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Attorneys for Plaintiff Bao Cha

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO**

BAO CHA, in an individual capacity, as
well as a representative capacity on behalf
of the State of California,

Plaintiff,

vs.

ALLEN SPEES FAMILY HOME, an
unknown entity, and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 23CECG02451

**DECLARATION OF KEVIN SCHWIN IN
SUPPORT OF MOTION FOR APPROVAL OF
PAGA SETTLEMENT**

Date: July 8, 2025

Time: 3:30 p.m.

Dept: 403

Judge: Hon. Lisa Gamoian

I, Kevin Schwin, declare as follows:

1. I am an attorney at law duly licensed to practice law in every court in the State of California, and I am one of the attorneys of record representing Plaintiff in this action.

2. I have personal knowledge of all the facts set forth herein, and if called as a witness, I could and would competently testify to those facts. I am of sound mind. I am over the age of eighteen years.

3. I have been practicing law in California for over sixteen years. I devote about 95% of my practice to representing plaintiffs in employment matters. The remaining 5% is devoted to general civil litigation practice. I am a regular member of the California Employment Lawyer's

1 Association (CELA), a statewide organization of attorneys representing employees in termination,
2 discrimination, wage and hour, and other employment cases.

3 4. I graduated *cum laude* from the Cleveland-Marshall College of Law in Cleveland,
4 Ohio in May of 2008.

5 5. While in law school, I served as the President of my law school's Employment and
6 Labor Law Association (ELLA).

7 6. I have received a number of honors and awards for my academic achievements
8 including receiving the Frank L. Bartak Memorial Fund Award for Outstanding Scholarship in
9 Torts, the CALI Excellence for the Future Award for my performance in Torts, and the Ohio State
10 Bar Association Award for Outstanding Scholarship in the Field of Labor and Employment Law.

11 7. I am the author of a published law review note on the topic of employment
12 discrimination law titled "*Toward a Plain Meaning Approach to Analyzing Title VII: Employment*
13 *Discrimination Protection of Transsexuals*." Published in Volume 57, No. 3 of the Cleveland State
14 Law Review.

15 8. I have been named as a "Northern California Rising Star" by Super Lawyers
16 Magazine every year from 2015-2023, and in 2024 and 2025 I have been named as a "Super
17 Lawyer."

18 9. I became licensed to practice law in March of 2009. Since then, I have tried 14
19 cases to verdict in court (6 jury trials and 8 bench trials), along with one additional jury trial that
20 resulted in a mistrial. I have also tried an additional 11 administrative hearings to conclusion,
21 including wage claims with the California Labor Commissioner's office, claims for unemployment
22 benefits with the California Unemployment Insurance Appeals Board, and Civil Service
23 Commission hearings for public employees.

24 10. In addition to my trial experience, I have significant experience representing
25 employees in wage and hour class actions. I have been an attorney of record in numerous certified
26 class actions and have been named class counsel numerous times.

27 11. In addition to the foregoing, I have been an attorney of record in a multitude of
28 individual wage and hour cases, including PAGA cases.

1 12. I perform contingency-fee based work as an employment lawyer representing
2 employees.

3 13. Since I began practicing law in 2009, I have raised my hourly fee rates each year to
4 account for inflation, increased overhead costs as my practice has grown over the years, and the
5 relatively rapid increase in value of services that is typical as lawyers gain more experience and
6 develop their skills. My current (2025) hourly rate is \$850 per hour.

7 14. I am familiar with rates charged by other attorneys in Fresno and my hourly rate is
8 reasonable and consistent with other attorneys with comparable skill, experience and credentials in
9 Fresno and the surrounding areas.

10 15. Typically in litigation matters, I advance litigation costs on behalf of my clients
11 because my clients most often cannot afford to pay even their own litigation expenses, let alone
12 attorneys' fees for my services. I know from experience that representing employees in a contingent
13 fee basis and advancing litigation expenses is extremely risky. For example, I lost a jury trial in
14 July 2015. I worked approximately 1,000 hours on that case and my co-counsel and I advanced
15 over \$40,000 in litigation costs on that case. I do not realistically expect my client to ever refund
16 those costs.

17 16. On a separate matter I tried back in 2016, my client prevailed at trial and obtained a
18 verdict of \$914,500 in the client's favor. I worked over 1,300 hours on that case and advanced over
19 \$120,000 in litigation costs. The defendant in that case filed for chapter 7 bankruptcy only days
20 after judgment was entered and the bankruptcy resulted in pennies on the dollar. Although I won
21 the case, I ultimately incurred a substantial monetary loss and was not even reimbursed for the costs
22 I advanced, let alone compensated for my time. These cases highlight the high risk of representing
23 employees on a contingent fee basis.

24 17. Contingency fee cases are particularly risky for me because I am in a small law firm,
25 and I don't have hundreds of partners with whom I can share risk.

26 18. I took this case on a contingency fee basis and my co-counsel, Santosh Narayan, and
27 I had to advance significant litigation costs on behalf of Ms. Cha.
28

1 19. I have worked a total of 55.7 hours on this case as of the date of this declaration,
2 which figure excludes additional time I spent performing clerical work and duplicative tasks.

3 20. Plaintiff filed this Action in the Fresno County Superior Court on June 20, 2023,
4 alleging six causes of action for: (1) Failure to Provide Meal Breaks; (2) Failure to Provide Rest
5 Breaks; (3) Failure to Provide Accurate Itemized Wage Statements; (4) Failure to Pay Wages Due
6 on Termination; (5) Failure to Keep Accurate Payroll Records; and (6) Recovery of PAGA
7 Penalties. In summary, Plaintiff's Complaint alleges Defendants failed to provide Plaintiff and
8 other aggrieved employees with duty-free rest and meal breaks in violation of California's wage
9 and hour laws. The Complaint further alleges Defendants failed to keep accurate records of hours
10 worked, and failed to provide employees with pay stubs as required by Labor Code section 226.

11 21. A true and correct copy of the Complaint is attached hereto as **Exhibit A**, and is
12 incorporated by reference herein.

13 22. A true and correct copy of the PAGA Notice that Plaintiff mailed to the California
14 LWDA and to Defendant via certified mail on April 4, 2023 is attached hereto as **Exhibit B**, and is
15 incorporated by reference herein.

16 23. The Parties subsequently conducted discovery to ascertain the strength of Plaintiff's
17 PAGA claims asserted in the Lawsuit and the strength of Defendants' defenses.

18 24. On June 7, 2024, the Parties engaged in mediation with mediator Lee Jacobson.
19 Following the mediation, the Parties arrived at a settlement based on extensive, arms-length
20 negotiations, taking into account all relevant factors, present and potential.

21 25. The settlement is memorialized in a Settlement Agreement with the following
22 material terms: Defendant will pay a gross settlement amount of \$130,000, which will cover claims
23 administration, attorneys' fees, litigation costs, Plaintiff's damages, and PAGA penalties. \$15,000
24 of the \$130,000 will be paid directly to Plaintiff to compensate her for her individual claims and in
25 exchange for a general release. This amount is not a service award but rather is compensation for
26 damages sought by Plaintiff on her non-representative wage and hour claims. In addition, up to
27 \$10,000 of the \$130,000 gross settlement amount will cover claims administration, up to \$40,000
28 of the \$130,000 gross settlement amount will cover attorneys' fees, and up to \$10,000 of the

1 \$130,000 gross settlement amount will cover Plaintiff's out of pocket litigation expenses. To the
2 extent claims administration costs, attorneys' fees and/or Plaintiff's out of pocket litigation
3 expenses are set at lower amounts than these "up to" amounts, the remaining funds will go towards
4 PAGA penalties (i.e. the "Net Settlement Amount"). Of the Net Settlement Amount, for each
5 PAGA Settlement Group Member, seventy-five percent (75%) of his or her allocated share of the
6 Net Settlement Amount shall be distributed to the LWDA ("LWDA Penalty Payment") and the
7 remaining twenty-five percent (25%) shall be distributed to the PAGA Settlement Group Members
8 ("Putative Aggrieved Employee Penalty Payment"). The "Putative Aggrieved Employee Penalty
9 Payment" for each PAGA Settlement Group Member shall be determined based on a formula taking
10 into account the number of each PAGA Settlement Group Member's "Pay Periods." A "Pay Period"
11 shall be defined as any instance when a Putative Aggrieved Employee received a wage statement
12 from Defendant between April 4, 2022 and the Approval Date, based on Defendants' data. The
13 amount paid to each PAGA Settlement Group Member will be determined as follows: The Net
14 Settlement Amount will be divided by the total number of Pay Periods for all PAGA Settlement
15 Group Members during the relevant time period (April 4, 2022 up to and including the Approval
16 Date) ("Pay Period Amount"). Each PAGA Settlement Group Member will then be paid an amount
17 equal to the Pay Period Amount multiplied by that PAGA Settlement Group Member's total number
18 of Pay Periods, multiplied by twenty-five percent (25%).

19 26. The release of the PAGA claim is limited in scope to claims for civil penalties
20 recoverable under PAGA. While Plaintiff is bound by a general release and Civil Code section
21 1542 waiver, the aggrieved employees and the LWDA will be subject only to a limited scope
22 release. This further supports that the settlement is fair and reasonable, and was negotiated by
23 sophisticated counsel in the interests of the public.

24 27. Plaintiff seeks court approval of attorneys' fees in the amount of \$40,000, which
25 represents 30.77% of the \$130,000 gross settlement amount. My lodestar in this case is \$47,345,
26 calculated as follows: 55.7 hours times \$850 per hour. The requested fees are less than my lodestar,
27 and that does not even include the lodestar for my co-counsel, Santosh Narayan.
28

1 28. I have also advanced costs of \$1,500, that will be reimbursed out of the gross
2 settlement amount.

3 29. A true and correct copy of the settlement agreement is attached hereto as **Exhibit**
4 **C**, and is incorporated by reference herein.

5 30. In discovery, Plaintiff discovered the following information from which I conducted
6 an analysis to evaluate the strengths of Plaintiff's case and Plaintiff's damages:

7 **I. Nature of the Dispute:**

8 This is a wage and hour case against Defendant Allen Spees Family Home.
9 ("Defendant" or "AS"), an intermediate care facility for disabled children. Plaintiff worked
10 for Defendant as a Licensed Vocational Nurse (LVN) from April 4, 2019 to October 12,
11 2022. Throughout her employment, Ms. Cha received regular pay raises and her rates of
12 pay increased from \$21 per hour when hired to \$31 per hour at the time of her resignation
13 in October 2022.

14 Ms. Cha's job duties included caring for clients, administering medications,
15 assisting clients with daily activities, and ensuring patient safety, amongst other things.

16 **II. Meal Period Claim:**

17 Plaintiff and the other nurses were not afforded off-duty meal breaks for each day
18 worked. Defendant requires all direct care staff – not just LVNs – to execute a document
19 titled "Job Description/Responsibilities/Expectations Direct Care Staff" at the time of hire.
20 Among the listed job duties is "dine with clients daily (as appropriate) as part of client
21 mealtime interaction." Although time cards produced by Defendant reveal employees
22 clocking out and back in for lunch, Plaintiff and several of her co-workers corroborated that
23 they were not able to leave their worksites for meal periods due to client care needs, which
24 is consistent with the "Job Description/Responsibilities/Expectations Direct Care Staff"
25 document they were all required to sign. In other words, Plaintiff and the other aggrieved
26 employees had to clock out and in for meal periods, but remained on duty.

27 Defendant asserts that wage order number 5 exempts it from providing off-duty meal
28 periods so long as it offers employees on-duty meal periods and an opportunity to eat the

1 same meal as the children eat, free of charge. However, Defendant did not provide
2 employees food.

3 Defendant owns and operates three nursing homes. At the time of hire, Plaintiff was
4 told that the meals were just for the clients, not for staff. At one of the three homes, there
5 were meal menus posted for the clients. Defendant only purchased and stocked sufficient
6 food to feed the clients. Based on the clients' posted dietary requirements, there simply was
7 not enough food to feed both the clients and the staff.

8 The other two homes had clients who were dependent on formula (liquid), via
9 gastrointestinal tube feedings. A few of them were able to eat orally, but their main
10 diet/nutrition was based on their formula feedings. Snacks were provided for those clients
11 that were able to eat by mouth, such as yogurt, applesauce, chips, etc., but those were only
12 recreational feedings. At these two homes, not only was there insufficient food to feed both
13 the clients and staff, but also the food itself was not edible.

14 Based on Plaintiff's calculations, Defendant owes Plaintiff \$29,439.80 on the meal
15 break claims ($[\$26/\text{hour average hourly rate during employment} \times 871 \text{ workdays} = \$22,646]$
16 $+ \$6,793.80$ in prejudgment interest).

17 **III. Rest Period Claim:**

18 Defendant prohibited staff from leaving the clients un-supervised, due to their
19 intensive care needs. Wage Order 5 will not provide a valid defense to the rest period
20 claims. Wage Order 5 does not exempt in home care providers from providing rest breaks
21 in total. Rather, it merely provides a limited exception in cases where "the employee is in
22 sole charge of residents." We believe the court will construe this exception narrowly, as
23 wage and hour law are generally construed in favor of employees. Here, multiple staff were
24 in charge of the residents, and therefore Plaintiff and the other nurses were never "in sole
25 charge of residents."

26 Based on Plaintiff's calculations, Defendant owes Plaintiff \$29,439.80 on the rest
27 break claims ($[\$26/\text{hour average hourly rate during employment} \times 871 \text{ workdays} =$
28 $\$22,646] + \$6,793.80$ in prejudgment interest)

1 **IV. Inaccurate Wage Statement and Payroll Records Claims:**

2 This claim is derivative of the rest and meal period claims. Plaintiff and other
3 employees were required to clock out for meal periods, even though they had to remain on
4 site and on duty. Defendant failed to accurately record hours worked, and thus failed to
5 provide accurate wage statements. Pursuant to Labor Code section 226, the maximum
6 penalty for violation of Labor Code 226 is \$4,000, which is the amount owed to Plaintiff
7 for this claim.

8 **V. Waiting Time Penalty Claim:**

9 This claim is likewise derivative of the other claims. Defendant failed to pay all
10 wages due and owing Plaintiff and other former employees at the time of termination or
11 resignation. Accordingly, Defendant owes Plaintiff waiting time penalties of \$7,440
12 (\$31/hour x 8 hours/day x 30 days).

13 **VI. PAGA Claim:**

14 The default PAGA penalty is \$100 per each aggrieved employee per pay period for
15 the initial violation and \$200 per pay period for a subsequent violation. (Cal. Lab. Code §
16 2699(f)(2).) The default penalty applies to "all provisions of this code except those for
17 which a civil penalty is specifically provided..." (Cal. Lab. Code § 2699, subd. (f).) There
18 are several labor code provisions applicable to this case for which a civil penalty is
19 specifically provided, including: Labor Code section 558 (for unpaid rest breaks, and meal
20 breaks); 210 (for failure to pay wages when due); 226.3 (for paystub violations); 256 (for
21 unpaid waiting time penalties); 1174.5 (for failure to maintain employment and payroll
22 records); and 2699(f) (for violations of the Wage Orders and corollary violations of Labor
23 Code section 1198). The penalties are as follows:

- 24 - Labor Code section 558 - \$50/employee/pay period for the initial violation and
25 \$100/employee/pay period for subsequent violations
26 - Labor Code section 210 - \$100/employee/pay period for the initial violation and
27 \$200/employee/pay period for subsequent violations
28

- Labor Code section 226.3 - \$250/employee/pay period for the initial violation and \$1,000/employee/pay period for subsequent violations
- Labor Code section 256 – 30 days pay for each former employee
- Labor Code section 1174.5 - \$500/employee whose records are not maintained

Under PAGA, an “initial violation” is any violation occurring prior to the employer being put on notice of its unlawful pay practices, and any “subsequent violation” is a violation occurring after the employer is notified of its labor code violations. (See *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209.) Here, Plaintiff served her PAGA notice on April 4, 2023. Thus, any labor code violations occurring before April 4, 2023 are “initial violations” and any violations occurring thereafter are “subsequent violations.”

Employers are required by law to maintain accurate timecards reflecting each employee’s daily hours worked, including off duty meal periods. (See Cal. Lab. Code §§ 1174, 1174.5, 1198; and IWC Wage Order No. 5 § 7.) It is well settled that when employers fail to maintain time keeping records as required by law, any labor code violations are presumed, and the burden of proof shifts onto the employer to prove it complied with the labor code and paid employees lawfully. (See *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680, 686–688 [where an employer is subject to a recordkeeping requirement, the burden shifts to that employer to rebut employee proof of monies owed once a prima facie case has been made]; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1536, fn. 11 [refusing to allow an employer to use any shortcomings in its records to resist employee wage claims]; *Cicairos v. Summit Logistics, Inc.* (2005) 133 Cal.App.4th 949, 961 [“[W]here the employer has failed to keep records required by statute, the consequences for such failure should fall on the employer, not the employee.”]; *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 74-78 [holding when an employer fails to record meal periods on time cards, a meal period violation is presumed].)

With that in mind, the PAGA penalties are calculated as follows: For “initial violations” under Labor Code sections 558, 210, 225.5, and 226.3 –

1 [\$50+\$100+\$100+\$250] x 26 pay periods¹ x an average of 30 employees = \$390,000. For
2 “subsequent violations under Labor Code sections 558, 210, and 226.3 –
3 [\$100+\$200+\$200+\$1,000] x 15 pay periods x 30 employees = \$675,000. For unpaid
4 waiting time penalties under Labor Code section 256 - \$148,800². And, for the failure to
5 maintain required employment records, \$500 x 30 current and former employees = \$15,000.
6 In total, the maximum amount of PAGA penalties recoverable are \$1,228,800.

7 31. Although Defendant’s maximum exposure on Plaintiff’s individual claims is
8 \$70,319.60 and Defendant’s maximum exposure on the PAGA claim is \$1,228,800, Plaintiff settled
9 the \$130,000, which is about 10% of the total exposure.

10 32. This settlement is fair, reasonable and consistent with PAGA’s public policy goals.
11 Courts may take the employer’s financial condition into account in deciding whether to approve a
12 PAGA settlement. (See, e.g. *Ramirez v. Benito Valley Farms, LLC* (N.D. Cal., Aug. 25, 2017, No.
13 16-CV-04708-LHK) 2017 WL 3670794, at *5 [approving PAGA settlement of 4.5% of maximum
14 exposure due to “Defendant’s weak financial condition.”].) Courts should also evaluate the
15 strengths and weaknesses of the case in deciding whether a settlement is fair. (*Kullar v. Foot Locker*
16 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.) And, because PAGA penalties are punitive in nature
17 and are designed to deter employers from violating the Labor Code, courts should likewise assess
18 whether the underlying labor code violations were intentionally designed to harm workers or
19 whether they were based on a good faith but mistaken belief. (*Fleming v. Covidien, Inc.* (C.D. Cal.
20 Aug. 12, 2011 No. ED-CV10-01487-RGK) 2011 U.S. Dist. LEXIS 154590, *8–*9 [finding lack of
21 willfulness by employer and efforts to comply with law warranted more than 80% reduction in
22 penalties]; *Aguirre v. Genesis Logistics* (C.D. Cal. Dec. 30, 2013 No. SACV-12-00687-JVS) 2013
23 U.S. Dist. LEXIS 189820, *5, *7 [reducing PAGA penalty by approximately 72% on grounds that
24 full amount would be punitive, even though defendant had not corrected unlawful practice after
25 five years of notice.]). Here, Defendant has a strong argument that the maximum penalties are
26 “unjust, arbitrary and oppressive, or confiscatory” because Defendant lacks the ability to pay.

27 _____
28 ¹ Defendant runs payroll every 2 weeks, or 26 times per year.

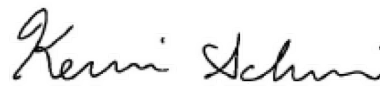
² There are 20 former employees in the PAGA class.

1 Specifically, as part of the mediation in this Action, Defendant produced a confidential report by a
2 CPA named Kenneth Creal who opined Defendant would not be able to pay more than \$130,000
3 in settlement without incurring financial hardship. In addition, the strength of the case also supports
4 settlement at the discounted amount. As noted above, payroll records reveal that Plaintiff and the
5 other aggrieved employees were clocking out and in for meal periods, which on their face appear
6 to establish compliance with meal period obligations. Liability would hinge on the ability of
7 Plaintiff and the other aggrieved employees to convince a trier of fact that even though they clocked
8 out and in for meal periods, they actually remained on duty and were working during those meal
9 periods. While the documents Plaintiff and the other aggrieved employees signed at the time of
10 hire seem to corroborate that meal periods were not duty-free, it is not at all a foregone conclusion
11 based on the evidence. Lastly, a significant reduction in PAGA penalties is justified because there
12 is no evidence Defendant was intentionally trying to take advantage of its employees. Thus, I
13 believe the settlement is fair and reasonable due to Defendant's financial condition, the significant
14 risk of losing on the merits, and the lack of evidence of intentional harm.

15 33. The settlement reached is not fully compensatory even to Plaintiff. Her maximum
16 damages on the non-PAGA, individual wage and hour claims total \$70,319.60. Yet, she agreed to
17 settle those non-PAGA claims for only \$15,000. This discount further supports the fairness of the
18 settlement, as it shows Plaintiff is not engaging in any kind of self-dealing by discounting the
19 PAGA penalties in exchange for payment of the maximum damages she may be able to recover at
20 trial.

21 I declare under penalty of perjury under the laws of the State of California that the foregoing
22 facts to which I attest are true and correct.

23
24 Dated: April 30, 2025

By: 
Kevin Schwin, Esq.
Attorney for Plaintiff
Bao Cha

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EXHIBIT A

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9 Attorneys for Plaintiff Bao Cha

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Superior Court of California
County of Fresno
By: I. Herrera, Deputy

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**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY FRESNO**

BAO CHA, in an individual capacity, as well as
a representative capacity on behalf of the State of
California,

Plaintiff,

vs.

ALLEN SPEES FAMILY HOME and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 23CECG02451

COMPLAINT FOR DAMAGES:

1. **FAILURE TO PROVIDE OFF-DUTY MEAL PERIODS (LABOR CODE §§ 226.7, 512, 516; IWC WAGE ORDER NO. 5, § 11);**
2. **FAILURE TO PROVIDE REST PERIODS LABOR CODE §§ 226.7, 512, 516; IWC WAGE ORDER NO. 5, § 12);**
3. **FAILURE TO TIMELY FURNISH ACCURATE, ITEMIZED WAGE STATEMENTS (LABOR CODE § 226);**
4. **FAILURE TO PAY WAGES DUE ON TERMINATION (LABOR CODE § 203);**
5. **FAILURE TO KEEP ACCURATE PAYROLL AND EMPLOYMENT RECORDS (LABOR CODE §§ 1174, 1174.5; IWC WAGE ORDER NO. 5 § 7;**
6. **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (Labor Code Section 2698, et seq.)**

DEMAND FOR JURY TRIAL

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1 meal break and were not provided any on-duty meals by Defendants. Such missed meal periods
2 were not considered "on-duty" or paid by Defendants.

3 8. Plaintiff and the other aggrieved employees were also unable to exercise the right to have
4 an off-duty lunch upon 30 days' notice to Defendants.

5 9. Plaintiff and the other aggrieved employees were never provided an additional hour of pay
6 for their missed meal or rest breaks and accordingly were provided inaccurate paystubs during their
7 respective tenures. Furthermore, following the end of their employment, Plaintiff and the other
8 aggrieved employees were not provided with all wages owed to them within 30 days of the end of
9 their employment, including all accrued, but unused vacation hours.

10 10. Plaintiff timely exhausted all administrative requirements and complied with all notice
11 requirements by giving written notice to the Labor and Workforce Development Agency
12 ("LWDA") and sending the same letter to Defendants via certified mail on April 4, 2023 setting
13 forth the Labor Code sections alleged to have been violated and the facts and theories supporting
14 each alleged violation.

15 11. The LWDA failed to notify Plaintiff of its intent to investigate within 65 days of the
16 postmark of the aforementioned letter sent to the Defendants.

17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO PROVIDE OFF-DUTY MEAL PERIODS (LABOR CODE §§ 226.7, 512, 516,** 19 **1198; IWC WAGE ORDER NO. 5, § 11); (BY PLAINTIFF AGAINST ALL DEFENDANTS)**

20 12. Plaintiff incorporates each and every allegation previously set forth in this complaint.

21 13. Pursuant to Labor Code Sections 226.7, 512, 516, and 1198, and IWC Wage Order No. 5,
22 Defendants were required to provide Plaintiffs with an uninterrupted meal period of 30 minutes for
23 any work period of more than 5 hours and a second meal period of 30 minutes for work period of at
24 least 10 hours.

1 14. During the employment, Plaintiff and all aggrieved employees were not allowed to leave
2 the Premises and were not relieved from work during their meal periods. Further, they were not
3 provided any on-duty meals by Defendants, nor able to exercise the right to have an off-duty lunch
4 upon 30 days' notice to Defendants.

5 15. Defendants did not enter into any valid and enforceable written on-duty meal period
6 agreements with Plaintiff and the other aggrieved employees. Any such agreements were legally
7 invalid and unenforceable.
8

9 16. As a result of Defendants' conduct, Plaintiff and all aggrieved employees are entitled to an
10 additional hour of pay at their regular rate of compensation for each workday that the meal period
11 was not provided along with interest thereon.
12

13 **SECOND CAUSE OF ACTION**

14 **FAILURE TO PROVIDE REST PERIODS LABOR CODE §§ 226.7, 512, 516, 1198;** 15 **IWC WAGE ORDER NO. 5, § 12); BY PLAINTIFF AGAINST ALL DEFENDANTS**

16 17. Plaintiff incorporates each and every allegation previously set forth in this complaint.

17 18. Pursuant to Labor Code Section 226.7, 512, 516, and 1198, and Wage Order No. 5,
18 Defendants were required to provide Plaintiffs with 10 minutes of net rest time per every four
19 hours work or major fraction thereof.
20

21 19. During the employment, Plaintiff and all aggrieved employees worked more than four
22 hours of work without being provided the required 10-minute rest period. Further, Plaintiffs were
23 not authorized and/or permitted by Defendants to take an additional rest period when they were not
24 able to take their rest period in order to tend to the needs of the disabled children.

25 20. As a result of Defendants' conduct, Plaintiff and all aggrieved employees are entitled to an
26 additional hour of pay at their regular rate of compensation for each workday that the rest period
27 was not provided along with interest thereon.
28

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO TIMELY FURNISH ACCURATE, ITEMIZED WAGE STATEMENTS**

3 **(LABOR CODE § 226) BY PLAINTIFF AGAINST ALL DEFENDANTS**

4 21. Plaintiff incorporates each and every allegation previously set forth in this complaint.

5 22. Labor Code Section 226(a) sets forth the reporting requirements for employers when
6 paying wages, stating "Every employer shall, semimonthly or at the time of each payment of
7 wages, furnish each of his or her employees... an accurate itemized statement in writing showing
8 (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose
9 compensation is solely based on a salary and who is exempt from payment of overtime under
10 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission...,
11 and (9) all applicable hourly rates in effect during the pay period and the corresponding number of
12 hours worked at each hourly rate by the employee..."
13

14 23. Plaintiff is informed and believes and based thereon alleges that Defendants knowingly
15 and intentionally failed to provide Plaintiff and all aggrieved employees with such timely and
16 accurate wage and hour statements.
17

18 24. Plaintiff and all aggrieved employees have been damaged by Defendants' failure to comply
19 with Labor Code Section 226 by not realizing the total amount of wages to which they were
20 entitled.
21

22 25. As a direct and proximate result of Defendants' conduct as alleged above, Defendants are
23 liable for damages and/or statutory penalties, together with interest thereon and attorney's fees and
24 costs.

25 **FOURTH CAUSE OF ACTION**

26 **FAILURE TO PAY WAGES DUE ON TERMINATION (LABOR CODE §203); BY**
27 **PLAINTIFF AGAINST ALL DEFENDANTS**
28

1 26. Plaintiff incorporates each and every allegation previously set forth in this complaint.

2 27. Labor Code Section 203 provides that if an employer fails to pay any wages of an
3 employee who is discharged or quits, the wages of such employee shall continue as from the due
4 date thereof at the same rate until paid or until an action therefor is commenced, for not more than
5 30 days.
6

7 28. Defendants willfully failed to pay all wages due to Plaintiff and all aggrieved employees
8 within the time limits set forth in Labor Code Section 203 after the end of their respective
9 employments with Defendants.

10 29. As a direct and proximate result of Defendants' actions, pursuant to Labor Code Section
11 203, Plaintiffs are entitled to their wages as a penalty from the date of discharge up to 30 days
12 thereafter.
13

14 **FIFTH CAUSE OF ACTION**

15 **FAILURE TO KEEP ACCURATE PAYROLL AND EMPLOYMENT RECORDS**

16 **(LABOR CODE §§ 1174, 1174.5, 1198; IWC WAGE ORDER NO. 5 § 7);**

17 **BY PLAINTIFF AGAINST ALL DEFENDANTS**

18 30. Plaintiff incorporates each and every allegation previously set forth in this complaint.

19 31. Defendants, as California employers, are required to maintain accurate payroll records
20 evidencing the hours worked daily by and the wages paid to, and the number of piece-rate units
21 earned by and any applicable piece rate paid to employees at a particular establishment but kept for
22 a period of not less than three years.
23

24 32. Upon information and belief, Defendants willfully failed to maintain any of the above
25 records accurately with respect to Plaintiff and all aggrieved employees' employment.

26 33. As a direct and proximate result of Defendants' actions, pursuant to Labor Code Section
27 1174.5, Plaintiff and all aggrieved employees are entitled to a civil penalty of \$500.
28

SIXTH CAUSE OF ACTION
VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (BY
PLAINTIFF IN HER REPRESENTATIVE CAPACITY AGAINST ALL
DEFENDANTS)

34. Plaintiff incorporates each and every allegation previously set forth in this complaint.

35. Plaintiff is an aggrieved employee under PAGA because she was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations set forth in this complaint. Plaintiff seeks to recover on behalf of the State of California, for all current and former aggrieved employees of Defendants, including herself, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

36. Plaintiff seeks penalties pursuant to PAGA for violation of the following Labor Code Sections:

- a. Failure to provide meal breaks in violation of Labor Code §§ 226.7 and 1198, and IWC Wage Order No. 5, the penalty for which is set forth in Labor Code §§ 558 and 2699(f)(2).
- b. Failure to provide rest breaks in violation of Labor Code §§ 226.7 and 1198, and IWC Wage Order No. 5, the penalty for which is set forth in Labor Code §§ 558 and 2699(f)(2).
- c. Failure to provide prompt payment of wages to employees upon termination and/or resignation in violation of Labor Code §203, the penalty for which is set forth in Labor Code § 256; and
- d. Failure to provide accurate itemized wage statement to employees in violation of Labor Code § 226, the penalty of which is set forth in Labor Code § 226.3.
- e. Failure to keep accurate payroll records in violation of Labor Code § 1174, the penalty for which is set forth in Labor Code § 1174.5.

37. Plaintiff has complied with the prefiling and notice requirements of PAGA by timely filing notice of the claims with the LWDA and sending a letter to Defendants of such claims via certified mail on April 4, 2023. The State of California did not provide notice within 65 days of the postmark of the aforementioned letter that it was launching an investigation.

1 **PRAYER FOR RELIEF**

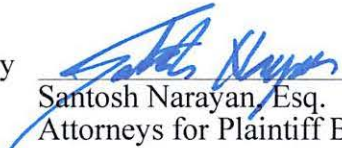
2 **WHEREFORE**, Plaintiff, on behalf of herself and the State of California, prays for
3 judgment against Defendants, and each of them, as follows:

- 4 1. For all compensation and wages owed, but not paid, to Plaintiff, as well as interest thereon,
5 according to proof;
6
7 2. For a premium hour of pay pursuant to Labor Code 226.7 for all missed meal and rest
8 breaks;
9
10 3. For damages and statutory and civil penalties pursuant to Labor Code §§ 203, 226.3, 1174.5
11 and 2699, et seq.;
12
13 4. For reasonable attorney's fees and costs according to proof;
14
15 5. For costs of suit incurred herein;
16
17 6. Pre-judgment and post-judgment interest as provided by law; and,
18
19 7. For any other and further relief as the Court deems just and proper.

20 Dated: June 20, 2023

NARAYAN LAW, APC

21 By


Santosh Narayan, Esq.
Attorneys for Plaintiff BAO CHA

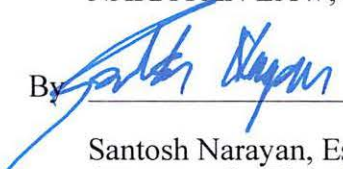
22 **DEMAND FOR JURY TRIAL**

23 Plaintiff hereby requests a trial by jury.

24 Dated: June 20, 2023

NARAYAN LAW, APC

25 By


Santosh Narayan, Esq.
Attorneys for Plaintiff BAO CHA

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EXHIBIT B

NARAYAN LAW, APC

April 4, 2023

VIA CERTIFIED MAIL AND DIGITAL UPLOAD

California Labor & Workforce Dev. Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

RE: PAGA Claim of Bao Cha v. Allen-Spees Family Home

To Whom it May Concern,

Bao Cha (“Cha”) was employed by Allen-Spees Family Home, an unknown entity, (“Employer”) as a Licensed Vocational Nurse, from on or about April 4, 2019 through October 12, 2022.

Cha makes this complaint on behalf of herself and other aggrieved employees for violations of the California Labor Code, as described herein. Cha is an “aggrieved employee” as defined by within the meaning of Cal. Labor Code §§ 2699 and 2699.3(a). This complaint is made against Allen-Spees Family Home.

Employee/Complainant:

Bao Cha
c/o Santosh Narayan, Narayan Law APC
1060 Fulton Mall Suite 301
Fresno, CA 93721
snarayan@narayanlegal.com

Employer:

Allen-Spees Family Home
524 W. Roberts Ave.
Fresno, CA 93704-1832

Employer manages and operates a group home for the disabled. Among other things, Employer failed/fails to pay employees for all hours worked; failed/fails to provide employees with proper meal breaks and/or compensate Cha and similarly situated aggrieved employees an additional hour of premium pay for missed/improper meal periods; failed/fails to pay all wages earned by employees following the end of their employment; and failed/fails to provide accurate paystubs for its employees.

Cha worked as an LVN at Employer’s facilities managing and overseeing the care of minor disabled children. Due to regulatory requirements, the needs of the patients, and Employer’s understaffing, Cha, and other aggrieved employees, were frequently unable

to be relieved of duty for their uninterrupted meal break, were not provided any on-duty meals by Employer, and such missed meal periods were not considered "on-duty" and paid by Employer. Cha was also unable to exercise the right to have an off-duty lunch upon 30 days' notice to Employer. Further, Cha was also not provided uninterrupted 10 minute rest periods.

IWC Wage Order No. 5-2001 Public Housekeeping Industry Section 11 (A) requires that an employer provide a meal period of not less than 30 minutes for a person working for a period of more than 5 hours except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee.

Section 12 requires that an employer provide a 10-minute rest period time per four (4) hours worked or major fraction thereof.

Cha was never provided an additional hour of pay for her missed meal or rest breaks and accordingly she was provided inaccurate paystubs during her tenure. Furthermore, following the end of her employment, Cha was not provided with all wages owed to her within 30 days of the end of her employment, including all accrued, but unused vacation hours.

The aforementioned conduct results in violations of Labor Code sections, 203, 210, 226, 226.7, 256, 512, and 1198-1199, and IWC Wage Order 5 and 15-2001, §11(A). These violations subject Employer to civil penalties under Labor Code sections 558, 210, 226.3, 256, 1174.5, and 2699, and Wage Order 5-2001, §20. Each violation of each Labor Code section and Wage Order provision results in a separate civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated. Employer's failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately resulted/results in further violations, such as violation of Labor Code section 1174, and other violations discussed below. Each violation results in a separate civil penalty, for each aggrieved employee for each pay period during which the statute provisions were violated.

Labor Code § 2699.3 requires that a claimant send a certified letter to the employer in question and to the Labor Workforce Development Agency setting forth the claims and the basis for the claims, thereby giving the Labor Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

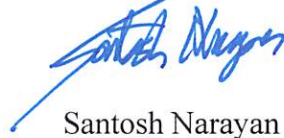
The purpose of this letter is to satisfy the requirement created by Labor Code §§ 2699, 2699.5, and 2699.3(a)-(g) prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the Labor Workforce Development Agency intends to take any action in reference to these claims. We kindly ask that you respond to this notice according to the time frame contemplated by the code.

Notice of Intent to Investigate and Civil Action: If Cha does not receive notice from the LWDA regarding an intent to investigate within 60 days hereof, we will initiate a lawsuit to enforce Cha's rights to collect penalties on behalf of the Labor and Workforce Development Agency under the Private Attorneys General Act (Cal. Labor Code §2698, et seq.) and all other applicable laws for the above-mentioned Labor Code violations, along with any other applicable causes of action.

Cha expressly reserves the right to amend or augment this complaint as further investigation warrants.

Please do not hesitate to reach out if you would like further information or detail. I can be reached at snarayan@narayanlegal.com.

Sincerely,



Santosh Narayan

cc: Allen-Spees Family Homes (via certified mail)

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EXHIBIT C

SETTLEMENT AGREEMENT

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Bao Cha ("Plaintiff"), for herself and on behalf of the State of California and all Private Attorneys General Act ("PAGA") Settlement Group Members, on the one hand, and Defendant Allen Spees Family Homes ("ASFH" or "Defendant"), on the other (collectively, the "Parties"), subject to the approval of the Court in accordance with California Labor Code section 2699(1)(2), that the Settlement of this Action shall be effectuated upon and subject to the following terms and conditions.

The Parties agree that the Action (as defined in Section I below) against Defendant shall be, upon approval by the Court, ended, settled, resolved, and concluded without any admission of fault or liability, as set forth in this Agreement and for the consideration set forth herein, including but not limited to a release of claims by Plaintiff (including any and all individual claims she may have against ASFH) and the PAGA Settlement Group Members as set forth herein.

I. DEFINITIONS

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- A. "Action" means the civil action captioned *Bao Cha v. Allen Spees Family Homes* pending in the Fresno County Superior Court Action No. 23CECG02451.
- B. "Agreement" means this Settlement Agreement.
- C. "Approval Date" means the date the Court grants approval of this Agreement by signing and filing the Final Order.
- D. "Complaint" means the PAGA Representative Action Complaint filed by Plaintiff on or about June 20, 2023 in the Action.
- E. "Court" means the Fresno County Superior Court.
- F. "Defendant" means Allen Spees Family Homes.
- G. "Defense Counsel" or "Counsel for Defendants" means:

Ryan L. Eddings, Bar No. 256519
reddings@littler.com
Caroline Lutz, Bar No. 274836
clutz@littler.com
LITTLER MENDELSON, P.C.
5200 North Palm Avenue
Suite 302
Fresno, California 93704.2225
Telephone: 559.244.7500
Fax No.: 559.244.7525

- H. "Putative Aggrieved Employee" means Plaintiff, and all current and former non-exempt employees employed by Defendant in California at any time from April 4, 2022 through the Approval Date.
- I. "Putative Aggrieved Employee Penalty Payment" means the portion of the Settlement Sum that shall be paid to each PAGA Settlement Group Member per the terms and conditions

of this Agreement.

J. "Effective Date" means the date by which all of the following have occurred:

- (1) The Court has approved the Settlement;
- (2) The Court has entered the Final Order; and,
- (3) The longer of (i) 30 days after entry of judgment on the PAGA claims or (ii) any date set by the Court for anyone to object, appeal or intervene, without objection, appeal or intervention, or in the event any objection, appeal, or intervention is filed, the date that same is disposed in the Parties' favor and is no longer subject to review by any court, whether by appeal, petition for rehearing or re-argument, petition for review, or otherwise.

K. "Final Order" means the final Court order entered in this Action in accordance with the terms herein, the Court adopting and approving this Agreement (and the terms of Settlement described herein), dismissing the PAGA claims with prejudice and the Court retaining jurisdiction over the enforcement, implementation, construction, administration, and interpretation of the Settlement.

L. "LWDA" means the State of California Labor and Workforce Development Agency.

M. "Named Plaintiff" or "Plaintiff" means Bao Cha.

N. "PAGA" means the Private Attorneys General Act of 2004, California Labor Code section 2698 et seq.

A. "PAGA Claims" means claims for PAGA penalties, pursuant to Labor Code section 2699 et seq. that: (1) arose or may be alleged to have arisen at any time from April 4, 2022 up to and including the Approval Date, and (2) are based on or arise from alleged violations of the following Labor Code provisions: 203, 204, 210, 226, 226.3, 226.7, 256, 512, 558, 1174.5, 1198, 1199, 2699, which arise from the facts alleged in the Complaint; and the related California Code of Regulations and related sections of the applicable Industrial Welfare Commission Wage Orders, which arise from the facts alleged in the Complaint.

B. "PAGA Settlement Group Members" means Plaintiff and all current and former non-exempt employees employed by Defendant in California at any time from April 4, 2022 through the Approval Date, who are included in the Putative Aggrieved Employee List. There are approximately 70 individuals that compose the PAGA Settlement Group Members.

C. "Plaintiff's Counsel" means:

Santosh Narayan, Bar No. 243273
NARAYAN LAW, APC
8050 N. Palm Avenue, Suite 300
Fresno California 93711
Telephone: (626) 432-5435
Facsimile: (626) 657-2921
Email: snarayan@narayanlegal.com
Kevin Schwin, Bar No. 262595
Of Counsel, Peck-Law, *Employment & Civil Rights*
1010 Fair Ave., Ste. H

Santa Cruz, CA 95060
Telephone: (408) 478-4161
Email: Kevin@Peck-Law.com

- D. "Putative Aggrieved Employee List" means a complete list of all Putative Aggrieved Employees that Defendant will diligently and in good faith compile from their records and provide to the Claims Administrator within twenty one (21) calendar days after the Approval Date. The Putative Aggrieved Employee List will be formatted in a readable Microsoft Office Excel spreadsheet and will include (if available) each Putative Aggrieved Employee's full name; most recent mailing address and telephone number; Social Security number; the hire and termination dates, Pay Periods, and any other relevant information needed to calculate settlement payments.
- E. "Released Parties" means the general partnership Allen Spees Family Homes, Sue Allen and Terry Spees, and any and all subsidiaries, and each of their past, present, and future agents, parents, affiliated companies, subsidiaries, divisions, predecessors, successors, partners, joint venturers, shareholders, consultants, advisors, insurers, reinsurers and assigns, and each of their past, present and future officers, investors, directors, executives, trustees, agents, employees, owners, partners, clients, contractors, vendors, attorneys, representatives, benefit plans sponsored or administered by the Released Parties, and any other persons or entities acting on behalf of or in concert with any of the foregoing.
- F. "Settlement" means the Parties' agreement, as detailed herein, to dispose of the Action as to Defendant.
- G. "Settlement Sum" means the total gross settlement amount of One Hundred Thirty Thousand Dollars and Zero Cents (\$130,000.00) to be paid by Defendant as provided by this Agreement to fully and finally settle, resolve and conclude this Action as to Defendant, as provided under this Agreement, without any admission of fault or liability. Under no circumstances shall the Settlement Sum exceed \$130,000.00.

II. FACTUAL BACKGROUND

- A. On June 20, 2023, Plaintiff filed the Complaint in the Fresno County Superior Court. The Action was brought on a putative representative basis under PAGA on behalf of the State of California and other allegedly Putative Aggrieved Employees, and alleged violations of the California Labor Code.
- B. The Parties engaged in a substantial exchange of documents and information during discovery. The Parties reached this Settlement only after discovery and investigation were performed.
- C. On June 7, 2024, the Parties engaged in a one-day mediation session with respected mediator, Lee Jacobson. After an arms-length negotiation facilitated by the mediator, the Parties reached this Settlement, including a settlement of Plaintiff's individual claims against Defendant.
- D. This Agreement sets forth the terms and conditions of the resolution of Claims asserted by Plaintiff individually, on behalf of the State of California and the PAGA Settlement Group Members, as well as any claims .
- E. The Settlement embodied in this Agreement is contingent on (i) issuance by the Court of a Final Order approving the Settlement, dismissing the PAGA Claims with prejudice in their

entirety, (ii) entry of the Final Order enforcing the terms of the Settlement, and retaining jurisdiction to ensure compliance with the Court's Final Order only, (iii) discharge of Defendant and the Released Parties from liability for the Claims released by this Agreement, (iv) release of the PAGA Claims released by this Agreement against the Released Parties by Plaintiff, the State of California and all PAGA Settlement Group Members, (v) submission of the Court's Final Order by Plaintiff's Counsel to the LWDA within ten (10) business days of entry of the order pursuant to California Labor Code § 2699(1)(3), and (vi) all parties bearing their respective fees and costs except as expressly provided in this Agreement.

F. Defendant disputes and denies Plaintiff's allegations and various causes of action asserted in the Complaint, including the PAGA Claims which are resolved by this Agreement and by entering this Agreement, Defendant makes no admission of law or fact. The Parties agree that this Agreement shall not be construed as an admission or concession of any statement of law or fact apart from the fact of settlement and release of the underlying claims.

III. APPROVAL AND IMPLEMENTATION OF SETTLEMENT

A. **Cooperation.** The Parties will cooperate in seeking approval of the Settlement described in this Agreement. The Parties further agree to fully cooperate in the drafting and filing of any further documents or filings reasonably necessary to be prepared or filed, including responding to challenges by any third parties, and shall take all steps that may be requested by the Court relating to the approval and implementation of the Settlement described in this Agreement.

B. **Court Approval.** Because this Action includes PAGA claims, this Agreement requires review and approval by the Court. See Cal. Lab. Code § 2699(1)(2). Accordingly, the Parties enter into this Agreement on a conditional basis. This Agreement is expressly contingent upon the Court's approval of this Settlement and the terms and material conditions of this Agreement (including, but not limited to, issuance of and entry of the Final Order in accordance therewith). If Court approval is not given and the Final Order is not entered, under the specific material terms requested, this entire Agreement shall automatically be deemed null and void *ab initio*, shall be of no force or effect whatsoever.

Plaintiff will file by no later than April 30, 2025 a Motion for Approval of PAGA Settlement and for an Order approving this Agreement. If the Court does not grant the request for approval and issue the Final Order (including, but not limited to, dismissing the PAGA claims with prejudice in their entirety, and entering the Final Order in accordance with the terms and conditions of this Agreement), under substantially similar material terms, the Parties agree to meet and confer to address the Court's concerns and determine whether resolution of the Action can be obtained in a manner consistent with the Court's concerns. Under no circumstances may a modified settlement be entered by the Court without a written agreement signed by both parties.

The Parties will fully cooperate to accomplish the terms of this Settlement Agreement, including but not limited to, executing such documents and taking such other action as may reasonably be necessary to implement the terms of this Settlement Agreement.

Plaintiff shall submit a copy of the Final Order in this Action and a copy of any other order providing for or denying an award of civil penalties within 10 days after entry of the Final Order, in compliance with section 2699(1)(3) of the California Labor Code.

C. Settlement Sum Payment Procedures

1. Settlement Sum

In exchange for the releases, obligations, and promises set forth in this Agreement (and subject to the terms and conditions contained in this Agreement), Defendant agrees to pay the Settlement Sum, which is the total and all-inclusive amount Defendant will be obligated to pay under the Settlement embodied by this Agreement. Other than payment of that portion of the Settlement Sum specifically allocated to settle the PAGA Claims, there shall be no other PAGA Claims payments arising out of or related to Putative Aggrieved Employees' allegations for the time period from April 4, 2022 up to and including the date the Court enters the Final Order asserted against Defendant or any of the Released Parties on behalf of Plaintiff, the State of California, any PAGA Settlement Group Member, or any other individual or entity. The Settlement Sum shall be allocated as follows:

- a. Claims Administration Fees: All Claims Administration expenses shall be paid from the Settlement Sum and shall not exceed Ten Thousand Dollars and Zero Cents (\$10,000.00). Claims administration expenses paid to an outside Claims Administration service must come out of the Settlement Sum. The Parties agree to retain Phoenix Class Action Administration Solutions ("Claims Administrator") to serve as the Claims Administrator in this matter. If the Claims Administration Fees are less than the estimated amount of Ten Thousand Dollars and Zero Cents (\$10,000.00), the remainder will be distributed amongst the PAGA Settlement Group Members pursuant to the allocation formula set forth in Section III(C)(1)(d), below.
- b. Attorneys' Fees and Litigation Costs: Plaintiff's Attorneys' fees and litigation costs incurred by Plaintiff's counsel shall be paid from the Settlement Sum. The attorneys' fees shall not exceed Forty Thousand Dollars and Zero Cents (\$40,000.00). Plaintiff's litigation costs shall not exceed Ten Thousand Dollars and Zero Cents (\$10,000.00). Any interested party, including Defendant, the LWDA, or any Putative Aggrieved Employee, may oppose Plaintiff's request for attorneys' fees and costs. If the Court sets the attorneys' fees and/or costs at an amount lower than the sums set forth in this paragraph, the remainder will be distributed amongst the PAGA Settlement Group Members pursuant to the allocation formula set forth in Section III(C)(1)(d), below.
- c. Payment to Plaintiff Bao Cha to Settle All Claims, Known and Unknown: A settlement payment to Plaintiff Bao Cha in the amount of Fifteen Thousand Dollars and Zero Cents (\$15,000.00) shall be paid from the Settlement Sum. This payment shall be in exchange for a general release of all claims, known or unknown, and dismissal of the entire Action with prejudice to be separately executed by the Parties.
- d. Payment of PAGA Penalties: The total sum available for payment of PAGA penalties shall be calculated by deducting the Claims Administration Fees, Attorneys' Fees and Litigation Costs, and the Settlement Payment to Plaintiff Bao Cha from the Settlement Sum (this will yield the "Net Settlement Amount"). Of the Net Settlement Amount, for each PAGA Settlement Group Member, seventy-five percent (75%) of his or her allocated share of the Net Settlement Amount shall be distributed to the LWDA ("LWDA Penalty Payment") and the remaining twenty-five percent (25%) shall be distributed to the PAGA Settlement Group Members ("Putative Aggrieved Employee Penalty Payment"). The "Putative Aggrieved Employee Penalty Payment" for each PAGA Settlement Group Member shall be determined based on a formula taking into account the number of each PAGA Settlement Group Member's "Pay Periods." A "Pay Period" shall be defined as any

instance when a Putative Aggrieved Employee received a wage statement from Defendant between April 4, 2022 and the Approval Date, based on Defendants' data. The amount paid to each PAGA Settlement Group Member will be determined as follows: The Net Settlement Amount will be divided by the total number of Pay Periods for all PAGA Settlement Group Members during the relevant time period (April 4, 2022 up to and including the Approval Date) ("Pay Period Amount"). Each PAGA Settlement Group Member will then be paid an amount equal to the Pay Period Amount multiplied by that PAGA Settlement Group Member's total number of Pay Periods, multiplied by twenty-five percent (25%).

2. Funding and Distribution Process

Within twenty (20) business days after the Effective Date, Defendant will transmit to the Claims Administrator the entire Settlement Sum of One Hundred Thirty Thousand Dollars and Zero Cents (\$130,000.00). This transmittal wholly satisfies Defendant's obligations with respect to the funding and disbursement process. Within ten (10) business days of receipt of the Settlement Sum, the Claims Administrator will disburse Putative Aggrieved Employee Penalty Payments to each PAGA Settlement Group Member to the last known physical address on file with Defendant in their regularly maintained records. Prior to this disbursement, the Claims Administrator shall run a single skip trace for every separated PAGA Settlement Group Member. PAGA Settlement Group Members who receive their Putative Aggrieved Employee Penalty Payments via U.S. Mail will receive a letter along with their Putative Aggrieved Employee Penalty Payment explaining the reason for the payment, the content of which will be agreed upon by the Parties prior to execution of this Settlement and attached as an Exhibit hereto. Such mailing as described in this paragraph shall be conclusive evidence of payment of the Putative Aggrieved Employee Penalty Payments, and shall satisfy any and all due process requirements. All funds not claimed within 180 days of mailing of payment shall be sent to the California State Controller's Office Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to each PAGA Settlement Group Member. If any PAGA Settlement Group Member's check is not cashed within 120 days after mailing, the Settlement Administrator will send the PAGA Settlement Group Member a letter or postcard informing him or her that unless the check is cashed in the next 60 days, it will expire and become non-negotiable. The letter or postcard will also offer to replace the check if it was lost and not cashed.

Within ten (10) business days of receipt of the Settlement Sum, the Claims Administrator shall send a check to the LWDA as and for the LWDA Penalty Payment, in the amount calculated pursuant to the terms of this Settlement, along with a copy of the Final Order, and any other documents required pursuant to California Labor Code section 2699(1).

Within ten (10) business days of receipt of the Settlement Sum, the Claims Administrator will disburse from the Settlement Sum an amount sufficient to pay the Attorneys' Fees and Costs described in III(1)(b), in the form of two checks made payable to "Narayan Law, APC" and "Peck-Law, Employment & Civil Rights" delivered to each Plaintiff's Counsel at the addresses listed above. The attorneys' fees shall be divided 50/50 between Narayan Law, APC and Peck-Law, Employment & Civil Rights. The costs incurred by each firm shall be reimbursed to the firm who incurred them. Plaintiff's Counsel will provide whatever information is necessary to the Claims Administrator to determine the amount of attorneys' fees and costs owed to each firm.

Within ten (10) business days of receipt of the Settlement Sum, the Claims Administrator will disburse from the Settlement Sum Fifteen Thousand Dollars and Zero Cents (\$15,000.00) to Plaintiff Bao Cha.

3. No Additional Contribution by Defendant

Defendant's monetary obligation under this Agreement is limited to the Settlement Sum. Defendant shall not be required to pay more than the Settlement Sum to obtain the relief (including, but not limited to, the Settlement, releases of claims and, issuance of the Final Order) provided in this Agreement or to fully and finally settle and resolve the PAGA Claims. Notwithstanding the above, in the event this Agreement is voided or nullified, in whole or in part, however that may occur, or the Settlement of the Action is barred by operation of law, or invalidated, or ordered not to be carried out by a Court of competent jurisdiction, Defendant will cease to have any obligation to pay any portion of the Settlement Sum to anyone under the terms of this Agreement. If this Agreement is invalidated through any proceeding within the Action, Plaintiff will return any disbursements from the Settlement Sum under his or his counsel's control to Defendant.

4. Tax Reporting and Indemnity

The Putative Aggrieved Employee Penalty Payments to Plaintiff and each PAGA Settlement Group Member are penalties, shall be reported on an IRS Form 1099 (to the extent required by law), and will not be subject to local, state or federal tax withholdings. In addition, the \$15,000.00 payment to Plaintiff shall be reported on an IRS Form 1099 (to the extent required by law), and will not be subject to local, state or federal tax withholdings. Plaintiff and each PAGA Settlement Group Member will be responsible for paying all applicable state, local and federal income taxes on their respective amounts received pursuant to this Settlement. Plaintiff shall not seek any indemnification from the Released Parties in this regard.

The payments for attorneys' fees and costs to Plaintiff's Counsel shall be reported on an IRS Form 1099 (to the extent required by law), and will not be subject to local, state or federal tax withholdings. Plaintiff's Counsel will be responsible for paying all applicable state, local and federal income taxes on their respective amounts received pursuant to this Settlement. Plaintiff's Counsel shall not seek any indemnification from the Released Parties in this regard.

IV. LIMITATIONS ON USE OF THIS SETTLEMENT

A. No Admission

Defendant disputes that Plaintiff or any PAGA Settlement Group Member is entitled to any additional wages other than those already paid and/or any penalties, dispute the allegations and each and every cause of action in the Action, and dispute that the Action may be maintained on a class, collective or representative basis. This Agreement is entered into solely for the purpose of compromising highly disputed claims. This Agreement and the payment of the Settlement Sum and the other considerations recited herein represent the compromise of disputed claims. Nothing in this Agreement is intended as or may be construed as an admission of liability, unlawful conduct, or wrongdoing by Defendant (and any of the Released Parties) in any way, shape or form, and Defendant and the Released Parties deny any such liability or wrongdoing.

B. Nullification

If (a) the Court should for any reason fail to approve this Settlement consistent with the material specific terms agreed to by the Parties and set forth herein, (b) the Court should for any reason fail to enter the Final Order, or (c) the Final Order is reversed, modified, or declared or rendered void, then this Agreement shall automatically be considered null and void *ab initio*. An example of a material change in the terms includes a change in the economic terms of the settlement.

In that instance, (i) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; and (ii) all Parties to this Agreement and the pleadings in this Action shall stand in the same position they were the day prior to the mediation in this Action, without

prejudice to either Party; and (iii) Defendant will not have any obligation to pay any portion of the Settlement Sum to anyone under the terms of this Agreement.

Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety, unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

V. RELEASE AND WAIVER OF CLAIMS

A. PAGA Settlement Group Member Release

Upon entry of the Final Order, Plaintiff, all PAGA Settlement Group Members, and the State of California shall be deemed to have fully, finally, and forever waived, released, relinquished, and discharged Defendant and each and all of the Released Parties from any and all PAGA Claims as defined herein that arose or may be alleged to have arisen at any time from April 4, 2022 up to and including the Approval Date. To extent an alleged PAGA violation arises directly from the operative facts pled in the Complaint and implicates the same primary rights and defenses being settled here, those claims are settled and released to the fullest extent permitted under applicable law.

However, this release is limited in scope. It applies only to claims for civil penalties based upon Labor Code violations that were alleged or could have been alleged based on the facts plead in the Complaint.

B. Plaintiff's Release and Civil Code Section 1542 Waiver

In further exchange for the consideration and compromises set forth in this Agreement, except as otherwise set forth herein, Plaintiff, Bao Cha, on behalf of herself and her heirs, estate, executors, administrators, successors and assigns, irrevocably and unconditionally releases, acquits and forever discharges the general partnership Allen Spees Family Homes, Sue Allen and Terry Spees, and any and all subsidiaries, and each of their past, present, and future agents, parents, affiliated companies, subsidiaries, divisions, predecessors, successors, partners, joint venturers, shareholders, consultants, advisors, insurers, reinsurers and assigns, and each of their past, present and future officers, investors, directors, executives, trustees, agents, employees, owners, partners, clients, contractors, vendors, attorneys, representatives (collective, "Released Parties,") and benefit plans sponsored or administered by the Released Parties from all charges, complaints, promises, agreements, controversies, suits, rights, demands, costs, losses, debts, actions, causes of action, claims, judgments, obligations, damages, liabilities and expenses, including any claims for attorneys' fees and costs, of any kind or character whatsoever, known and unknown, suspected, unsuspected, anticipated and unanticipated, which Plaintiff now has, owns or holds, or claims to have, own or hold, against each or any of the Released Parties on or before the Effective Date of this Agreement (hereinafter "Released Claims"). This release of all known or unknown, suspected or unsuspected, anticipated and unanticipated claims arising out of Plaintiff's employment relationship with, and separation from, Defendant, including, but not limited to: (1) any claims asserted directly or indirectly, impliedly or inferentially in the Action, or that may or could have been asserted in any cause of action or claim therein; (2) any claims (whether based on federal, state or local law, statutory or decisional) for breach of contract of employment or collective bargaining agreement (express or implied), or any grievance initiated by an employee under a collective bargaining agreement; (3) any claim sounding in tort or common law, specifically including, but not limited to, any torts related to defamation, invasion of privacy, false light,

intentional and negligent interference with contract and/or prospective economic advantage, fraud and any misrepresentation, and intentional and negligent infliction of emotional distress; and (4) any claims under any state or federal statute or regulation, including, without limitation, the California Fair Employment and Housing Act ("FEHA"), Title VII of the Civil Rights Act, the Unruh and George Civil Rights Acts, the California Family Rights Act ("CFRA"), the Family and Medical Leave Act ("FMLA"), the Americans with Disabilities Act ("ADA"), the Rehabilitation Act of 1973, the Genetic Information and Non-Discrimination Act ("GINA"), the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), the Employee Retirement Income Security Act of 1974 ("ERISA") (excluding claims for accrued vested benefits under any employee benefit pension plan of any Released Parties in accordance with the terms and conditions of such plan and applicable law), the Occupational Safety and Health Act ("OSHA"), the Age Discrimination in Employment Act ("ADEA"), the Older Workers Benefit Protection Act ("OWBPA"), the Equal Pay Act, the Fair Labor Standards Act ("FLSA"), the California Civil Code, the California Government Code, the California Labor Code, and any policy of Defendant, or any collective bargaining agreement. Plaintiff agrees that he has, upon receipt of the Settlement Proceeds, been paid all compensation, remuneration, and wages due in any form.

Notwithstanding the foregoing, this Agreement and the releases contained within are not to be applicable to any past or present workers' compensation claims by Plaintiff against Defendant, and any other claims that cannot lawfully be waived or released by private agreement, all of which are specifically exempted from the releases contained within this Agreement.

Plaintiff understands and agrees that she may have sustained damages, losses, costs or expenses for which they might have a claim, that are presently unknown or unsuspected, and that such damages, losses, costs and expenses may give rise to additional damages, losses, costs or expenses in the future. It is specifically acknowledged by Plaintiff that the foregoing release has been agreed upon and given in light of such facts, and the Agreement is intended to release the Released Parties from potential liability for all such damages, losses, costs and expenses. As part of the inducement for the consideration given for this Agreement, Plaintiff agrees that this Agreement extends to all claims of every nature and kind, known or unknown, suspected or unsuspected, past or present, arising from or attributable to the Released Parties, and **Plaintiff specifically waives the provisions of Section 1542 of the California Civil Code, which reads as follows, and any other state or federal statute or common law principle of similar effect:**

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

C. No Additional Attorneys' Fees or Costs

The Parties agree to bear their own attorneys' fees and costs related to this Action except as specifically provided above with respect to the Fee Amount, and Plaintiff's Counsel waives any and all rights to further attorneys' fees and costs from Defendant in connection with this Action.

VI. MISCELLANEOUS PROVISIONS

A. LWDA Notice

The LWDA will be given notice of this Settlement pursuant to the 2016 amendments to the PAGA. Cal. Lab. Code § 2699(1)(2). Plaintiff will serve a copy of the Settlement to the LWDA on the same day the Settlement is filed with the Court. Additionally, a copy of the Court's Final Order will be submitted to the LWDA within ten (10) days after entry of the Final Order, pursuant to California Labor Code § 2699(1)(3).

B. PAGA Settlement Group Member Data

All data, if any, regarding the number of PAGA Settlement Group Members and total Pay Periods, and other similar settlement metrics will be submitted to the Claims Administrator in a timely manner pursuant to this Agreement, and shall be kept confidential by the Claims Administrator and used solely for the purpose of administration of the Settlement Amount, unless otherwise ordered by the Court.

C. Voluntariness

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity.

D. Amendments

The terms and provisions of this Agreement may be amended or modified only by an express written agreement that is signed by the Plaintiff and an authorized representative of Defendant.

E. Assignment

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Plaintiff's Counsel, or Defense Counsel without the express written consent of each Party. Plaintiff expressly warrants that he has not transferred to any person or entity any right or cause of action, or claim released by this Agreement.

F. Representation and Warranties

Plaintiff's Counsel and Plaintiff jointly and severally represent and warrant to Defendant that there are no attorneys beyond those named as Plaintiff's Counsel who have claims for fees arising out of the Action or the Settlement contemplated hereby.

G. Governing Law

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.

H. Entire Agreement

This Agreement contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings governing the subject matter of this Agreement other than those

expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the subject matter hereof, including, without limitation, the Memorandum of Understanding executed by the Parties, which is incorporated herein by reference, but to the extent any of the terms of the Memorandum of Understanding is inconsistent with this Agreement, it is superseded by this Agreement, and this Agreement controls.

I. Waiver of Compliance

A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

J. Counterparts

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or its/their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. A fax or PDF signature on this Agreement shall be as valid as an original signature.

K. Meet and Confer Regarding Dispute(s)

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, Plaintiff's Counsel and Defense Counsel shall meet and confer in an attempt to resolve such disputes and, if necessary, shall then attempt resolution by expedited telephonic mediation with the mediator in this matter, Lee Jacobson prior to submitting such disputes to the Court. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, executing such documents and taking such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court or otherwise to effectuate this Settlement Agreement and the terms set forth herein. The Parties counsel can agree to non-material changes to this Settlement Agreement and the Parties agree to act in good faith to address any concerns raised by the Court in connection with the approval hearing.

L. Agreement Binding on Successors

This Agreement shall bind and inure to the benefit of the Parties hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

M. Cooperation in Drafting

The Parties have cooperated in the negotiation and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this Agreement.

N. Fair Settlement

Plaintiff, Defendant, Plaintiff's Counsel, and Defense Counsel believe that this Agreement reflects a fair, reasonable, and adequate settlement of the Action as to Defendant and have arrived at this Agreement through arms' length negotiation, taking into account all relevant factors, current and potential, and is consistent with public policy, and fully complies with applicable provisions of

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Plaintiff, Defendant, Plaintiff's Counsel, and Defense Counsel believe that this Agreement reflects a fair, reasonable, and adequate settlement of the Action as to Defendant and have arrived at this Agreement through arms' length negotiation, taking into account all relevant factors, current and potential, and is consistent with public policy, and fully complies with applicable provisions of law.

O. Headings

The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement and shall not be considered in interpreting this Agreement.

P. Continuing Jurisdiction

The Parties agree that upon the occurrence of the Final Order pursuant to the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code of Civil Procedure section 664.6 and the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties and the PAGA Settlement Group Members to the fullest extent to interpret, enforce and effectuate the terms, conditions, intents and obligations of the Agreement.

Q. No Reliance on Representations

The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other Parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Agreement, or with respect to any such matters. No representations, warranties, or inducements have been made to any Party concerning this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth below.

APPROVED AND ACCEPTED.

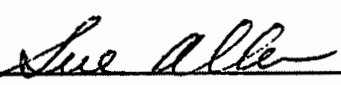
Dated: 04/08/2025, 2024



BAO CHA
Plaintiff and PAGA Representative

Dated: 4/3/25, 2024

ALLEN SPEES FAMILY HOMES



By: _____
Title: Owner