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6 individually and on behalf of similarly situated employees

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

11 ANA ARMAS, individually and on behalf of
12 all other similarly situated employees,

13 Plaintiff,

14 vs.

15 VIENNA CONVALESCENT HOSPITAL,
16 INC., a California Corporation; and DOES 1 to
17 100, inclusive,

18 Defendants.

Case No. STK-CV-UOE-2023-0003403

*Assigned for All Purposes to Hon. Blanca A.
Banuelos, Department 10B*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION TO APPROVE PRIVATE
ATTORNEYS GENERAL ACT
SETTLEMENT**

Date:
Time: 9:00 a.m.
Dept.: 10B
Judge: Hon. Blanca A. Banuelos

Filed: April 6, 2023
Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on _____, at 9:00 a.m., or as soon thereafter as the matter may
3 be heard in Department 10B of the above-entitled Court, Plaintiff Ana Armas (“Plaintiff”) will move for
4 entry of an Order for the following:

- 5 1. Finding that Plaintiff exhausted administrative remedies under the Private Attorneys General
6 Act (“PAGA”) and, as such, was authorized to enter into this settlement on behalf of the
7 Labor and Workforce Development Agency;
- 8 2. Approving the \$50,000 PAGA Settlement, which is incorporated by reference as if stated
9 here in full;
- 10 3. Approving the application for payment to Plaintiff's Counsel of reasonable costs in the
11 amount of \$2,806.71;
- 12 4. Approving the appointment of ILYM Group, Inc. as the Settlement Administrator and for
13 payment to ILYM Group, Inc., for administering said settlement in the amount of \$3,850.00;
- 14 5. Approving the application for payment to Plaintiff's Counsel of reasonable attorneys' fees of
15 35% of the Gross Settlement Amount;
- 16 6. Approving the application for an Enhancement Payment of \$5,000 to Plaintiff from the Gross
17 Settlement Amount for her work on behalf of the Aggrieved Employees and the LWDA and
18 in exchange for her general release of all her individual claims in addition to any amount
19 Plaintiff may be entitled to under the Agreement's pro rata distribution formula.
- 20 7. Approving as to form and content the proposed Notice of Settlement, which provides
21 individuals within the scope of the Settlement information regarding the Settlement;
- 22 8. Approving the proposed procedures to notify, and deliver payment to, the individuals within
23 the scope of the Settlement;
- 24 9. Directing Defendant to report employment information, including social security numbers, to
25 the Settlement Administrator to administer the settlement proceeds;
- 26 10. Directing that any amount from settlement checks that were not cashed by the check cashing
27 deadline be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers
28 Rights under the doctrine of *cy pres*; and

1 11. 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 California Labor Code section 2699(1)(2) on the grounds
4 that the proposed PAGA settlement is fair, reasonable, and adequate and furthers the purpose behind the
5 asserted California Labor Code statutes in deterring non-compliance. As a result, the PAGA settlement
6 should be approved by the Court. This motion will be based on the notice of motion, memorandum of
7 points and authorities, the Declaration of Justin P. Rodriguez, the Declaration of Ana Armas, exhibits,
8 the record and files of this case, and any further oral or documentary evidence introduced at the hearing
9 of this motion.

10
11 **Tentative rulings for Law and Motion will be posted electronically by 1:30 p.m. the day before the**
12 **hearing. Any party wishing to contest or argue the tentative ruling must email the court at**
13 **civilcourtclerks@sjcourts.org that they intend to appear remotely no later than 4:00 PM on the**
14 **day before the scheduled hearing. The Department and Case Number must be in the header of the**
15 **email. The email must include the Department, Case number, Case Name, Motion, party's name**
16 **and email, date and time of the hearing, issues they plan to argue, and that they have informed the**
17 **opposing party. The party must also notify affected counsel, or unrepresented parties, that they**
18 **intend to appear, no later than 4:00 PM on the day before the scheduled hearing. Unless the Court**
19 **and opposing counsel have been notified, the tentative ruling shall become the ruling of the Court**
20 **without oral argument.**

21 Dated: September 14, 2023

Shimoda & Rodriguez Law, PC

22 By: 
23 Galen T. Shimoda
24 Justin P. Rodriguez
25 Renald Konini
26 Attorneys for Plaintiff
27
28

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Case No. STK-CV-UOE-2023-0003403

*Assigned for All Purposes to Hon. Blanca A.
Banuelos, Department 10B*

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT**

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Dept.: 10B

Judge: Hon. Blanca A. Banuelos

Filed: April 6, 2023

Trial Date: None Set

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I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT

Plaintiff Ana Armas (“Plaintiff”) seeks approval of a Private Attorneys General Act (“PAGA”) Settlement in the gross amount of \$50,000. *See generally* Exhibit A (Proposed PAGA Settlement [“Agreement”]). Plaintiff brought this PAGA lawsuit on behalf of the Labor and Workforce Development Agency (“LWDA”) and Aggrieved Employees who worked for Defendant Vienna Convalescent Hospital, Inc. (“Defendant”) (Plaintiff and Defendant sometimes collectively referred to as the “Parties”). *See generally* Exhibit B (Plaintiff’s Operative Complaint). There are approximately 110 Aggrieved Employees.

Plaintiff has alleged that Defendant failed to pay overtime wages, failed to provide meal periods or pay premiums in lieu thereof, failed to provide rest periods or pay premium in lieu thereof, failed to provide accurate wage statements, failed to pay final wages, and failed to provide paid sick leave. *See generally* Exhibit B; *see also* Declaration of Justin P. Rodriguez (“Decl. Rodriguez”), ¶¶ 2, 9-10. Defendant has denied all of Plaintiff’s allegations and any liability or wrongdoing of any kind. *See* Decl. Rodriguez, ¶ 5. 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, 9-11. The Agreement was entered into in good faith by the Parties to resolve heavily contested claims and guarantees a reasonable recovery for Aggrieved Employees and the LWDA. Accordingly, Plaintiff requests that the Court: (1) make a finding that Plaintiff has exhausted all administrative remedies and that Plaintiff is authorized to enter into the proposed Agreement on behalf of the LWDA; (2) approve the proposed Agreement as fair, reasonable, and adequate; (3) set dates for and direct distribution of payment and the Notice of Settlement (Exhibit E) to Aggrieved Employees affected by the settlement as set forth in the Agreement and (4) adopt the implementation schedule contained in the proposed order.

II. PROCEDURAL AND LITIGATION HISTORY

On January 26, 2023, Plaintiff gave written notice to the LWDA and Defendant providing facts and the legal basis for all claims asserted in the Complaint and the claims that are being resolved under

1 the Agreement. *See* Exhibit C (Plaintiff's Ltr. to the Labor and Workforce Development Agency).
2 Plaintiff also submitted the \$75.00 filing fee. *See* Decl. Rodriguez ¶ 3. The January 26, 2023, notice was
3 also sent via certified mail to Defendant on the same day. *See* Exhibit C. The LWDA did not provide
4 any response to Plaintiff's notice correspondence within the statutorily required time frame and, as a
5 result, Plaintiff became authorized to act as a Private Attorney General for the asserted claims. *See*
6 Decl. Rodriguez ¶ 3. Plaintiff filed this lawsuit on April 6, 2023, and uploaded a copy of the filed
7 Complaint to the LWDA on April 26, 2023. *See* Decl. Rodriguez ¶ 3. No trial date has been set in this
8 matter. *See id.*

9 **III. INVESTIGATION AND DISCOVERY CONDUCTED**

10 Plaintiff thoroughly investigated the merits of the claims and potential damages for such claims.
11 *See id.* at ¶¶ 6, 9-11. Plaintiff worked during the time all of Defendant's policies and practices at issue in
12 the Complaint were in effect and provided information regarding these policies and practices, enabling
13 pre-filing investigations to take place. *See* Declaration of Ana Armas ("Decl. Armas") ¶¶ 2-3, 5-6; Decl.
14 Rodriguez ¶ 7. The Parties engaged in informal discovery and exchange of documents, payroll data and
15 relevant policies for the entirety of the statute of limitations applicable to the asserted claims. The
16 discovery covered all aspects of the asserted claims, including merits issues, damages, the scope and
17 configuration of Aggrieved Employees, the content and implementation of the wage and hour policies at
18 issue, issues relating to manageability concerns at trial, among other relevant areas. *See* Decl.
19 Rodriguez ¶ 7. The information allowed Plaintiff to determine the extent and frequency of any
20 violations in accordance with Plaintiff's contentions and create an accurate damages model to assess the
21 reasonableness of any settlement. *See id.* at ¶¶ 7, 9-10.

22 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

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

24 The final settlement occurred only after extended, arm's length negotiations. Over the course of
25 approximately nine (9) months Plaintiff has been investigating the claims and discussing with
26 Defendant's counsel the merits of the claims and issues present in this case. *See id.* at ¶¶ 5-8. The
27 Parties exchanged substantial amounts of information and legal analysis in connection with these
28

1 discussions. *See id.* It was only after these extended discussions, that the Parties were able resolve all
2 claims and enter into the Agreement. *See id.* at ¶ 8.

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

4 1. The scope of Aggrieved Employees covered under the Agreement includes all nonexempt
5 employees who have or continue to work for Defendant in California from January 26, 2022, up to
6 either (1) to the Final Approval Date or (2) sixty (60) days after the Agreement is signed, whichever is
7 earlier, and who were paid any type of nondiscretionary remuneration in addition to their base hourly
8 rate, including, but not limited to, performance bonuses, shift differentials, or other types of bonuses.
9 *See Exhibit A, ¶ 1.2.* There are approximately 110 Aggrieved Employees. *See id.*

10 2. Defendant will pay the Gross Settlement Amount of \$50,000. *See id.* at ¶ 5.1. No
11 portion of the Gross Settlement Amount will revert to Defendant. *See id.* at ¶ 5.5.

12 3. Subject to Court approval, the Parties have selected ILYM Group, Inc. to act as the
13 Settlement Administrator, who has provided a maximum cost estimate of \$3,850. *See Exhibit D (ILYM*
14 *Group, Inc. Quote); Exhibit A, ¶ 1.27; Decl. Rodriguez, ¶ 21.*

15 4. The Parties agree that up to thirty-five percent (35%) of the Gross Settlement Amount
16 (\$17,500) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendant will
17 not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2.
18 Additionally, the Parties agree that Plaintiff will also be entitled to the actual litigation costs as approved
19 by the Court in an amount not to exceed \$4,000. *See id.* At the time this motion was filed, the estimated
20 total costs incurred and that will be incurred in the future as a result of the litigation and implementing
21 the terms of the Agreement are \$2,806.71. *See Decl. Rodriguez ¶ 20; Exhibit G (Plaintiff's Itemized*
22 *Costs).*

23 5. The parties agree that Plaintiff will be paid an Enhancement Payment of up to \$5,000.00
24 for the work performed on behalf of the LWDA and Aggrieved Employee as well as for the general
25 release of all Plaintiff's individual claims. *See Exhibit A. at ¶¶ 1.8, 5.4; See Decl. Rodriguez, ¶¶ 7, 20;*
26 *see generally Decl. Armas.* No other Aggrieved Employee is subject to this type of release and waiver
27 of individual claims. *See Decl. Rodriguez, ¶ 20; see Decl. Armas ¶ 8.* This amount will be in addition
28

1 to any amount Plaintiff may be entitled to under the terms of the Agreement. *See* Exhibit A. at ¶¶ 1.8,
2 5.4.

3 6. Any allocated amounts under the Agreement for Settlement Administrator Costs,
4 Enhancement Payment, and attorney's fees and costs that are not ultimately awarded by the Court will
5 remain part of the Net Settlement Amount and be paid out to the LWDA and Aggrieved Employees as
6 set forth in the Agreement. *See* Exhibit A, ¶¶ 1.2, 1.11, 1.13, 1.14, 1.17, 1.8, 5.1-5.4. These amounts
7 will be paid from the Gross Settlement Amount, not in addition to the Gross Settlement Amount. *See id.*
8 at ¶¶ 1.14, 1.17, 1.8, 5.1-5.4.

9 7. Any and all claims for civil penalties under the PAGA that asserted in the Complaint or
10 that could have been asserted based on the facts alleged will be deemed fully, finally, and forever
11 released against the Released Parties. *See* Exhibit A, ¶¶ 1.16, 1.25-1.26, 6.1-6.2.

12 8. The Settlement Administrator will perform searches to locate Aggrieved Employees
13 based on the last contact information in Defendant's possession. *See id.* at ¶¶ 7.1, 7.6-7.7. The searches
14 will include reference to the U.S. Postal Service's National Change of Address Database and, for any
15 notice returned as undeliverable, skip tracing using the individual's social security number and other
16 pertinent identifying information. *See id.* Although not required to provide a notice of settlement to
17 Aggrieved Employees in connection with the Individual Settlement Amount, the Agreement provides
18 that Aggrieved Employees will receive a notice giving them information concerning all material terms
19 of the settlement. *See id.* at ¶ 7.5; Exhibit E; *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL
20 1340777, at *5 (N.D. Cal. 2010) ("Unnamed employees need not be given notice of the PAGA claim,
21 nor do they have the ability to opt-out of the representative PAGA claim"); *see also Arias v. Superior*
22 *Ct.*, 46 Cal.4th 969, 984-988 (2009) (rejecting a defendant's due process argument that aggrieved
23 employees must be given notice similar to class members in class actions).

24 9. For any portion of the Net Settlement Amount allocated to Aggrieved Employees that is
25 not claimed by them by cashing their respective settlement checks within 180 days of issuance, the
26 remaining amount shall be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for
27 Workers' Rights under the doctrine of *cy pres*. *See* Exhibit A, at ¶ 5.5. The designated beneficiaries
28 clearly promote the law consistent with the objectives and purposes underlying the lawsuit, as they are

1 non-profits aimed at assisting employees with wage and hour claims who cannot afford legal
2 representation, including providing representation for employees in wage claims before the California
3 Labor Commissioner. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718, 720, 722-724 (2006);
4 *see also* Decl. Rodriguez, ¶¶ 24-31.

5 **c. Allocation of Settlement Funds**

6 A Net Settlement Amount will be determined by subtracting from the Gross Settlement Amount
7 any attorneys' fees and costs, Plaintiff's Enhancement Payment, and Settlement Administrator Costs
8 awarded by the Court. *See* Exhibit A, ¶¶ 1.11, 1.14, 1.8, 5.1-5.4. The Net Settlement Amount shall be
9 divided between the PAGA Payment and payment to Aggrieved Employees. The PAGA Payment to the
10 LWDA will be 75% of the Net Settlement Amount. *See* Cal. Lab. Code § 2699(i). 25% of the Net
11 Settlement Amount will be paid to Aggrieved Employees *See id.* Each Individual Settlement Amount
12 shall be determined by taking the Qualifying Pay Periods for the individual Aggrieved Employee and
13 dividing that by the Qualifying Pay Periods for all Aggrieved Employees and multiplying that fraction
14 by the 25% share of the Net Settlement Amount. *See* Exhibit A, ¶¶ 1.2, 1.12, 1.14, 1.24, 5.8.

15 **V. THE AGREEMENT SHOULD BE APPROVED AS PLAINTIFF MET ALL**
16 **STATUTORY REQUIREMENTS FOR PROCEEDING WITH THE PAGA CLAIM AND**
17 **THE AGREEMENT IS FAIR, REASONABLE, AND ADEQUATE**

18 A PAGA settlement is not effective unless the statutory requirements for becoming an authorized
19 representative of the LWDA have been complied with and the Court has reviewed and approved the
20 terms of the PAGA settlement. *See* Cal. Lab. Code §§ 2699(1)(2), 2699.3(a), (c). The Court has broad
21 discretion in making the decision to approve or reject a settlement for civil penalties as the statutory
22 scheme authorizes the Court to determine whether, in certain circumstances, penalties should be
23 assessed and, if assessed, the appropriate amount of penalties based on the facts and circumstances of
24 the case. *See id.* at § 2699(e)(1)-(2). In evaluating a PAGA settlement, the Court must determine
25 "whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law
26 violations, deter future ones, and to maximize enforcement of state labor laws." *Moniz v. Adecco USA,*
27 *Inc.*, 72 Cal.App.5th 56, 77 (2021). In setting this standard, the *Moniz* Court invoked the same
28 established framework Courts use to evaluate whether class action settlements are fair, reasonable, and
adequate. *See id.*; *see also* *Chamberlain v. Baker Hughes, a GE Co., LLC*, 2020 WL 4350207, *4 n.5

(E.D. Cal. 2020) (expressly incorporating the multi-factor test used in class cases); *O'Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1132-1134 (N.D. Cal. 2016) (evaluating the settlement by comparing the amount paid in relation to the likely available damages and risks of litigation); *Jordan v. NCI Group, Inc.*, 2018 WL 1409590, *1–*2 (C.D. Cal. 2018) (same). This framework has been used many times over by multiple Courts. *See, e.g., Salazar v. Sysco Cent. Cal., Inc.*, 2017 U.S. Dist. LEXIS 14971, *6, n.4-5 (E.D. Cal. 2017); *Juarez v. Villafan*, 2017 U.S. Dist. LEXIS 137205, *5 n.4 (E.D. Cal. 2017); *Ramirez v. Benito Valley Farms, LLC*, 2017 U.S. Dist. LEXIS 137272, *8-9 (N.D. Cal. 2017); *Gutilla v. Aerotek, Inc.*, 2017 U.S. Dist. LEXIS 41655, *7, n.4 (E.D. Cal. 2017); *Smith v. H.F.D. No. 55, Inc.*, 2018 U.S. Dist. LEXIS 67192, *6 (E.D. Cal. 2018); *Rincon v. W. Coast Tomato Growers, LLC*, 2018 U.S. Dist. LEXIS 22886, *6 (S.D. Cal. 2018); *Patel v. Nike Retail Services, Inc.*, 2019 WL 2029061 at *2 (N.D. Cal. 2019). An important difference in the analysis, however, is that the evaluation should focus on the amount of the settlement as a whole rather than any individual aggrieved employee's share because a PAGA lawsuit is fundamentally a law enforcement action where the "relief is designed to protect the public[,] not to benefit private parties." *See Moniz*, 72 Cal.App.5th at 74 (internal quotation and citations omitted).

a. Plaintiff has Met All Statutory Requirements For Proceeding With A PAGA Claim

An aggrieved employee must give written notice of the facts, theories, and statutes supporting the violations to the LWDA by online filing and by certified mail to the employer as well as pay a filing fee of \$75.00. *See* Cal. Lab. Code §§ 2699.3(a)(1)(A)-(B), (c)(1)(A)-(B). An "aggrieved employee" means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed." *id.* at § 2699(c). If the LWDA does not provide notice of its intent to investigate within 65 calendar days of the notice, the aggrieved employee may commence a civil action. *See id.* at §§ 2699.3(a)(2)(A), 2699.5. For alleged violations of the Labor Code sections not enumerated in section 2699.5, an aggrieved employee may commence a civil action if the employer has not cured the alleged violations within 33 calendar days of the notice. *See id.* at § 2699.3(c)(2)(A). An aggrieved employee must also submit a copy of any proposed PAGA settlement to the LWDA at the same time the agreement is submitted to Court. *See id.* at § 2699(l)(2).

1 As set forth above, Plaintiff complied with all statutory requirements to commence a civil action.
2 See Decl. Rodriguez ¶ 3; Exhibit C. The notice letter to the LWDA sets forth all claims and theories of
3 liability stated in the Complaint as well as supporting facts. See Exhibit C. Plaintiff also paid the
4 \$75.00 filing fee. See Decl. Rodriguez ¶ 3. As the LWDA did not provide any notice of its intent to
5 investigate within the required time frame and no cure under the statute took place, Plaintiff is
6 authorized resolve those claims contained in the notice letter(s) and the operative Complaint. See *id.*;
7 Exhibit B; Exhibit C. Furthermore, Plaintiff has provided a copy of the Agreement *and* this entire
8 motion for approval to the LWDA for its consideration at the same time this motion was filed. See
9 Rodriguez ¶ 22; Exhibit F (Proof of Submission of Proposed Settlement Agreement to LWDA).

10 **b. The Terms of The Settlement Are Fair, Reasonable, and Adequate**

11 Factors to consider in determining whether the PAGA Settlement Agreement is fair, reasonable,
12 and adequate include the strength of the case, the risk, expense, complexity and likely duration of further
13 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
14 extent of discovery completed and the stage of the proceedings, and the experience and views of
15 counsel. See *Chamberlain*, 2020 WL 4350207, *4 n.5; *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
16 1801 (1996). However, this Court should begin its analysis with a presumption that the proposed
17 settlement is fair. “A presumption of fairness exists where: (1) the settlement is reached through arm’s
18 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
19 intelligently; (3) counsel is experienced in similar litigation” *Dunk*, 48 Cal.App.4th at 1802.
20 Indeed, the law favors settlement of lawsuits, particularly complex litigation cases where substantial
21 resources can be conserved by avoiding the time, expense, and rigors of formal litigation. See *Neary v.*
22 *Regents of Univ. of Cal.*, 3 Cal.4th 273, 277-81 (1992); *In re Synacor ERISA Litigation*, 516 F.3d 1095,
23 1101 (9th Cir. 2008);.

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

26 Settlement of the PAGA claims was reached only after substantial litigation and extensive arm’s
27 length negotiations lasting nearly nine (9) months. See Decl. Rodriguez, ¶¶ 6-8. At all times, the
28 negotiations were adversarial, although still professional in nature. See *id.*

1 **ii. The Extent of Investigation and Discovery Completed Provided Ample**
2 **Information to Enter into an Informed and Reasonable Settlement**

3 The Parties were in possession of all necessary information during the negotiations. The Parties
4 engaged in substantial informal discovery, which included all necessary components for evaluating the
5 PAGA claims and creating an accurate damages model. *See id.* at ¶¶ 6-11. Plaintiff was in possession
6 of this information prior to calculating any damages in this case. *See id.* As a result, Plaintiff was able
7 to make a reasonable estimation of Defendant's potential liability. *See id.* For these reasons, the
8 settlement now before the Court was reached at a stage where “the parties certainly have a clear view of
9 the strengths and weaknesses of their cases” sufficient to support the settlement. *See Boyd v. Bechtel*
10 *Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

11 **iii. Plaintiff's Counsel is Experienced in Similar Litigation**

12 Plaintiff's counsel have considerable experience in complex litigation such as class and PAGA
13 actions. *See Decl. Rodriguez*, ¶¶ 13-19. Thus, Plaintiff's counsel are qualified to evaluate the PAGA
14 claims, the value of settlement versus moving forward with litigation, and viability of possible
15 affirmative defenses. Plaintiff's counsel believe that the Agreement is fair, reasonable, and adequate in
16 light of the risks associated with the claims, the uncertainties of complex litigation, and the secured
17 benefit to Aggrieved Employees and the LWDA that the Agreement provides. *See id.* at ¶¶ 9-11.

18 **iv. The Settlement is Fair and Reasonable Based on the Strength of Plaintiff's Case**
19 **and the Risks and Costs of Further Litigation**

20 Plaintiff's claims and the manageability of the litigation proceeding as a PAGA action were
21 heavily disputed by Defendant. *See Decl. Rodriguez*, ¶¶ 5-9. Based on the records and facts of this
22 case, Plaintiff has secured a gross recovery of approximately 27.8% of the realistic maximum value of
23 the claims in this matter and between 40% and 154% of the realistic recovery after accounting for
24 potential discretionary reductions to any civil penalties by the Court. *See Decl. Rodriguez*, ¶¶ 9-11; *See*
25 *Cal. Lab. Code § 2699(e)(1)-(2)*. The \$50,000 Gross Settlement Amount is a reasonable compromise
26 and exceeds approved settlement ranges in other PAGA cases whether comparing either absolute
27 numbers or as a percentage of total available damages. *See Junkersfeld v. Med. Staffing Sols., Inc.*, 2022
28 WL 2318173, at *8 n.2 (E.D. Cal. 2022) (collecting cases with PAGA settlement values ranging from

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

v. The Proposed Settlement is a Reasonable Compromise of Claims

In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), the Court required additional information be presented in representative action settlements “to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399 (2010), clarified that *Kullar* does not require an illusory prediction of the outer reaches of exposure without taking into account the actual risks of litigation such as dispositive motions and trial. *Kullar*

1 also does not require an explicit statement of the maximum amount to be recovered if Plaintiff prevailed
2 on all the claims, provided there is a record that allows “an understanding of the amount that is in
3 controversy and the realistic range of outcomes of the litigation.” *Id.* at 409.

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

14 **VI. THE AMOUNTS REQUESTED FOR ATTORNEY’S FEES AND COSTS,**
15 **ENHANCEMENT PAYMENT, AND SETTLEMENT ADMINISTRATOR COSTS ARE**
16 **REASONABLE AND SHOULD BE APPROVED**

17 **i. The Requested Attorney’s Fees and Costs Are Justified as a Percentage of the**
18 **Common Fund**

19 California state and federal courts have recognized that when a litigant’s efforts create or
20 preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally
21 among all the beneficiaries to compensate those who created the fund. *See Boeing Co. v. Van Gemert*,
22 444 U.S. 472, 477-481 (1980) (“A lawyer who recovers a common fund for the benefit of persons other
23 than . . . his client is entitled to a reasonable attorney’s fee from the fund as a whole.”); *Vincent v.*
24 *Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375
25 (1970); *see also* *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1
26 Cal.5th 480, 506 (2016); *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026, 1027 (9th Cir.
27 1977). Courts have approved use of a percentage of the fund to calculate reasonable attorney fee awards
28 where the amount of the settlement is certain or is an easily calculable sum of money. *See Dunk*, 48
Cal.App.4th at 1808. The Ninth Circuit has also held that the common fund doctrine applies when: (1)

1 the class of beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the
2 fee can be shifted with some exactitude to those benefitting. *See Paul, Johnson, Alston & Hunt v.*
3 *Graulity*, 886 F.2d 268, 271 (9th Cir. 1989). These criteria are “easily met” when “each member of a
4 represented group has an undisputed and mathematically ascertainable claim to part of a lump-sum
5 settlement recovered on his behalf.” *Id.* at 271 (citations omitted).

6 Although this litigation is under the PAGA and not a class action, the basis for a common fund
7 applies with equal force. The three (3) factors set forth in *Paul, Johnson, Alston & Hunt*, exist in this
8 case because there is a sufficiently identifiable class of beneficiaries (*e.g.* Aggrieved Employees and the
9 LWDA), the benefits can be accurately traced to the Agreement Plaintiff and Plaintiff counsel were able
10 to negotiate on behalf of the LWDA and Aggrieved Employees, and the fee can be shifted with
11 exactitude to those benefitting as the fee request is a specific, lump-sum of the common fund.

12 Historically, attorneys’ fee awards in common fund cases in general range from 20% to 50% of
13 the fund, depending on the circumstances of the case. *See Newberg on Class Actions*, (3rd Ed. 1992),
14 §14.03 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are
15 generally approved as reasonable in representative litigation settlements below \$10 million. *See Martin*
16 *v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011) (collecting cases); *Birch v.*
17 *Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a
18 \$16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern
19 District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class
20 action settlement). Plaintiff’s request of \$17,500 (35%) falls within these typical fee arrangements. *See*
21 *Decl. Rodriguez*, ¶ 20.

22 Plaintiff’s counsel seeks reimbursement of \$2,806.71 for the expenses they have and will
23 continue to incur while prosecuting this litigation through any compliance hearing(s). This is less than
24 the \$4,000 provided for in the Agreement. An itemization for these costs is being filed with this motion
25 as Exhibit G. All expenses were necessarily incurred to properly litigate this case. *See id.* The
26 appropriate analysis in determining whether particular costs are compensable is whether they are of the
27 type typically billed by attorneys to paying clients in the marketplace. *Harris v. Marhoefer*, 24 F.3d 16,
28 19 (9th Cir. 1994) (“Harris may recover as part of the award of attorney’s fees those out-of pocket

1 expenses that ‘would normally be charged to a fee paying client.’”); *Abrams v. Lightolier, Inc.*, 50 F.3d
2 1204, 1225 (3d Cir. 1995) (expenses recoverable if customary to bill clients for them); *Bratcher v. Bray-*
3 *Doyle Indep. Sch. Dist. No. 42*, 8 F.3d 722, 725-26 (10th Cir. 1993) (expenses reimbursable if normally
4 billed to client). The categories of expenses for which Plaintiff’s counsel seek reimbursement here are
5 categories normally charged to hourly clients and, therefore, should be reimbursed out of the common
6 fund. *See* Decl. Rodriguez, ¶ 20.

7 **ii. The Enhancement Payment to the Named Plaintiff for Her Services to the**
8 **Aggrieved Employees and the State of California As Well As For Her General**
9 **Release of All Individual Claims Is Reasonable**

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

19 In this case, Plaintiff provided and explained documents, being available at all times to discuss
20 the case with Plaintiff’s counsel. *See* Decl. Rodriguez, ¶ 7; *see generally* Decl. Armas. Plaintiff spent a
21 significant amount of time pursuing this litigation for the benefit of all Aggrieved Employees and the
22 State of California and has entered into a general release of all claims. *See id.* Payment of \$5,000 to
23 Plaintiff is appropriate given the risk, assistance, and time required in bringing this case to a resolution
24 as well as the fact that it provides consideration for Plaintiff waiving her individual claims. *See* Decl.
25 Rodriguez, ¶ 20; *see* Decl. Armas ¶ 8.

26 **iii. Settlement Administrator Costs Are Reasonable**

27 The \$3,850 in Settlement Administrator Costs is also within ranges approved by Courts and
28 should be approved in this case. *See Patel*, 2019 WL 2029061, *2 (\$5,261 for settlement

1 administrator's fees was not excessive where PAGA group consisted of 40 employees); Exhibit D;
2 Decl. Rodriguez, ¶ 21.

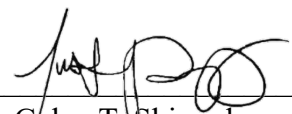
3 **VII. CONCLUSION**

4 For all of the foregoing reasons, Plaintiff respectfully requests that this Court find that Plaintiff
5 has met all statutory requirements to commence a PAGA civil action; approve the Agreement, including
6 Plaintiff's Counsel's application for reasonable attorneys' fees and costs and Settlement Administrator
7 Costs; approve the Notice of Settlement and payment distribution procedures; and adopt the
8 implementation schedule identified in the proposed order, which is being filed concurrently herewith.

9
10
11 Dated: September 14, 2023

Shimoda & Rodriguez Law, PC

12
13 By: _____


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Justin P. Rodriguez
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Attorneys for Plaintiff ANA ARMAS
individually and on behalf of similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

ANA ARMAS, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

VIENNA CONVALESCENT HOSPITAL,
INC., a California Corporation; and DOES 1 to
100, inclusive,

Defendants.

Case No. STK-CV-UOE-2023-0003403

*Assigned for All Purposes to Hon. Blanca A.
Banuelos, Department 10B*

**EXHIBIT LIST AND EXHIBITS IN
SUPPORT OF PLAINTIFF'S MOTION TO
APPROVE PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT**

Date:

Time: 9:00 a.m.

Dept.: 10B

Judge: Hon. Blanca A. Banuelos

Filed: April 6, 2023

Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Proposed Private Attorneys General Act Settlement
B	Plaintiff's Operative Complaint
C	Plaintiff's Letter to the Labor and Workforce Development Agency
D	ILYM Group, Inc. Quote
E	Proposed Notice of Settlement
F	Proof of Submission of Proposed Settlement Agreement to LWDA
G	Plaintiff's Itemized Costs

Dated: September 14, 2023

Shimoda & Rodriguez Law, PC

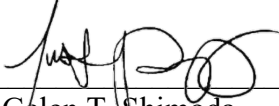
By: 
 Galen T. Shimoda
 Justin P. Rodriguez
 Renald Konini
 Attorneys for Plaintiff

EXHIBIT A

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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

ANA ARMAS, individually and on behalf of all
other similarly situated employees,

Plaintiff,

vs.

VIENNA CONVALESCENT HOSPITAL,
INC., a California Corporation; and DOES 1 to
100, inclusive,

Defendant.

Case No.: STK-CV-UOE-2023-3403

**PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT**

Filed: April 6, 2023

Trial Date: None Set

1 This Private Attorneys General Act Settlement is made and entered into between the Plaintiff Ana
2 Armas (“Plaintiff”), on behalf of herself, the State of California Labor and Workforce Development
3 Agency, and Aggrieved Employees, and Defendant Vienna Convalescent Hospital, Inc. (“Defendant”).
4 This Agreement is subject to the terms and conditions set forth below and approval of the Court.

5 **1. DEFINITIONS**

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

7 1.1 “Action” means the above stated lawsuit, *Armas v. Vienna Convalescent Hospital, Inc.*,
8 San Joaquin County Superior Court, Case No. STK-CV-UOE-2023-3403, filed April 6, 2023.

9 1.2 “Aggrieved Employee(s)” means all nonexempt employees who have or continue to work
10 for Defendant in California from January 26, 2022, up to either (1) the Approval Date, or (2) sixty (60)
11 days after this Agreement is fully executed, whichever is earlier, and who were paid any type of non-
12 discretionary remuneration in addition to their base hourly rate, including, but not limited to, performance
13 bonuses, shift differentials, or other types of bonuses. The estimated number of Aggrieved Employees is
14 110.

15 1.3 “Agreement” or “Settlement” or “Settlement Agreement” means this Private Attorneys
16 General Act Settlement.

17 1.4 “Complaint” means the operative Complaint on file in the Action with the Court.

18 1.5 “Court” means the San Joaquin County Superior Court.

19 1.6 “Defendant” means Vienna Convalescent Hospital, Inc.

20 1.7 “Defendant's Counsel” means De Castro Law Group, P.C.

21 1.8 “Enhancement Payment” means the amount approved by the Court to be paid to the
22 Plaintiff in recognition of the time and effort expended for the benefit of the Labor and Workforce
23 Development Agency and Aggrieved Employees, which is in addition to any Individual Settlement
24 Amount paid to the Plaintiff as Aggrieved Employee. Also, the payment is in exchange for a waiver of
25 individual claims by Plaintiffs, including a waiver of Civil Code section 1542.

26 1.9 “Effective Date” means the Approval Date.

27 1.10 “Approval Date” means the date the Court enters a signed order granting approval of the
28 Agreement.

1.11 “Gross Settlement Amount” is the sum of Fifty Thousand Dollars (\$50,000).

1.12 “Individual Settlement Amount” means an individual Aggrieved Employees’ allocation of the Net Settlement Amount, as defined in Section 1.14 and 5.8.

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

1.14 “Net Settlement Amount” is the portion of the Gross Settlement Amount available for distribution between Aggrieved Employees and the LWDA pursuant to Labor Code section 2699(i), after deduction of Plaintiff’s attorneys’ fees and litigation costs, Enhancement Payment, and Settlement Administrator Costs.

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

1.16 “PAGA” means Private Attorneys General Act.

1.17 “PAGA Claim Period” means from January 26, 2022, up to either (1) the Approval Date or (2) sixty (60) days after this Agreement is fully executed, whichever is earlier.

1.18 “PAGA Payment” means the 75% share of the Net Settlement Amount paid to the LWDA pursuant to Labor Code section 2699(i).

1.19 “Parties” mean Defendant and Plaintiff.

1.20 “Plaintiff” means Ana Armas.

1.21 “Plaintiff’s Counsel” means Galen T. Shimoda, Justin P. Rodriguez and Renald Konini of Shimoda & Rodriguez Law, PC.

1.22 “Plaintiff’s Released Claims” means all of Plaintiff’s individual, non-PAGA, claims arising from, could have been asserted, or related in any way to the Plaintiff’s employment with Defendant, under federal, state, or local laws, and/or ordinances, or tort or contract theories, including, without limitation, claims under the Civil Rights Act of 1964, Title VII, the California Fair Employment and House Act, the Americans with Disabilities Act and all amendments thereto, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, ERISA, the Family and Medical Leave Act, the California Family Rights Act, the Fair Labor Standards Act, the California Labor Code, the Industrial Welfare Commission Wage Orders, and the California Business and Professions Code, whether known or unknown, and whether anticipated or unanticipated, including without limitation statutory,

1 constitutional, contractual or common law claims for lost wages, unpaid wages, emotional distress,
2 punitive damages, special damages, damages, unpaid costs, penalties, liquidated damages, interest,
3 attorneys' fees, litigation costs, restitution, equitable relief or other similar relief or claims. The Plaintiff's
4 Released Claims exclude claims for workers' compensation, unemployment insurance benefits, or other
5 claims that cannot be released as a matter of law.

6 1.23 "QSF" means a Qualified Settlement Fund set up by the Settlement Administrator for the
7 benefit of the Aggrieved Employees and from which the payments under this Agreement shall be made.
8 Any amounts Defendant has agreed to pay under this Agreement shall remain the property of Defendant
9 until the payments required under the Agreement are made.

10 1.24 "Qualifying Pay Periods" are pay periods worked by Aggrieved Employees during the
11 PAGA Claim Period in California. The calculation of an Aggrieved Employees' pay periods and a
12 determination as to whether an Aggrieved Employee was actively employed in California in a particular
13 pay period shall be construed from Defendant's records.

14 1.25 "Released PAGA Claims" means any and all claims for civil penalties that were brought
15 under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, that were asserted in the Complaint
16 and any additional claims for civil penalties under the PAGA that could have been brought based on the
17 facts alleged therein during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver
18 of claims.

19 1.26 "Released Parties" means Defendant, as well as Defendant's officers, shareholders,
20 directors, agents, employees, attorneys, and insurers.

21 1.27 "Settlement Administrator" means and refers to ILYM Group, Inc., the third-party entity
22 that will administer the Agreement as outlined in Section 7, or any other third-party administrator agreed
23 to by the Parties and approved by the Court for the purposes of administering this Agreement. The Parties
24 each represent that they do not have any financial interest in the Settlement Administrator.

25 1.28 "Settlement Administrator Costs" means the fees and expenses reasonably incurred by the
26 Settlement Administrator as a result of the procedures and processes expressly required by this Agreement,
27 and shall include all costs of administering the Agreement, including, but not limited to, all tax document
28 preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and

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

12 **2. DESCRIPTION OF THE LITIGATION**

13 2.1 On or about January 26, 2023, Plaintiff sent notice to the LWDA to exhaust administrative
14 remedies under the PAGA for (1) Failure to Pay Overtime Wages, (2) Failure to Provide Meal Periods or
15 Pay Premiums in Lieu Thereof, (3) Failure to Provide Rest Periods or Pay Premium in Lieu Thereof, (4)
16 Failure to Provide Accurate Wage Statements, (5) Failure to Pay Final Wages, and (6) Failure to Provide
17 Paid Sick Leave. Plaintiff also asserted there was individual liability for several of these violations
18 pursuant to Labor Code sections 558, 558.1 (Regarding Provisions Regulating Hours and Days of Work
19 in Any Industrial Welfare Commission Order). The LWDA did not respond to the notice within the
20 statutorily required time frame and, as such, Plaintiff became authorized to act as a Private Attorneys
21 General on all alleged PAGA claims.

22 2.2 After exhausting administrative remedies, Plaintiff filed a Complaint on April 6, 2023, in
23 San Joaquin County Superior Court on behalf of herself and Aggrieved Employees for claims alleged in
24 the January 26, 2023, notice to the LWDA. The Complaint included individual and PAGA claims.

25 2.3 Through informal discovery, Defendant and Defendant's Counsel provided Plaintiff's
26 Counsel with copies of all applicable versions of its policies and procedures, employee handbooks,
27 information on the number of Aggrieved Employees, including, but not limited to, Aggrieved Employees'
28 workweeks, dates of employment, total number of Aggrieved Employees, their rates of pay, and pay

1 periods as well as timecard data and payroll reports for a randomly selected sample of Aggrieved
2 Employees.

3 2.4 After Plaintiff's Counsel received the data, the Parties engaged in informal settlement
4 negotiations, but were not initially able to come to a resolution. After months of negotiations, the Parties
5 were able to come to a resolution. At all times, the Parties' settlement negotiations have been non-
6 collusive, adversarial, and at arm's length.

7 2.5 Discussions between Plaintiff and Plaintiff's Counsel, between counsel for the Parties,
8 document productions, extensive legal analysis, the provision of information by Defendant to Plaintiff and
9 the detailed analysis of the sampled records have permitted each side to assess the relative merits of the
10 PAGA claims and the defenses to those claims.

11 2.6 In the Action, Plaintiff contends that Defendant violated California law by 1) failing to pay
12 overtime wages, 2) failing to provide meal periods or pay premiums in lieu thereof, 3) failing to provide
13 rest periods or pay premium in lieu thereof, 4) failing to provide accurate wage statements, 5) failing to
14 pay final wages, and 6) failing to provide paid sick leave. Plaintiff also alleged individual liability for
15 several of these alleged Labor Code violations under Labor Code sections 558, 558.1. Defendant has
16 denied each of Plaintiff's claims. The agreed upon Gross Settlement Amount was reached after evaluating
17 the Parties' theories of potential exposure for the PAGA claims. The Parties also assessed appropriate
18 discounts to the potential liability based on Defendant's factual and legal contentions and defenses.

19 2.7 The Parties agree that the above-described investigation and evaluation, as well as
20 discovery and the information exchanged to date, are more than sufficient to assess the merits of the
21 respective Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff,
22 Plaintiff's Counsel, Defendant, and Defendant's Counsel have concluded that it is desirable that the PAGA
23 claims asserted in the Action be settled in a manner and upon such terms and conditions set forth herein
24 in order to avoid further expense, inconvenience and distraction of further legal proceedings, and the risk
25 of an adverse outcome each of the Parties potentially face. Plaintiff, Plaintiff's Counsel, Defendant, and
26 Defendant's Counsel are of the opinion that the Agreement for the consideration and terms set forth herein
27 is fair, reasonable, and adequate in light of all known facts and circumstances.

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

2 3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose
3 of settling the PAGA claims asserted in the Action. This Agreement and the settlement it evidences are
4 made in compromise of disputed claims. The Parties enter into this Agreement and associated settlement
5 on a conditional basis in order for the Court to evaluate and approve the settlement. If the Effective Date
6 does not occur, or if the Court's approval of the settlement is reversed or materially modified on appellate
7 review, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall
8 not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the
9 Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152,
10 Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

11 3.2 Defendant has denied all claims as to liability, damages, penalties, interest, fees, injunctive
12 relief and all other forms of relief asserted in the Action. Defendant has agreed to resolve the asserted
13 PAGA claims in the Action via this Agreement, but, to the extent this Agreement is deemed void or the
14 Effective Date does not occur, Defendant does not waive, and are expressly reserving, all rights to
15 challenge all such claims and allegations in the Action upon all procedural and factual grounds, including,
16 without limitation, the ability to challenge representative or collective treatment on any grounds, as well
17 as to assert any and all other potential defenses or privileges.

18 **4. SCOPE OF THE AGGRIEVED EMPLOYEES**

19 4.1 The scope of individuals encompassed under the Agreement, who are entitled to all benefits
20 as authorized under the Agreement and subject to all obligations and duties required under the Agreement,
21 shall include all Aggrieved Employees as defined in Section 1.2.

22 4.2 Aggrieved Employees entitled to recover under this Agreement will include only those
23 individuals who are identified in Defendant's records as having worked as an Aggrieved Employee.

24 **5. TERMS OF THE SETTLEMENT**

25 The Parties agree as follows:

26 5.1 Gross Settlement Amount: In consideration and exchange for the releases described in
27 Section 6, Defendant shall pay the Gross Settlement Amount (\$50,000). Funding of the Gross Settlement
28 Amount shall occur within twenty-eight (28) calendar days after the Effective Date to be held in trust in a

1 QSF by the Settlement Administrator. The Gross Settlement Amount represents the maximum amount
2 payable under this Agreement by Defendant, and includes without limitation, the PAGA Payment, all
3 payments to the Aggrieved Employees, Plaintiff's Enhancement Payment, all attorneys' fees, costs and
4 litigation expenses directly related to the Action incurred to date, as well as all such fees and costs incurred
5 in documenting the Agreement, administering the Agreement (including Settlement Administrator Costs),
6 and obtaining approval of the Agreement.

7 5.2 Attorneys' Fees and Costs: Plaintiff's Counsel will apply to the Court for attorney's fees
8 of 35% of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount.
9 Defendant has agreed to not oppose Plaintiff's Counsel's application for attorneys' fees so long as it does
10 not exceed the 35% threshold. Plaintiff's Counsel will apply to the Court for reimbursement for advanced
11 litigation expenses not to exceed \$4,000, which shall be paid from the Gross Settlement Amount.
12 Defendant has agreed to not oppose Plaintiff's Counsel's request for reimbursement for advanced litigation
13 expenses so long as they do not exceed the \$4,000 threshold. The Settlement Administrator will issue
14 Class Counsel an IRS Form 1099 for the attorneys' fees and costs paid under this Agreement. In the event
15 that the Court awards less than the requested attorney's fees and/or costs, neither Plaintiff nor Plaintiff's
16 counsel shall be entitled to void or rescind this Agreement on that basis and the portion of the requested
17 amounts not awarded to Plaintiff's Counsel shall be added to the Net Settlement Amount as defined in
18 section 1.14.

19 5.3 Settlement Administrator Costs: The Settlement Administrator Costs shall be paid from
20 the Gross Settlement Amount and shall not exceed \$5,000. The difference between any actual costs and
21 the allocated \$5,000 shall be added to the Net Settlement Amount as defined in section 1.14.

22 5.4 Enhancement Payment: Plaintiff's Counsel, on behalf of Plaintiff, shall apply to the Court
23 for an Enhancement Payment to Plaintiff in an amount not to exceed Five Thousand Dollars (\$5,000.00)
24 to compensate for the risks, time, and expense of her involvement in the Action and securing the benefits
25 of this Agreement for the LWDA and Aggrieved Employees as well as for the waiver of her individual
26 claims. The Enhancement Payment is in addition to the Individual Settlement Amount Plaintiff would
27 otherwise be due under the Agreement as an Aggrieved Employee. Defendant has agreed to not oppose
28 Plaintiff's Counsel's request for Enhancement Payments to Plaintiff so long as they do not exceed the

1 amount stated herein. The Enhancement Payment will be designated as a non-wage payment and reported
2 on an IRS Form 1099-MISC. In the event that the Court awards less than the Enhancement Payment
3 amount requested, neither Plaintiff nor Plaintiff's counsel shall be entitled to void or rescind this
4 Agreement on that basis and any portion of the requested amount not awarded to Plaintiff shall be added
5 to the Net Settlement Amount as defined in section 1.14.

6 5.5 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount allocated
7 to Aggrieved Employees that was not claimed by Aggrieved Employees by cashing their respective
8 settlement checks before the deadline to do so, that remaining amount shall be donated equally, *i.e.* 50/50,
9 to Capital Pro Bono, Inc., and the Center for Workers' Rights under the doctrine of *cy pres*. No portion
10 of the Gross Settlement Amount will revert to Defendant for any reason.

11 5.6 No Additional Benefits Contributions: All Individual Settlement Amounts paid to
12 Aggrieved Employees shall be deemed to be income solely in the year in which such amounts were
13 actually received by Aggrieved Employees. It is expressly understood and agreed that the receipt of such
14 Individual Settlement Amounts will not entitle any Aggrieved Employee to any new or additional
15 compensation or benefits under any company bonus or other compensation or benefit plan or agreement
16 in place during the period covered by the Agreement, nor will it entitle any Aggrieved Employee to any
17 increased retirement, 401(k) benefits or matching benefits, or deferred compensation benefits. It is the
18 intent of this Agreement that the Individual Settlement Amounts provided for in this Agreement are the
19 sole payments to be made by Defendant to the Aggrieved Employees in connection with this Agreement
20 (notwithstanding any contrary language or agreement in any benefit or compensation plan document that
21 might have been in effect during the period covered by this Agreement).

22 5.7 Tax Allocation: The Parties recognize that the Individual Settlement Amounts to be paid
23 to Aggrieved Employees reflect settlement of a dispute over claimed penalties. The characterization of
24 Individual Settlement Amounts to Aggrieved Employees are as follows:

25 5.7.1 One Hundred percent (100%) of each Aggrieved Employees' Individual Settlement
26 Amount shall be allocated for payment of disputed civil penalties. This portion of the Individual
27 Settlement Amount consists of other income, not wages, for which the Aggrieved Employees shall receive
28 an IRS form 1099-MISC.

1 5.7.2 Aggrieved Employees shall be solely responsible for the reporting and payment of
2 their share of any federal, state and/or municipal income or other taxes on payments made pursuant to this
3 Agreement. No party has made any representation to any of the other Parties as to the taxability of any
4 payments pursuant to this Agreement, including the payments to Aggrieved Employees, the payments to
5 Plaintiff's Counsel, or otherwise as to tax implications of any provision of this Agreement.

6 5.8 Pro Rata Distribution Formula: After Court approved attorneys' fees and costs,
7 Enhancement Payment, and Settlement Administrator Costs are determined and a Net Settlement Amount
8 has been established, that Net Settlement Amount shall be divided between the PAGA Payment and
9 payment to Aggrieved Employees. The PAGA Payment to the LWDA will be 75% of the Net Settlement
10 Amount. 25% of the Net Settlement Amount will be paid to Aggrieved Employees. Each individual
11 Aggrieved Employees' Individual Settlement Amount shall be determined by taking the Qualifying Pay
12 Periods for the individual Aggrieved Employee and dividing that by the Qualifying Pay Periods for all
13 Aggrieved Employees and multiplying that fraction by the 25% share of the Net Settlement Amount.
14 Payment to Aggrieved Employees of their Individual Settlement Amount will not require the submission
15 of any claim form.

16 5.9 No Additional Contribution by Defendant: Defendant's monetary obligation under this
17 Agreement is limited to the Gross Settlement Amount as described above. All other costs and expenses
18 arising out of or in connection with the performance of this Agreement shall be paid from the Gross
19 Settlement Amount, unless expressly provided otherwise herein. However, in the event this agreement is
20 deemed null and void as described in Section 3, then Defendant and Plaintiff shall be equally responsible
21 for the Settlement Administrator Costs incurred between the date the Agreement was executed and the
22 date of such event.

23 **6. RELEASE**

24 6.1 Upon the Effective Date, Plaintiff and each Aggrieved Employee shall be deemed to fully,
25 finally, and forever release the Released Parties from all Released PAGA Claims.

26 6.2 Release by Plaintiff: Upon the Effective Date, Plaintiff will be deemed to fully, finally and
27 forever release the Released PAGA Claims and Plaintiff's Released Claims as to all Released Parties.
28 Plaintiff's Released Claims include any and all of their individual claims, whether or not they know or

1 suspect to them exist in their favor at the time of the releases, which, if known, might have affected
2 Plaintiffs' settlement with, and release of, the Released Parties. With respect to Plaintiff's Released
3 Claims, Plaintiff stipulates and agrees that she shall be deemed to have, and by operation of Approval of
4 this Agreement shall have, expressly waived and relinquished, to the fullest extent permitted by law, the
5 provisions, rights and benefits of Section 1542 of the California Civil Code, which states:

6 A general release does not extend to claims that the creditor or releasing
7 party does not know or suspect to exist in his or her favor at the time of
8 executing the release and that, if known by him or her, would have
9 materially affected his or her settlement with the debtor or released party.

10 **7. SETTLEMENT ADMINISTRATION**

11 7.1 Duties of Settlement Administrator: The Settlement Administrator shall be responsible
12 for: 1) receiving and reviewing for accuracy Aggrieved Employee contact information; 2) calculating
13 estimated Individual Settlement Amounts and any and all taxes associated with the Individual Settlement
14 Amount, including employer taxes, if any; 3) taking appropriate steps to trace and locate any individual
15 Aggrieved Employees whose address or contact information as provided to the Settlement Administrator
16 is inaccurate or outdated and mailing the Notice of Settlement to Aggrieved Employees; 4) providing
17 notification to the appropriate state officials of this Agreement as required; 5) maintaining the Gross
18 Settlement Amount in a QSF; 6) determining and paying the final amounts due to be paid under the
19 Agreement after resolution of awarded attorneys' fees and costs and Settlement Administrator Costs; 7)
20 paying any residual funds from uncashed checks to the *cy pres* beneficiaries; 8) reporting to Plaintiff's
21 Counsel and Defendant's Counsel regarding the statistics of the administration, including (a) the number
22 of initial Notice of Settlements mailed; (b) the number of forwarded Notice of Settlements; (c) the number
23 of re-mailed Notice of Settlements; (d) the number of total undeliverable Notice of Settlements; (e) the
24 number of address traces performed for undeliverable Notice of Settlements; (g) the number of Notice of
25 Settlements undeliverable from traced addresses; 9) providing a declaration to the Court regarding the
26 final statistics of the administration and compliance with all payment obligations under the Agreement;
27 10) completing all necessary tax reporting on the QSF and payment of the Individual Settlement Amounts
28 to Aggrieved Employees; and 11) carrying out other related tasks as necessary to effectuate the terms of

1 this Agreement and any Order of the Court. All disputes relating to the Settlement Administrator's ability
2 and need to perform its duties shall be referred to the Court, if necessary, which will have continuing
3 jurisdiction over the terms and conditions of this Agreement, until all payments and obligations
4 contemplated by the Agreement have been fully executed.

5 7.2 Aggrieved Employee Data: Within fourteen (14) calendar days after the Effective Date,
6 Defendant shall provide the Settlement Administrator with the name, last known mailing address, last
7 known telephone number, Social Security Number, and Qualifying Pay Periods of each Aggrieved
8 Employee. The Settlement Administrator shall review the data to determine the number of Qualifying
9 Pay Periods for each Aggrieved Employee. Defendant shall not provide any information for pay periods
10 during which an Aggrieved Employee may have worked as an exempt employee, worked outside
11 California, or worked outside the PAGA Claim Period. The Settlement Administrator shall maintain all
12 information received from Defendant confidential to itself, and Defendant's Counsel. However, Plaintiff's
13 Counsel shall be able to review the breakdown of Qualified Pay Periods and estimated Individual
14 Settlement Amounts for Aggrieved Employees prior to mailing for quality assurance.

15 7.3 Determination of Payments to Aggrieved Employees, Plaintiff's Counsel, and the LWDA:
16 Within seven (7) calendar days after Defendant has provided the Settlement Administrator with
17 information regarding Aggrieved Employees, the Settlement Administrator shall calculate the final Net
18 Settlement Amount, PAGA Payment, and the final Individual Settlement Amounts for Aggrieved
19 Employees, and report the results of these calculations to Plaintiff's Counsel and Defendant's Counsel.

20 7.4 Settlement Administrator Payments to Aggrieved Employees, Plaintiff's Counsel, and the
21 LWDA: Defendant shall wire the Gross Settlement Amount as described in Section 5.1 to the Settlement
22 Administrator within fourteen (14) calendar days after receiving the funding calculation and report from
23 the Settlement Administrator to be to be held in trust in a QSF. Within seven (7) calendar days after the
24 Settlement Administrator receives the Gross Settlement Amount, the Settlement Administrator shall
25 deliver payment of Plaintiff's Counsels' attorney's fees and costs, the Enhancement Payment, the PAGA
26 Payment payable to the LWDA, Settlement Administrator Costs, and payment for Individual Settlement
27 Amounts to Aggrieved Employees as required under this Agreement and approved by the Court.

Plaintiff's Counsel shall provide the Settlement Administrator with the pertinent taxpayer identification number and payment instructions for the attorney's fees and costs after the Effective Date.

7.5 Notice to Aggrieved Employees: The notice of settlement will be sent in English and Spanish. The Settlement Administrator will provide a Notice of Settlement, substantially in the form attached as Exhibit 1, to each Aggrieved Employee concurrently providing payment for Individual Settlement Amounts as described in Sections 5.8 and 7.4. The Notice of Settlement will inform Aggrieved Employees of a summary of the terms and conditions of the Agreement. The Notice of Settlement will also inform Aggrieved Employees of the Gross Settlement Amount, Net Settlement Amount, attorneys' fees and costs allocations, Enhancement Payment, Settlement Administrator Cost allocations, PAGA Payment allocations, the scope of individuals covered by this Agreement, and the nature and extent of the Released PAGA Claims. The Notice of Settlement will provide information on how to access electronic copies online of the Notice of Settlement, any motions for approval of the Agreement, any motions for approval of attorneys' fees and costs, and any other documents as the Court directs.

7.6 Aggrieved Employee Mailing: Within seven (7) calendar days after the Settlement Administrator receives the Gross Settlement Amount, the Settlement Administrator will perform a national change of address ("NCOA") search, update the addresses per the results of the NCOA search and will mail the respective Individual Settlement Amount, as determined in Sections 5.8 and 7.4, and Notice of Settlement, to each Aggrieved Employee by first-class mail, postage prepaid.

7.7 Returned and/or Re-mailed Notice Packets: In the event that a Notice of Settlement and Individual Settlement Amount payment is returned to the Settlement Administrator as undeliverable, the Notice of Settlement and Individual Settlement Amount payment shall be sent to the forwarding address affixed thereto within seven (7) calendar days. If no forwarding address is provided, then the Settlement Administrator shall promptly attempt to determine a correct address using a single skip-trace, computer or other search using the name, address and/or Social Security number of the individual involved, and shall then perform a single re-mailing within seven (7) calendar days. Following each search that does not result in a corrected address, for those Aggrieved Employees who appear to be current employees of Defendant at the time of the Effective Date, the Settlement Administrator shall contact Defendant's Counsel for assistance and Defendant shall cooperate in good faith with the Settlement Administrator's

1 reasonable efforts to obtain valid mailing addresses for Aggrieved Employees to the extent they were
2 active employees of Defendant at the time of the Effective Date. In the event the procedures in this
3 paragraph are followed and the intended recipient of a Notice of Settlement and Individual Settlement
4 Amount payment still does not receive the Notice of Settlement and/or Individual Settlement Amount
5 payment, the Aggrieved Employee shall still be bound by all terms of the Agreement, including the
6 releases contained in Sections 1.25 and 6.1, and any final judgment entered by the Court.

7 7.8 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.2
8 to 7.7 shall constitute due and sufficient notice to Aggrieved Employees of the Action and the Agreement
9 and shall satisfy Aggrieved Employees' due process rights. Nothing else shall be required of the Parties,
10 Plaintiff's Counsel, or Defendant's Counsel to provide notice of the Agreement except as expressly
11 required by the Court.

12 7.9 Settlement Check Expiration and Cy Pres: The Settlement Administrator shall issue
13 Individual Settlement Amounts to Aggrieved Employees in the form of a check, which shall become null
14 and void if not deposited within one hundred eighty (180) calendar days of issuance. After one hundred
15 eighty (180) calendar days of issuance, the checks shall be voided and funds from all undeposited checks
16 shall be transmitted to the *cy pres* beneficiaries identified in Section 5.5. The Settlement Administrator
17 shall deliver the *cy pres* funds within fourteen (14) calendar days after the check cashing deadline.

18 7.10 Settlement Administrator Declaration Regarding Settlement Administration: Within
19 twenty-one (21) calendar days after the last day for Aggrieved Employees to cash their settlement checks,
20 the Settlement Administrator shall provide Plaintiff's Counsel and Defendant's Counsel with a signed
21 declaration under penalty of perjury providing a complete and detailed report regarding the settlement
22 administration and that all the obligations of the Settlement Administrator have been completed.

23 **8. SETTLEMENT ADMINISTRATION SCHEDULE**

24 8.1 The schedule may be modified depending on whether and when the Court grants necessary
25 approvals, orders notice to Aggrieved Employees, and sets further hearings, if any. The schedule may
26 also be modified to correct clerical errors and to reflect the provisions in the Agreement as described
27 above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures
28

as expeditiously as reasonably practicable. The schedule for notice and payment procedures carrying out the Agreement is as follows.

Last day for Defendant to provide Settlement Administrator with Aggrieved Employee information	Within 14 calendar days after the Effective Date
Last day for Settlement Administrator to calculate and report to the Parties the Net Settlement Amount, PAGA Payment, and Individual Settlement Amounts for Aggrieved Employees	Within 7 calendar days after receiving Aggrieved Employee information
Last day for Defendant to fund Gross Settlement Amount	Within 14 calendar days after the Settlement Administrator calculates and reports to the Parties the Net Settlement Amount, PAGA Payment, and Individual Settlement Amounts for Aggrieved Employees
Last day for Settlement Administrator to complete NCOA search, update Aggrieved Employee mailing information, and complete mailing	Within 7 calendar days after Defendant has funded the settlement
Last day for Settlement Administrator to deliver payment of Plaintiff's Counsel's attorney's fees and costs, PAGA Payment, Settlement Administrator Costs, and payment to Aggrieved Employees	Within 7 calendar days after Defendant has funded the settlement
Last day for Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to 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. MISCELLANEOUS TERMS

9.1 Dismissal and Retention of Jurisdiction to Enforce: Upon the Effective Date, the Released PAGA Claims will be dismissed with prejudice, with the Court to retain jurisdiction over the Parties to

1 enforce the terms of the Agreement pursuant to Civil Procedure Code section 664.6. The prevailing party
2 in any action to enforce the terms of the Agreement shall be entitled to reasonable attorneys' fees and
3 costs. The Parties agree to meet and confer in good faith to resolve any issue before any such motion for
4 attorney's fees and costs is filed.

5 9.2 Additional Pay Period Contingency: Defendant has represented that there are no more
6 than 2,373 pay periods during the PAGA Claim Period. In the event the number of pay periods during
7 the PAGA Claim Period is more than 2,610.3 (*i.e.*, greater than 10% more than 2,373), then the Gross
8 Settlement Amount shall be increased proportionally by the pay periods in excess of 2,610.3, multiplied
9 by the pay period value of \$21.07, or in the sole discretion of Defendant the ending date of the PAGA
10 Claim Period shall be adjusted to a date by which the the number of pay periods during the PAGA Claim
11 Period is not more than 2,610.3.

12 9.3 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
13 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to,
14 execution of such other documents and the taking of such other action as may reasonably be necessary to
15 fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including
16 all efforts contemplated by this Agreement and any other efforts that may become necessary by Court
17 order, or otherwise, to effectuate this Agreement and the terms set forth herein. This may include
18 modifying and/or resubmitting the Agreement for approval. Plaintiff's Counsel shall be responsible for
19 drafting the court approval paperwork. All parties agree to act immediately and diligently to perform their
20 obligations under this Agreement, including the review and approval of settlement documents, such that
21 there are no substantial delays in seeking court approval or administration of this settlement. Plaintiff's
22 Counsel shall endeavor to file a motion for approval of this settlement within sixty (60) calendar days of
23 the date this Agreement is signed. Plaintiff's Counsel shall provide Defendant's Counsel with a draft
24 approval motion within 2 weeks after this Agreement is fully executed. Defendant's Counsel will provide
25 comments and/or proposed revisions within 2 weeks after receipt of the draft motion.

26 9.4 No Admission of Liability: Neither the acceptance nor the performance by Defendant of
27 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to
28 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 Aggrieved Employees 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 Aggrieved Employees, or any other person, and Defendant has specifically disclaimed any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Aggrieved Employees, or any other person. Each of the Parties has entered into this Agreement with the intention to avoid further disputes and litigation.

9.5 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 the Plaintiff:

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

To Defendant:

Jose-Manuel A. de Castro
David G. Larmore
Lori V. Minassian
De Castro Law Group, P.C.
7590 Glenoaks Blvd., Suite 201
Los Angeles, California 91504

9.6 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.

9.7 Binding Effect of Agreement: The Parties, by signing this Agreement, are bound by the terms herein. The Parties waive their rights to file an appeal, writ, or any challenge whatsoever to the terms of this Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, Settlement Administrators, successors, and assigns.

1 9.8 Attorneys' Fees and Costs Limitations: Neither Plaintiff's Counsel nor any other attorneys
2 acting for, or purporting to act for, Aggrieved Employees, or Plaintiff, may recover or seek to recover any
3 amounts for fees, costs, or disbursements from the Released Parties or the Gross Settlement Amount
4 except as expressly provided herein.

5 9.9 No Modifications: This Agreement may not be changed, altered, or modified, except in
6 writing signed by the Parties hereto and approved by the Court. This Agreement may not be discharged
7 except by performance in accordance with its terms.

8 9.10 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and
9 represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement
10 and to take all appropriate action required or permitted to be taken by such Parties pursuant to this
11 Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of
12 this Agreement

13 9.11 Counterparts: This Agreement shall become effective upon its execution by all of the
14 undersigned. Plaintiff, Plaintiff's Counsel, Defendant and Defendant's Counsel may execute this
15 Agreement in counterparts, and execution of counterparts shall have the same force and effect as if each
16 had signed the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the
17 same force and effect of originals.

18 9.12 Choice of Law: The Agreement and the exhibits hereto shall be considered to have been
19 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and
20 the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance
21 with, and governed by, the substantive laws of the State of California without giving effect to that State's
22 choice of law principles.

23 9.13 Headings and Captions: Paragraph titles or captions contained in the Agreement are
24 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the
25 scope of this Agreement, or any provision thereof.

26 9.14 No Retaliation or Discouragement: The Parties agree they will take no action that could
27 be construed as retaliation against any Aggrieved Employees for participating in this settlement.
28

9.17 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.

9.18 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.

Date: 8/31/2023

DocuSigned by:

79F2A54203454D5...

Ana Armas

Date: _____

By:
For Vienna Convalescent Hospital, Inc.

9.15 Integrated Agreement: This Agreement sets forth the entire understanding between the Parties with regard to any and all material terms or otherwise 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.

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

9.17 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.

9.18 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: _____

Ana Armas

For Defendant:

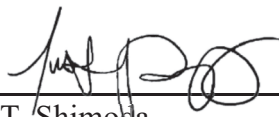
Date: 8/29/25

By: [Signature]
For Vienna Convalescent Hospital, Inc.

1 APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

2
3 Dated: 8/31/2023

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

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7 APPROVED AS TO FORM

DE CASTRO LAW GROUP, P.C.

8
9 Dated: _____

By: 
Jose-Manuel A. de Castro
David G. Larmore
Lori V. Minassian
Attorneys for Defendant

EXHIBIT 1

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

Case No. STK-CV-UOE-2023-3403

ANA ARMAS, individually and on behalf of all other
similarly situated employees,

Plaintiff,

vs.

VIENNA CONVALESCENT HOSPITAL, INC., a
California Corporation; and DOES 1 to 100,
inclusive,

Defendant.

**NOTICE OF PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT PAYMENT**

TO: All nonexempt employees who have or continue to work for Defendant in California from January 26, 2022, to [REDACTED] who were paid any type of non-discretionary remuneration in addition to their base hourly rate, including, but not limited to, performance bonuses, shift differentials, or other types of bonuses ("Aggrieved Employees").

This Notice is being provided to you to inform you of a Private Attorney General Act ("PAGA") Settlement and your proportional share of this settlement payment. The payment is a result of a Court approved PAGA Settlement in the case of *Armas v. Vienna Convalescent Hospital, Inc.*, San Joaquin County Superior Court of California, Case No. STK-CV-UOE-2023-3403, filed April 6, 2023 (the "Action"). You are receiving this letter because you fall within the definition of Aggrieved Employees identified above. This Settlement **does not** release any individual claims that you might have against Defendant outside of PAGA.

In the Action, Plaintiff Ana Armas ("Plaintiff") sought to obtain civil penalties, fees, and costs on behalf of herself and Aggrieved Employees. Plaintiff alleged that Vienna Convalescent Hospital, Inc. ("Defendant") violated California law by 1) failing to pay overtime wages, 2) failing to provide meal periods or pay premiums in lieu thereof, 3) failing to provide rest periods or pay premium in lieu thereof, 4) failing to provide accurate wage statements, 5) failing to pay final wages, and 6) failing to provide paid sick leave. Plaintiff also alleged individual liability for several of these alleged Labor Code violations under Labor Code sections 558, 558.1. Defendant has denied all of Plaintiff's allegations.

This notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the Action or the merits of the claims or defenses asserted. Defendant has denied engaging in any unlawful conduct in any respect and further disputes all of Plaintiff's allegations in the Action. By entering into the PAGA Settlement, Defendant does not admit any liability to Plaintiff or to any other current or former employees, and Defendant does not admit that any violations of Plaintiff's rights, or the rights of any other current or former employees has occurred.

Plaintiff filed a notice with the California Labor and Workforce Development Agency ("LWDA") to exhaust administrative remedies and pursue claims under the PAGA, California Labor Code §§ 2698 *et seq.*, predicated on violations of Labor Code sections 201-203, 226, 226.3, 226.7, 246, 246.5, 248.5, 256, 510, 512, 558, 558.1, and 1194. The scope of the PAGA Settlement includes all of the Aggrieved Employees for the time period identified above. In exchange for payment under the Settlement, Plaintiff has agreed to waive any and all claims for civil penalties that were brought under the PAGA that were asserted in the Complaint and any additional claims for civil penalties under the PAGA that could have been brought based on the facts alleged therein between from January 26, 2022, and [REDACTED]. Aggrieved Employees cannot opt out of this waiver of claims. However, the waiver **does not** extend to any non-PAGA claims you may have.

Under the terms of the Settlement, Defendant has agreed to pay a Gross Settlement Amount of \$50,000 to resolve the PAGA claims alleged in the Action ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount were sums approved by the Court for attorneys' fees \$[REDACTED], attorneys' costs in the amount of \$[REDACTED], an Enhancement Payment to Plaintiff in the amount of \$[REDACTED], and the fees and expenses of the Settlement Administrator in the amount of \$[REDACTED], which will result in a "Net Settlement Amount" of \$[REDACTED] for distribution to between Aggrieved Employees and the Labor and Workforce Development Agency ("LWDA") as required by the California Labor Code. 75% of the Net Settlement Amount (\$[REDACTED]) is being paid to the LWDA and 25% of the Net Settlement Amount (\$[REDACTED]) is being paid to Aggrieved Employees pursuant to Labor Code section 2699(i). Each

individual Aggrieved Employee's share of the Net Settlement Amount was determined by taking their individual number of pay periods worked between from January 26, 2022, and [REDACTED], dividing that number by the number of pay periods worked for all Aggrieved Employees between from January 26, 2022 and [REDACTED], and then multiplying that fraction by the 25% share of the Net Settlement Amount.

Enclosed in this mailing, you will find a check containing your share of the PAGA Settlement based on this allocation. Should you have any questions or concerns, you may contact counsel for Plaintiff and/or Defendant.

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
On behalf of Plaintiff

Jose-Manuel A. de Castro
David G. Larmore
Lori V. Minassian
De Castro Law Group, P.C.
7590 Glenoaks Blvd., Suite 201
Los Angeles, California 91504
Phone: (310)-270-9877
On behalf of Defendant

EXHIBIT B

FILED
SUPERIOR COURT

2023 APR -6 PM 3: 15

BRANDON E. RILEY, CLERK

DANIELLE JEANDEBIEN
DEPUTY

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

9 Attorneys for Plaintiff ANA ARMAS,
10 individually and on behalf of all other similarly situated employees

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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

ANA ARMAS, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

VIENNA CONVALESCENT HOSPITAL,
INC., a California Corporation; and DOES 1 to
100, inclusive,

Defendants.

Case No.

STK-CV-40E -2023- 3403

COMPLAINT FOR DAMAGES:

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

DEMAND FOR JURY TRIAL

Plaintiff ANA ARMAS ("Plaintiff"), on behalf of herself and all other similarly situated employees, hereby files this Complaint against Defendants VIENNA CONVALESCENT HOSPITAL, INC., a California Corporation; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as "Defendants"). On information and belief, Plaintiff allege the following:

INTRODUCTION

1. This is an individual and Private Attorneys General Act ("PAGA") lawsuit brought by Plaintiff for failing to provide overtime wages, meal and rest period violations, wage statement violations, waiting time penalties, and unfair competition.

INDIVIDUAL AND PAGA COMPLAINT

FILE BY FAX

1 **JURISDICTION AND VENUE**

2 2. The San Joaquin County Superior Court has jurisdiction in this matter pursuant to
3 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
4 Labor Code, California Business and Professions Code, and Wage Order No. 4.

5 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), and 395.5, in that
6 Defendants reside in San Joaquin County and/or are foreign entities and have not designated any county
7 in California as being where they maintain their principal offices. In addition, some of the wrongful acts
8 and violations of law asserted herein occurred within San Joaquin County, and Defendant's obligation to
9 pay wages arose in San Joaquin County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36
10 Cal.3d 403, 414 (1984).

11 4. Plaintiff sought permission pursuant to California Labor Code section 2699 *et seq.* to
12 pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf
13 of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3,
14 Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency
15 (“LWDA”) on approximately January 26, 2023. Plaintiff provided facts and legal bases for his claims
16 within the notice to the LWDA on all violations asserted under the Private Attorneys General Act cause
17 of action. Plaintiff also submitted the \$75.00 filing fee. The January 26, 2023, notice was also sent via
18 certified mail to Defendants on the same day. To date, the LWDA has not provided any response to
19 Plaintiff’s notice correspondence. Accordingly, Plaintiff has exhausted all administrative remedies
20 pursuant to the Private Attorneys General Act (“PAGA”) and may bring this action on behalf of himself
21 and all similarly situated employees, *i.e.* Aggrieved Employees. See Cal. Lab. Code § 2699.3(a)(2)(A),
22 (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005).
23 Aggrieved Employees include, but is not limited to the following: all non-exempt employees who have
24 worked, or continue to work, for Defendants in California from January 26, 2022 to present.

25 **PARTIES**

26 5. ANA ARMAS is an individual over the age of eighteen (18) and is a resident of the
27 State of California.
28

6. On information and belief, Plaintiff alleges, VIENNA CONVALESCENT HOSPITAL, INC., is now and/or at all times mentioned in this Complaint was a California Corporation and the owner and operator of an industry, business and/or facility doing business in the State of California.

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

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

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

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

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

GENERAL ALLEGATIONS

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

13. Plaintiff worked for Defendant from January 2017 to May 2022. Plaintiff worked as a CNA and was paid an hourly rate. Plaintiff typically worked forty (40) hours per week or more, at eight (8) hours per day or more. Defendant paid Plaintiff non-discretionary remuneration, including for perfect attendance (PA) and other bonuses. The PA bonuses resulted in extra pay of \$0.50 to \$1.00. However, Defendant failed to include this remuneration into the regular rate of pay for purposes of overtime, sick leave, and meal and rest premiums.

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**
3 **FAILURE TO PAY OVERTIME WAGES**
4 **(As to all Defendants)**

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

7 15. During the period Plaintiff was employed by Defendants, Defendants were required to
8 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
9 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
10 hours worked in excess of twelve (12) hours per day. *See, e.g.,* IWC Wage Order No. 4, section (3)(A);
11 Cal. Lab. Code §§ 510, 1194.

12 16. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
13 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
14 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
15 worked at their regular rate of pay because Defendants failed to include renumerations into the
16 regular rate of pay for purposes of overtime wages.

17 17. Plaintiff and similarly situated employees were not exempt from overtime protections
18 employees under the California Wage Orders and Labor Code.

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

22 **SECOND CAUSE OF ACTION**
23 **MEAL PERIOD VIOLATIONS**
24 **(As to all Defendants)**

25 19. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 18 as though fully
26 set forth herein.

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

1 21. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 4, section
2 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30)
3 minutes for each work period of more than five (5) hours.

4 22. California Labor Code section 512 and Wage Order No. 4 section 11(B) further
5 provide that employers may not employ employees for a work period for more than ten (10) hours
6 per day without providing the employee with a second meal period of at least thirty (30) minutes.
7 However, if the total hours worked is no more than twelve (12) hours, the second meal period may
8 be waived so long as there was no waiver as to the first meal period. Employees are entitled to one
9 (1) hour of pay at their regular rate of compensation for each meal period not provided.

10 23. Defendants employed Plaintiff and similarly situated employees for periods of more
11 than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal
12 period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more
13 than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated
14 employees to take their first meal period before the completion of their fifth hour of work and failed
15 to allow Plaintiff and similarly situated employees to take their second meal period before the
16 completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their
17 rights to all meal periods throughout their employment.

18 24. Defendants further failed to pay Plaintiff and similarly situated employees the
19 applicable meal period premiums for any such missed meal breaks based on their regular rate of pay
20 because Defendants failed to include renumerations into the regular rate of pay for purposes of meal
21 period premiums.

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

25 **THIRD CAUSE OF ACTION**
26 **REST PERIOD VIOLATIONS**
 (As to all Defendants)

27 26. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 25 as though fully
28 set forth herein.

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

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

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

30. Defendants further failed to pay Plaintiff and similarly situated employees the applicable rest period premiums for any such missed rest periods based on their regular rate of pay. because Defendants failed to include renumerations into the regular rate of pay for purposes of rest period premiums.

31. 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.

FOURTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

32. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 31 as though fully set forth herein.

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

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (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 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, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the

1 *name and address of the legal entity that secured the services of the*
2 *employer, and (9) all applicable hourly rates in effect during the pay*
3 *period and the corresponding number of hours worked at each hourly rate*
4 *by the employee. The deductions made from payment of wages shall be*
5 *recorded in ink or other indelible form, properly dated, showing the*
6 *month, day, and year, and a copy of the statement and the record of the*
7 *deductions shall be kept on file by the employer for at least three years at*
8 *the place of employment or at a central location within the State of*
9 *California.*

10 34. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
11 itemized statement or failed to provide an accurate and complete itemized statement showing the
12 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not
13 accurately itemize all applicable hourly rates in effect during the pay period, all overtime and double
14 time corresponding rates of pay, all meal and rest period premiums corresponding rates of pay, and
15 gross and net wages earned. Plaintiff and similarly situated employees were not able to promptly
16 and easily determine their overtime rate of pay, meal and rest period premiums rates of pay, and
17 gross and net wages earned from their paystubs alone. Additionally, Plaintiff and similarly situated
18 employees suffered confusion over whether they received all wages owed and were prevented from
19 effectively challenging information on their wage statements.

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

23 **FIFTH CAUSE OF ACTION**
24 **WAITING TIME PENALTIES**
25 **(As to all Defendants)**

26 36. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 35 as though fully
27 set forth herein.

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

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

39. Plaintiff and similarly situated employees did not receive all wages, including overtime wages, meal and rest period premiums, or all sick leave pay owed at their termination or within the required time after their separation from employment.

40. 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.

41. 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 paid non-discretionary remunerations, including for perfect attendance (PA) and other bonuses. The PA bonuses resulted in extra pay of \$0.50 to \$1.00. However, Defendants failed to include this remuneration into the regular rate of pay for purposes of overtime, sick leave, and meal and rest premiums. The hours Plaintiff worked were accurately reflected on her timecards. Such conduct shows Defendants had knowledge of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining wages owed.

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

SIXTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to all Defendants)

43. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 42 as though fully set forth herein.

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

45. Plaintiff and similarly situated employees were not paid all wages owed, including overtime wages, meal and rest period premiums, and paid sick leave, during their employment or any

1 time thereafter. Moreover, through Defendants' conduct Plaintiff and similarly situated employees were
2 denied statutory protections regarding meal and rest periods.

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

6 47. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the
7 UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
8 restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code
9 sections 17203, 17208, violations of California Labor Code sections 226.7, 245 *et seq.*, 510, 512, and
10 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing
11 of this Action.

12 **SEVENTH CAUSE OF ACTION**
13 **PRIVATE ATTORNEYS GENERAL ACT**
14 **(As to all Defendants)**

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

17 49. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
18 following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated
19 current and former employees:

- 20 • Violation of Labor Code §§ 510, 1194; IWC Wage Order 5, § 3 (Failure to Pay Overtime
21 Wages)
- 22 • Violation of Labor Code §§ 226.7, 512 and Wage Order No. 5, §§ 11(A) and 11(B)
23 (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- 24 • Violation of Labor Code § 226.7 and Wage Order No. 5, § 12(A) (Failure to Provide Rest
25 Periods or Pay Premiums in Lieu Thereof)
- 26 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- 27 • Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- 28 • Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of
Work in Any Industrial Welfare Commission Order)

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

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

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

52. 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. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
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. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the

violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);

b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);

6. As to the Seventh Cause of Action:

a. For civil penalties as provided in the Labor Code for each enumerated violation;

b. For those Labor Code sections where there is no civil penalty provided for their violation, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;

c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;

d. For any other remedies as allowed by law and/or deemed appropriate by the Court;

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- 1 7. For such other and further relief as this Court may deem just and proper,
2 including, but not limited to:
3 a. Wages as proved at trial;
4 b. Injunctive and Declaratory relief;
5 c. Attorney's fees and costs as provided for by law; and
6 d. Interest.

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10 Dated: April 5, 2023

Shimoda & Rodriguez Law, PC

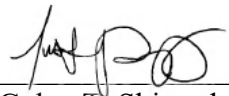
11
12 By: 
13 Galen T. Shimoda
14 Justin P. Rodriguez
15 Renald Konini
16 Attorneys for Plaintiff

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

January 26, 2023

For Online Filing:

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

Re: *Armas v. Vienna Convalescent Hospital, Inc.*

Dear Labor Commissioner,

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

Vienna Convalescent Hospital, Inc.
800 South Ham Lane
Lodi, CA 95242

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 Vienna Convalescent Hospital, Inc. (“Defendant”). 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: Aggrieved Employee: All nonexempt employees who have or continue to work for Defendant in California. 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

Plaintiff worked for Defendant from January 2017 to May 2022. Defendant worked as a CNA and was paid an hourly rate. Plaintiff typically worked forty (40) hours per week or more, at eight (8) hours per day or more. Defendant paid Plaintiff non-discretionary remuneration, including for perfect attendance (PA) and other bonuses. The PA bonuses resulted in extra pay of \$0.50 to \$1.00. However, Defendant failed to include this remuneration into the regular rate of pay for purposes of overtime, sick leave, and meal and rest premiums.



B. ALLEGATIONS AND CHARGES

Count 1 - Violation of Labor Code §§ 226.7, 512 and Wage Order No. Wage Order 4, §§ 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. Wage Order 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. Wage Order 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. Defendant also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

Defendant failed to pay all meal period premiums at the correct rate of pay to Plaintiff and similarly situated employees.

Count 2 – Violation of Labor Code § 226.7 and Wage Order No. Wage Order 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. Wage Order 4, 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. Defendant failed to pay all rest period premiums at the correct rate of pay to Plaintiff and similarly situated employees.

Count 3 – 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, Defendant failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees due to not paying the correct regular rate of pay. This is in violation of the law.

Count 4 – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including meal and rest period violation premiums and unpaid overtime and Plaintiff’s final paycheck, 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 5 – 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. As described above, Defendant, by and through Defendant 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 6 – Violation of Labor Code §§ 510, 1194; IWC Wage Order 16, § 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. Defendant failed to pay all overtime wages at the correct rate of pay to Plaintiff and similarly situated employees.



Count 7 – Violation Labor Code § 246 (Failure to Pay Sick Leave)

Labor Code section 246 *et al.* provides the law for paid sick leave to employees. When calculating the sick leave for the employee, the employer may choose to pay “in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time,” which is what the Defendant did. However, Defendant failed to pay Plaintiff and Aggrieved Employees the regular rate of pay for their sick leave.

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: 
Galen T. Shimoda

GTS/hh
cc: Client via e-mail

1 *Armas v. Vienna Convalescent Hospital*

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

4 I, Hannah Hogan, declare that:

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

7 On January 26, 2023, I served the following documents on the party below:

- 8 • Private Attorney General Act Letter

9

10 Vienna Convalescent Hospital 800 South Ham Lane 11 Lodi, California 95242	
--	--

12 [XXX] [By Certified Mail] I am familiar with my employer's practice for the collection
13 and processing of correspondence for mailing with the United States Postal
14 Service and that each day's mail is deposited with the United States Postal
15 Service that same day in the ordinary course of business. On the date set forth
16 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 Elk Grove, California, addressed as set forth above.

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

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

20 I declare under penalty of perjury under the laws of the State of California that the foregoing
21 is true and correct, and that this declaration was executed on January 26, 2023, at Salt Lake City,
Utah.

22 

23 _____
Hannah Hogan

24

25

26

27

28

EXHIBIT D

Case Name: Armas v. Vienna Convalescent Hospital Inc.

Wednesday, July 19, 2023

Requesting Attorneys Name:	Renald Konini
E-Mail:	rkonini@shimodalaw.com
ILYM Contact:	Lisa Mullins
E-Mail:	lisa@ilymgroup.com
Contact Number:	714.878.8836

Assumptions: PAGA Settlement

ASSUMPTIONS	
Total Estimated # of Class Members	115
NCOA	Yes
Remail of Undeliverables	Yes
Case Duration (Years)	1

Activity	Rate Type	Unit Cost	Volume	Amount
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CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$125.00	1	\$125.00
Project Manager (Case notification and maintenance)	Hourly	\$120.00	2	\$240.00
Certified Spanish Translation	Flat Fee	\$750.00	1	\$750.00
NCOA	Flat Rate	\$47.05	1	\$47.05

*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.

Subtotal \$1,162.05

DISTRIBUTION (Includes EIN, Bank Acct /QSF Setup)*				
Distribution Setup & Management	Hourly	\$150.00	2	\$300.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	1	\$125.00
Check Stub & Release - (including 1099)	Per Check	\$1.50	115	\$172.50
USPS First Class 1oz Postage	Per Piece	\$0.63	115	\$72.45
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	14	\$28.00
Preparation of Taxes	Hourly	\$125.00	2	\$250.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

*Additional Bank fees may apply

Subtotal \$2,447.95

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$120.00	1	\$120.00
Declaration	Hourly	\$120.00	1	\$120.00

Subtotal \$240.00

NOT-TO-EXCEED: \$3,850.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT E

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

) **Case No. STK-CV-UOE-2023-3403**

ANA ARMAS, individually and on behalf of all other)
similarly situated employees,)

) **NOTICE OF PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT PAYMENT**

) **Plaintiff,**

) **vs.**

VIENNA CONVALESCENT HOSPITAL, INC., a)
California Corporation; and DOES 1 to 100,)
inclusive,)

) **Defendant.**

TO: All nonexempt employees who have or continue to work for Defendant in California from January 26, 2022, to [REDACTED] who were paid any type of non-discretionary remuneration in addition to their base hourly rate, including, but not limited to, performance bonuses, shift differentials, or other types of bonuses ("Aggrieved Employees").

This Notice is being provided to you to inform you of a Private Attorney General Act ("PAGA") Settlement and your proportional share of this settlement payment. The payment is a result of a Court approved PAGA Settlement in the case of *Armas v. Vienna Convalescent Hospital, Inc.*, San Joaquin County Superior Court of California, Case No. STK-CV-UOE-2023-3403, filed April 6, 2023 (the "Action"). You are receiving this letter because you fall within the definition of Aggrieved Employees identified above. This Settlement **does not** release any individual claims that you might have against Defendant outside of PAGA.

In the Action, Plaintiff Ana Armas ("Plaintiff") sought to obtain civil penalties, fees, and costs on behalf of herself and Aggrieved Employees. Plaintiff alleged that Vienna Convalescent Hospital, Inc. ("Defendant") violated California law by 1) failing to pay overtime wages, 2) failing to provide meal periods or pay premiums in lieu thereof, 3) failing to provide rest periods or pay premium in lieu thereof, 4) failing to provide accurate wage statements, 5) failing to pay final wages, and 6) failing to provide paid sick leave. Plaintiff also alleged individual liability for several of these alleged Labor Code violations under Labor Code sections 558, 558.1. Defendant has denied all of Plaintiff's allegations.

This notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the Action or the merits of the claims or defenses asserted. Defendant has denied engaging in any unlawful conduct in any respect and further disputes all of Plaintiff's allegations in the Action. By entering into the PAGA Settlement, Defendant does not admit any liability to Plaintiff or to any other current or former employees, and Defendant does not admit that any violations of Plaintiff's rights, or the rights of any other current or former employees has occurred.

Plaintiff filed a notice with the California Labor and Workforce Development Agency ("LWDA") to exhaust administrative remedies and pursue claims under the PAGA, California Labor Code §§ 2698 *et seq.*, predicated on violations of Labor Code sections 201-203, 226, 226.3, 226.7, 246, 246.5, 248.5, 256, 510, 512, 558, 558.1, and 1194. The scope of the PAGA Settlement includes all of the Aggrieved Employees for the time period identified above. In exchange for payment under the Settlement, Plaintiff has agreed to waive any and all claims for civil penalties that were brought under the PAGA that were asserted in the Complaint and any additional claims for civil penalties under the PAGA that could have been brought based on the facts alleged therein between from January 26, 2022, and [REDACTED]. Aggrieved Employees cannot opt out of this waiver of claims. However, the waiver **does not** extend to any non-PAGA claims you may have.

Under the terms of the Settlement, Defendant has agreed to pay a Gross Settlement Amount of \$50,000 to resolve the PAGA claims alleged in the Action ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount were sums approved by the Court for attorneys' fees \$[REDACTED], attorneys' costs in the amount of \$[REDACTED], an Enhancement Payment to Plaintiff in the amount of \$[REDACTED], and the fees and expenses of the Settlement Administrator in the amount of \$[REDACTED], which will result in a "Net Settlement Amount" of \$[REDACTED] for distribution to between Aggrieved Employees and the Labor and Workforce Development Agency ("LWDA") as required by the California Labor Code. 75% of the Net Settlement Amount (\$[REDACTED]) is being paid to the LWDA and 25% of the Net Settlement Amount (\$[REDACTED]) is being paid to Aggrieved Employees pursuant to Labor Code section 2699(i). Each

individual Aggrieved Employee's share of the Net Settlement Amount was determined by taking their individual number of pay periods worked between from January 26, 2022, and [REDACTED], dividing that number by the number of pay periods worked for all Aggrieved Employees between from January 26, 2022 and [REDACTED], and then multiplying that fraction by the 25% share of the Net Settlement Amount.

Enclosed in this mailing, you will find a check containing your share of the PAGA Settlement based on this allocation. Should you have any questions or concerns, you may contact counsel for Plaintiff and/or Defendant.

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
On behalf of Plaintiff

Jose-Manuel A. de Castro
David G. Larmore
Lori V. Minassian
De Castro Law Group, P.C.
7590 Glenoaks Blvd., Suite 201
Los Angeles, California 91504
Phone: (310)-270-9877
On behalf of Defendant

EXHIBIT F

EXHIBIT G

Date	Description	Amount
1/26/2023	Administration/Copy Fee - Phone, Fax, Scan, Copying, Westlaw Legal Research Fees	\$500.00
1/26/2023	Payment to LWDA - PAGA Filing Fee	\$75.00
4/7/2023	Service fee for complaint, complex and jury fees	\$108.01
4/10/2023	Payment to Court - Complex Fees	\$1,000.00
4/10/2023	Payment to Court - Complaint Fee Superior Court	\$435.00
4/10/2023	Payment to Court - Jury Fees	\$150.00
6/2/2023	One Legal Service Fee - Proof of service of summons order20520030	\$61.26
Anticipated	Payment to Court - Preliminary Approval Motion	\$60.00
Anticipated	One Legal Fee - Preliminary Approval Motion	\$294.92
Anticipated	One Legal Fee - CMC Statement	\$61.26
Anticipated	One Legal Fee - Compliance Declaration	\$61.26

Total: \$2,806.71

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 ANA ARMAS
6 individually and on behalf of similarly situated employees

7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN JOAQUIN**

10 ANA ARMAS, individually and on behalf of
11 all other similarly situated employees,

12 Plaintiff,

13 vs.

14 VIENNA CONVALESCENT HOSPITAL,
15 INC., a California Corporation; and DOES 1 to
16 100, inclusive,

17 Defendants.

Case No. STK-CV-UOE-2023-0003403

*Assigned for All Purposes to Hon. Blanca A.
Banuelos, Department 10B*

**DECLARATION OF JUSTIN P.
RODRIGUEZ IN SUPPORT OF MOTION TO
APPROVE PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT**

Date:

Time: 9:00 a.m.

Dept.: 10B

Judge: Hon. Blanca A. Banuelos

Filed: April 6, 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 Ana Armas (“Plaintiff”) herein. I am making this
4 declaration on behalf of Plaintiff, and in support of Plaintiff’s Motion to Approve Private Attorneys
5 General Act Settlement. A true and correct copy of the Private Attorneys General Act Settlement is
6 being filed with this Motion as Exhibit A.

7 2. This case was brought as a Private Attorneys General Act (“PAGA”) lawsuit, including
8 Plaintiff’s individual wage and hour claims, based on Plaintiff’s contention that Defendant Vienna
9 Convalescent Hospital, Inc. (“Defendant”) failed to pay overtime wages, failed to provide meal periods
10 or pay premiums in lieu thereof, failed to provide rest periods or pay premium in lieu thereof, failed to
11 provide accurate wage statements, failed to pay final wages, and failed to provide paid sick leave.
12 These claims primarily stemmed from Plaintiff’s allegations that Defendant violated California law by
13 failing to incorporate the value of nondiscretionary perfect attendance (“PA”) bonuses into Plaintiff’s
14 and Aggrieved Employees’ regular rates of pay for the purpose of calculating overtime wages, meal
15 and rest period premiums, and paid sick leave.

16 3. Plaintiff is the only named Plaintiff in this matter. From our initial investigations of
17 Plaintiff’s claims and documents, we believed these claims had merit and could be maintained as a
18 PAGA action. Plaintiff filed the original complaint on April 6, 2023. Plaintiff exhausted
19 administrative remedies through the Labor and Workforce Development Agency (“LWDA”) prior to
20 filing the Complaint in order to pursue penalties under the PAGA. Plaintiff filed a notice with the
21 LWDA on January 26, 2023, setting forth the facts and theories of liability. A true and correct copy of
22 the notice filed with the LWDA is being filed with this Motion as Exhibit C. A copy of the notice was
23 also sent to Defendant via certified mail and the \$75.00 filing fee was remitted to the LWDA at that
24 time. There was no response by the LWDA regarding its intent to investigate the claims alleged in
25 Plaintiff’s notice. As such, Plaintiff became authorized to commence a civil action under the PAGA. A
26 copy of the Complaint was uploaded to the LWDA shortly thereafter on April 26, 2023, after we
27 received a file stamped copy back from Court. A true and correct copy of Plaintiff’s operative
28

1 Complaint is being filed with this Motion as Exhibit B. Currently, there is no trial date set in this
2 matter.

3 4. Because the settlement is a PAGA only settlement, no certification procedures have or
4 need to occur in the context of approving the Agreement pursuant to *Arias v. Superior Court*, 46
5 Cal.4th 969, 975 (2009) and California Labor Code section 2699(1)(2). The settlement notice being
6 provided to employees within the PAGA settlement identifies the scope of the settlement and that no
7 other Aggrieved Employee claims, class or otherwise, are being compromised as part of the settlement.

8 5. Defendant is represented in this matter by De Castro Law Group, P.C. From the
9 beginning, Defendant has contested the merits of this case, the manageability of the case at trial, and
10 Plaintiff's ability to prove a violation in each pay period for each employee among other defenses and
11 contentions they made challenging the propriety of this action. Defendant further contended that, even
12 assuming there was a finding supporting the imposition of PAGA penalties, the Court would likely
13 exercise its discretion to substantially reduce any such penalties owed based on evidence of good faith
14 attempts to comply with Labor Code obligations by Defendant. Notwithstanding its agreement to settle
15 this matter, Defendant believe the practices Plaintiff is contending are unlawful either do not exist or, to
16 the extent they do exist, fully comply with all state and federal employment laws with respect to
17 Plaintiff and Aggrieved Employees.

18 6. Based on the expected testimony from Plaintiff and Aggrieved Employees, a review of
19 Defendant's policies and procedures and other documents relating to the alleged claims, information on
20 the number of Aggrieved Employees, Aggrieved Employees' pay periods, payroll data for the
21 Aggrieved Employees, the scope of the potential penalties at issue in light of the claims alleged, the
22 Court's statutorily authorized discretion to reduce any penalties assessed, and the negotiations that have
23 taken place, I am convinced that the proposed settlement is in the best interest of the Plaintiff, Aggrieved
24 Employees affected by the Agreement and the LWDA. The length and risks of trial and other normal
25 perils of complex litigation that impact the value of the claims were also considered and weighed in
26 reaching the proposed settlement. These risks were also exacerbated in this case in that it would have
27 been necessary for Plaintiff to litigate the existence of violations for numerous individual Aggrieved
28 Employees in each pay period that they worked. In addition, I carefully considered the difficulties of

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

8 7. My office, including my partner, Galen T. Shimoda, our paralegals, and myself, along
9 with Plaintiff's assistance, thoroughly investigated the merits of the claims and potential damages for
10 such claims. The parties engaged in informal discovery and exchange of documents, such as timecards,
11 paystubs, payroll data and relevant policies for the entirety of the statute of limitations applicable to the
12 PAGA claims. The discovery covered all aspects of the asserted claims, including merits issues,
13 damages, the scope and configuration of Aggrieved Employees, the content and implementation of the
14 wage and hour policies at issue, issues relating to manageability concerns at trial, among other relevant
15 areas. From this production we were able to determine information critical to a reliable damages
16 analysis such as the average hourly rate, average daily hours worked, average number of pay periods
17 that had potential violations based on the asserted claims, and the number of former employees. This
18 information allowed my office to assess both liability and damages and create an accurate damages
19 model. Plaintiff assisted in all aspects of this litigation including providing factual information relating
20 to Defendant's employment conditions, potential witness information, and answered questions regarding
21 Defendant's factual contentions in this matter. This was important because it directly related to our
22 ability to maintain this case as a PAGA action under manageability concerns and our ability to obtain a
23 favorable settlement for the PAGA claims.

24 8. Throughout this litigation, our office had numerous communications with Defendant's
25 Counsel discussing our respective positions. Through informal discovery and Plaintiff's independent
26 investigation, the applicable payroll and Aggrieved Employee information were reviewed and
27 analyzed prior to settlement. It was only after approximately nine (9) months of extensive investigation,
28 litigation, and arm's length negotiations that the parties were able to reach a settlement. Although the

case was filed in April 2023, our pre-filing investigation began in November 2022. The negotiations were at all times contentious and adversarial, though still professional in nature.

9. The following represents the potential maximum recovery for Plaintiff's PAGA claim based on my office's analysis of Defendant's relevant policies and the data produced by Defendant, including a sample of time and payroll records for Aggrieved Employees. There was a maximum of 1,370 pay periods within the 1-year statute of limitations that were affected by the regular rate issue. 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 Aggrieved Employees' payroll data, the maximum total exposure for this claim ranged from \$277,500 to \$483,000. The range of damages results from the fact that the PA bonus covered a monthly period, Aggrieved Employees were paid bi-monthly, and the PA bonus was paid out in 685 pay periods. Thus, assuming there were overtime premiums, meal period premiums, and rest period premiums paid out to employees in each of the two pay periods the PA bonus covered for every Aggrieved Employee, the maximum amount of potential pay periods affected would be 1,370. However, it was infrequent that overtime, meal period premiums, and/or rest period premiums were paid at all.

- a. Overtime Wages: This claim is based on Defendant's failure to incorporate the perfect attendance (PA) bonuses into the regular rate of pay when calculating overtime and double time paid in the same pay periods where PA bonuses were also earned. The maximum amount of civil penalties potentially applicable for this claim ranges from \$34,250 to \$68,500 (\$50 per violation per pay period x 685 and 1,370 pay periods respectively). The percentage of pay periods affected was heavily disputed as Defendant contended the actual applicable pay periods at issue for this claim were no greater than 685. Furthermore, the amount of substantive wage loss was relatively little, ranging from \$0.09 to \$6.00 per bi-monthly pay period. It is unlikely that a Court would award the full \$50.00 civil penalties where actual wage loss was this low.

- 1 b. Meal and Rest Periods: These claims were also based on Defendant's failure to
2 incorporate the perfect attendance (PA) bonuses into the regular rate of pay when
3 calculating meal and rest period premiums in the same pay periods where PA bonuses
4 were also earned. The maximum amount of civil penalties potentially applicable for the
5 meal period claim ranges from \$34,250 to \$68,500 (\$50 per violation per pay period x
6 685 and 1,370 pay periods respectively). The maximum amount of civil penalties
7 potentially applicable for the rest period claim ranges from \$68,500 to \$137,000 (\$100
8 per violation per pay period x 685 and 1,370 pay periods respectively). However, the
9 percentage of pay periods affected was heavily disputed. Plaintiff assumed a violation
10 in every pay period for every employee, even though there were several pay periods
11 where no meal and/or rest periods were paid. In fact, the payroll records did not show
12 any payment for rest period premiums and approximately 15% of pay periods affected
13 by the failure to pay meal period premiums at the regular rate of pay, substantially
14 reducing the amount of potential civil penalties available. Similar to the overtime
15 claims, the actual substantive loss due to underpayment only ranged from \$0.50 to \$2.00
16 per bi monthly pay period, so it is unlikely a Court would award the maximum \$50
17 and/or \$100 civil penalty where the actual wage loss was this low.
- 18 c. Wage Statement Violations: This claim is derivative of Plaintiffs' overtime, and meal
19 and rest period claims. The maximum potential value for this claim ranges from \$68,500
20 to \$137,000 (\$100 per violation per pay period x 685 and 1,370 pay periods
21 respectively). Because this claim is derivative of Plaintiff's other claims, the same risks
22 identified above for Plaintiff's overtime, meal period, and rest period claims equally
23 apply here, substantially affecting the potential value of this claim.
- 24 d. Waiting Time Penalties: This claim is derivative of the overtime and meal and rest
25 period claims above. The maximum potential value of this claim is \$72,000 (Daily rate
26 of pay of \$160 x 30 days x 15 former employees). Because this claim is derivative, the
27 same risks mentioned above also apply to this claim. Additionally, due to the heavily
28 disputed nature of the claims, there is a substantial risk that the good faith dispute

1 defense to waiting time penalty claims would apply here at least as to the meal and rest
2 period claims. *See Diaz v. Grill Concepts Servs., Inc.*, 23 Cal.App.5th 859, 868 (2018).

- 3 e. Sick Leave: Because the PA bonus was only paid where an Aggrieved Employees had
4 perfect attendance during the month, there were no instances where sick leave was paid
5 out in the same month that a PA bonus was paid, resulting in this claim having zero
6 value.

7 10. Using a more realistic range of recovery that accounts for the lack of pay periods
8 affected by the meal and rest period claims and the non-speculative 685 pay period count for the
9 remaining claims, I believe the realistic maximum recovery would be closer to \$179,887.50. In
10 addition to the risks on the merits and disputes regarding the proper valuation of the penalty amounts, I
11 believe the Court may exercise its discretion to reduce PAGA penalties in this case in light of
12 Defendant's showing a good faith attempt at compliance by having detailed wage and hour policies,
13 including policies regarding overtime as well as meal and rest periods. Furthermore, several of the
14 potential penalty amounts are substantially, if not entirely overlapping, and the substantive loss is very
15 small compared to the maximum potential civil penalties that could be awarded, giving a strong reason
16 to exercise discretionary reductions to assessed penalties to avoid any finding that they were arbitrary,
17 capricious, and/or unduly excessive. Additionally, some of the violations are due to technical non-
18 compliance with the Labor Code, such as derivative wage statement violations, rather than violations
19 causing substantive wage loss by Aggrieved Employees. Courts are statutorily authorized to use
20 discretion to reduce penalties and the range of discretion used varies substantially. *See Thurman v.*
21 *Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction); *Fleming v.*
22 *Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82% reduction). The 82%
23 reduction equates to roughly \$9-\$50 worth of civil penalties per pay period per employee depending on
24 the total potential value of the civil penalty (*i.e.* \$50-\$100), which is more in line with actual awards
25 based on my experience and review of awards in other cases. Using the more realistic maximum values
26 and setting aside risks of proving the claims on the merits, the total exposure may be reduced to
27 \$32,379.75 (82% reduction from \$179,887.50) to \$125,921.25 (30% reduction from \$179,887.50).
28 Thus, the Gross Settlement Amount represents approximately 27.8% of the realistic maximum value of

1 the claim (\$50,000/\$179,887.50) in this matter and between 40% (\$50,000/\$179,887.50) and 154%
2 (\$50,000/\$32,379.75) of the realistic range of recovery after accounting for discretionary reductions to
3 any civil penalties by the Court.

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

27 12. In agreeing to represent Plaintiff and take on the case for all Aggrieved Employees, our
28 office agreed to take this case on a contingency basis, meaning that we would take a percentage of any

1 settlement or judgment should we recover a monetary amount. We took a risk that we would not
2 recover any money in this matter if we were unsuccessful at trial. We also took on the risk that the case
3 may be subject to an unfavorable summary judgment ruling. However, we believe it is important to
4 make sure employees are able to find affordable representation in order to ensure that employers are
5 complying with all their legal obligations towards employees and paying employees all their hard-
6 earned wages.

7 13. I am a shareholder at Shimoda & Rodriguez Law, PC. My law firm is a boutique law
8 practice that focuses primarily in employment litigation, emphasizing wage and hour litigation. I
9 attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the
10 Departmental Citation for Academic Achievement in the Philosophy program. I was one of only two
11 recipients of this award out of the entire Philosophy Department. After U.C. Davis, I attended the
12 University of the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris
13 Doctorate. I graduated in the top 20% of my class and was a member of the Traynor Honor Society at
14 McGeorge. Other academic achievements of mine include receiving a Witkin Award (top grade) in my
15 legal research and writing course, a Witkin Award in complex civil litigation, being a member of the
16 Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from
17 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global Business &*
18 *Development Law Journal* from 2010–2011, and being selected as a Sacramento County Bar
19 Association Diversity Fellow in 2009. I was also a member of the Employment and Labor Law Society
20 and an officer for the Latino Law Students Association from 2009 to 2010.

21 14. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda
22 Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp.
23 became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent
24 rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to present, I have
25 been recognized as a Super Lawyer (Rising Star). I have been a panel speaker and presented a number
26 of seminars covering issues in wage and hour litigation in general and complex class and PAGA
27 litigation in particular. These engagements include the following: (1) *Epic Systems*, PAGA, and the
28 Future of Employment Arbitration in California (Sacramento County Bar Assoc., Sept. 2018); (2) Class

1 Actions and PAGA Claims (Assoc. of Defense Counsel of Northern California & Nevada, Jul. 2020);
2 (3) Mediation: The Experienced Trial Lawyers Perspective (Sacramento County Bar Assoc., Sept.
3 2020); (4) How to Become a Pivotal Part of Any Wage and Hour Practice Group (Sacramento County
4 Bar Assoc., Mar. 2021); (5) Emerging Trends and Issues Relating to Arbitration and PAGA Claims in a
5 Post-*Viking River Cruises* World (Sacramento County Bar Assoc., Nov. 2022). I was elected to the
6 Sacramento County Bar Association Labor and Employment Law Section's executive committee in
7 2019 and was the Chair of the executive committee for 2022. I have also been a member of the
8 Presiding Judge Civil Law Advisory Committee for Sacramento County Superior Court since August
9 2020. My practice focuses on complex civil litigation, including wage and hour class actions, PAGA
10 claims, and Fair Labor Standards Act ("FLSA") claims. I am actively involved in most all of the
11 complex litigation handled by our firm. Class and/or PAGA actions I have litigated or am currently
12 litigating, including the instant case, includes, but is not limited to, the following:

- 13 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 14 • *Adams-Anguy v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- 15 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 16 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 17 • *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080 (San
18 Joaquin Sup. Ct.);
- 19 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 20 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 21 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup.
22 Ct.);
- 23 • *Barkhousen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- 24 • *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- 25 • *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-00271174
26 (Sac. Sup. Ct.);
- 27 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- 28 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.

1 Ct.);

- 2 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
- 3 Sup. Ct.);
- 4 • *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- 5 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- 6 • *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 7 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613
- 8 (Sac. Sup. Ct.);
- 9 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 10 • *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-
- 11 00222101 (Sac. Sup. Ct.);
- 12 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- 13 • *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- 14 • *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- 15 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 16 • *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- 17 • *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup.
- 18 Ct.);
- 19 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 20 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 21 • *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- 22 • *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- 23 • *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- 24 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 25 • *Hellum v. AI Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- 26 • *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- 27 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- 28 • *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. Ovarions 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.).

15. 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.

16. 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

1 B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the
2 University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He
3 graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and
4 Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a number of
5 employment law articles for journals and our firm regularly publishes articles on our firm's website.
6 Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar)
7 Employment Review seminars from 2014 to the present. His speaking engagements include the
8 following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual
9 Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the
10 Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in
11 Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6)
12 CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law
13 Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class
14 Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21,
15 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the
16 Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour
17 Panel and AB 1825 Training: Updates on California's New Wage Laws and Manager Compliance
18 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
19 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
20 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
21 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
22 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
23 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);
24 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
25 Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,
26 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized
27 as a Super Lawyer from 2014 to present.

1 17. Mr. Shimoda has practiced law in California since being admitted to the State Bar in
2 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases.
3 Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington &
4 Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is
5 in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and
6 Federal Courts, including up to certification, settlement, preliminary and final approval, and
7 disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel.
8 Some of the class action and/or PAGA cases he is litigating and/or has litigated as lead or co-counsel
9 include the following:

- 10 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 11 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 12 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 13 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 14 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 15 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 16 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 17 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 18 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup.
19 Ct.);
- 20 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 21 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- 22 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
23 Ct.);
- 24 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
25 Sup. Ct.);
- 26 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 27 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- 28 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);

- 1 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613
2 (Sac. Sup. Ct.);
- 3 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 4 • *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- 5 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- 6 • *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San
7 Joaquin Sup. Ct.);
- 8 • *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- 9 • *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac. Sup.
10 Ct.);
- 11 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 12 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 13 • *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-300000003 (Sac. Sup.
14 Ct.);
- 15 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 16 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 17 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 18 • *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- 19 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- 20 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 21 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 22 • *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- 23 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 24 • *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- 25 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 26 • *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- 27 • *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup.
28 Ct.);

- 1 • *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- 2 • *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- 3 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- 4 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 5 • *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- 6 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201
- 7 (Sac Sup. Ct.);
- 8 • *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup.
- 9 Ct.);
- 10 • *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- 11 • *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- 12 • *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- 13 • *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac.
- 14 Sup. Ct.);
- 15 • *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- 16 • *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- 17 • *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- 18 • *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

22 19. My associate, Renald Konini, Esq., also worked with me on this case. In May 2011, Mr.
23 Konini graduated from Seton Hall University School of Law. Prior to moving to California, he
24 practiced law in New Jersey. While working for my firm, Mr. Konini has worked on a variety of
25 individual and class action cases, including those involving wage and hour claims, Private Attorney
26 General Act claims, wrongful termination claims, discrimination claims, retaliation claims, and
27 harassment claims. Mr. Konini passed the July 2016 California Bar Examination and started practicing
28 as an associate at my firm from approximately April 2019 to February 2021 and rejoined my firm in

1 September 2022. Mr. Konini has worked on the written and oral discovery, including defending a
2 PAGA representative's deposition, drafting special interrogatories and request for production of
3 documents, calculating class-wide damages, communicating with class representatives, drafting
4 mediation briefs, negotiating, drafting correspondence to defendants' counsel regarding the damages
5 calculated per plaintiffs' claims against defendant companies, and more. Mr. Konini worked on other
6 class and/or PAGA wage and hour actions that my firm has filed, namely *Bertelli v. Air Products and*
7 *Chemicals, Inc.*, Case No. 34-2018-00236898 (Sac. Sup. Ct.), *Carr v. Howroyd-Wright Employment*
8 *Agency, Inc.*, Case No. 34-2018-00228290 (Sac. Sup. Ct.), *Gomez v. Vander Schaaf Dairy*, et al., Case
9 No. STK-CV-UOE-2020-0003954 (San Joaquin Sup. Ct.), *Haggins v. Kelly Services, Inc.*, Case No.
10 34-2017-00220473 (Sac. Sup. Ct.), *Hussaini v. Integrated Resources, Inc.*, et al, Case No. 34-2021-
11 00297152 (Sac. Sup. Ct.), *Kee, et al. v. Dr. Jeffrey A. Saladin, Dental Corporation (D/B/A Children's*
12 *Choice Pediatric Dental Care)*, et al., Case No. 34-2020-00290072 (Sac. Sup. Ct.), *Lear v. Raxium,*
13 *Inc.*, Case No. 21CV004358 (Alameda Sup. Ct.), *Serrano v. Cool Time, LLC*, Case No. 34-2021-
14 00312356 (Sac. Sup. Ct.), *Grebe v. Mary Ann's Baking Co., Inc.*, Case No. 34-2020-00285254-CU-
15 OE-GDS (Sac. Sup. Ct.), *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.),
16 *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.), *Miller v. Caldwell*
17 *Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.), *Pek, et al v. Varris*
18 *Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin Sup. Ct.), *Valencia v. Lowbrau*
19 *Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct). Mr. Konini's practice largely
20 revolves around wage and hour matters, including PAGA claims.

21 20. I am requesting attorneys' fees and costs pursuant to the common fund doctrine as I
22 believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977),
23 *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v.*
24 *Graulty*, 886 F.2d 268, 271 (9th Cir. 1989). Plaintiff and our firm have been able to secure an
25 identifiable benefit on behalf of Aggrieved Employees and the LWDA and equity counsels that the cost
26 of the representation should be born equally amongst all who are receiving these benefits. The
27 settlement recovery provides an excellent result and is the product of substantial time and effort in
28 analyzing the facts and law applicable to this case. Our firm agreed to take this case on a contingency

1 basis and as a representative action with the possibility that we would not receive any compensation for
2 our time and efforts due to issues regarding the merits and have carried that risk over the course of this
3 case. I have reviewed fee arrangements and Court ordered fee awards in similar class cases and I
4 believe that the thirty-five percent (35%) fee request is within the accepted ranges. In my experience
5 with contingency cases in employment law cases, the typical percentage negotiated between parties
6 ranges from thirty-five to forty percent (35% to 40%) in individual litigation. In class action and
7 PAGA litigation, my experience in our firm and working with several other firms has been that the
8 typical percentage negotiated between parties and approved by a court range from thirty to forty percent
9 (30% to 40%) based on the same factors. I have also reviewed several recent Federal District Court
10 Cases where the Court has approved common fund-based fee requests. These cases include *In re*
11 *Activision Sec. Litigation*, 723 F.Supp. 1373, 1379 (N.D. Cal. 1989), *Watson v. Raytheon Company*,
12 USDC Southern District, Case No. 3:10-cv-0063, *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern
13 District, Case No. 3:09-cv-02745, *Green, et al. v. Penske Logistics, L.L.C., et al.*, USDC Southern
14 District, Case No. 3:09-cv-00069, *Benitez et al. v. Wilbur*, USDC Eastern District, Case No. 1:08-cv-
15 01122, *Chavez et al. v. Petrissans et al.*, USDC Eastern District, Case No. 1:08-cv-00122, and *Willis et*
16 *al. v. Cal-Western Transport*, USDC Eastern District, Case No. 1:00-cv-05695, which are cited in
17 Plaintiff's Memorandum of Points and Authorities. I believe our request of \$17,500 (approximately
18 35%) for attorneys' fees is justified given the results obtained on behalf of Aggrieved Employees and
19 the LWDA. Moreover, at this time, my firm has advanced all costs for Plaintiff and Aggrieved
20 Employees and has not received any compensation whatsoever for our time expended in this case. The
21 incurred costs to date and the expected costs through overseeing the complete distribution of all
22 settlement proceeds are \$2,806.71. Attached as Exhibit G is a true and correct copy of an itemization
23 of our firm's incurred costs and expected costs through the complete distribution of all settlement
24 proceeds. I believe the \$5,000 Enhancement Payment is an appropriate payment to Plaintiff for the
25 time and effort she expended on behalf of the Aggrieved Employees and especially because she is
26 subject to a general release of all claims that no other Aggrieved Employee is subject to.

27 21. I have used several settlement administrator companies in the wage and hour class
28 actions and PAGA actions I have resolved in the past and believe ILYM Group, Inc. will provide the

1 best service to administer the proposed class settlement. A true and correct copy of a cost estimate
2 provided by ILYM Group, Inc. is filed with this Motion as Exhibit D. Any difference in the actual costs
3 and the allocated amounts to cover costs will be redistributed to Aggrieved Employees pro rata per the
4 terms of the Agreement.

5 22. A copy of the proposed Agreement and the entire Motion to Approve the PAGA
6 Settlement was submitted to the LWDA at the same time the Motion was submitted to the Court
7 pursuant to California Labor Code section 2699(1)(2). A true and correct copy of documents
8 demonstrating the settlement documents were provided to the LWDA and that the LWDA has
9 confirmed receipt are being filed with this Motion as Exhibit F.

10 23. A true and correct copy of the proposed Notice of Settlement to be distributed to
11 Aggrieved Employees informing them of the settlement and all material terms is being filed with this
12 Motion as Exhibit E.

13 24. The designated *cy pres* beneficiaries in this case are Capital Pro Bono, Inc. (“CPB”) and
14 The Center For Workers Rights (“CFWR”). Only those funds that remain from uncashed settlement
15 checks will be sent to the *cy pres* beneficiaries pursuant to section 5.5 of the Agreement.

16 25. CPB is a 501(c)(3) nonprofit in good standing with the State of California that was
17 established in 1981 and incorporated in 1986 to provide free civil legal services to the indigent,
18 primarily through the use of volunteer attorneys. The formal service area includes Sacramento, Yolo,
19 San Joaquin, El Dorado and Placer counties, however it also regularly provides assistance, whether in
20 person or by phone, to individuals residing outside those counties, including Solano, Nevada, Merced,
21 Sutter, Yuba, and Stanislaus counties. CPB changed its name in 2020 from Voluntary Legal Services
22 Program of Northern California (“VLSP”) to Capital Pro Bono, Inc. CPB has been the recipient of *cy*
23 *pres* funds from several jurisdictions in the State of California, including from Sacramento County
24 Superior Court.

25 26. If CPB is approved as a *cy pres* beneficiary, any funds received will be dedicated to the
26 Employment Law Clinic and Advice Line project, which assists the indigent with legal matters related to
27 their current or former employment. This assistance regularly includes, but is not limited to, free legal
28 advice regarding claims for unpaid wages, failure to provide meal and rest periods, failure to pay

1 reimbursement, and waiting time penalty claims. CPB provides legal advice, assistance with legal
2 forms, and direct representation in administrative hearings, including administrative hearings in front of
3 the California Labor Commissioner for unpaid wages. CPB has a staff attorney and clinic coordinator
4 who provide assistance, along with experienced employment law attorney volunteers. These services
5 have been a focus of the Employment Law Clinic and Advice Line project since its inception with VLSP
6 and continuing through today under CPB.

7 27. CFWR is also a qualified *cy pres* designee in class actions, under section 384, as it is a
8 501(c)(3) nonprofit in good standing with the State of California providing free civil legal services to the
9 indigent. Since its inception in 2014 and in partnership with Legal Aid at Work, the CFWR offers one-
10 on-one legal consultations for low-wage workers. The CFWR discusses employment issues with
11 workers and advises them as to the available legal remedies. In addition to individual counseling on
12 employment issues, the CFWR educates workers, unions, and community members about workplace
13 laws and remedies through “Know-Your-Rights” trainings conducted by the CFWR staff and volunteers.

14 28. The CFWR provides limited representation for low-wage workers in wage claims before
15 the California Labor Commissioner. The CFWR has provided services to low-wage workers in a variety
16 of industries across the entire state of California. CFWR primarily focuses on the enforcement of basic
17 workplace protections, including claims for unpaid wages, minimum wage violations, failure to pay
18 overtime, failure to pay reimbursement, waiting time penalties, and meal and rest period violations. The
19 CFWR helps workers navigate the wage claim process before the California Labor Commissioner
20 through advice given at its legal consultation clinics and/or, in some cases, through representing workers
21 in these claims. If the CFWR is approved as a *cy pres* beneficiary, the funds received will be dedicated
22 towards assisting low-wage workers with wage claims and enforcing the California Labor Code with
23 respect to those wage claims.

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

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

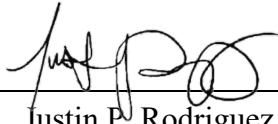
1 31. I have volunteered for both organizations numerous times over the past several years,
2 either directly in the advice clinics or by presenting seminars on wage and hour laws for law students
3 seeking to also volunteer at advice clinics. I have also volunteered by sitting on CPB's advisory
4 committee.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

9 32. Brittany V. Berzin has never done any work, volunteer or otherwise, with CPB. During
10 law school, Ms. Berzin was a student volunteer for the CFWR for two summers. Since graduating law
11 school, she has volunteered for the CFWR approximately one to two times per year, assisting in the
12 advice clinic. Recently, Ms. Berzin volunteered to be on the Board of Directors and is currently the
13 Chair, which is an unpaid position. As Chair, Ms. Berzin is one of seven Board Members, who are all
14 from different law firms and/or local public and private organizations. No compensation or benefits,
15 monetary or otherwise, are provided to any Board Member or organization a Board Member is
16 associated with. The Executive Director of the CFWR supervises, directs, and controls the day-to-day
17 operations of the CFWR, not Ms. Berzin or the Board of Directors. As Chair, Ms. Berzin's additional
18 duties include scheduling meetings, drafting meeting agendas and presiding over meetings.
19 Furthermore, CFWR has not, and does not, provide any referrals to Shimoda & Rodriguez Law, P.C.

20 33. Galen T. Shimoda has volunteered for both organizations on and off over the past several
21 years through either presenting wage and hour seminars to law students who staff the free advice clinics
22 or helping at the advice clinics themselves. However, Mr. Shimoda has not performed any volunteer
23 work with either organization since approximately March 2020. Mr. Shimoda has never received
24 payment or compensation of any kind in connection with any work he's done with either of the proposed
25 *cy pres* beneficiaries. Renald Konini has never done any work, volunteer or otherwise with Capital Pro
26 Bono, Inc. or the Center For Workers' Rights. Neither my firm, myself, Mr. Konini, Ms. Berzin, nor
27 Mr. Shimoda have ever received any compensation, direct or indirect, for designating CFWR or CPB as
28

1 *cy pres* beneficiaries or in connection with any of the volunteer work we have done with the
2 organizations.

3 I declare under penalty of perjury under the laws of the State of California that the foregoing
4 is true and correct. Executed on September 14, 2023 in Sacramento, California.

5
6 
7 _____
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)
Shimoda & Rodriguez Law, PC
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Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff ANA ARMAS
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

ANA ARMAS, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

VIENNA CONVALESCENT HOSPITAL,
INC., a California Corporation; and DOES 1 to
100, inclusive,

Defendants.

Case No. STK-CV-UOE-2023-0003403

*Assigned for All Purposes to Hon. Blanca A.
Banuelos, Department 10B*

**DECLARATION OF ANA ARMAS IN
SUPPORT OF PLAINTIFF'S MOTION TO
APPROVE PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT**

Date:
Time: 9:00 a.m.
Dept.: 10B
Judge: Hon. Blanca A. Banuelos

Filed: April 6, 2023
Trial Date: None Set

1 I, Ana Armas, 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 To Approve Private Attorneys General Act Settlement.

5 2. I worked for Defendant Vienna Convalescent Hospital, Inc. ("Defendant") from
6 approximately January 2017 to May 2022 as a non-exempt employee. I was subject to all of
7 Defendant's policies and practices that have been alleged as unlawful in the complaint and the notice
8 sent to the Labor and Workforce Development Agency ("LWDA"), including the following: failure to
9 pay overtime wages, failure to provide meal periods or pay premiums in lieu thereof, failure to provide
10 rest periods or pay premium in lieu thereof, failure to provide accurate wage statements, failure to pay
11 final wages, and failure to pay sick leave.

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

19 4. My attorneys explained to me the risks and benefits of bringing a claim under the
20 Private Attorneys General Act ("PAGA"). I understood that pursuing the case as a PAGA action in
21 addition to my individual claims meant that it would take substantially longer than pursuing individual
22 claims alone and that the PAGA claims being pursued were for civil penalties, not for individual
23 claims. I understood that I risked getting nothing in the end, but I believed it was important to make
24 sure that Defendant followed the law for everyone. I understood that I took on the risk, both
25 professionally and financially, in pursuing the case as a PAGA action rather than just pursuing my
26 claims individually. As the named PAGA representative, I also took on the risk of having to pay
27 Defendant's costs if we were unsuccessful in bringing our claims.

1 5. During the course of this litigation, I have given detailed accounts of all the facts related
2 to my employment. I provided my attorneys with extensive documentation that I believe supported the
3 claims brought against Defendant. I met with and assisted my attorneys in understanding these
4 documents and providing context for Defendant's payroll process as it applied to me and how I believed
5 it applied to Defendant's other employees. I worked there for over five years, so I was able to discuss
6 the similarities of the wage and hour policies and practices among all Aggrieved Employees for the
7 entire PAGA Claim Period.

8 6. The work I performed for this case included an extensive review of documents and
9 payroll practices to show and explain to my attorneys what was happening and why I thought it was
10 unlawful. For example, I searched for and reviewed many payroll documents and work-related
11 documents to show and explain to my attorneys what was happening and why certain practices were
12 unlawful. I helped review and explain to my attorney's different documents such as payroll documents,
13 paystubs and payroll records, payroll polices, bonus policies, meal and rest period policies, employee
14 handbook, timesheets, and Defendants' practices of such policies. Also, I spent a substantial amount of
15 time discussing the bonus compensation policy, including the type of bonus that could be earned and
16 the circumstances under which the perfect attendance ("PA") bonus would be earned. I went through
17 my pay history with my attorneys to explain how the payments were documented on our paystubs and
18 what other indicators they could look for in the records to demonstrate the when and how the bonus
19 was paid and circumstances surrounding the PA bonus. This was very important because it was
20 directly related to the primary claim that Aggrieved Employees' regular rates of pay were calculated
21 incorrectly for the purpose of calculating overtime wages, meal and rest period premiums, and paid sick
22 leave. This helped not only the overtime wages, meal and rest period premiums, and paid sick leave
23 claims but also claims related to waiting time penalties and failure to provide accurate wage statements.
24 I also worked with my attorneys to review Defendant's practices and written policies to reconstruct the
25 timeline and facts of this case and help support our allegations. Overall, I have spent an enormous
26 amount of time assisting in the prosecution of this case.

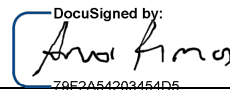
27 7. I participated in the negotiations and settlement discussions in this case, speaking with
28 my attorneys to answer questions, provide any additional information needed to assist the negotiations,

1 and discussing the potential terms of the Agreement to evaluate its adequacy. Throughout the course of
2 this litigation I have asked questions when I needed clarification about various aspects of this case to
3 make sure there were continually steps taken to advance the interests of the Aggrieved Employees and
4 the LWDA.

5 8. I estimate that I have spent approximately 50-55 hours total in assisting my attorneys in
6 this case. I expect the amount of time I spend on this case will also increase if approval is granted
7 because Aggrieved Employees may inquire about payment. I have not received any benefits as a result
8 of filing this lawsuit. I have spent a substantial amount of time in this case, securing a monetary
9 benefit for the LWDA and for many individuals who have not had to do anything whatsoever to have
10 the opportunity to receive it. This has been particularly challenging because I take care of my
11 grandchildren several days per week, and I would have to find time during the week to assist my
12 attorneys in this case. Rather than spend this time with friends and family, I have spent this time for the
13 benefit of the Aggrieved Employees. Finally, as part of the Settlement, I am the only individual
14 providing a general release of all our individual claims and waiving the protections of California Civil
15 Code section 1542 for unknown claims. No other Aggrieved Employees are subject to a release of their
16 individual, non-PAGA claims. I believe the full Enhancement Payment is reasonable and appropriate
17 given the work I have done on behalf of Aggrieved Employees and the LWDA and the waiver of
18 personal claims I am providing to secure payment for the Aggrieved Employees and the LWDA.

19 9. I have reviewed the Private Attorneys General Act Settlement, discussed the terms with
20 my attorneys, and asked my attorney any questions I had. I believe the terms of the Settlement and
21 allocations are fair and reasonable given the facts of the case.

22 I declare under penalty of perjury under the laws of the State of California that the foregoing is
23 true and correct. Executed on 9/15/2023 in Lodi, California.

24
25 DocuSigned by:
26 
27 79F2A54203454D5...

28 Ana Armas

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 ANA ARMAS
individually and on behalf of similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

ANA ARMAS, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

VIENNA CONVALESCENT HOSPITAL,
INC., a California Corporation; and DOES 1 to
100, inclusive,

Defendants.

Case No. STK-CV-UOE-2023-0003403

*Assigned for All Purposes to Hon. Blanca A.
Banuelos, Department 10B*

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT**

Date:
Time: 9:00 a.m.
Dept.: 10B
Judge: Hon. Blanca A. Banuelos

Filed: April 6, 2023
Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion to Approve Private Attorneys General Act Settlement (“Motion”) in the above
3 referenced case came before this Court, on _____ at 9:00 a.m., in Department 10B before the
4 Honorable Blanca A. Banuelos, presiding. Plaintiff Ana Armas (“Plaintiff”) filed this Private Attorneys
5 General Act (“PAGA”) action on April 6, 2023. The operative Complaint alleges that Vienna
6 Convalescent Hospital, Inc. (“Defendant”) violated California law by failing to pay overtime wages,
7 failing to provide meal periods or pay premiums in lieu thereof, failing to provide rest periods or pay
8 premium in lieu thereof, failing to provide accurate wage statements, failing to pay final wages, and
9 failing to provide paid sick leave. The Complaint further alleges that Defendant engaged in unfair
10 competition and further alleges that Defendant is also liable for civil penalties under the PAGA as a
11 result of the alleged violations. Defendant has denied all of Plaintiff’s allegations. Plaintiff sought
12 attorneys’ fees and costs as part of this Action.

13 The parties have agreed to a settlement of the PAGA claims. Defendant will provide monetary
14 consideration in exchange for a release of claims and dismissal consistent with the terms of the PAGA
15 Settlement (“Agreement” or “Settlement”). Any capitalized terms herein shall have the same meaning
16 as set forth in the Agreement. The Court, having received and considered Plaintiff’s Motion, the
17 declarations in support, the Agreement, the Notice of Settlement, and other evidence, HEREBY
18 ORDERS AND MAKES DETERMINATIONS AS FOLLOWS:

19 **I. SCOPE OF INDIVIDUALS WITHIN THE PAGA SETTLEMENT – AGGRIEVED**
20 **EMPLOYEES**

21 The Court finds that Plaintiff has exhausted all administrative remedies required to bring the
22 PAGA claims asserted in this litigation. Plaintiff is authorized to act on behalf of the Labor and
23 Workforce Development Agency (“LWDA”) with respect to the PAGA claims being released under the
24 Agreement. The Court finds the scope of individuals subject to the terms and conditions of the
25 Agreement, its releases, and all rights and obligations thereunder include the following:
26
27
28

1 All nonexempt employees who have or continue to work for Defendant in
2 California from January 26, 2022, up to either (1) the Approval Date, or
3 (2) sixty (60) days after the Agreement is fully executed, whichever is
4 earlier, and who were paid any type of nondiscretionary remuneration in
5 addition to their base hourly rate, including, but not limited to,
6 performance bonuses, shift differentials, or other types of bonuses.

7 The Court recognizes that the foregoing definition is for Aggrieved Employee identification
8 purposes only and is not intended to capture the claims at issue or limit or alter the released claims under
9 the Agreement.

10 **II. APPROVING THE AGREEMENT**

11 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
12 A. The Court finds that the Agreement is fair, reasonable, and adequate, and, therefore, is approved as
13 required under California Labor Code sections 2698 *et seq.* Based on the potential amount of penalties
14 at issue, the risk of loss on the merits, the risk of being able to prove violations in each pay period as to
15 each individual as required by statute for damages purposes, and the Court's statutorily authorized
16 discretion to reduce penalties, the Agreement represents a substantial recovery for Aggrieved Employees
17 and the LWDA to further the LWDA's purpose in enforcing the California Labor Code. The Court also
18 finds that the Agreement provides a recovery that creates an effective, substantial deterrent to any
19 potential future non-compliance, furthering the purpose of the California Labor Code and LWDA.

20 The Court approves of the PAGA penalty allocations set forth in the Agreement wherein 75% of
21 the Net Settlement Amount will be paid to the LWDA and 25% of the Net Settlement Amount will be
22 paid to Aggrieved Employees as civil penalties pursuant to California Labor Code section 2699(i).

23 Additionally, because the Court finds the Parties' settlement to have been agreed upon only after
24 extensive and costly investigation, arms-length negotiations, and in an attempt to avoid further delays
25 and costs, the Court approves the Agreement and terms stated therein, which is incorporated by
26 reference in its entirety, as if stated here in full, including the \$50,000 Gross Settlement Amount.

27 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
28 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Aggrieved employees and the
LWDA), the benefits can be accurately traced as set forth in the Agreement, Plaintiff and Plaintiff's
Counsel were able to negotiate on behalf of Aggrieved employees and the LWDA, and the fee can be
shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the

1 Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 271 (9th Cir.
2 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th
3 480, 506 (2016). The Court finds the attorneys' fees request of thirty-five (35%) of the Gross
4 Settlement Amount, *i.e.* \$17,500, to be appropriate compensation for Plaintiff's Counsel. The attorneys'
5 fees request is within the range of percentages that have been approved by other Courts in similar cases
6 and is reasonable in light of the circumstances of this case, the substantial and beneficial results obtained
7 on behalf of Aggrieved Employees and the LWDA, and the contingent nature of the recovery over the
8 course of this case, which included potential loss at summary judgment and/or trial proceedings.
9 Additionally, the Court orders that \$2,806.71 of the Gross Settlement Amount will be paid to Plaintiff's
10 Counsel for reasonable costs incurred in this case.

11 The Court orders and approves ILYM Group, Inc. to act as the Settlement Administrator in this
12 case. The Settlement Administrator will take its fees out of the Gross Settlement Amount, which are not
13 to exceed \$3,850.00. Any difference between the actual Settlement Administrator Costs and the
14 approved amount will be added to the Net Settlement Amount for distribution between the LWDA and
15 Aggrieved Employees consistent with the allocations and formulas set forth in the Agreement.

16 The Court orders that Plaintiff will receive an Enhancement Payment of \$5,000 from the Gross
17 Settlement Amount for her work on behalf of the Aggrieved Employees and the LWDA and in exchange
18 for her general release of all her individual claims in addition to any amount Plaintiff may be entitled to
19 under the Agreement's pro rata distribution formula.

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

25 The releases and waivers for Plaintiff and the Aggrieved Employees are also approved by the
26 Court as set forth in the Agreement.

27 //

28 //

III. APPROVAL OF THE NOTICE OF SETTLEMENT

The Court finds that the Notice of Settlement, which was submitted with Plaintiff's Motion as Exhibit E, fairly and adequately advised Aggrieved Employees about the Agreement and its effect. The Court further finds that the Notice of Settlement and distribution of such notice by first class mail to each identified Aggrieved Employees at his or her most recent address based on a National Change of Address database search from the Aggrieved Employees' last known address and a skip trace on any Aggrieved Employees who have their notice returned as "undeliverable" or "not at this address" comported with all constitutional requirements, including those of due process.

The Court also finds that because there is a strong interest in providing Aggrieved Employees the opportunity to recover under the Agreement, along with the parties' efforts to minimize any intrusion to privacy rights, the sharing of employment information, including social security numbers, is not a serious intrusion on their privacy rights. Hence, the Court orders Defendant to provide first and last name, last known mailing address, social security number, and hire and termination dates for pay period calculations to the Settlement Administrator only, and not to Plaintiff or Plaintiff's Counsel, in order to process this settlement as contemplated within the Agreement and approved by this Order. The Settlement Administrator shall only use this information for settlement purposes identified herein, and this information shall be kept confidential, not be shared with any third-party, and used only to administer the settlement.

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 provide Settlement Administrator with Aggrieved Employee information	Within 14 calendar days after the Effective Date
Last day for Settlement Administrator to calculate and report to the Parties the Net Settlement Amount, PAGA Payment, and Individual Settlement Amounts for Aggrieved Employees	Within 7 calendar days after receiving Aggrieved Employee information

Last day for Defendant to fund Gross Settlement Amount	Within 14 calendar days after the Settlement Administrator calculates and reports to the Parties the Net Settlement Amount, PAGA Payment, and Individual Settlement Amounts for Aggrieved Employees
Last day for Settlement Administrator to complete NCOA search, update Aggrieved Employee mailing information, and complete mailing	Within 7 calendar days after Defendant has funded the settlement
Last day for Settlement Administrator to deliver payment of Plaintiff's Counsel's attorney's fees and costs, PAGA Payment, Settlement Administrator Costs, and payment to Aggrieved Employees	Within 7 calendar days after Defendant has funded the settlement
Last day for Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to 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

IT IS FURTHER ORDERED that this action be dismissed with prejudice with each party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved Agreement pursuant to California Civil Procedure Code section 664.6.

IT IS SO ORDERED.

Date: _____

By: _____

Judge of the Superior Court



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

September 14, 2023

Sent via E-Filing

Superior Court of California - San Joaquin Civil Division
180 E. Weber Avenue, Ste. 200
Stockton, California 95202

Re: Hearing Dates For Plaintiffs' Motion For Approval Of PAGA Settlement

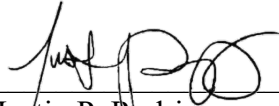
Dear Clerk:

Plaintiff requests Plaintiff's Motion for Approval of the PAGA Settlement be set on October 13, 2023, October 17, 2023, or October 20, 2023. Please be advised that October 17, 2023, is Plaintiffs' first preference.

Very truly yours,

Shimoda & Rodriguez Law, PC

By: _____


Justin P. Rodriguez

cc: Jose-Manuel A. De Castro, Esq., Counsel for Defendant (via e-service)
David G. Larmore, Esq., Counsel for Defendant (via e-service)
Lori V. Minassian, Esq., Counsel for Defendant (via e-service)

Armas v. Vienna Convalescent Hospital
San Joaquin County Superior Court of California, STK-CV-UOE-2023-0003403

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

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 September 15, 2023, I served the following documents on the party below:

- PLAINTIFF’S NOTICE OF MOTION AND MOTION TO APPROVE PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT
- MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PLAINTIFF’S MOTION TO APPROVE PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT
- EXHIBIT LIST AND EXHIBITS IN SUPPORT OF PLAINTIFF’S MOTION TO APPROVE PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT
- DECLARATION OF JUSTIN P. RODRIGUEZ IN SUPPORT OF MOTION TO APPROVE PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT
- DECLARATION OF ANA ARMAS IN SUPPORT OF PLAINTIFF’S MOTION TO APPROVE PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT
- [PROPOSED] ORDER GRANTING PLAINTIFF’S MOTION TO APPROVE PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT
- LETTER TO COURT REGARDING HEARING DATES

Jose-Manuel A. De Castro (SBN 213769) David G. Larmore (SBN 216041) Lori V. Minassian (SBN 223542) De Castro Law Group, P.C. 7590 Glenoaks Blvd., Suite 201 Los Angeles, CA 91504 Phone: 310-270-9877 Facsimile: 310-341-2330 E-Mail: jmdecastro@decastrolawgroup.com ykarimi@decastrolawgroup.com	
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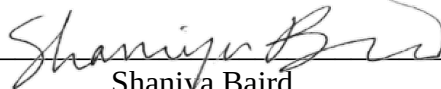
[] [By Mail] I am familiar with my employer’s practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day’s mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth 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 Elk Grove, California, addressed as set forth above.

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

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

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

5 I declare under penalty of perjury under the laws of the State of California that the foregoing
6 is true and correct, and that this declaration was executed on September 15, 2023, at Elk Grove,
7 California.

8 
Shaniya Baird