Class Members, Class Members' dates of employment, and a representative 20% sample
24 of Class Members' time and payroll data, the scope of the potential damages to Plaintiff and Class
25 Members in light of the claims alleged, the uncertainty in the law with regard to certification, and the
26 negotiations that have taken place, I am convinced that the proposed settlement is in the best interest of
27 the class. The length and risks of trial and other normal perils of litigation that impact the value of the
28 claims were also considered and weighed in reaching the Agreement. In addition, I carefully considered

1 the prospect of potential class certification issues as well as the uncertainty of class certification, the
2 difficulties of complex litigation, and the lengthy process of establishing specific damages and various
3 possible delays and appeals in agreeing to the proposed settlement. I further considered the fact that
4 penalties under the PAGA could be substantially cut at the discretion of the Court even if Plaintiff was
5 successful on proving those claims and there was risk that a Court could find no willfulness in the failure
6 to pay wages at separation, which would eliminate the value of the waiting time penalty claim entirely.
7 Overall, I believe it is more beneficial to secure a guaranteed benefit to the class now rather than to
8 proceed with litigation and potentially obtain zero funds to the class due to legal or factual issues in the
9 case.

10 7. My office, including my partner, Galen T. Shimoda, my associate, Renald Konini, our
11 paralegal, and myself, along with Plaintiff's assistance, thoroughly investigated the merits of the claims
12 and potential damages for such claims. The parties engaged in informal discovery and exchange of
13 documents, including a representative 20% sampling of employee data, such as timecards, paystubs,
14 payroll data and relevant policies for the entirety of the statute of limitations applicable to the alleged
15 claims. The discovery covered all aspects of the asserted claims, including certification issues, merits
16 issues, damages, the scope and configuration of Class Members, the content and implementation of the
17 wage and hour policies at issue, issues relating to manageability concerns at trial, among other relevant
18 areas. Discovery included many different documents, including employee onboarding documents,
19 employee policy and handbooks, employment agreements, and timecards. From this production we
20 were able to determine information critical to a reliable damages analysis such as the average hourly
21 rate, average daily hours worked, shifts eligible for meal and rest periods and the number of potential
22 shifts that may correspond to liability under our theories of liability, the average number of workweeks
23 and pay periods that had potential violations based on the asserted claims, the frequency with which
24 violations occurred in a given week and/or pay period, and the number of former employees. This
25 information allowed my office to assess both liability and damages and create an accurate damages
26 model. Plaintiff assisted in all aspects of this litigation including providing factual information relating
27 to Plaintiff's and Class Members' employment conditions, providing a substantial number of documents,
28 and answering questions regarding Defendant's factual contentions in this matter. This was important

1 because it directly related to our ability to maintain this case as a class action and our ability to obtain a
2 favorable settlement for the class.

3 8. Throughout this litigation our office had numerous communications with Defendant's
4 Counsel discussing our respective positions. The parties engaged in mediation on August 14, 2023,
5 using an experienced mediator, Russ J. Wunderli. It was only after one (1) year of extensive, arm's
6 length negotiations that the parties were able to reach a settlement, which only occurred after a full-day
7 mediation and after several days of assessment of the proposed settlement terms. The negotiations were
8 at all times contentious and adversarial, though still professional in nature.

9 9. In analyzing the sample data and relevant policies and comparing them against
10 Plaintiff's allegations and theories of liability, the following represents the potential maximum recovery
11 for each of Plaintiff's claims based on my office's analysis of Defendant's relevant policies and the
12 data produced by Defendant, including a sample of time and payroll records for Class Members. There
13 were 19,717 workweeks in the Class Period, 2,275 PAGA pay periods, an average base hourly rate of
14 \$30.22 and an average overtime rate of \$45.33.

15 a) Unpaid Minimum Wages: This claim is based on allegations that Defendant did not pay
16 Plaintiff for all hours worked as Defendant rounded putative class members' hours
17 despite being able to record actual hours worked down to the minute, and Defendant's
18 lack of rounding policy and its failure to inform Plaintiff and putative class members of
19 its rounding practices. This claim is entirely comprised of liquidated damages under
20 California Labor Code section 1194.2 in the amount of \$320,401.25. Plaintiff only
21 claimed liquidated damages under this cause of action to avoid double recovery for
22 substantive wage loss because Plaintiff has also assumed that all unpaid hours qualified
23 for overtime compensation. There were substantial amounts of risk with respect to
24 certification and with Plaintiff proving the merits or damages. The issue with this claim
25 was whether the "rounding" was the result of a built-in feature of an app that was used to
26 record hours worked or the result of self-reporting by class members and/or instructions
27 by supervisors to document hours worked in a rounded manner. Where the rounding
28 was not the result of a singular app and/or procedure, this raised a substantial risk for

1 certification as the claim may require reviewing the circumstances surrounding each
2 timekeeper and why the time was rounded. Also, in our calculations, we based damages
3 off the gross amount of hours unpaid, not the net amount of hours unpaid. Thus, instead
4 of an average of 1.25 hours unpaid per week, the amount would very likely be lower to
5 the extent there was a *net* amount of unpaid time during that week. Given these facts, it
6 is likely a Court would find that they supported a good faith defense, which entirely
7 wipes out a claim for liquidated damages. See Cal. Lab. Code § 1194.2(b). Based on
8 the facts of this case, it is unlikely that there would be any recovery under this claim.

9 b) Unpaid Overtime Wages: In part, this claim is based on the same facts as the minimum
10 wage claim described above as it relates to rounding, and off the clock work, therefore,
11 is subject to the same risks outlined above. The maximum possible damages for the
12 rounding part of this claim are \$1,117,214.51. This amount does not take into account
13 any potential risks with respect to certification or Plaintiff proving the merits or
14 damages. As noted above, Plaintiff's calculations are based on being able to
15 consistently prove a net of 1.25 unpaid hours worked per week, per employee, for the
16 entirety of their employment. It is unlikely that such a finding would be made at trial for
17 the same reasons as stated above. The issue of daily overtime only occurred in about
18 43.10% of the time over the entire class. The overtime occurrence would reduce the
19 value of the rounding part of the overtime claim by at least 57%.

20 Unpaid Overtime based on RROP: This claim is also based on the allegations that
21 Defendant failed to pay Plaintiff and Class Members all overtime wages due to
22 Defendant's failure to incorporate the value of on-call earnings when calculating the
23 regular rate of pay for premium purposes such as overtime. The maximum possible
24 amount for this claim is \$212,450.68 for failure to calculate the on-call earnings into the
25 regular rate of pay based on 43.10% of affected workweeks. This amount does not take
26 into account any potential risks with respect to Plaintiff proving the merits or damages,
27 which was heavily disputed. For example, in addition to the issues cited above
28 regarding the minimum wage claims, Plaintiff would be put in the position of having to

1 prove that Defendant had a practice to violate its own policy regarding accurate
2 recording of hours. This presents substantial risk that the Court would find individual
3 issues predominate because inquiry as to why class members did not record accurate
4 time and/or whether the timekeeping software, the class members, or the supervisors
5 were responsible for entering the time into the system and rounding the time. This could
6 have reduced the damages for this claim, and the other asserted claims that either
7 directly depend on the regular rate of calculation (i.e. meal period premium regular rate
8 of pay) or indirectly depend on it as a derivative violation (i.e. wage statement penalties,
9 waiting time penalties, and PAGA penalties), by a considerable amount. Taking these
10 factors into account, a more realistic range of recovery for this claim would be a range of
11 \$335,164.35 to \$480,402.24 for the rounding allegations part of this claim, and a range
12 of \$63,735.20 to \$148,715.47 for the regular rate of pay miscalculations.

13 c) Meal Periods: Based on the sample data, the total exposure for this claim is
14 \$2,383,390.96. This amount does not take into account any potential risks associated
15 with this claim, which was heavily disputed. While Plaintiff contended that Defendant
16 maintained a regular and consistent practice of failing to provide all meal periods due to
17 lack of adequate staffing, Defendant's written meal period policy that was given to Class
18 Members at the time of hire and later during the course of their employment included
19 examples that explained to class members when and how to take their meal periods. For
20 instance, one examples states that "your meal period will be provided no later than the
21 end of your fifth hour of work" and "if you begin work at 8:00 a.m., you must start your
22 meal period by 12:59 p.m. (which is before the end of your fifth hour of work)." This
23 policy presented substantial risks for certification and proving this claim on the merits
24 because Defendant contends that it explained in detail its meal period policy, it had a
25 valid meal period policy, and it was not responsible for policing Class Members to
26 ensure they took their meal periods. This claim also was based on the contention that
27 Defendants failed to properly calculate the regular rate of pay for meal period premiums
28 that is actually paid to Class Members. This claim was based on the same types of

1 payments that were the basis for Plaintiff's overtime regular rate of pay claims. As a
2 result, the same risks associated with the overtime claims are present here and could
3 substantially reduce the value of this claim. Taking these factors into account, a more
4 realistic range of recovery for this claim would be \$715,017.29 to \$1,668,373.67.

5 d) Rest Breaks: This claim was based on the same allegations as the meal period claim
6 and was subject to the same risks. The maximum exposure for this claim is
7 \$2,383,390.96. However, the claim was based on the same allegations as the meal
8 periods and that Defendant lacked adequate staffing which led to Plaintiff and class
9 members not being provided with compliant rest breaks. This claim was also heavily
10 disputed and did not benefit from any presumptive violation based on time records under
11 the law like meal period claims do. This presents substantial risk for Plaintiff ultimately
12 being able to certify this claim, which is also very difficult to establish on the merits due
13 to there being no requirements to document when, and for how long, rest periods were
14 taken. Additionally, the variance in the actual experience of Class Members that took
15 rest breaks presented substantial risks for certification and proving this claim on the
16 merits. This claim was also based on the contention that Defendants failed to properly
17 calculate the regular rate of pay for rest period premiums that is actually paid to Class
18 Members. This claim was based on the same types of payments that were the basis for
19 Plaintiff's overtime regular rate of pay claims. As a result, the same risks associated
20 with the overtime claims are present here and could substantially reduce the value of this
21 claim. Taking these factors into account, a more realistic range of recovery for this claim
22 would be \$715,017.29 to \$1,668,373.67.

23 e) Reimbursement: This claim was based on Plaintiff's contention that he and Class
24 Members were required to communicate with managers, supervisors, and other
25 employees using their personal cell phones and internet. In addition, Plaintiff and Class
26 Members used their personal cell phones to address patient placement, communicate
27 with county members, enter timecards, text messages and for searching diagnosis codes
28 and criteria. The maximum exposure for this claim is \$227,503.85. This amount does

not take into account any potential risks associated with this claim. Defendant heavily disputed whether use of personal cell phones was required given the presence of company computers and phones available on premises which could have allowed Plaintiff and other class members to perform the same functions as on their cell phones. This raised a substantial risk that the Court would find against Plaintiff on this claim. I believe it is unlikely that any damages beyond a nominal amount would have been awarded for this claim if the case went to trial. As a result, a realistic range of recovery for this claim would be \$22,750 to \$68,251.15.

f) Sick Time RROP Violations: The maximum exposure for this claim is \$52,800. This claim also was based on the contention that Defendants failed to properly calculate the regular rate of pay for sick pay premiums that is actually paid to Class Members. This claim was based on the same types of payments that were the basis for Plaintiff's overtime regular rate of pay claims. As a result, the same risks associated with the overtime claims are present here and could substantially reduce the value of this claim. Taking these factors into account, a more realistic range of recovery for this claim would be \$15,840 to \$36,960.

g) Wage Statement Violations: This claim is derivative of Plaintiff's overtime, minimum wage, and meal and rest period claims. The maximum exposure for this claim is \$113,750, which is calculated based on an initial violation of \$50 per pay period per employee. Based on our research, we did not find any prior Labor Commissioner or court decisions that stated Defendant's practices and/or policies were improper. As such, a "subsequent violation" may not be found for penalty calculation purposes and the exposure analysis here is based on an "initial violation" valuation being adopted by any fact finder if this matter went to trial. This amount does not take into account the potential risks associated with this claim and assumes a violation in every pay period. Because this claim is derivative of Plaintiff's other claims, the same risks identified above for Plaintiff's minimum wages, overtime, meal period, and rest period claims equally apply here, substantially affecting the potential value of this claim. Taking

these factors into account, a more realistic range of recovery for this claim is \$34,125 to \$79,625.

- h) Waiting Time Penalties: This claim is derivative of the minimum wage, overtime and meal and rest period claims above. The maximum exposure for this claim is \$1,298,251.20. However, this amount does not take into account the potential risks associated with this claim. Because this claim is derivative, the same risks mentioned above also apply to this claim. Similar to the liquidated damages for minimum wage violations, there is a good faith dispute defense to waiting time penalty claims. *See Diaz v. Grill Concepts Servs., Inc.*, 23 Cal.App.5th 859, 868 (2018). Based on the facts of this case, it is more realistic that there would not be any recovery for this claim.
- i) PAGA: This claim is derivative of the Labor Code violations identified above and would be subject to all the same risks as the underlying claims it is based on. Additionally, based on our research, we did not find any prior Labor Commissioner or court decisions that stated Defendant's practices and/or policies were improper. As such, a "subsequent violation" may not be found for penalty calculation purposes, and the exposure analysis here is based on an "initial violation" valuation being adopted by any fact finder if this matter went to trial. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207-1209 (2008). Based on Class Members' payroll data, the maximum total exposure for this claim is \$1,723,668. This amount does not take into account any of the risks in proving the merits of the underlying claims that the PAGA damages are based on. As outlined above, there are substantial risks to the claims and it is unlikely that recovery would be provided for several of the asserted claims let alone 100% of the potential available penalty. Beyond the risks on the merits, the correct valuation of civil penalty amounts for certain claims under PAGA were in dispute. For example, the calculation valued civil penalties for failure to pay final wages under Labor Code section 256 (which provides the civil penalty amount will not exceed 30 days' pay as waiting time under the terms of Section 203) for a total of \$435,168.00 instead of the \$100 per violation default penalty under Labor Code 2699(f), which results in a reduction to

1 \$95,454.55 for this claim. However, based on the facts of this case, it is more realistic
2 that there would not be any recovery for this claim. In addition to the risks on the merits
3 and disputes regarding the proper valuation of the penalty amounts, I believe the Court
4 may exercise its discretion to reduce PAGA penalties in this case because a majority of
5 the civil penalties sought would be in addition to amounts owed for substantive
6 violations, some of the violations are due to technical non-compliance with the Labor
7 Code, such as derivative wage statement violations, and Defendant produced legally
8 compliant policies among other documents, that a Court may find demonstrates a good
9 faith attempt at compliance. Courts are statutorily authorized to use discretion to reduce
10 penalties and the range of discretion used varies substantially. *See Thurman v. Bayshore*
11 *Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction); *Fleming v.*
12 *Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction).
13 The 82% reduction equates to roughly \$9-\$50 worth of civil penalties per pay period per
14 employee depending on the total potential value of the civil penalty (*i.e.* \$50-\$250),
15 which is more in line with actual awards based on my experience and review of awards
16 in other cases. Thus, even if using the maximum values possible and setting aside risks
17 of proving the claims on the merits, the total exposure may be cut to approximately
18 \$310,260.24 (82% reduction) to \$1,206,567.60 (30%) or lower. Using the lower,
19 disputed PAGA penalty values (\$682,500 total) would lower the potential exposure
20 further to \$122,850 (82% reduction) to \$477,750 (30%). It is important to note that this
21 discretionary reduction is completely separate and in addition to any risks on the merits.
22 Given the substantial risks associated with the claims, we believe the amount that might
23 ultimately be awarded under this claim would be significantly lower than our maximum
24 exposure calculation. Allocating \$20,000 to the PAGA claims in this case is
25 appropriate, especially in light of amounts that Courts have approved as reasonable
26 valuations in other cases. *See Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010)
27 (approving \$0 allocation to the resolution of PAGA claims based on their being disputed
28 and being part of a class settlement which was evaluated based on the terms of the

1 agreement overall); *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, at *8 n.2
2 (E.D. Cal. 2022) (collecting cases with PAGA settlement values ranging from .037%-
3 1%); *Jennings v. Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018)
4 (approving settlement of PAGA claims at 0.6% of total estimated value due to risk of no
5 recovery); *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016)
6 (approving \$10,00 PAGA settlement allocation where total PAGA penalty exposure was
7 approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox Commc'ns*
8 *California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily
9 approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l,*
10 *LLC*, 2014 U.S. Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA
11 allocation when attorneys' fees award alone amounted to \$200,000); *Jack v. Hartford*
12 *Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000
13 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010
14 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in
15 \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9
16 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v.*
17 *M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving
18 \$100,000 PAGA allocation in a \$3,950,000 settlement even though PAGA exposure was
19 calculated at \$53,600,000, or 0.2% of total estimated value); *Garcia v. Gordon*
20 *Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012) (approving
21 \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*,
22 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from
23 \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645,
24 at *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA
25 out of \$6.9 million common-fund settlement).

26 10. In summary, Plaintiff's gross recovery of \$450,000 under the Agreement equals
27 approximately 4% of the maximum value of the claims in this matter and between 10% and 22% of the
28 more realistic range of recovery. After deducting from the Gross Settlement Amount the proposed

1 allocations for attorneys' fees and costs, any Enhancement Payment to the Class Representative,
2 Settlement Administrator Costs, and the PAGA Payment, the net recovery under the Agreement,
3 \$243,504.32, represents approximately 2% of the maximum value of the claims in this matter. The net
4 recovery also represents between 5% and 12% of the more realistic range of recovery. The average net
5 award is approximately \$726.88. I believe the Agreement represents a reasonable compromise of
6 claims based on the legal and factual disputes in this case. The ability to secure a guaranteed settlement
7 now and ensure Class Members receive some compensation, rather than proceed to further litigation
8 and potentially recover nothing, was a motivating factor in reaching this Agreement.

9 11. In agreeing to take on this case, our office agreed to take this case on a contingency
10 basis, meaning that we would take a percentage of any settlement or judgment should we recover a
11 monetary amount. We took a risk that we would not recover any money in this matter if we were
12 unsuccessful at trial. We also took on the risk that the case may be subject to an unfavorable summary
13 judgment ruling. However, we believe it is important to make sure employees are able to find
14 affordable representation in order to ensure that employers are complying with all their legal
15 obligations towards employees and paying employees all their hard-earned wages. We rely on
16 attorneys' fee awards in order to continue working to ensure California wage and hour protections are
17 enforced. Otherwise, we could not continue to represent employees who are denied wages, but whose
18 cases may be time-consuming and difficult to prove. There have been many class cases we have
19 litigated where ultimately we get zero for our time because we are unable to meet certification
20 requirements or the company becomes financially insolvent.

21 12. I am a shareholder at Shimoda & Rodriguez Law, PC. My law firm is a boutique law
22 practice that focuses primarily on employment litigation, emphasizing wage and hour litigation. I
23 attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the
24 Departmental Citation for Academic Achievement in the Philosophy program. I was one of only two
25 recipients of this award out of the entire Philosophy Department. After U.C. Davis, I attended the
26 University of the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris
27 Doctorate. I graduated in the top 20% of my class and was a member of the Traynor Honor Society at
28 McGeorge. Other academic achievements of mine include receiving a Witkin Award (top grade) in my

1 legal research and writing course, a Witkin Award in complex civil litigation, being a member of the
2 Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from
3 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global Business &*
4 *Development Law Journal* from 2010–2011, and being selected as a Sacramento County Bar
5 Association Diversity Fellow in 2009. I was also a member of the Employment and Labor Law Society
6 and an officer for the Latino Law Students Association from 2009 to 2010.

7 13. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda
8 Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp.
9 became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent
10 rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to present, I have
11 been recognized as a Super Lawyer (Rising Star). I have been a panel speaker and presented a number
12 of seminars covering issues in wage and hour litigation in general and complex class and PAGA
13 litigation in particular. These engagements include the following: (1) *Epic Systems*, PAGA, and the
14 Future of Employment Arbitration in California (Sacramento County Bar Assoc., Sept. 2018); (2) Class
15 Actions and PAGA Claims (Assoc. of Defense Counsel of Northern California & Nevada, Jul. 2020);
16 (3) Mediation: The Experienced Trial Lawyers Perspective (Sacramento County Bar Assoc., Sept.
17 2020); (4) How to Become a Pivotal Part of Any Wage and Hour Practice Group (Sacramento County
18 Bar Assoc., Mar. 2021); (5) Emerging Trends and Issues Relating to Arbitration and PAGA Claims in a
19 Post-Viking River Cruises World (Sacramento County Bar Assoc., Nov. 2022). I was elected to the
20 Sacramento County Bar Association Labor and Employment Law Section's executive committee in
21 2019 and was the Chair of the executive committee for 2022. I have also been a member of the
22 Presiding Judge Civil Law Advisory Committee for Sacramento County Superior Court since August
23 2020. My practice focuses on complex civil litigation, including wage and hour class actions, PAGA
24 claims, and Fair Labor Standards Act ("FLSA") claims. I am actively involved in most all of the
25 complex litigation handled by our firm. Class and/or PAGA actions I have litigated or am currently
26 litigating, including the instant case, includes, but is not limited to, the following:

- 27 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 28 • *Adams-Angway v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);

- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080 (San Joaquin Sup. Ct.);
- *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup. Ct.);
- *Barkhousen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-00271174 (Sac. Sup. Ct.);
- *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);
- *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
- *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-00222101 (Sac. Sup. Ct.);

- *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup. Ct.);
- *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-EFB (E.D. Cal.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-

00082201 (Sac Sup. Ct.);

- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Salmon v. Ovation Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.) ;
- *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.) ;
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

14. The preceding list does not include those cases where, for various reasons, the case was filed as a class action and/or PAGA action, but did not maintain that status through the end of the case.

15. My partner, Galen T. Shimoda, Esq., worked with me on this matter and was critical in assisting with all aspects of the litigation of this case. Mr. Shimoda and I are some of only a handful of plaintiff attorneys located in Sacramento who handle wage and hour class actions. Mr. Shimoda attended and graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a number of employment law articles for journals and our firm regularly publishes articles on our firm's website. Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar) Employment Review seminars from 2014 to the present. His speaking engagements include the following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6)

1 CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law
2 Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class
3 Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21,
4 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the
5 Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour
6 Panel and AB 1825 Training: Updates on California’s New Wage Laws and Manager Compliance
7 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
8 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
9 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
10 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
11 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
12 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);
13 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
14 Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,
15 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized
16 as a Super Lawyer from 2014 to present.

17 16. Mr. Shimoda has practiced law in California since being admitted to the State Bar in
18 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases.
19 Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington &
20 Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is
21 in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and
22 Federal Courts, including up to certification, settlement, preliminary and final approval, and
23 disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel.
24 Some of the class action and/or PAGA cases he is litigating and/or has litigated as lead or co-counsel
25 include the following:

- 26 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 27 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 28 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);

- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);
- *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
- *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
- *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac. Sup. Ct.);

- 1 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 2 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 3 • *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac.
- 4 Sup. Ct.);
- 5 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 6 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 7 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 8 • *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- 9 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- 10 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 11 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 12 • *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- 13 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 14 • *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- 15 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 16 • *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- 17 • *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac.
- 18 Sup. Ct.);
- 19 • *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- 20 • *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- 21 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- 22 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 23 • *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- 24 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-
- 25 00082201 (Sac Sup. Ct.);
- 26 • *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac.
- 27 Sup. Ct.);
- 28 • *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);

- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

17. The preceding list of cases does not include those where, for a variety of reasons, the case was initially filed as a class and/or PAGA action, but did not maintain that status through the end of the case.

18. My associate, Renald Konini, Esq., also worked with me on this case. In May 2011, Mr. Konini graduated from Seton Hall University School of Law. Prior to moving to California, he practiced law in New Jersey. While working for my firm, Mr. Konini has worked on a variety of individual and class action cases, including those involving wage and hour claims, Private Attorney General Act claims, wrongful termination claims, discrimination claims, retaliation claims, and harassment claims. Mr. Konini passed the July 2016 California Bar Examination and started practicing as an associate at my firm from approximately April 2019 to February 2021. He rejoined my firm in September 2022. Mr. Konini has experience drafting written discovery, taking and defending depositions, calculating class-wide damages, interviewing putative class members, drafting motions and briefs on complex class action procedures, negotiating class and individual damages claims, and communicating with opposing counsel regarding these items in navigating the litigation. Mr. Konini has also worked on other class and/or PAGA wage and hour actions that my firm has filed, namely *Bertelli v. Air Products and Chemicals, Inc.*, Case No. 34-2018-00236898 (Sac. Sup. Ct.), *Carr v. Howroyd-Wright Employment Agency, Inc.*, Case No. 34-2018-00228290 (Sac. Sup. Ct.), *Gomez v. Vander Schaaf Dairy, et al.*, Case No. STK-CV-UOE-2020-0003954 (San Joaquin Sup. Ct.), *Haggins v. Kelly Services, Inc.*, Case No. 34-2017-00220473 (Sac. Sup. Ct.), *Hussaini v. Integrated Resources, Inc.*, et al, Case No. 34-2021-00297152 (Sac. Sup. Ct.), *Kee, et al. v. Dr. Jeffrey A. Saladin, Dental*

1 *Corporation (D/B/A Children's Choice Pediatric Dental Care), et al.*, Case No. 34-2020-00290072
2 (Sac. Sup. Ct.), *Lear v. Raxium, Inc.*, Case No. 21CV004358 (Alameda Sup. Ct.), *Serrano v. Cool*
3 *Time, LLC*, Case No. 34-2021-00312356 (Sac. Sup. Ct.), *Grebe v. Mary Ann's Baking Co., Inc.*, Case
4 No. 34-2020-00285254-CU-OE-GDS (Sac. Sup. Ct.), *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No.
5 20CV01255 (Butte Sup. Ct.), *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac.
6 Sup. Ct.), *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac.
7 Sup. Ct.), *Pek, et al v. Varris Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin Sup.
8 Ct.), *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct). Mr.
9 Konini's practice largely revolves around wage and hour matters, including class and PAGA claims.

10 19. My office is requesting attorneys' fees and costs pursuant to the common fund doctrine
11 pursuant to *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston &*
12 *Hunt v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989). Plaintiff and Plaintiff's Counsel have been able to
13 secure an identifiable benefit on behalf of the class and equity counsels that the cost of the
14 representation should be born equally amongst all class members receiving these benefits. The
15 settlement recovery provides a good result and is the product of substantial time and effort in analyzing
16 the facts and law applicable to this case. There was substantial risk in agreeing to take this case on a
17 contingency basis and as a class action with the possibility that our firm would not receive any
18 compensation their time and efforts due to issues regarding the merits and/or certification and have
19 carried that risk over the course of the case. In my experience, the attorney's fee request of thirty-five
20 percent (35%) of the common fund is within ranges typically approved in wage and hour class action
21 litigation. In my experience with contingency cases in employment law cases, the typical percentage
22 negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual
23 litigation. In class action and PAGA litigation, my experience in our firm and working with several
24 other firms has been that the typical percentage negotiated between parties and approved by a court
25 ranges from thirty to forty percent (30% to 40%) based on the same factors. I have also reviewed
26 several recent Federal District Court Cases where the Court has approved common fund-based fee
27 requests. These cases include *In re Activision Sec. Litigation*, 723 F.Supp. 1373, 1379 (N.D. Cal.
28 1989), *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-cv-0063, *Dirienzo v.*

1 *Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745, *Green, et al. v. Penske*
2 *Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069, *Benitez et al. v. Wilbur*,
3 USDC Eastern District, Case No. 1:08-cv-01122, *Chavez et al. v. Petrissans et al.*, USDC Eastern
4 District, Case No. 1:08-cv-00122, and *Willis et al. v. Cal-Western Transport*, USDC Eastern District,
5 Case No. 1:00-cv-05695. I believe our request of \$157,700 (35%) for attorneys' fees is justified given
6 the results obtained on behalf of Class Members, Aggrieved Employees and the LWDA. Moreover, at
7 this time, my firm has advanced all costs for Plaintiff, Class Members, and Aggrieved Employees and
8 has not received any compensation whatsoever for our time expended in this case. The incurred costs
9 to date and the expected costs through overseeing the complete distribution of all settlement proceeds
10 are \$6,245.68. Attached as Exhibit D is a true and correct copy of an itemization of our firm's incurred
11 costs and expected costs through the complete distribution of all settlement proceeds.

12 20. I have used several class action administrator companies in the wage and hour class
13 actions I have resolved in the past and believe ILYM Group, Inc. will provide the best service to
14 administer the class settlement. Under the settlement the difference between the originally allocated
15 \$15,000 and the actual administration costs of \$7,750 will be paid to the Participating Class Members on
16 a pro rata basis.

17 21. A copy of the Agreement and the entire Motion was submitted to the LWDA for review
18 at the same time the Motion was submitted to the Court pursuant to California Labor Code section
19 2699(l)(2). A true and correct copy of documents demonstrating the settlement documents were
20 provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as
21 Exhibit E.

22 22. The designated *cy pres* beneficiaries in this case are Capital Pro Bono, Inc. ("CPB") and
23 The Center For Workers Rights ("CFWR"). Only those funds that remain from uncashed settlement
24 checks will be sent to the *cy pres* beneficiaries pursuant to section 5.6 of the Agreement.

25 23. CPB is a 501(c)(3) nonprofit in good standing with the State of California that was
26 established in 1981 and incorporated in 1986 to provide free civil legal services to the indigent,
27 primarily through the use of volunteer attorneys. The formal service area includes Sacramento, Yolo,
28 San Joaquin, El Dorado and Placer counties, however it also regularly provides assistance, whether in

1 person or by phone, to individuals residing outside those counties, including Solano, Nevada, Merced,
2 Sutter, Yuba, and Stanislaus counties. CPB changed its name in 2020 from Voluntary Legal Services
3 Program of Northern California (“VLSP”) to Capital Pro Bono, Inc. CPB has been the recipient of *cy*
4 *pres* funds from several jurisdictions in the State of California, including from Sacramento County
5 Superior Court.

6 24. If CPB is approved as a *cy pres* beneficiary, any funds received will be dedicated to the
7 Employment Law Clinic and Advice Line project, which assists the indigent with legal matters related to
8 their current or former employment. This assistance regularly includes, but is not limited to, free legal
9 advice regarding claims for unpaid wages, failure to provide meal and rest periods, failure to pay
10 reimbursement, and waiting time penalty claims. CPB provides legal advice, assistance with legal
11 forms, and direct representation in administrative hearings, including administrative hearings in front of
12 the California Labor Commissioner for unpaid wages. CPB has a staff attorney and clinic coordinator
13 who provide assistance, along with experienced employment law attorney volunteers. These services
14 have been a focus of the Employment Law Clinic and Advice Line project since its inception with VLSP
15 and continuing through today under CPB.

16 25. CFWR is also a qualified *cy pres* designee in class actions, under section 384, as it is a
17 501(c)(3) nonprofit in good standing with the State of California providing free civil legal services to the
18 indigent. Since its inception in 2014 and in partnership with Legal Aid at Work, the CFWR offers one-
19 on-one legal consultations for low-wage workers. The CFWR discusses employment issues with
20 workers and advises them as to the available legal remedies. In addition to individual counseling on
21 employment issues, the CFWR educates workers, unions, and community members about workplace
22 laws and remedies through “Know-Your-Rights” trainings conducted by the CFWR staff and volunteers.

23 26. The CFWR provides limited representation for low-wage workers in wage claims before
24 the California Labor Commissioner. The CFWR has provided services to low-wage workers in a variety
25 of industries across the entire state of California. CFWR primarily focuses on the enforcement of basic
26 workplace protections, including claims for unpaid wages, minimum wage violations, failure to pay
27 overtime, failure to pay reimbursement, waiting time penalties, and meal and rest period violations. The
28 CFWR helps workers navigate the wage claim process before the California Labor Commissioner

1 through advice given at its legal consultation clinics and/or, in some cases, through representing workers
2 in these claims. If the CFWR is approved as a *cy pres* beneficiary, the funds received will be dedicated
3 towards assisting low-wage workers with wage claims and enforcing the California Labor Code with
4 respect to those wage claims.

5 27. I believe the services provided by CPB and the CFWR promote the law consistent with
6 the objective of wage and hour class actions in general and in this case specifically.

7 28. I have spoken with every other attorney at my firm to determine whether they have any
8 relationship with either of the proposed *cy pres* beneficiaries.

9 29. I have volunteered for both organizations numerous times over the past several years,
10 either directly in the advice clinics or by presenting seminars on wage and hour laws for law students
11 seeking to also volunteer at advice clinics. I have also volunteered by sitting on CPB's advisory
12 committee. These organizations are non-profits that assist low-income workers throughout California,
13 giving free legal advice regarding employment law issues and representing employees with wage claims
14 before the California Labor Commissioner. I have witnessed firsthand the quality service and attention
15 these entities provide to individuals in need of employment law advice and representation at the
16 California Labor Commissioner.

17 30. Brittany V. Berzin has never done any work, volunteer or otherwise, with CPB. During
18 law school, Ms. Berzin was a student volunteer for the CFWR for two summers. Since graduating law
19 school, she has volunteered for the CFWR approximately one to two times per year, assisting in the
20 advice clinic. Recently, Ms. Berzin volunteered to be on the Board of Directors and is currently the
21 Chair, which is an unpaid position. As Chair, Ms. Berzin is one of seven Board Members, who are all
22 from different law firms and/or local public and private organizations. No compensation or benefits,
23 monetary or otherwise, are provided to any Board Member or organization a Board Member is
24 associated with. The Executive Director of the CFWR supervises, directs, and controls the day-to-day
25 operations of the CFWR, not Ms. Berzin or the Board of Directors. As Chair, Ms. Berzin's additional
26 duties include scheduling meetings, drafting meeting agendas and presiding over meetings.
27 Furthermore, CFWR has not, and does not, provide any referrals to Shimoda & Rodriguez Law, P.C.
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1 31. Galen T. Shimoda has volunteered for both organizations on and off over the past several
2 years through either presenting wage and hour seminars to law students who staff the free advice clinics
3 or helping at the advice clinics themselves. However, Mr. Shimoda has not performed any volunteer
4 work with either organization since approximately March 2020. Mr. Shimoda has never received
5 payment or compensation of any kind in connection with any work he's done with either of the proposed
6 *cy pres* beneficiaries. Renald Konini has never done any work, volunteer or otherwise with Capital Pro
7 Bono, Inc. or the Center For Workers' Rights.

8 32. Neither my firm, myself, Mr. Konini, Ms. Berzin, nor Mr. Shimoda have ever received
9 any compensation, direct or indirect, for designating CFWR or CPB as *cy pres* beneficiaries or in
10 connection with any of the volunteer work we have done with the organizations.

11 I declare under penalty of perjury under the laws of the State of California that the foregoing is
12 true and correct. Executed on May 7, 2024, in Sacramento, California.

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Justin P. Rodriguez

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
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Attorneys for Plaintiff JESSE DOWNARD
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF PLACER

JESSE DOWNARD, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

SIERRA MENTAL WELLNESS GROUP, a
California Corporation; and DOES 1 to 100,
inclusive,

Defendants.

Case No. S-CV-0049587

CLASS ACTION

**DECLARATION OF JESSE DOWNARD IN
SUPPORT OF PLAINTIFF’S MOTION FOR
FINAL APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT**

Date: June 4, 2024
Time: 8:30 a.m.
Dept.: 42
Judge: Hon. Trisha Hirashima

Filed: December 19, 2022
FAC Filed: March 27, 2023
Trial Date: None Set

1 I, Jesse Downard, declare:

2 1. I am a competent adult, I have personal knowledge of the facts set forth in this
3 declaration, and I am making this declaration on behalf of myself, as a named plaintiff, and in support
4 of Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement.

5 2. I worked for Defendant Sierra Mental Wellness Group ("Defendant") from
6 approximately December 12, 2020, to September 9, 2022, as a non-exempt employee. I was subject to
7 all of Defendant's policies and practices that have been alleged as unlawful in the Complaint and the
8 notice sent to the Labor and Workforce Development Agency, including the following: failure to pay
9 overtime, failure to pay minimum wages, failure to provide accurate wage statements, failure to timely
10 pay final wages, failure to provide meal and rest periods or pay premiums in lieu thereof, and failure to
11 reimburse expenses.

12 3. I have actively participated in the litigation of this case for the benefit of all Class
13 Members. Prior to obtaining an attorney, I performed several hours of research trying to find a quality
14 attorney to handle the claims. I also performed several hours of research on the potential claims, so I
15 could be sure I could have an informed discussion with the attorneys about the claims and have a better
16 idea of what to expect in litigation and how to help the case proceed. After securing Shimoda &
17 Rodriguez Law, PC, I continued to be actively involved in the case to help ensure a positive outcome.

18 4. My attorneys explained to me the risks and benefits of bringing a class action and a
19 claim under the Private Attorneys General Act ("PAGA"). I understood that pursuing the case as a
20 class and PAGA action meant that it would take substantially longer than pursuing my claims
21 individually, whether in Court or with the California Labor Commissioner, and that I risked getting
22 nothing in the end, but I believed it was important to make sure that Defendant followed the law for
23 everyone. I understood that I took on the risk, both professionally and financially, in pursuing the case
24 as a class and PAGA action rather than pursuing my claims individually, including the risk of having to
25 pay Defendant's costs if we were unsuccessful in bringing our claims.

26 5. During the course of this litigation, I have given detailed accounts of all the facts related
27 to my employment. I provided my attorneys with extensive documentation that I believe supported the
28 claims brought against Defendant. I met with and assisted my attorneys in understanding these

1 documents and providing context for Defendant's payroll process as it applied to me and how I
2 believed it applied to Defendant's other employees. I worked there for over one (1) year and nine (9)
3 months, so I was able to discuss the similarities of the wage and hour policies and practices among all
4 Class Members.

5 6. The work I performed for this case included an extensive review of documents and
6 payroll practices to show and explain to my attorneys what was happening and why I thought it was
7 unlawful. For example, one of the allegations we made was that Defendant failed to incorporate the
8 value of on-call earnings when calculating the regular rate of pay for premium purposes such as
9 overtime, double time, sick leave, and meal and rest period premiums. I spent time explaining the "on
10 call" shifts, and the practices and policies that Defendant maintained and walked through numerous
11 examples and comparison of time records and corresponding paystubs, covering the same period to
12 reconstruct the pay practices at issue in this case. This became more intense and involved as we had to
13 address the arguments and factual assertions that Defendant and its counsel were making in response to
14 our allegations. I believe the review helped show where there was (or was not) consistency between
15 Defendant's stated policies, practices, and our claims. This was very important as it helped not only the
16 claims of failure to pay overtime, failure to pay minimum wages, and failure to reimburse expenses
17 claims, but also claims related to meal and rest breaks, waiting time penalties, failure to provide
18 accurate wage statements, and derivative PAGA claims. The review became even more detailed when
19 my attorneys asked me questions about the payroll data sample that was produced as part of informal
20 discovery to engage in mediation. I also spent a substantial amount of time identifying and speaking to
21 potential witnesses who could speak to my attorneys to give their own insights and provide
22 declarations. Since the settlement, I have also fielded questions by Class Members about this case and
23 helped to direct them to my attorneys and/or explained to them the status of the case and settlement
24 terms. Overall, I have spent an enormous amount of time assisting in the prosecution of this case. I
25 estimate that I spent about 130 to 150 hours assisting with this case.

26 7. I participated in the negotiations and settlement discussions in this case, including
27 participating in mediation by phone, speaking with my attorneys to answer questions, provide any
28 additional information needed to assist the negotiations, and discussing the potential terms of the

1 Agreement to evaluate its adequacy. Throughout the course of this litigation I have asked questions
2 when I needed clarification about various aspects of this case to make sure there were continually steps
3 taken to advance the interests of Class Members.

4 8. I have not received any benefits as a result of filing this lawsuit. I have, however,
5 experienced substantial burdens as a result of filing the lawsuit that other Class Members were not
6 subject to. For example, in bringing the lawsuit, I assumed the risk of having to pay Defendant's costs
7 if the Court or jury rules against us on the claims. My understanding is that this is a substantial risk
8 because the costs associated with litigation, in general, are very high and this cost is multiplied many
9 times over in complex litigation like class actions. I have spent a substantial amount of time in this
10 case, securing a monetary benefit for many individuals who have not had to do anything whatsoever to
11 have the opportunity to receive it. I have been employed full-time and sometimes part-time during the
12 majority of the time this case has been pending. As a result, the time I have spent on this case has to
13 occur during my lunch and/or breaks times, after hours, and on my days off. This is particularly
14 challenging because I have three young children and I am a single dad. Rather than spend this time
15 with friends and family, I have spent this time for the benefit of Class Members. I have also
16 experienced a lot of stress and anxiety arising from this litigation for which I had to take medication
17 for. I also feel that I lost employment opportunities because of this lawsuit. Finally, as part of the
18 Settlement, I am the only individual providing a broader release of my individual claims than any other
19 Class Member. No other Class Member is subject to such a broad release.

20 9. I have reviewed the final Joint Stipulation of Class Action and PAGA Settlement and
21 Release, discussed the terms with my attorney, and asked my attorney any questions I had. I believe
22 the terms of the Settlement and allocations are fair and reasonable given the facts of the case.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on 5/1/2024 in Grass Valley, California.

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JD DECL. ISO MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Renald Konini (Cal. State Bar No. 312080)
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9 Attorneys for Plaintiff JESSE DOWNARD individually and
10 on behalf of similarly situated employees

11
12 **SUPERIOR COURT OF CALIFORNIA**
13 **FOR THE COUNTY OF PLACER**
14

15 JESSE DOWNARD, individually and on
16 behalf of all other similarly situated
17 employees,

18 Plaintiff,

19 vs.

20 SIERRA MENTAL WELLNESS GROUP, a
21 California Corporation; and DOES 1 to 100,
22 inclusive,

23 Defendants.
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Case No. S-CV-0049587

**DECLARATION OF NATHALIE
HERNANDEZ OF ILYM GROUP, INC.,
IN SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: June 4, 2024
Time: 8:30 a.m.

Judge: Hon. Trisha Hirashima
Dept.: 42

1 I, Nathalie Hernandez, declare as follows:

2 1. I am a resident of the United States of America and am over the age of 18. I am a
3 Case Manager for ILYM Group, Inc., (herein after referred to as “ILYM Group”), the professional
4 settlement services provider who has been retained by the Parties’ Counsel and subsequently
5 appointed by the Court to serve as the Settlement Administrator for the above captioned *Downard*
6 *v. Sierra Mental Wellness Group* matter. I am authorized to make this declaration on behalf of
7 ILYM Group and myself. I have personal knowledge of the facts herein, and, if called upon to
8 testify, I could and would testify competently to such facts.

9 2. ILYM Group has extensive experience in administering Class Action Settlements,
10 including direct mail services, database management, claims processing and settlement fund
11 distribution services for Class Actions ranging in size from 26 to 4.5 million Settlement Class
12 Members.

13 3. ILYM Group was engaged by the Parties’ Counsel and subsequently approved and
14 appointed by the Court to provide notification services and settlement administration, pursuant to
15 the terms of the Settlement, in the above referenced Action. Duties performed to-date and to be
16 performed after Final Approval of the Settlement is granted, include: (a) printing and mailing the
17 *Notice of Proposed Class Action and PAGA Settlement, and Hearing Date for Final Court*
18 *Approval of Settlement* (referred to as “Notice Packet”); (b) receiving and processing requests for
19 exclusion; (c) resolving Settlement Class Members’ disputes over the number of workweeks
20 Defendants have record of them working during the Class Period, which was pre-printed on their
21 individualized Class Notice; (d) calculating individual settlement award amounts; (e) processing
22 and mailing settlement award checks; (f) handling tax withholdings as required by the Settlement
23 and the law; (g) preparing, issuing and filing tax returns and other applicable tax forms; (h)
24 handling the distribution of any unclaimed funds pursuant to the terms of the Settlement; and (i)
25 performing other tasks as the Parties mutually agree to and/or the Court orders ILYM Group to
26 perform.

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1 4. On January 17, 2024, ILYM Group received the Court approved text for the Notice
2 Packet from Counsel for Plaintiff. ILYM Group prepared a draft of the formatted Notice Packet,
3 which was approved by the Parties' Counsel prior to mailing.

4 5. On February 8, 2024, ILYM Group received the class data file from Counsel for
5 Defendants, which contained the name, social security number, last known mailing address, last
6 known telephone number, workweeks and pay periods for each Settlement Class Member. The
7 data file was uploaded to our database and checked for duplicates and other possible discrepancies.
8 The Class List contained 339 individuals.

9 6. As part of the preparation for mailing, all 339 names and addresses contained in the
10 Class List were then processed against the National Change of Address ("NCOA") database,
11 maintained by the United States Postal Service ("USPS"), for purposes of updating and confirming
12 the mailing addresses of the Settlement Class Members before mailing of the Notice Packet. The
13 NCOA contains requested change of addresses filed with the USPS. To the extent that an updated
14 address was found in the NCOA database, the updated address was used for the mailing of the
15 Notice Packet. To the extent that no updated address was found in the NCOA database, the original
16 address provided by Counsel for Defendants was used for the mailing of the Notice Packet.

17 7. On February 20, 2024, the Notice Packet was mailed, via U.S First Class Mail, to
18 all 339 individuals contained in the Class List. Attached hereto, as **Exhibit A**, is a true and correct
19 copy of the mailed Notice Packet.

20 8. As of the date of this declaration, 35 Notice Packets have been returned to our office
21 as undeliverable. ILYM Group performed a computerized skip trace on the 35 returned Notice
22 Packets that did not have a forwarding address, in an effort to obtain an updated address for the
23 purpose of re-mailing the Notice Packet. As a result of this skip trace, 28 updated addresses were
24 obtained and the Notice Packets were promptly re-mailed to those Settlement Class Members, via
25 U.S First Class Mail.

26 9. As of the date of this declaration, a total of 28 Notice Packets have been re-mailed.
27 Specifically, 28 have been re-mailed as a result of ILYM Group's skip tracing efforts.

28 ///

1 10. As of the date of this declaration, a total of 7 Notice Packets have been deemed
2 undeliverable. Specifically, 7 have been deemed undeliverable as no updated address was found
3 notwithstanding the skip tracing.

4 11. As of the date of this declaration, ILYM Group has received four requests for
5 exclusion. The names of the request for exclusion are Benita Priestley, Bonnie Sayers, Emily
6 Clark, and Janet Brown. The deadline to request exclusion from the Settlement was April 20, 2024.

7 12. As of the date of this declaration, ILYM Group has not received any objections to
8 the Settlement. The deadline to file an objection to the Settlement was April 20, 2024.

9 13. As of the date of this declaration, ILYM Group will report a total of 335
10 Participating Class Members, representing 98.82% of the 339 Settlement Class Members.

11 14. Participating Class Members will receive a proportional share of the Net Settlement
12 Fund through individual settlement payments, based on the number of workweeks worked by Class
13 Members during the Class Period. The Net Settlement Fund is the amount remaining after
14 deduction of the Court-approved payments from the Gross Settlement Fund for Class Counsel Fees
15 and Litigation Costs, the Class Representative Enhancement Award, Settlement Administration
16 Fees to ILYM Group, LWDA and the Aggrieved Employees allocation, e.g.,

17 Gross Settlement Fund	\$ 450,000.00
18 Class Counsel Fees	\$ 157,500.00
19 Class Counsel Litigation Costs	\$ 6,245.68
20 Enhancement Award	\$ 15,000.00
21 Administration Fees	\$ 7,750.00
22 LWDA	\$ 15,000.00
23 PAGA Allocation	\$ 5,000.00
24 Net Settlement Fund (estimated)	\$ 243,504.32

25 To determine a Participating Class Member's individual settlement award payment, the Net
26 Settlement Fund will be divided by the total number of workweeks worked by all Settlement Class
27 Members during the Class Period, multiplied by the number of workweeks worked by that
28 Participating Class Member. Based on these calculations, the Participating Class Members will

1 receive an estimated average gross payment of \$726.88, with the estimated highest gross payment
2 being \$3,034.65

3 15. ILYM Group's total fees and costs for services in connection with the administration
4 of this Settlement, which includes fees and costs incurred to-date, as well as anticipated fees and
5 costs for completion of the settlement administration, are \$7,750.00. ILYM Group's work in
6 connection with this matter will continue with the calculation of the settlement award payments,
7 issuance and mailing of the settlement award checks, the necessary tax filing and reporting on such
8 payments, and any other tasks that the Parties mutually agree to and/or the Court orders ILYM
9 Group to perform.

10 I declare under penalty of perjury under the laws of the State of California and the United
11 States that the foregoing is true and correct to the best of my knowledge and that this Declaration
12 was executed this 1st day of May 2023, at Tustin, California.

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17 Nathalie Hernandez
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EXHIBIT “A”

**CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF PLACER**

JESSE DOWNARD, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

SIERRA MENTAL WELLNESS GROUP, a
California Corporation; and DOES 1 to 100,
inclusive,

Defendant.

Case No. **S-CV-0049587**

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT, AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: All hourly non-exempt employees who have worked, or continue to work, for Defendant in California as clinicians, nurses, psychologists, or similar positions responsible for providing care to patients at any point from December 19, 2018, to December 9, 2023 (the “Class Members”).

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE IN OR OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

You are receiving this notice pursuant to an order from the Placer County Superior Court (“Court”) granting Plaintiff’s motion for preliminary approval of a Joint Stipulation of Regarding Class Action PAGA Settlement and Release (“Agreement” or “Settlement”) as fair, reasonable, and adequate. The Settlement was entered into between Plaintiff Jesse Downard (“Plaintiff” or “Class Representative”), and Defendant SIERRA MENTAL WELLNESS GROUP (“Defendant”) on behalf of Class Members as defined above. The terms of the Settlement are outlined herein. You are receiving this notice because Defendant’s records indicate you fall within the definition of “Class Member.” Defendant’s records also indicate that you worked «Class_Workweeks_» weeks during the applicable Class Period (as defined below), which means your total share of the settlement proceeds is estimated to be \$«Class_Estimated_Settlement_Amount». Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate, and the resolution of any workweek disputes as described in this notice.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court’s order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On December 19, 2022, Plaintiff filed a Complaint against Defendant in the Placer County Superior Court of California on behalf of himself and Class Members. The term “Action” means this putative class action pending in Placer County Superior Court, Case No. S-CV-0049587. The Class Period all hourly non-exempt employees who have worked, or continue to work, for Defendant in California as clinicians, nurses, psychologists, or similar positions responsible for providing care to patients at any point from December 19, 2018, is to December 9, 2023 (the “Class Period”).

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself, Class Members, and Aggrieved Employees. Plaintiff alleged that Defendant violated California law by 1) failing to pay overtime wages, 2) failing to pay minimum wages, 3) failing to provide meal periods or pay premiums in lieu thereof, 4) failing to provide rest periods or pay premiums in lieu thereof, 5) failing to provide accurate wage statements, 6) failing

to timely pay all final wages, 7) failing to reimburse employees for incurred expenses, 8) failing to provide paid sick leave, 9) failing to maintain accurate records, 10) engaging in unfair competition, and 10) committing PAGA violations. Defendant has denied all of Plaintiff's allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendant continue to deny all allegations and claims. Defendant has entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, which are defined as all hourly non-exempt employees who have worked, or continue to work, for Defendant in California as clinicians, nurses, psychologists, or similar positions responsible for providing care to patients at any point from December 19, 2018, to December 9, 2023. The Agreement also applies to Aggrieved Employees, which are defined as all hourly non-exempt employees who have worked, or continue to work, for Defendant in California as clinicians, nurses, psychologists, or similar positions responsible for providing care to patients at any point between December 16, 2021, to December 9, 2023. If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself ("opt out") from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, Aggrieved Employees cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. Aggrieved Employees will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendant has agreed to pay a total sum of Four Hundred Fifty Thousand Dollars (\$450,000) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorneys' fees not to exceed 35% of the Gross Settlement Amount, attorneys' costs not to exceed \$10,000, Settlement Administrator Costs estimated not to exceed \$15,000, Class Representative's Enhancement Payment of \$15,000, and \$20,000 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendant in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the \$20,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among Aggrieved Employees.

The number of weeks you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment ("Individual Settlement Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by Participating Class Members (i.e., those who do not opt out of the Settlement), the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on Aggrieved Employees' allocations for the PAGA claims.

B. Individual Settlement Amounts and Allocation Between Class Members and Aggrieved Employees

Defendant will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to Aggrieved Employees. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that all Individual Settlement Amounts payable to eligible Class Members will be allocated from the Net Settlement Amount and paid as 2/3 for disputed interest, statutory penalties, and other non-wage damages for which IRS Forms 1099-MISC will issue and 1/3 for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to Aggrieved employees will be paid as 100% for civil penalties.

Payment to Participating Class Members and Aggrieved Employees will not require the submission of a claim form. Each Participating Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Participating Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. The PAGA Claim Period is defined as December 16, 2021 up to December 9, 2023. Defendant's records indicate that you worked «PAGA_WorkWeeks» weeks during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be \$«PAGA_Estimated_Settlement_Amount». This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or Aggrieved Employee to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendant's Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendant's records. Defendant's records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendant's records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendant's records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than April 20, 2024. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

D. Release of Claims

For those Class Members who do not opt out and Aggrieved Employees, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released any and all class claims that are alleged in the Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the Complaint, through the Class Period. This release excludes the release of claims not permitted by law. The Released Class Claims exclude claims for workers' compensation or unemployment insurance benefits. This release will cover all Class Members who do not opt out.

Aggrieved Employees will be deemed to have released any and all claims that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in the Complaint and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the Complaint during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

The individuals released ("Released Parties") include Defendant, as well as Defendant's officers, shareholders, directors, agents, employees, attorneys, and insurers.

Class Members and/or Aggrieved Employees can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if they have questions about the released claims and what they mean.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

If you wish to be a Participating Class Member and believe your workweek information is accurate, **you do not need to take any further action.** Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement as a Class Member

The Court will exclude you from being a Class Member if you request this by **April 20, 2024**. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (*i.e.*, “opt out”) by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or wants to be excluded from this Settlement; (c) identify the case name and number (*i.e.* Downard v. Sierra Mental Wellness Group, S-CV-0049587); (d) be signed; and (e) be post-marked no later than **April 20, 2024**. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

ILYM Group, Inc.
P.O. Box 2031
Tustin, CA 92781

If you submit a request to opt out which is not postmarked by April 20, 2024, your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not receive their share of the Net Settlement Amount. Aggrieved Employees cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. The objection must (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (*i.e.* Downard v. Sierra Mental Wellness Group, S-CV-0049587) (e) be signed; and (f) be post-marked no later than April 20, 2024. The objection must be sent to the Settlement Administrator at the address identified in Section III.B and to counsel for Plaintiff and Defendant at the addresses identified in Section VI of this notice.

If you have submitted a written objection as outlined above, you may also appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney. You should also file a notice of intent to appear with the Court and serve the notice on counsel for Plaintiff and Defendant.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and Aggrieved Employee, will release Defendant and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Defendant in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendant and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 42, Hon. Howard G. Gibson Courthouse (Main Courthouse), 10820 Justice Center Drive Roseville, CA 95678 on June 4, 2024, at 8:30 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court also will be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representative's Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court at the Settlement Administrator's website: www.ilymgroupclassaction.com/sierramentawellness. You can also contact Class Counsel or Defendant's Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiff

Ronald E. Enabnit
Matheny Sears Linkert & Jaime, LLP
3638 American River Drive
Sacramento, CA 95864
Telephone: (916) 978-3434
Facsimile: (916) 978-3430
On behalf of Defendant

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL 888-250-6810.

BY ORDER OF THE COURT

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Renald Konini (Cal. State Bar No. 312080)
Shimoda & Rodriguez Law, PC
3 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
4 Telephone: (916) 525-0716
Facsimile: (916) 760-3733

5 Attorneys for Plaintiff JESSE DOWNARD
6 individually and on behalf of similarly situated employees

7
8 **SUPERIOR COURT OF CALIFORNIA**

9 **FOR THE COUNTY OF PLACER**

10 JESSE DOWNARD, individually and on
11 behalf of all other similarly situated
12 employees,

13 Plaintiff,

14 vs.

15 SIERRA MENTAL WELLNESS GROUP, a
16 California Corporation; and DOES 1 to 100,
inclusive,

17 Defendants.
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Case No. S-CV-0049587

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: June 4, 2024

Time: 8:30 a.m.

Dept.: 42

Judge: Hon. Trisha Hirashima

Filed: December 19, 2022

FAC Filed: March 27, 2023

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement (“Motion”) in the above
3 referenced case came before this Court, on June 4, 2024, at 8:30 a.m., in Department 42 before the
4 Honorable Trisha Hirashima, presiding. Named Plaintiff Jesse Downard (“Plaintiff”) filed this
5 putative class action on December 19, 2022. The operative Complaint alleges that Defendant Sierra
6 Mental Wellness Group (“Defendant”) violated California law by 1) failing to pay overtime wages, 2)
7 failing to pay minimum wages, 3) failing to provide meal periods, 4) failing to provide rest periods, 5)
8 failing to provide accurate wage statements, 6) failing to timely pay all final wages, 7) failing to
9 reimburse employees for incurred expenses, and 8) by engaging in unfair competition. Plaintiff has
10 also alleged Defendant is liable for a civil penalties under the Private Attorneys General Act
11 (“PAGA”) based on these violations. Plaintiff sought attorneys’ fees and costs as part of this Action.
12 Defendant denied all of Plaintiff’s claims and denied that this case was appropriate for class treatment.
13 No class has been certified. The class settlement was preliminarily approved by this Court on January
14 22, 2024.

15 The parties have agreed to settle the class and PAGA claims. Defendant will provide monetary
16 consideration in exchange for a release of claims consistent with the terms of the proposed settlement
17 as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
18 (“Agreement” or “Settlement”). Any capitalized terms herein shall have the same meaning as set forth
19 in the Agreement. The Court, having received and considered Plaintiff’s Motion for Final Approval of
20 Class Action and PAGA Settlement, the declarations in support, the Agreement, the proposed Notice
21 of Settlement, and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS
22 FOLLOWS:

23 **I. CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF CLASS**
24 **REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

25 The Court finds that certification of the following class for settlement purposes only is
26 appropriate under the California Code of Civil Procedure and related case law:

27 All hourly non-exempt employees who have worked, or continue to work,
28 for Defendant in California as clinicians, nurses, psychologists, or similar

positions responsible for providing care to patients at any point between December 19, 2018, to December 9, 2023.

The Court recognizes that the foregoing definition is for Class Member identification purposes only and is not intended to capture the claims at issue or limit or alter the released claims under the Agreement. A Class Member shall not include the four individuals who timely opted out of the class settlement as identified in paragraph 11 of the declaration of Nathalie Hernandez, which include Benita Priestley, Bonnie Sayers, Emily Clark, and Janet Brown. These individuals shall not be bound by the Agreement or any of the releases or obligations therein except for the releases and covenants regarding to the PAGA claims as set forth in sections 1.31 and 6.2 as they are still Aggrieved Employees under the Agreement and there is no ability to opt out of a PAGA settlement.

For settlement purposes only, the Court finds that Class Members meet the ascertainability and numerosity requirements since the parties can identify with a matter of certainty, based on payroll records, individuals who fall within the definition and the number of Class Members would make joinder impractical. The commonality and predominance requirements are met for settlement purposes since there are questions of law and fact common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's contentions that Defendant caused the violations outlined above by 1) failing to incorporate the value of on-call earnings when calculating the regular rate of pay for premium purposes such as overtime, double time, sick leave, and meal and rest period premiums, 2) failing to have enough staff to provide meal and rest periods to Plaintiff and putative class members, 3) engaging in rounding practices, rounding of putative class members' hours despite being able to record actual hours worked down to the minute, and lack of rounding policy and its failure to inform Plaintiff and putative class members of its rounding practices, and 4) failing to reimburse Plaintiff and putative class members for use of their personal cell phone and internet for work purposes. The PAGA, waiting time penalty, wage statement violation, and unfair competition claims also derive from these violations. Additionally, Class Members seek the same remedies under state law. The typicality requirement for settlement purposes is also satisfied since the claims of the Class Representative is based on the same facts and legal theories as those applicable to the class members.

1 The Court also finds that certifying the settlement class is required to avoid each Class Member
2 from litigating similar claims individually. This Settlement will achieve economies of scale for Class
3 Members with relatively small individual claims and conserve the resources of the judicial system.

4 The Court finds that Plaintiff Jesse Downard and Plaintiff's counsel, Galen T. Shimoda,
5 Justin P. Rodriguez, and Renald Konini of Shimoda & Rodriguez Law, PC, to be adequate
6 representatives of the settlement class. The Court appoints them as Class Representative and Class
7 Counsel, respectively.

8 **II. APPROVING CLASS ACTION AND PAGA SETTLEMENT**

9 The Court has again reviewed the preliminarily approved Agreement, which was submitted with
10 Plaintiff's Motion as Exhibit A. The Court finds that final approval is warranted as the Settlement falls
11 within the range of reasonableness and is fair, reasonable, and adequate for the class. The Court also
12 finds the Settlement was agreed upon only after extensive investigation, litigation, and arms-length
13 negotiations by counsel experienced in complex litigation, who took reasonable steps and measures to
14 weigh the potential value of the disputed claims against the risks of continued litigation. Class Members
15 were able to object to the Agreement and its terms through the administrative process and at a fairness
16 hearing or opt-out of being bound by the preliminarily approved Agreement.

17 No objections were made by Class Members and only four (4) Class Members opted out of the
18 settlement. Because the Court finds the Parties' settlement to have been agreed upon only after an
19 extensive investigation and arms-length negotiations, and in an attempt to avoid further delays and costs,
20 the Court gives final approval to the Agreement and all terms therein as if stated here in full, including
21 the \$450,000 Gross Settlement Amount, which will be funded in two installment payments of \$225,000.
22 Defendant will fund the first installment payment on May 14, 2024, and the second installment payment
23 on August 14, 2024.

24 Class Counsel sought an award of attorneys' fees of \$157,500, attorney's costs of \$6,245.68, an
25 Enhancement Payment to the Class Representative in the amount of \$15,000, and for Settlement
26 Administrator Costs in the amount of \$7,750. Defendant does not oppose these requests. The Notice of
27 Settlement sent to Class Members included information regarding these amounts and that they would be
28

1 requested in connection with final approval of the Agreement. Class Members have been given the
2 opportunity to object to these amounts and no objections have been submitted in any respect whatsoever.

3 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
4 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits that
5 Plaintiff and Class Counsel were able to negotiate on behalf of Class Members can be accurately traced
6 as set forth in the Agreement, and the fee can be shifted with exactitude to those benefiting as the fee
7 request is a specific, lump-sum percentage of the Gross Settlement Amount. *See Laffitte v. Robert Half*
8 *Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 271
9 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980) (“A lawyer who recovers a
10 common fund for the benefit of persons other than . . . her client is entitled to a reasonable attorney’s fee
11 from the fund as a whole.”). The Court finds the attorneys’ fees request of Thirty Five Percent (35%) of
12 the Gross Settlement Amount, *i.e.* \$157,500, to be appropriate compensation for Plaintiff’s Counsel.
13 The attorneys’ fees request is within the range of percentages that have been approved by other Courts
14 in similar cases and is reasonable in light of the circumstances of this case, the substantial and beneficial
15 results obtained on behalf of Class Members, Aggrieved Employees and the LWDA, and the contingent
16 nature of the recovery over the course of this case, which included potential loss at summary judgment
17 and/or trial proceedings. Additionally, the Court orders that \$6,245.68 of the Gross Settlement Amount
18 will be paid to Plaintiff’s Counsel for reasonable costs incurred in this case.

19 The Court orders and approves ILYM Group, Inc., to act as the Settlement Administrator in this
20 case. The Settlement Administrator will take its fees out of the Gross Settlement Amount, which are
21 \$7,750. Any difference between the actual Settlement Administrator Costs and the approved amount
22 will be added to the Net Settlement Amount for distribution between the Participating Class Members
23 pro rata as set forth in the Agreement.

24 The Court orders that Plaintiff will receive an Enhancement Payment of \$15,000 from the Gross
25 Settlement Amount for his work on behalf of the Class Members, Aggrieved Employees and the LWDA
26 and in exchange for his general release of all his individual claims in addition to any amount Plaintiff
27 may be entitled to under the Agreement’s pro rata distribution formula.
28

1 The Court approves of the Twenty Thousand Dollars (\$20,000) PAGA Payment, which shall be
2 paid from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the
3 alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and
4 Workforce Development Agency (“LWDA”) and Twenty-Five percent (25%) will be paid to Aggrieved
5 Employees on a pro rata basis as described in the Agreement. The Court also finds that the Agreement
6 provides a recovery that creates an effective, substantial deterrent to any potential future non-
7 compliance, furthering the purpose of the Labor Code and LWDA.

8 The Court approves of the identified *cy pres* beneficiaries and distribution plan wherein any
9 checks issued to Participating Class Members and/or Aggrieved Employees that are not cashed by the
10 deadline to do so shall be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for
11 Workers’ Rights. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718 (2006). No portion of the
12 Gross Settlement Amount will revert to Defendant for any reason.

13 The releases and waivers for Class Members who did not opt out of being bound by the
14 Agreement (*i.e.* Participating Class Members), Aggrieved Employees, and the Class Representative are
15 also approved by the Court as set forth in the Agreement.

16 **III. APPROVAL OF THE DISTRIBUTION METHOD OF NOTICE TO THE CLASS,**
17 **INCLUDING THE NOTICE OF SETTLEMENT**

18 The Court finds that the Notice of Settlement, which was submitted with Plaintiff’s Motion as
19 Exhibit A to the Declaration of Nathalie Hernandez, fairly and adequately advised Class Members of the
20 terms of the Agreement, the rights being waived, their right to opt out, the ability to dispute the number
21 of workweeks worked during the Class Period, their pro rata share of the Net Settlement Amount, how
22 to participate in the settlement, how to file documentation in opposition to the proposed settlement, and
23 when to appear at the fairness hearing. The Court further finds that the Notice of Settlement and
24 proposed distribution of such notice by first class mail to each identified Class Member at his or her
25 most recent address based on a National Change of Address database search from the Class Members’
26 last known address and a skip trace on any Class Members who have the Notice of Settlement returned
27 as “undeliverable” or “not at this address” comported with all constitutional requirements, including
28 those of due process.

IV. IMPLEMENTATION SCHEDULE

Accordingly, with good cause shown, the Court hereby approves and orders that the following implementation schedule be adhered to:

Last day for Defendant to fund first installment payment	May 14, 2024
Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts to Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 7 calendar days after the Effective Date
Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after Defendant has fully funded the settlement
Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

FINAL APPROVAL AND HEARING

IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to

1 the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved
2 Agreement pursuant to California Civil Procedure Code section 664.6.

3 **IT IS SO ORDERED.**

4
5 Date: _____

By: _____
Judge of the Superior Court

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Justin P. Rodriguez (Cal. State Bar No. 278275)
2 Renald Konini (Cal. State Bar No. 312080)
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5 Attorneys for Plaintiff JESSE DOWNARD
6 individually and on behalf of similarly situated employees

7
8
9 **SUPERIOR COURT OF CALIFORNIA**
10 **FOR THE COUNTY OF PLACER**

11 JESSE DOWNARD, individually and on
12 behalf of all other similarly situated
13 employees,

14 Plaintiff,

15 vs.

16 SIERRA MENTAL WELLNESS GROUP, a
17 California Corporation; and DOES 1 to 100,
18 inclusive,

19 Defendants.
20
21
22
23

Case No. S-CV-0049587

CLASS ACTION

PROOF OF SERVICE

Date: June 4, 2024

Time: 8:30 a.m.

Dept.: 42

Judge: Hon. Trisha Hirashima

Filed: December 19, 2022

FAC Filed: March 27, 2023

Trial Date: None Set

Downard v Sierra Mental Wellness Group
Placer County Superior Court of California S-CV-0049587

**PROOF OF SERVICE — CCP §§ 1010.6, 1013a and 2015.5
and California Rules of Court, Rule 1.21, Rule 2.150, and Rule 2.251**

I, Shaniya Baird, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action.

On May 7, 2024, I served the following documents on the party below:

- **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**
- **MEMORANDUM OF POINTS & AUTHORITES IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**
- **EXHIBIT LIST AND EXHIBITS IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**
- **DECLARATION OF JUSTIN P. RODRIGUEZ IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**
- **DECLARATION OF JESSE DOWNARD IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**
- **DECLARATION OF NATHALIE HERNANDEZ OF ILYM GROUP, INC., IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- **[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**

Ronald E. Enabnit Matheny Sears Linkert & Jaime, LLP 3638 American River Dr Sacramento, CA 95864 Telephone: 916-978-3434 Facsimile: 916-978-3430 E-mail: renabnit@mathenysears.com msilva@mathenysears.com	
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[] [By Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth

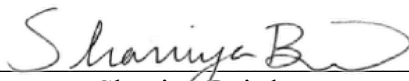
1 above, I served the aforementioned document(s) on the parties in said action
2 by placing a true copy thereof enclosed in a sealed envelope with postage
3 thereon fully prepaid, for collection and mailing on this date, following
ordinary business practices, at Sacramento, California, addressed as set forth
above.

4 [] [By Personal Service] By personally delivering a true copy thereof to the
office of the addressee above.

5 [XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s)
6 shown above. No error was reported by the e-mail service that I used.

7 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
personally delivered via the following overnight courier service: _____.

8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct, and that this declaration was executed on May 7, 2024, at Salt Lake
10 City, Utah.

11 
12 _____
Shaniya Baird