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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

9.16 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.

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:

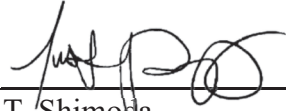
Date: 8/29/25

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

4
5
6
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 resulted 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