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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE

MAYRA DIAZ, on behalf of herself and on
behalf of all similarly situated individuals,

Plaintiff,

v.

KAWEAH DELTA HEALTH CARE
DISTRICT, a California public entity; and
DOES 1 through 10, inclusive,

Defendants.

Case No. VCU297155
Assigned to: Honorable Bret D. Hillman
Dept. 7

**SETTLEMENT AGREEMENT FOR
CLASS AND REPRESENTATIVE
ACTION**

Complaint Filed: April 3, 2023
FAC Filed: June 2, 2023
SAC Filed: November 21, 2023

1 Subject to final approval by the Court, which counsel and the Parties agree to
2 diligently pursue and recommend in good faith, Plaintiffs Mayra Diaz and Robert Villareal
3 (“Plaintiffs”), individually and on behalf of all others similarly situated and alleged
4 aggrieved employees, on the one hand, and Defendant Kaweah Delta Health Care District
5 (“Defendant”), on the other hand (collectively, the “Parties” and individually, a “Party”),
6 hereby agree to the following binding settlement of the class and representative action
7 designated Diaz v. Kaweah Delta Health Care District, Tulare County Superior Court Case
8 No. VCU297155 (the “Action”), pursuant to the terms and conditions set forth below (the
9 “Settlement,” “Settlement Agreement” or “Agreement”).

10 **I. Definitions.**

11 The following definitions are applicable to this Settlement Agreement.
12 Definitions contained elsewhere in this Settlement Agreement will also be effective:

13 **A. *“Attorneys’ Fees and Costs.”***

14 The attorneys’ fees approved by the Court for Class Counsel’s litigation and
15 resolution of the Action, and all costs incurred and to be incurred by Class Counsel in the
16 Action, including, but not limited to, costs associated with documenting the Settlement,
17 securing the Court’s approval of the Settlement, and administering the Settlement. Class
18 Counsel will request attorneys’ fees not to exceed one-third of the Class Settlement Amount,
19 or \$158,333.33. The costs requested to be reimbursed will not exceed \$15,000.00. The
20 attorneys’ fees and costs awarded are subject to the Court’s approval. Such Attorneys’ Fees
21 and Costs shall be paid from the Class Settlement Amount. Class Counsel will be issued an
22 IRS Form 1099 for the Attorneys’ Fees and Costs detailed in this Section and shall be solely
23 and legally responsible for paying all applicable taxes on the payment made pursuant to this
24 Section.

25 **B. *“Class Counsel.”***

26 Gaines & Gaines, APLC and Stonebrook Law shall be appointed Class
27 Counsel upon approval by the Court.
28

1 **C. “Class List.”**

2 A complete list of all Class Members (as that term is defined below) that
3 Defendant will diligently and in good faith compile from their records and provide to the
4 Settlement Administrator within fourteen (14) calendar days after Preliminary Approval of
5 this Settlement. The Class List will be formatted in a readable Microsoft Office Excel
6 spreadsheet and will include each Class Member’s full name, most recent mailing address,
7 telephone number, Social Security number, dates of employment (*i.e.*, hire date and
8 termination date, if applicable), the total workweeks worked for each Class Member during
9 each Sub-Class Period, and the total Pay Periods worked for each PAGA Aggrieved
10 Employee.

11 **D. “Class Member(s)” or “Settlement Class.”**

12 All current and former non-exempt employees of Defendant who worked
13 anytime during the period of October 19, 2019 and June 27, 2021 and whose time was
14 rounded (“Rounding Sub-Class”); and all current and former non-exempt employees of
15 Defendant who were subject to on-call time during any workweek from October 19, 2019
16 through the date of preliminary approval of the Settlement (“On-Call Sub-Class”).

17 **E. “Class Period.”**

18 The Class Period is the period of October 19, 2019 through the date of
19 preliminary approval of the settlement. The Rounding Sub-Class Period is October 19, 2019
20 to June 27, 2021. The On-Call Sub-Class Period includes all workweeks where any on-call
21 time was worked from October 19, 2019 to the date of preliminary approval of the
22 Settlement.

23 **F. “Class Representative Enhancement Payment.”**

24 The amount to be paid to Plaintiffs in recognition of their efforts and work in
25 prosecuting the Action on behalf of Class Members and for their general release of claims.
26 Subject to the Court granting Final Approval of this Settlement Agreement, Plaintiffs will
27 request Court approval of a Class Representative Enhancement Payment of \$7,500.00 for
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1 each Plaintiff. Plaintiffs will be issued an IRS Form 1099 in connection with their Class
2 Representative Enhancement Payment. Plaintiffs shall be solely and legally responsible for
3 paying any and all applicable taxes on this payment and shall hold Defendant harmless from
4 any claim or liability for taxes, penalties or interest arising as a result of the payment. The
5 Class Representative Enhancement Payment will be paid from the Class Settlement Amount
6 and will be in addition to Plaintiffs' Individual Settlement Payment (as that term is defined
7 below) paid pursuant to the Settlement. Defendant makes no representations as to the tax
8 treatment or legal effect of the payment called for herein, and Plaintiffs are not relying on
9 any statement or representation by Defendant or its counsel in this regard.

10 **G. "Class Settlement Amount."**

11 The sum of Four Hundred Seventy-Five Thousand Dollars (\$475,000.00) to
12 be paid by Defendant in full satisfaction of all claims alleged in and arising from the Action.
13 The Class Settlement Amount includes all Individual Settlement Payments to Class
14 Members, the Class Representative Enhancement Payment to Plaintiffs, Settlement
15 Administration Costs to the Settlement Administrator, the PAGA Settlement Amount, and
16 the Attorneys' Fees and Costs. Defendant will be responsible for any employer payroll
17 taxes required by law, separate and in addition to the Class Settlement Amount, including
18 the employer FICA, FUTA, and SDI contributions on the wage portion of the Individual
19 Settlement Payments.
20

21 **H. "Effective Date."**

22 The date on which the Final Award becomes final. For purposes of this
23 Section, the Final Award "becomes final" only after the Court grants the Motion for Final
24 Approval and enters Final Judgment upon the latter of: (i) if no objections are filed, the date
25 the Court enters Final Judgment; (ii) if objections are filed and no appeal is filed, the
26 expiration date of the time for the filing or noticing of any appeal from, or other challenge
27 to, the Final Judgment (this time period shall not be less than 60 calendar days after the
28 Notice of Entry of Final Judgment); (iii) if objections are filed and an appeal is filed, the

1 date the Final Judgment is affirmed and becomes final under the California Rules of Court;
2 or (iv) if objections are filed and an appeal is filed, the date of final dismissal of any appeal
3 from the Final Judgment or the final dismissal of any proceeding on review of any court of
4 appeal decision relating to the Final Judgment.

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6 ***I. "Final Approval."***

7 An Order, entered by the Court, Granting Final Approval of the Settlement.

8 ***J. "Final Judgment"***

9 The Judgment entered by the Court, based on Final Approval of the
10 Settlement.

11 ***K. "Individual Settlement Payment."***

12 Each Class Member's share of the Net Settlement Amount, which shall be
13 distributed to the Class Members, less employee portions of state and federal withholding
14 taxes, including the employee FICA, FUTA and SDI contributions and any other applicable
15 payroll deductions required by law as a result of the payment of the amount allocated to
16 such Class Member as set forth herein.

17 ***L. "LWDA Notice."***

18 The Parties agree that Plaintiffs will submit Notice to the Labor and
19 Workforce Development Agency ("LWDA") of this Settlement along with a copy of this
20 Settlement Agreement within ten (10) calendar days of when it is submitted to the Court,
21 and will thereafter submit a copy of any judgment or any other order (*e.g.*, the Final Award)
22 providing for an award of civil penalties in conformity with Labor Code Section 2699(*I*).

23 ***M. "LWDA Payment."***

24 The amount of Thirty-Seven Thousand Five Hundred Dollars (\$37,500.00)
25 taken from the PAGA Settlement Amount that the Parties have agreed to pay to the LWDA
26 in connection with the claims asserted under the California Private Attorneys General Act of
27 2004 ("PAGA").
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1 **N. “Net Settlement Amount.”**

2 The portion of the Class Settlement Amount remaining after deduction of the
3 approved Class Representative Enhancement Payment, Settlement Administration Costs,
4 PAGA Settlement Amount, and the Attorneys’ Fees and Costs.

5 **O. “Notice of Objection.”**

6 A Class Member’s valid and timely written objection to the Settlement
7 Agreement. For the Notice of Objection to be valid, it must include the objector’s full name,
8 signature, address, telephone number and a written statement of all grounds for the objection
9 accompanied by legal support, if any, for such objection. The Notice of Objection must be
10 returned by mail or fax to the Settlement Administrator at the specified address or facsimile
11 number and postmarked or faxed on or before the Response Deadline. The date of the
12 postmark or fax receipt confirmation will be the exclusive means to determine whether a
13 Notice of Objection has been timely submitted.

14 Class Members who fail to make objections in the manner specified above
15 shall be deemed to have waived any objections and shall be foreclosed from making any
16 objection (whether by appeal or otherwise) to the Settlement Agreement. Neither the Parties
17 nor their counsel will solicit or otherwise encourage Class Members to submit written
18 objections to the Settlement Agreement or appeal from the Order and Judgment. Class
19 Counsel will not represent any Class Members with respect to any such objections to this
20 Settlement. The Settlement Administrator shall provide counsel for the Parties with
21 complete copies of all objections received, including the date of postmark or fax receipt
22 confirmation for each objection, within five (5) business days of receipt. Class Counsel will
23 provide copies of any objections and supporting documents to the Court at least sixteen (16)
24 court days before the Final Approval Hearing.

25 **P. “Notice Packet”**

26 The document providing Class Members with notice of and information
27 regarding the Action and the Settlement, substantially in the form attached as Exhibit 1, that
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1 will be mailed to Class Members' last known addresses.

2 ***Q. "PAGA Aggrieved Employees."***

3 All On-Call Subclass Members who were subject to on-call time during any
4 workweek from April 3, 2022 through the date of preliminary approval ("PAGA Period").

5 ***R. "PAGA Portion of the Settlement."***

6 Divide the number of Pay Periods worked by the PAGA Aggrieved Employee
7 by the total number of Pay Periods worked by all PAGA Aggrieved Employees during the
8 PAGA Period. The resulting percentage shall be applied to \$12,500 to determine the PAGA
9 portion of the settlement for that Participating Settlement Class Member who is also a PAGA
10 Aggrieved Employee.

11 ***S. "PAGA Settlement Amount."***

12 The amount of Fifty Thousand Dollars (\$50,000.00) allocated to resolution of
13 the PAGA claims of the PAGA Aggrieved Employees, to be taken from the Class Settlement
14 Amount. Per Labor Code § 2699(i), seventy-five percent (75%) of the PAGA Settlement
15 Amount, or ThirtySeven Thousand Five Hundred Dollars (\$37,500.00) will be payable to the
16 LWDA, and the remaining twenty-five percent (25%), or Twelve Thousand Five Hundred
17 Dollars (\$12,500.00) of the PAGA Settlement Amount will be calculated separately from the
18 Net Settlement Amount and included the Individual Settlement Payments per Paragraph 8.

19 ***T. "Pay Periods."***

20 A fourteen (14) day period beginning on Sunday. The start of the pay period
21 coincides with the start of the workday. There are no partial Pay Periods (Pay Periods are
22 integers).

23 ***U. "Plaintiffs' Released Claims."***

24 Upon the Effective Date, and as a condition of receiving any portion of their
25 Class Representative Enhancement Payment, Plaintiffs fully and finally release Defendant
26 and the Released Parties, from any and all claims, known and unknown, under federal, state
27 and/or local law, statute, ordinance, regulation, common law, or other source of law,
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1 including but not limited to claims arising from or related to their employment with
2 Defendant and their compensation while employees of Defendant (“Plaintiffs’ Released
3 Claims”). Plaintiffs’ Released Claims include, but are not limited to, all claims arising from
4 or related to the Action and related forthcoming amended complaint. Plaintiffs’ Released
5 Claims include all claims for unpaid wages, including, but not limited to, failure to pay
6 minimum wages, straight time compensation, overtime compensation, double-time
7 compensation, and interest; the calculation of the regular rate of pay; missed meal period
8 and rest-period premiums, including failure to pay premiums at the regular rate of
9 compensation; wage statement penalties; reimbursement for all necessary business expenses;
10 payment for all hours worked, including off-the-clock work; the alleged failure to pay
11 vested, unused vacation pay; the alleged failure to pay sick leave pay at the regular rate of
12 pay; deductions; failure to keep accurate records; unfair business practices; penalties,
13 including, but not limited to, civil penalties, statutory penalties, recordkeeping penalties,
14 minimum-wage penalties, wage statement penalties, and waiting-time penalties; and
15 attorneys’ fees and costs. Plaintiffs’ Released Claims include all claims arising under the
16 California Labor Code (including, but not limited to, sections 90.5, 201, 202, 203, 204, 213,
17 218.5, 221, 223, 226, 226.3, 226.7, 227.3, 246, 432, 510, 511, 512, 558, 558.1, 1174,
18 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 1670.5, 2698 *et seq.*, 2699
19 *et seq.*, 2699.3, 2800, and 2802); all claims arising under: the Wage Orders of the California
20 Industrial Welfare Commission; California Business and Professions Code section 17200, *et*
21 *seq.*; the California Civil Code, to include but not limited to, sections 3287, 3336 and 3294;
22 California Code of Civil Procedure § 1021.5; the California common law of contract; the
23 FLSA, 29 U.S.C. § 201, *et seq.*; federal common law; and the Employee Retirement Income
24 Security Act, 29 U.S.C. § 1001, *et seq.* (“ERISA”). Plaintiffs’ Released Claims also include
25 all claims for lost wages and benefits, emotional distress, retaliation, punitive damages, and
26 attorneys’ fees and costs arising under federal, state, or local laws for discrimination,
27 harassment, retaliation, and wrongful termination, such as, by way of example only, (as
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1 amended) 42 U.S.C. section 1981, Title VII of the Civil Rights Act of 1964, the Americans
2 With Disabilities Act, the Age Discrimination in Employment Act, and the California Fair
3 Employment and Housing Act; and the law of contract and tort. Plaintiffs, as
4 representatives of the LWDA, release all claims under the California Private Attorneys
5 General Act of 2004 ("PAGA") which were brought, or could have been brought, based on
6 facts alleged in the Action. This release excludes the release of claims not permitted by law.

7 Plaintiffs' Released Claims include all claims, whether known or unknown. Even if
8 Plaintiffs discover facts in addition to or different from those that they now know or believe
9 to be true with respect to the subject matter of Plaintiffs' Released Claims, those claims will
10 remain released and forever barred. Thus, Plaintiffs expressly waive and relinquish the
11 provisions, rights and benefits of section 1542 of the California Civil Code, which reads:

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

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18 ***V. "Preliminary Approval."***

19 The Court's order granting preliminary approval of the Settlement
20 Agreement.

21 ***W. "Qualified Settlement Account."***

22 The fund established by the Settlement Administrator pursuant to Internal
23 Revenue Code Section 1.468B-1.

24 ***X. "Released Class Claims."***

25 Upon the Effective Date, all Class Members who do not opt out of the
26 Settlement fully and finally release Defendant and the Released Parties from any and all
27 Released Class Claims which accrued during the Class Period. The Released Class Claims
28 include all claims asserted in the Second Amended Complaint, arising from or related to the

1 facts and claims alleged in the Second Amended Complaint, or that could have been raised
2 in the Action based on the facts and claims alleged. The Released Class Claims include all
3 claims for failure to pay minimum wages (as a result of rounding, on-call time, off-the-clock
4 work, or any other theory) and any potentially resulting penalties, including, but not limited
5 to civil penalties, statutory penalties, recordkeeping penalties, wage statement penalties, and
6 waiting-time penalties; and attorneys' fees and costs. The Released Class Claims do not
7 include a release of any PAGA claims. This release excludes the release of claims not
8 permitted by law.

9
10 ***Y. "Released PAGA Claims."***

11 Upon the Effective Date, all PAGA Aggrieved Employees fully and finally
12 release Defendant and the Released Parties from any and all Released PAGA Claims which
13 accrued during the PAGA Period. . The Released PAGA Claims include all claims arising
14 under PAGA which are asserted in the Second Amended Complaint, arising from or related
15 to the facts and claims alleged in the Second Amended Complaint, or that could have been
16 raised in the Action under PAGA based on the facts and claims alleged. The Released
17 PAGA Claims include all claims for PAGA civil penalties related to the failure to pay
18 minimum wages (as a result of rounding, on-call time, off-the-clock work, or any other
19 theory) and any potentially resulting penalties, including, but not limited to civil penalties,
20 recordkeeping penalties, wage statement penalties, and waiting-time penalties; and
21 attorneys' fees and costs. The Released PAGA Claims do not include any claims for wages
22 or statutory penalties.

23
24 ***Z. "Released Parties."***

25 Defendant and each of its past, present and future agents, employees,
26 servants, officers, directors, partners, trustees, representatives, shareholders, stockholders,
27 attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or
28 partnerships, divisions, assigns, predecessors, successors, insurers, consultants, service

1 providers, joint venturers, joint employers, co-employers, dual employers, alleged joint
2 employers, alleged co-employers, alleged dual employers, affiliates, alter-egos, and
3 affiliated organizations, and all of their respective past, present and future employees,
4 directors, officers, agents, attorneys, stockholders, fiduciaries, parents, subsidiaries, and
5 assigns.

6 ***AA. "Request for Exclusion."***

7 A notice submitted by a Class Member requesting to be excluded from the
8 Settlement. For the Request for Exclusion to be valid, it must include the Class Member's
9 full name, signature, address, telephone number and a written statement requesting to be
10 excluded from this Settlement. The Request for Exclusion must be returned by mail or fax
11 to the Settlement Administrator at the specified address or facsimile number and postmarked
12 or faxed on or before the Response Deadline. The date of the postmark or fax receipt
13 confirmation will be the exclusive means to determine whether a Request for Exclusion has
14 been timely submitted. A Class Member who does not submit a timely and valid Request
15 for Exclusion from the Settlement will be deemed a Class Member and will be bound by all
16 terms of the Settlement Agreement if the Settlement is granted Final Approval by the Court.

17 ***BB. "Response Deadline."***

18 The deadline by which Class Members must mail or fax to the Settlement
19 Administrator valid Requests for Exclusion, Notices of Objection to the Settlement, or
20 workweek amount disputes. The Response Deadline will be forty-five (45) calendar days
21 from the initial mailing of the Notice Packet by the Settlement Administrator, unless the
22 45th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be
23 extended to the next day on which the U.S. Postal Service is open. The Response Deadline
24 for Requests for Exclusion, Notices of Objection, or gross payroll amount disputes will be
25 extended fifteen (15) calendar days for any Class Member who is re-mailed a Notice Packet
26 by the Settlement Administrator, unless the 15th day falls on a Sunday or Federal holiday, in
27 which case the Response Deadline will be extended to the next day on which the U.S. Postal
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1 Service is open. The Response Deadline may also be extended by express agreement
2 between Class Counsel and Defendant. Under no circumstances, however, will the
3 Settlement Administrator have the authority to unilaterally extend the deadline for Class
4 Members to submit a Request for Exclusion, Notice of Objection to the Settlement, or gross
5 payroll disputes.

6 **CC. "Settlement Administrator."**

7 Phoenix Class Action Administration Solutions shall be the third-party class
8 action Settlement Administrator as agreed to by the Parties and approved by the Court for
9 the purposes of administering this Settlement. The Parties each represent that they do not
10 have any financial interest in the Settlement Administrator or otherwise have a relationship
11 with the Settlement Administrator that could create a conflict of interest.

12 **DD. "Settlement Administration Costs."**

13 The costs payable from the Class Settlement Amount to the Settlement
14 Administrator for administering this Settlement, including, but not limited to, printing,
15 distributing, and tracking documents for this Settlement, calculating estimated amounts per
16 Class Member, tax reporting, distributing the Class Settlement Amount, and providing
17 necessary reports and declarations, and other duties and responsibilities set forth herein to
18 process this Settlement Agreement, and as requested by the Parties. The Settlement
19 Administration Costs will be paid from the Class Settlement Amount, including, if
20 necessary, any such costs in excess of the amount represented by the Settlement
21 Administrator as being the maximum costs necessary to administer the Settlement, which
22 are anticipated to be no greater than \$32,500.00. To the extent actual Settlement
23 Administration Costs are greater than \$32,500.00, such excess amount will be taken from
24 the Class Settlement Amount, subject to the Court's approval.

25 **EE. "Workweek."**

26 A Workweek refers to any calendar week (i.e., a week beginning with
27 Monday and ending with Sunday) during the Class Period, in which a Class Member was
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1 engaged in any productive work activity for which they were paid as a non-exempt
2 employee, not including paid time off or leaves of absence.

3 **II. Funding of the Class Settlement Amount.**

4 1. Within fourteen (14) calendar days from the Effective Date of the Settlement,
5 Defendant will deposit the Class Settlement Amount and an amount sufficient to satisfy the
6 employer payroll taxes required by law into a Qualified Settlement Account to be established by the
7 Settlement Administrator. Within fourteen (14) calendar days of the full funding of the Settlement,
8 the Settlement Administrator will issue payments to: (a) Class Members; (b) the LWDA; (c)
9 Plaintiffs; and (d) Class Counsel. The Settlement Administrator will also issue a payment to itself
10 for Court-approved services performed in connection with the Settlement. Defendant has no
11 obligation to deposit such funds prior to the deadlines set forth herein.

12 **III. Attorneys' Fees and Costs.**

13 2. Defendant agrees not to oppose any application by Class Counsel for attorneys' fees
14 of not more than one-third of the Class Settlement Amount, or \$158,333.33, and for the
15 reimbursement of costs and expenses associated with Class Counsel's litigation and settlement of the
16 Action not to exceed \$15,000.00. No counsel shall be entitled to attorneys' fees or costs for work
17 performed in the Action other than as provided in this Settlement Agreement. The instant Settlement
18 Agreement is the exclusive means for recovery of attorneys' fees and costs incurred in the Action by
19 any attorney, law firm and/or other legal services provider.

20 **IV. Class Representative Enhancement Payment.**

21 3. Defendant agrees not to oppose any application or motion for Class Representative
22 Enhancement Payment in the amount of up to \$7,500.00 for each Plaintiff. Plaintiffs will be solely
23 and legally responsible to pay any and all applicable taxes on the payment made pursuant to this
24 Section and will indemnify and hold Defendant harmless from any claim or liability for taxes,
25 penalties, or interest arising as a result of the payment.
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1 **V. Settlement Administration Costs.**

2 4. The Settlement Administrator will be paid for the reasonable costs of administration
3 of the Settlement and distribution of payments from the Class Settlement Amount, which are
4 currently estimated to be \$32,500.00.

5 5. The Parties hereby acknowledge that the Settlement Administration Costs may
6 increase above the current estimate of \$32,500.00 and that any such additional Settlement
7 Administration Costs that are approved by the Parties' counsel and the Court shall be taken out of the
8 Class Settlement Amount.

9 **VI. Labor and Workforce Development Agency Payment.**

10 6. Subject to Court approval, the Parties agree that PAGA Settlement Amount will be
11 designated for satisfaction of Plaintiffs' and Class Members' PAGA claims. Per Labor Code §
12 2699(i), seventy-five percent (75%) of the PAGA Settlement Amount, or \$37,500 will be paid to the
13 LWDA and twenty-five percent (25%) or \$12,500 of the PAGA Settlement Amount will be paid to
14 PAGA Aggrieved Employees.

15 **VII. Net Settlement Amount.**

16 7. The Net Settlement Amount and \$12,500 of the PAGA Settlement Amount will be
17 used to satisfy Individual Settlement Payments to PAGA Aggrieved Employees in accordance with
18 the terms of this Settlement.

19 **VIII. Individual Settlement Payment Calculations.**

20 8. To determine the Individual Settlement Payment for each Participating Settlement
21 Class Member and each PAGA Aggrieved Employee, the Settlement Administrator will:

- 22
- 23 8(a) Divide the number of Workweeks worked by each Class Member during
24 both the Rounding Sub-Class Period and during the On-Call Sub-Class
25 Period by the total number of Workweeks worked by all Class Members
26 during the Rounding Sub-Class Period and during the On-Call Sub-Class
27 Period. The resulting percentage shall be applied to the Net Settlement
28 Amount to determine the Individual Settlement Payment for that

Participating Settlement Class Member.

8(b) Add the PAGA Portion of the Settlement for PAGA Aggrieved Employees, whether or not they are Class Members.

8(c) For taxation purposes, the class portion of the Individual Settlement Payment to each Class Member shall be allocated fifty percent (50%) to potential penalties and interest to be paid as one check and reported on a 1099 Form; and fifty percent (50%) to wages to be paid as another check and reported on a W-2 Form. As to each PAGA Aggrieved Employee, the PAGA portion of the Individual Settlement Payment shall be allocated all (100%) to potential penalties to be paid as one check and reported on a 1099 Form.

8(d) The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Settlement Agreement.

9. The Individual Settlement Payments made to Class Members under this Settlement, and any other payments made pursuant to this Settlement, will not be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be eligible, including, but not limited to, profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

IX. Settlement Administration Process.

10. The Parties agree to cooperate in the administration of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in administration of the Settlement. The Settlement Administrator will provide the following services:

- a. Establish and maintain a Qualified Settlement Account.
- b. Calculate the Individual Settlement Payment each Class Member is eligible

1 to receive.

- 2 c. Print and mail the Notice Packet.
- 3 d. Establish and maintain a toll-free information telephone support line to assist
- 4 Class Members who have questions regarding the Notice Packet.
- 5 e. Conduct additional address searches for mailed Notice Packets that are
- 6 returned as undeliverable.
- 7 f. Process Requests for Exclusion, calculate Class Members' Individual
- 8 Settlement Payment, field inquiries from Class Members, and administer
- 9 any Requests for Exclusion. This service will include settlement proceed
- 10 calculation, printing and issuance of Individual Settlement Payment Checks,
- 11 and preparation of IRS W-2 and 1099 Tax Forms. Accounting for and
- 12 payment of employee tax withholdings and calculation and forwarding of all
- 13 payroll taxes and penalties to the appropriate government authorities will
- 14 also be included as part of this service.
- 15 g. Issuing to Plaintiffs, Class Members, and Plaintiffs' Counsel any W-2, 1099,
- 16 or other tax forms as may be required by law for all amounts paid pursuant
- 17 to this Settlement.
- 18 h. Provide declarations and/or other information to the Court as requested by
- 19 the Parties and/or the Court.
- 20 i. Provide weekly status reports to counsel for the Parties.

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22 11. Within fourteen (14) calendar days of Preliminary Approval, Defendant will provide

23 the Class List to the Settlement Administrator.

24 12. Within fourteen (14) calendar days after receiving the Class List from Defendant,

25 the Settlement Administrator will mail a Notice Packet to all Class Members via regular First-Class

26 U.S. Mail, using the last known mailing addresses identified in the Class List.

27 13. Prior to mailing, the Settlement Administrator will perform a search based on the

28 National Change of Address Database for information to update and correct any known or

1 identifiable address changes. Any Notice Packets returned to the Settlement Administrator as non-
2 deliverable on or before the Response Deadline will be sent promptly via regular First-Class U.S.
3 Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date
4 of such re-mailing on the Notice Packet. If no forwarding address is provided, the Settlement
5 Administrator will promptly attempt to determine the correct address using a skip-trace, or other
6 search using the name, address and/or Social Security number of the Class Member involved, and
7 will then perform a single re-mailing. If after skip-trace, or other search, no better address is
8 determined, the Settlement Administrator will re-mail to the original address. Those Class Members
9 who receive a re-mailed Notice Packet, whether by skip-trace or by request, will have an additional
10 fifteen (15) calendar days to postmark or fax a Request for Exclusion, payment dispute or Notice of
11 Objection to the Settlement.

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13 14. Class Members will have an opportunity to dispute the information provided in their
14 Notice Packets. To the extent Class Members dispute the information used from Defendant's
15 records to calculate their Individual Settlement Payment or the amount of their Individual Settlement
16 Payment, Class Members may produce evidence to the Settlement Administrator showing that such
17 information is inaccurate. Absent evidence rebutting Defendant's records, Defendant's records will
18 be presumed determinative. However, if a Class Member produces evidence to the contrary, the
19 Settlement Administrator will evaluate the evidence submitted by the Class Member and will make
20 the final decision as to the Individual Settlement Payment to which the Class Member may be
21 entitled. The payment dispute must be returned by mail or fax to the Settlement Administrator at the
22 specified address or facsimile number and postmarked or faxed on or before the Response Deadline.
23 The date of the postmark or fax receipt confirmation will be the exclusive means to determine
24 whether a payment dispute has been timely submitted. All such disputes are to be resolved not later
25 than fourteen (14) calendar days after the Response Deadline.

26 15. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
27 Settlement Agreement must sign and postmark or fax a written Request for Exclusion to the
28 Settlement Administrator within the Response Deadline. The date of the postmark on the return

1 mailing envelope or the fax receipt confirmation will be the exclusive means to determine whether a
2 Request for Exclusion has been timely submitted. All Requests for Exclusion will be submitted to
3 the Settlement Administrator, who will certify jointly to Class Counsel and Defendant's Counsel the
4 Requests for Exclusion that were timely submitted. Any Class Member who does not affirmatively
5 opt out of the Settlement Agreement by submitting a timely and valid Request for Exclusion will be
6 bound by all its terms, including those pertaining to the Released Class Claims. PAGA Aggrieved
7 Employees shall not be able to exclude themselves from the PAGA Portion of this Settlement or the
8 release of the Released PAGA Claims, and Class Members who are also PAGA Aggrieved
9 Employees shall receive their PAGA Portion of the Settlement even if they submit a timely and valid
10 Request for Exclusion of the class action settlement.

11 16. Objections. Class Members who do not submit a Request for Exclusion may object
12 to this Settlement as explained in the Notice Packet by filing a written objection with the Settlement
13 Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel,
14 as well as file all such objections with the Court) within the Response Deadline. Defendant's
15 counsel and Class Counsel shall file any responses to objections no later than the deadline to file the
16 Motion for Final Approval, unless an untimely objection is filed within ten (10) days of the Motion
17 for Final Approval, in which case Class Counsel and Defendant's counsel shall have ten (10) days to
18 respond. To be valid, any objection must: (1) contain the objecting Class Member's full name and
19 current address, as well as contact information for any attorney representing the objecting Class
20 Member for purposes of the objection; (2) include all objections and the factual and legal bases for
21 same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other
22 evidence; and (4) be postmarked no later than the Response Deadline.

23 17. Defective Submissions. If a Class Member's dispute regarding the Individual
24 Settlement Payment, Objection or Request for Exclusion is defective as to the requirements listed
25 herein, that Class Member will be given an opportunity to cure the defect(s). The Settlement
26 Administrator will mail the Class Member a cure letter within three (3) business days of receiving
27 the defective submission to advise the Class Member that his or her submission is defective and that
28

1 the defect must be cured to render the Objection or Request for Exclusion valid. The Class Member
2 will have until the later of (a) the Response Deadline or (b) fifteen (15) calendar days from the date
3 of the cure letter, whichever date is later, to postmark or fax a revised Objection or Request for
4 Exclusion.

5 **X. NULLIFICATION OF THE SETTLEMENT AGREEMENT.**

6 18. Defendant's Option to Nullify the Settlement Agreement. If five percent (5%) or
7 more of the Class Members opt out of the Settlement, Defendant, in its sole discretion, shall have the
8 option of nullifying the Settlement Agreement. Defendant must exercise this option by providing
9 written notice to Plaintiffs' counsel within 15 calendar days of being notified by the Settlement
10 Administrator that five percent or more of the Class Members opted out of the Settlement.

11 19. Automatic Nullification of the Settlement Agreement. In the event the Court does
12 not enter Preliminary Approval and Final Approval, approving the release of the Released Class
13 Claims against the Released Parties specified herein, this Settlement Agreement shall be null and
14 void. The Stipulations and Recitals contained herein shall be of no force or effect, and shall not be
15 treated as an admission by the Parties or their counsel. In such a case, the Parties and any funds to be
16 awarded under this Settlement Agreement shall be returned to their respective statuses as of the date
17 and time immediately prior to the execution of this Settlement Agreement, and the Parties shall
18 proceed in all respects as if this Settlement Agreement had not been executed, except that any fees
19 already incurred by the Settlement Administrator shall be paid equally by both Parties.
20

21 **XI. Certification Reports Regarding Individual Settlement Payment Calculations.**

22 20. The Settlement Administrator will provide Defendant's counsel and Class Counsel a
23 weekly report, which certifies: (a) the number of Class Members who have submitted valid
24 Requests for Exclusion; (b) any objections submitted to the Settlement along with a copy of any such
25 objection; and (c) whether any Class Member has submitted a challenge to any information
26 contained in his/her Notice Packet. Additionally, the Settlement Administrator will provide to
27 counsel for the Parties any updated reports regarding the administration of the Settlement Agreement
28 as needed or requested.

1 21. Uncashed Settlement Checks. Any checks issued by the Settlement Administrator
2 to Class Members will be negotiable for one-hundred eighty (180) calendar days. After one-hundred
3 eighty (180) calendar days from the date of mailing, the checks shall become null and void, and any
4 monies remaining in the distribution account shall be distributed to the Controller of the State of
5 California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 et seq.,
6 for the benefit of those Settlement Class members who did not cash their checks until such time that
7 they claim their property. The Settling Parties agree that this disposition results in no “unpaid
8 residue” under California Civil Procedure Code § 384, as the entire Settlement Payment will be paid
9 out to Settlement Class members, whether or not they all cash their Settlement Checks.

10 22. Certification of Completion. Upon completion of administration of the Settlement,
11 the Settlement Administrator will provide a written declaration under oath to certify such completion
12 to the Court and counsel for all Parties.

13 **XII. Tax Treatment of Individual Settlement Payment.**

14 23. All Individual Settlement Payments will be allocated as follows: as to the class
15 portion, fifty percent (50%) allocated as wages and fifty percent (50%) allocated as non-wages,
16 including penalties and interest. As to the PAGA Portion, all (100%) allocated as non-wages as
17 penalties. The portion allocated to wages will be reported on an IRS Form W-2 and the portions
18 allocated to non-wages will be reported on an IRS Form-1099 by the Settlement Administrator. The
19 Gross Individual Settlement Payments will be reduced by any required legal deductions for each
20 Class Member. All standard employee payroll deductions will be made for state and federal
21 withholding taxes, including any other applicable payroll deductions owed by the Class Members as
22 a result of the Wage Component, resulting in a net wage component. The Settlement Administrator
23 will issue a check and W-2 Form to each Class Member for the wage component. No withholding
24 shall be made on the penalty portions of the Gross Individual Settlement Payment. The Settlement
25 Administrator will issue a second check and IRS Form-1099 for the remaining penalty component.
26 The Settlement Administrator shall be responsible for issuing the payments and calculating and
27 withholding all required state and federal taxes. The Settlement Administrator shall determine the
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1 eligibility for, and the amounts of, any Individual Settlement Payment under the terms of this
2 Settlement Agreement. Any disputes not resolved by the Settlement Administrator concerning the
3 administration of the Settlement will be resolved by the Court, under the laws of the State of
4 California. Prior to any such involvement of the Court, counsel for the Parties will confer in good
5 faith to resolve the dispute without the necessity of involving the Court.

6 **XIII. Administration of Taxes by the Settlement Administrator.**

7 24. Tax Liability. Defendant makes no representation as to the tax treatment or legal
8 effect of the payments called for hereunder, and Plaintiffs and Class Members are not relying on any
9 statement, representation, or calculation by Defendant or by the Settlement Administrator in this
10 regard. Plaintiffs and Class Members understand and agree they will be solely responsible for the
11 payment of their share of any taxes and penalties assessed on the payments described herein.

12 25. Circular 230 Disclaimer. EACH PARTY TO THIS SETTLEMENT
13 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY"
14 AND EACH PARTY TO THIS SETTLEMENT AGREEMENT OTHER THAN THE
15 ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES
16 THAT (1) NO PROVISION OF THIS SETTLEMENT AGREEMENT, AND NO WRITTEN
17 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
18 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY
19 SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
20 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
21 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
22 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
23 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
24 ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT, (B) HAS NOT
25 ENTERED INTO THIS SETTLEMENT AGREEMENT BASED UPON THE
26 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
27 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
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1 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
2 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
3 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
4 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
5 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
6 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
7 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
8 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
9 SETTLEMENT AGREEMENT.

10 **XIV. Release by Plaintiffs and Class Members and PAGA Aggrieved Employees.**

11 26. No Prior Assignments. The Parties and their counsel represent, covenant, and
12 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to
13 assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand,
14 action, cause of action or right herein released and discharged.

15 27. It is the desire of Plaintiffs, Class Members (except those who exclude themselves
16 from the Settlement), PAGA Aggrieved Employees and Defendant to fully, finally, and forever
17 settle, compromise, and discharge the Released Class and PAGA Claims. Upon the Effective Date,
18 Plaintiffs shall fully release and discharge the Released Parties from Plaintiffs' Released Claims, the
19 Class Members shall fully release and discharge the Released Parties from any and all Released
20 Class Claims, and the PAGA Aggrieved Employees shall fully release and discharge the Released
21 Parties from any and all Released PAGA Claims. This release shall be binding on all Class
22 Members who have not timely submitted a valid and complete Request for Exclusion, including
23 each of their respective attorneys, agents, spouses, executors, representatives, guardians ad litem,
24 heirs, successors, and assigns, and shall inure to the benefit of the Released Parties, who shall have
25 no further or other liability or obligation to any Class Member with respect to the Released Claims,
26 except as expressly provided herein. PAGA Aggrieved Employees shall not be able to exclude
27 themselves from the PAGA Portion of the Settlement or the release of Released PAGA Claims and
28

1 Class Members who are also PAGA Aggrieved Employees shall receive their PAGA Portion of the
2 Settlement even if they opt-out of the class action settlement.

3 **XV. Preliminary Approval Hearing.**

4 28. Plaintiffs will obtain a hearing before the Court to request Preliminary Approval of
5 the Settlement Agreement and the entry of a Preliminary Approval Order for: (a) conditional
6 certification of the Settlement Class for settlement purposes only, (b) Preliminary Approval of the
7 proposed Settlement Agreement, and (c) setting a date for a Final Approval/Settlement Fairness
8 Hearing.

9 29. The Preliminary Approval Order will provide for the Notice Packet to be sent to all
10 Class Members as specified herein. In conjunction with the Preliminary Approval Hearing,
11 Plaintiffs will submit this Settlement Agreement and will include the proposed Notice Packet.

12 30. Class Counsel will be responsible for drafting all documents necessary to obtain
13 Preliminary Approval, subject to review and comment by Defendant's counsel.

14 **XVI. Final Settlement Approval Hearing and Entry of Judgment.**

15 31. Upon expiration of the Response Deadline, and with the Court's permission, a Final
16 Approval/Settlement Fairness Hearing will be conducted to determine the Final Approval of the
17 Settlement Agreement along with the amounts properly payable for: (a) Individual Settlement
18 Payments; (b) the LWDA Payment; (c) the Attorneys' Fees and Costs; (d) the Class Representative
19 Enhancement Payment; and (e) all Settlement Administration Costs.

20 32. The Final Approval/Settlement Fairness Hearing will be held no later than forty-five
21 (45) calendar days after the Response Deadline.

22 33. Class Counsel will be responsible for drafting all documents necessary to obtain
23 Final Approval, subject to review and comment by Defendant's counsel. Class Counsel will also be
24 responsible for drafting the Attorneys' Fees and Costs application to be heard at the Final
25 Approval/Settlement Fairness Hearing. Any failure by the Court to fully and completely approve the
26 Settlement Agreement will result in this Settlement Agreement entered into by the Parties, and all
27 obligations under this Settlement Agreement, being nullified and voided.
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1 34. In conjunction with Final Approval, the Court shall enter Final Judgment consistent
2 with the terms of this Agreement.

3 **XVII. Judgment and Continued Jurisdiction.**

4 35. The Court shall retain jurisdiction with respect to the interpretation, implementation,
5 and enforcement of the terms of this Settlement Agreement and all orders and judgments entered in
6 connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court
7 for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Settlement
8 Agreement and all orders and judgments entered in connection therewith.

9 **XVIII. Other Provisions.**

10 36. Exhibits Incorporated by Reference. The terms of this Settlement include the terms
11 set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth
12 herein. Any Exhibits to this Settlement are an integral part of the Settlement.

13 37. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute
14 the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral
15 agreements may be deemed binding on the Parties.

16 38. Amendment or Modification. This Settlement Agreement may be amended or
17 modified only by a written instrument signed by counsel for all Parties or their successors-in-interest
18 and approved by the Court.

19 39. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
20 and represent they are expressly authorized by the Parties whom they represent to negotiate this
21 Settlement Agreement and to take all appropriate action required or permitted to be taken by such
22 Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other
23 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
24 counsel will cooperate with each other and use their best efforts to effect the implementation of the
25 Settlement. If the Parties are unable to reach agreement on the form or content of any document
26 needed to implement the Settlement, or on any supplemental provisions that may become necessary
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1 to effectuate the terms of this Settlement, the Parties may seek the assistance of a neutral mediator to
2 resolve such disagreement.

3 40. Binding on Successors and Assigns. This Settlement Agreement will be binding
4 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
5 defined.

6 41. California Law Governs. All terms of this Settlement Agreement and Exhibits
7 hereto will be governed by and interpreted according to the laws of the State of California.

8 42. Execution and Counterparts. This Settlement Agreement is subject only to the
9 execution of all Parties. However, the Settlement Agreement may be executed in one or more
10 counterparts. All executed counterparts and each of them, including facsimile, scanned copies of the
11 signature page, and electronic signatures (e.g., DocuSign), will be deemed to be one and the same
12 instrument.

13 43. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
14 this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have
15 arrived at this Settlement after arm's-length negotiations and in the context of adversarial litigation,
16 taking into account all relevant factors, present and potential. The Parties further acknowledge that
17 they are each represented by competent counsel and that they have had an opportunity to consult
18 with their counsel regarding the fairness and reasonableness of this Settlement.

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

23 45. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
24 class certification for purposes of this Settlement only; except, however, that either Party may appeal
25 any Court order that materially alters the Settlement Agreement's terms.

26 46. Class Action Certification for Settlement Purposes Only. The Parties agree to
27 stipulate to class certification only for purposes of the Settlement. If, for any reason, the Settlement
28

1 is not approved, the stipulation to certification will be void. The Parties further agree that
2 certification for purposes of the Settlement is not an admission that class action certification is proper
3 under the standards applied to contested certification motions and that this Settlement Agreement
4 will not be admissible in this or any other proceeding as evidence that either: (a) a class action
5 should be certified or (b) Defendant is liable to Plaintiffs or any Class Member, other than according
6 to the Settlement's terms.

7 47. Non-Admission of Liability. The Parties enter into this Settlement Agreement to
8 resolve the dispute that has arisen between them and to avoid the burden, expense, and risk of
9 continued litigation. In entering into this Settlement Agreement, Defendant does not admit, and
10 specifically denies, it has violated any federal, state, or local law; violated any regulations or
11 guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal
12 requirements; breached any contract; violated or breached any duty; engaged in any
13 misrepresentation or deception; or engaged in any other unlawful conduct with respect to their
14 employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the
15 negotiations connected with it, shall be construed as an admission or concession by Defendant of any
16 such violations or failures to comply with any applicable law. Except as necessary in a proceeding to
17 enforce the terms of this Settlement Agreement, this Settlement Agreement and its terms and
18 provisions shall not be offered or received as evidence in any action or proceeding to establish any
19 liability or admission on the part of Defendant or to establish the existence of any condition
20 constituting a violation of, or a non-compliance with, federal, state, local or other applicable law. If
21 Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains
22 protected by California Evidence Code Section 1152.

23 48. Captions. The captions and section numbers in this Settlement Agreement are
24 inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or
25 intent of the provisions of this Settlement Agreement.

26 49. Waiver. No waiver of any condition or covenant contained in this Settlement
27 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to
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1 imply or constitute a further waiver by such party of the same or any other condition, covenant, right
2 or remedy.

3 50. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
4 and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be
5 construed more strictly against one Party than another merely by virtue of the fact that it may have
6 been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length
7 negotiations between the Parties, all Parties have contributed to the preparation of this Settlement
8 Agreement.

9 51. Representation by Counsel. The Parties acknowledge that they have been
10 represented by counsel throughout all negotiations that preceded the execution of this Settlement
11 Agreement and that this Settlement Agreement has been executed with the consent and advice of
12 counsel and reviewed in full. Further, Plaintiffs and Class Counsel warrant and represent that there
13 are no liens on the Settlement Agreement.

14 52. All Terms Subject to Final Court Approval. All amounts and procedures described
15 in this Settlement Agreement herein will be subject to final Court approval.

16 53. Cooperation and Execution of Necessary Documents. All Parties will cooperate in
17 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of
18 this Settlement Agreement.

19 54. No Press Releases/Advertisements. Neither Plaintiffs nor Plaintiffs' Counsel shall
20 issue any press release or announcement of any kind related in any way to the Settlement. Plaintiffs
21 and Class Counsel agree to limit their statements regarding the terms of the Settlement, whether oral,
22 written or electronic (including the world wide web), to say the Class Action has been resolved and
23 that Plaintiffs and Class Counsel are satisfied with the Settlement terms. Nothing in this Section is
24 intended to interfere with Class Counsel's duties and obligations to faithfully discharge their duties
25 as Class Counsel, including but not limited to: (1) as required by law; (2) as required under the terms
26 of the Settlement; and/or (3) as required under counsel's duties and responsibilities as Class Counsel.
27
28

1 This Settlement shall not be advertised or mentioned on any source, including Plaintiffs' Counsel's
2 personal or firm website.
3
4 55. Binding Agreement. The Parties warrant that they understand and have full authority
5 to enter into this Settlement, intend that this Settlement Agreement will be fully enforceable and
6 binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding
7 to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might
8 apply under federal or state law. Plaintiffs, and not their respective representative(s), must personally
9 execute this Settlement Agreement. An authorized officer of Defendant must execute this Settlement
10 Agreement on behalf of Defendant. This Agreement shall become binding and enforceable pursuant
11 to California Code of Civil Procedure section 664.6.

12
13 Dated: 08 / 29 / 2024
14

PLAINTIFFS


Mayra Diaz

15
16 Dated: _____
17

Robert Villareal

18
19
20
21 Dated: 9/11/24
22

DEFENDANT


Gary K. Herbst, CEO
KAWEAH DELTA HEALTH CARE
DISTRICT

1 This Settlement shall not be advertised or mentioned on any source, including Plaintiffs' Counsel's
2 personal or firm website.

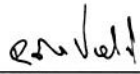
3 55. Binding Agreement. The Parties warrant that they understand and have full authority
4 to enter into this Settlement, intend that this Settlement Agreement will be fully enforceable and
5 binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding
6 to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might
7 apply under federal or state law. Plaintiffs, and not their respective representative(s), must personally
8 execute this Settlement Agreement. An authorized officer of Defendant must execute this Settlement
9 Agreement on behalf of Defendant. This Agreement shall become binding and enforceable pursuant
10 to California Code of Civil Procedure section 664.6.
11

12 **PLAINTIFFS**

13 Dated: _____

14 Mayra Diaz

15
16 Dated: 09 / 06 / 2024

17 
18 Robert Villareal

19 **DEFENDANT**

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21 Dated: 9/11/24

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23 Gary K. Herbst, CEO
24 KAWAIAH DELTA HEALTH CARE
25 DISTRICT
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APPROVED AS TO FORM:

DATED: 9/6/2024

Gaines & Gaines, APLC

Daniel F. Gaines
Counsel for Plaintiffs

DATED: 9/11/2024

Sheppard, Mullin, Richter & Hampton, LLP

By: *[Signature]*
Derek R. Havel
Emily Papania

Attorneys for Defendant Kaweah Delta Health
Care District

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EXHIBIT 1

1 **Mayra Diaz et al. v. Kaweah Delta Health Care District,**
2 **Case No. VCU297155 (Tulare County, California Superior Court)**

3 **NOTICE OF CLASS ACTION SETTLEMENT**
4 **AND HEARING DATE FOR COURT APPROVAL**

5 **TO: All non-exempt hourly employees of Kaweah Delta Health Care District who**
6 **worked any time between October 19, 2019 and June 27, 2021, or who worked on-**
7 **call time during any time between October 19, 2019 and [date of preliminary**
8 **approval]**

9 **A class action lawsuit may affect your legal rights.**

10 *A California Superior Court authorized this notice. This is not a solicitation from a lawyer.*

- 11 • The Superior Court of the State of California for the County of Tulare (the “Court”) has
12 preliminarily approved a Settlement that could affect your rights. The proposed Settlement
13 resolves a class action and Labor Code Private Attorneys General Act of 2004 (“PAGA”)
14 action filed by Plaintiffs Mayra Diaz and Robert Villareal (“Plaintiffs”) against Defendant
15 Kaweah Delta Health Care District (“Defendant”), in Tulare County Superior Court Case
16 No. VCU297155. (the “Action”).
- 17 • Defendant denies Plaintiffs’ allegations and maintains it has fully complied with the law.
18 By agreeing to the Settlement, Defendant in no way admits any violation of law or any
19 liability whatsoever to Plaintiffs or others, and it expressly denies all such liability. Both
20 Plaintiffs and Defendant have agreed to the Settlement in light of all known facts and
21 circumstances—including the uncertainty and cost associated with litigation.
- 22 • If the Court grants final approval of the settlement, it would provide a cash fund for
23 members of the Class to split based on the number of relevant weeks they worked during
24 the relevant period.
- 25 • You have been identified as a member of the class. Your rights may be affected. And you have
26 choices to make:

27 **YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT**

28 **DO NOTHING**

Stay in this lawsuit. Receive a settlement payment.
Give up your right to sue.

By doing nothing, you will receive a check for your pro-rata share of the Net Settlement Amount estimated to be [redacted]. You do not have to do anything else to receive payment for class action claims at issue in this lawsuit. However, you give up any rights to sue Defendant, separately about the same legal claims in this lawsuit.

ASK TO BE EXCLUDED

Get out of this lawsuit. Get no benefits from it. Keep rights other than under the PAGA.

If you ask to be excluded, you won't receive any money, except for the amount that you are owed as an aggrieved employee under the PAGA. But you keep any rights you otherwise have to sue Defendant, separately about the same legal claims in this lawsuit. To ask to be excluded, you must act before [date].

OBJECT

Object to the terms of the settlement.

You may object to the class action settlement by submitting a written objection. If you object and the Court grants final approval of the class action settlement despite your objection, you will remain eligible to automatically receive a payment and will be bound by the class action release provisions of the settlement.

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION FROM THE COURT AS TO THE MERITS OF THE CLAIMS.

BASIC INFORMATION

1. Why did I get this notice?

The records kept by Defendant show that you were employed as an hourly non-exempt employee at some point during the period from October 19, 2019 to June 27, 2021; or as an hourly non-exempt employee who worked on-call time at some point during the period from October 19, 2019 to [date of preliminary approval]. The Class Period is the period of October 19, 2019 through [date of preliminary approval]. The Court has certified a class action lawsuit for purposes of a settlement that may affect you.

Because the settlement preliminarily approved by the Court would affect Settlement Class Members' legal rights, the Court ordered that this Notice be sent to you. This Notice provides a brief description of the Action, informs you of the settlement terms preliminarily approved by the Court, and advises you of your legal rights with respect to the Settlement. If the Court finally approves the settlement, the settlement will fully resolve the Action, and your legal rights may be affected by the Settlement.

2. What is a class action and who is involved?

In a class action lawsuit, one or more people called "Class Representatives" (in this case Mayra Diaz and Robert Villareal) sue on behalf of other people who are alleged to have similar claims. The people together are a "Class." The Class Representatives who sue are called Plaintiffs. The entity they sued (in this case Kaweah Delta Health Care District) is called the Defendant.

3. Why is this lawsuit a class action?

To facilitate the settlement reached between the parties and for purposes of the settlement only, the Court has preliminarily decided that this lawsuit can proceed as a class action because it meets the requirements of California Code of Civil Procedure, section 382, which governs class actions. Specifically, the Court found that there are a sufficient number of people who were subject to the alleged employment policies at issue in this case, that there are legal questions common to each of them, that the Class Representatives will fairly and adequately

1 represent the interests of the Class; and that this class action will be more efficient than having
2 many individual lawsuits.

3 **4. What is this lawsuit about?**

4 Plaintiffs claim Defendant violated the California Labor Code by failing to pay minimum wages,
5 and that Plaintiffs are entitled to seek penalties under PAGA for alleged violations of the
6 California Labor Code.

7 **5. What is the Plaintiffs asking for?**

8 Plaintiffs' claims are brought under the California Labor Code, and the PAGA. Under those laws,
9 Plaintiffs may seek to recover unpaid minimum wages and civil penalties. Plaintiffs are also
10 asking for their reasonable attorneys' fees and the costs of the lawsuit to be paid by Defendant.

11 **6. What is the position of Defendant?**

12 Defendant contends its policies were lawful and that all non-exempt employees were properly
13 compensated under the California Labor Code. Further, Defendant denies that penalties are
14 appropriate under the PAGA.

15 **7. Why is there a settlement?**

16 The Court did not decide in favor of Plaintiffs or Defendant. Instead, both sides agreed to a
17 settlement. The Class Representatives and Class Counsel think the settlement is in the best
18 interests of the Class.

19 **8. Is there any money available from the settlement?**

20 To settle this case, Defendant has agreed to pay a total of \$475,000.00 ("Class Settlement
21 Amount"). Class Counsel has requested that the following amounts be paid out from the Class
22 Settlement Amount in addition to the payments made to the Class: (1) \$32,500 in Settlement
23 Administration Costs to Phoenix Class Action Administration Solutions ("Phoenix"), (2)
24 \$37,500 to the California Labor and Workforce Development Agency for PAGA penalties, (3)
25 \$7,500 service payments to each of the Class Representatives, (4) Class Counsel's costs of no
26 more than \$15,000, and (5) Attorneys' Fees for Class Counsel of no more than \$158,333.33. All
27 members of the Class who do not opt-out of the Class will receive an amount calculated based
28 on the number of weeks worked during the relevant time period. Based on Defendant's
records, you are expected to receive an allocation based on approximately [] total weeks

9. What if I disagree with the number of weeks worked shown above?

If you dispute the number of weeks worked as shown on this Notice, you may produce evidence
of the number of workweeks you think you are entitled to and mail it to the settlement
administrator postmarked on or before [date], to: [Settlement administrator information]

The settlement administrator will notify you of the decision related to any dispute of your
weeks worked.

worked. This work week total includes both weeks worked during the period between
October 19, 2019 to June 27, 2021, and any weeks worked with on-call time from October 19,
2019 to [date of preliminary approval].

10. How will taxes be handled on the money?

For tax purposes, settlement payments to each Class Member shall be allocated fifty percent
(50%) to penalties and interest to be paid as one check and reported on a 1099 Form; and
fifty percent (50%) to wages to be paid as another check and reported on a W-2 Form.
Settlement payments to PAGA Aggrieved Employees shall be allocated all (100%) to
penalties. You will be responsible to pay any income taxes required on the payment you
receive.

YOUR RIGHTS AND OPTIONS

11. What happens if I do nothing at all?

If the Court issues final approval of the settlement, you will receive a check for your respective settlement amount. You will also be bound by any orders the Court issues in this case and you will be forever barred from suing Defendant for the conduct at issue during the time periods at issue in this lawsuit.

12. Why would I ask to be excluded?

If you already have your own lawsuit against Defendant about the same claims in this lawsuit and want to continue with it, you need to ask to be excluded from the Class. If you exclude yourself, you will not be legally bound by the Court's judgment in this case. If you start your own lawsuit against Defendant after you exclude yourself, you will have to hire and pay your own lawyer for that lawsuit and you will have to prove your claims. If you do exclude yourself so you can start or continue your own lawsuit against Defendant, you should talk to your own lawyer soon because your claims may be subject to a statute of limitations.

13. How do I ask the Court to exclude me from this case?

To ask to be excluded, you must send an "Opt-Out Request" to Phoenix in the form of a letter sent by mail or fax, stating that you want to be excluded from this case. Be sure to include your name, address, telephone number, the last four digits of your social security number or EIN number and sign the letter. Your Opt-Out Request must be postmarked on or before [date] and sent to: [Settlement Administrator Information]

RELEASE OF CLAIMS

14. What claims am I releasing?

Upon the date the settlement becomes effective ("Effective Date"), all Class Members who do not opt out of the Settlement fully and finally release Defendant and the Released Parties from any and all Released Class Claims which accrued during the Class Period. The Released Class Claims include all claims asserted in the Second Amended Complaint, arising from or related to the facts and claims alleged in the Second Amended Complaint, or that could have been raised in the Action based on the facts and claims alleged. The Released Class Claims include all claims for failure to pay minimum wages (as a result of rounding, on-call time, off-the-clock work, or any other theory) and any potentially resulting penalties, including, but not limited to civil penalties, statutory penalties, recordkeeping penalties, wage statement penalties, and waiting-time penalties; and attorneys' fees and costs. The Released Class Claims do not include a release of any PAGA claims. This release excludes the release of claims not permitted by law.

Regardless of whether you opt-out of the Settlement, upon the Effective Date, all PAGA Aggrieved Employees fully and finally release Defendant and the Released Parties from any and all Released PAGA Claims which accrued during the PAGA Period (April 3, 2022 through [date of preliminary approval]). The Released PAGA Claims include all claims arising under PAGA which are asserted in the Second Amended Complaint, arising from or related to the facts and claims alleged in the Second Amended Complaint, or that could have been raised in the Action under PAGA based on the facts and claims alleged. The Released PAGA Claims include all claims for PAGA civil penalties related to the failure to pay minimum wages (as a result of rounding, on-call time, off-the-clock work, or any other theory) and any potentially resulting penalties, including, but not limited to civil penalties,

1 recordkeeping penalties, wage statement penalties, and waiting-time penalties; and
2 attorneys' fees and costs. The Released PAGA Claims do not include any claims for wages
3 or statutory penalties.

4 THE LAWYERS AND PLAINTIFFS REPRESENTING YOU

5 **15. Do I have a lawyer in this case?**

6 The Court decided that the law firms of Gaines & Gaines, APLC and Stonebrook Law are
7 qualified to represent you and all Class Members.

8 **16. Should I get my own lawyer?**

9 You do not need to hire your own lawyer because Class Counsel is working on your behalf. If
10 you want your own lawyer, you will have to pay that lawyer. For example, you can ask him or
11 her to appear in Court for you if you want someone other than Class Counsel to speak for you.

12 **17. How will Class Counsel and Plaintiffs be paid?**

13 Class Counsel will ask the Court for attorney's fees up to one-third of the settlement as well as
14 their reasonable costs, and a payment of \$7,500.00 each as an enhancement award to both
15 Class Representatives. Defendant has agreed not to oppose these requests. The Court may
16 award less than these amounts.

17 OBJECTING TO THE SETTLEMENT

18 **18. How do I tell the Court that I don't like the settlement?**

19 If you are a Class Member, you can object to the settlement if you do not like any part of it. You
20 can give reasons why you think the Court should not approve it, either in writing or orally at
21 the Final Settlement Approval and Fairness Hearing. If you properly present your objection, the
22 Court will consider your views. Any such written objection must be filed by mailing or faxing
23 the objection to the Settlement Administrator, on or before [date], at: [Settlement
24 Administrator Address and Fax Number]

25 To be valid, any written objection must: (1) contain the objecting Class Member's full name
26 and current address, as well as contact information for any attorney representing the
27 objecting Class Member for purposes of the objection; (2) include all objections and the
28 factual and legal bases for same; (3) include any and all supporting papers, briefs, written
evidence, declarations, and/or other evidence; (4) be postmarked no later than [] ; and
(5) reference to "*Mayra Diaz et al. v. Kaweah Delta Health Care District*, Case No. VCU297155."

Any attorney you may hire for the purpose of making an objection must file his or her Entry of
Appearance thirty (30) days before the Final Settlement Approval and Fairness Hearing, on or
before [date]. The Entry of Appearance shall be filed with the Clerk of the Court with a copy
served upon Class Counsel and Defense Counsel in accordance with the California Code of Civil
Procedure.

Notwithstanding the above, any Class Member who does not otherwise exclude themselves
from the Settlement may also appear at the Final Settlement Approval and Fairness Hearing
and voice an oral objection. If written objections are filed, the parties may engage in discovery
about the filed objections before the Final Settlement Approval and Fairness Hearing.

1 If you object, you will remain bound by the class action settlement if finally approved.. If
2 you do not want to be bound by the class action settlement if finally approved, you must opt
3 out of the class action settlement. Regardless of whether you object to the class action
4 settlement, you will be bound by the PAGA settlement if approved.

5 **19. What's the difference between objecting and excluding?**

6 Objecting is simply telling the Court that you don't like something about the settlement. You can
7 object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to
8 be part of the Class. If you exclude yourself, you have no basis to object because the case no
9 longer affects you.

10 **THE COURT'S FINAL SETTLEMENT APPROVAL AND FAIRNESS HEARING**

11 **20. When and where will the Court decide whether to approve the settlement?**

12 The Court will hold a Final Settlement Approval and Fairness Hearing on [date/time] in
13 [place.]. At this hearing, the Court will consider whether the settlement is fair, reasonable, and
14 adequate. If there are objections, the Court will consider them. The Judge will listen to people
15 who have asked to speak at the hearing. The Court may also decide how much to pay Class
16 Counsel. After the hearing, the Court will decide whether to approve the Settlement.

17 **21. Do I have to come to the hearing?**

18 No. Class Counsel will answer questions the Court may have. But you are welcome to come at
19 your own expense. If you send an objection, you don't have to come to Court to talk about it. As
20 long as you mailed your written objection on time, the Court will consider it. You may also pay
21 your own lawyer to attend, but it is not necessary.

22 **GETTING MORE INFORMATION**

23 **22. Are more details available?**

24 This Notice summarizes the settlement. More details are in the Settlement Agreement For Class
25 and Representative Action. You can get a copy of the Settlement, and also be informed if the Final
26 Settlement and Approval is continued to a later date, by accessing the website maintained for
27 this Action by Phoenix. at: [Settlement Admin Website]

28 You can also get more information about the settlement by contacting Class Counsel at:
[Contact information]

**PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION
REGARDING THIS SETTLEMENT.**