

**SETTLEMENT AGREEMENT AND RELEASE UNDER
THE CALIFORNIA LABOR CODE PRIVATE ATTORNEYS GENERAL ACT**

This Settlement Agreement and Release Under the California Labor Code Private Attorneys General Act ("Agreement") is made by and between Andrea Mendoza ("Plaintiff"), on behalf of herself and the State of California, on the one hand, and CP Homecare, Inc. ("Defendant"), on the other hand. Plaintiff and Defendant are collectively referred to herein as "Parties." This Agreement is based on the following facts:

A. **Whereas**, Defendant provides in-home caregiving services in California for the elderly.

B. **Whereas**, Plaintiff contends that she was employed by Defendant as an in-home caregiver from approximately July 2021 to April 30, 2023.

C. **Whereas**, on May 26, 2023, Plaintiff submitted a notice to the California Labor and Workforce Development Agency ("LWDA") alleging a claim for civil penalties against Defendant under the Private Attorneys General Act ("PAGA"), section 2698 *et seq.* of the California Labor Code, stemming, in large part, from Defendant's purported underlying failure to provide proper meal periods and proper rest periods to those individuals employed by Defendant as in-home caregivers.

1. Specifically, the May 26, 2023, notice seeks civil penalties on behalf of caregivers based on Defendant's alleged violation of Labor Code sections 226.7 and 512, for the alleged **underlying** failure to provide proper meal and rest periods.

2. In addition, the May 26, 2023, notice seeks **derivative** civil penalties on behalf of caregivers for the alleged failure to timely provide all wages under Labor Code sections 201 and 202 at the termination of employment, also stemming from the alleged underlying failure to provide proper meal and rest periods.

3. Similarly, the May 26, 2023, notice seeks civil penalties on behalf of caregivers for alleged improper wage statements under Labor Code section 226, including **derivative** civil penalties stemming from the alleged underlying failure to provide proper meal and rest periods.

4. The May 26, 2023, notice also seeks **non-derivative** civil penalties on behalf of caregivers for the alleged failure to timely pay wages under Labor Code section 204, stemming from a purported failure by Defendant to pay wages on proper paydays.

5. In addition, the May 26, 2023, notice seeks **non-derivative** civil penalties on behalf of caregivers for an alleged failure by Defendant to reimburse employees under Labor Code section 2802 for necessary business expenses.

D. **Whereas**, on July 20, 2023, Plaintiff submitted a supplemental notice to the LWDA alleging the same facts and theories set forth in the May 26, 2023, notice, plus an additional, **non-**

derivative purported violation of Labor Code section 246 for Defendant's alleged failure to provide in-home caregiver employees with notices itemizing their respective amounts of available paid sick-leave.

E. **Whereas**, the facts and theories of liability set forth in the two above-referenced PAGA notices, as well as the provisions of the Labor Code alleged to have been violated by Defendant, are referred to herein as the "Matter."

F. **Whereas**, on August 22, 2023, Defendant submitted a notice to the LWDA purporting to demonstrate that Defendant had cured the alleged violation of section 246 as to all relevant allegedly aggrieved employees. Defendant also provided cure notices to all such individuals. Plaintiff has not contested Defendant's cure through any submission to the LWDA.

G. **Whereas**, since May 26, 2023, the Parties have been actively engaged in settlement discussions relating to the Matter, including exchanging information and documents sufficient to enable the Parties to meaningfully discuss potential resolution of the Matter, and entering into both an Agreement to Toll Statute of Limitations and an Amended Agreement to Toll Statute of Limitations.

H. **Whereas**, Defendant denies all of the allegations made by Plaintiff in the Matter, and denies having committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct.

I. **Whereas**, the Matter involves arguable questions of fact and law, and the Parties desire to settle Plaintiff's contemplated PAGA cause of action.

J. **Whereas**, on December 22, 2023, Plaintiff and Defendant reached a settlement in principle of Plaintiff's PAGA cause of action, which the Parties now seek to memorialize by way of the within Agreement.

K. **Whereas**, the Parties understand, acknowledge, and agree that this Agreement constitutes a compromise of disputed claims, including the contemplated PAGA cause of action; that it is the desire and intention of the Parties to effect a final and complete resolution of that cause of action; and that the settlement of the PAGA cause of action is subject to the Court's approval. The Parties further acknowledge that nothing in this Agreement shall be construed as an admission of liability by Defendant.

L. **Whereas**, the Parties believe and agree that this Agreement provides a fair, adequate, and reasonable resolution of the PAGA cause of action, and that they have arrived at the settlement embodied in this Agreement through arms' length negotiations, taking into account all relevant factors, present and potential.

M. **Whereas**, California law provides that the California Labor and Workforce Development Agency ("LWDA") may assess and collect civil penalties from "employers" for violations of certain provisions of the Labor Code. *See* Cal. Lab. Code § 2699(a). California law also provides that, if an "aggrieved employee" duly complies with certain administrative-

exhaustion requirements, the employee may, “as an alternative” to enforcement by the LWDA, bring a civil action under PAGA to recover civil penalties for the benefit of the LWDA. *See id.* “[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the [State] . . . and 25 percent to the aggrieved employees.” *Id.* § 2699(i).

N. **Whereas**, California Labor Code section 2699(l) requires court approval of any settlement of any PAGA claim.

O. **Whereas**, because any settlement of Plaintiff’s PAGA cause of action in the Matter must be reviewed and approved by the Court, the Parties understand, acknowledge, and agree that this Agreement is conditioned on judicial approval thereof.

Therefore, in consideration of the promises and agreements contained herein, and in order to resolve Plaintiff’s alleged PAGA cause of action in the Matter, the Parties agree and covenant as follows:

1. **DEFINITIONS.**

A. “Agreement” means this Settlement Agreement and Release Under the California Labor Code Private Attorneys General Act.

B. “Allegedly Aggrieved Employees” means all individuals employed by Defendant as non-exempt in-home caregivers at any time from May 26, 2022, through February 16, 2024. Defendant estimates that there are ninety Allegedly Aggrieved Employees, inclusive of Plaintiff.

C. “Caregiver Letter” means the letter in the form of **Exhibit 1** hereto, to be included with each Allegedly Aggrieved Employee’s check for his or her share of the Caregiver PAGA Payment.

D. “Caregiver PAGA Payment” means 25% of the Net PAGA Fund, to be delivered to the Allegedly Aggrieved Employees.

E. “Complaint” means the pleading attached hereto as **Exhibit 2**, to be filed by Plaintiff in a mutually agreeable state-court venue for purposes of effectuating the Settlement.

F. “Court” means the state-court venue where the Complaint is filed.

G. “Defendant” means CP Homecare, Inc.

H. “Defendant’s Counsel” means Zelenski Law, PC.

I. “Effective Date” means the date that the Court has signed and entered the Stipulation and [Proposed] Order for Approval of the Parties’ Settlement Under the California Labor Code Private Attorneys General Act attached hereto as **Exhibit 3**.

J. “Employee Data” means the best information in Defendant’s possession, custody, or control with respect to each Allegedly Aggrieved Employee’s last-known name, last-known address, Social Security number, last-known telephone number, and dates of employment during the PAGA Period.

K. “Gross PAGA Fund” means the gross amount of \$40,000.00 (forty-thousand dollars), which is the maximum and exact amount that Defendant will pay pursuant to this Agreement. If, as of the date that the Employee Data is provided to the Settlement Administrator as set forth below, the total number of Allegedly Aggrieved Employees exceeds the present estimate of ninety by 10% or more, then the Gross PAGA Fund will increase by 10%.

L. “LWDA PAGA Payment” means 75% of the Net PAGA Fund, to be delivered to the LWDA.

M. “Matter” means the facts and theories of liability set forth in Plaintiff’s May 26, 2023, PAGA notice; the facts and theories of liability set forth in Plaintiff’s July 20, 2023, PAGA notice; and the provisions of the Labor Code alleged to have been violated by Defendant as set forth in those notices.

N. “Net PAGA Fund” means the funds available for distribution to the LWDA and the Allegedly Aggrieved Employees after deducting the following, all as approved by the Court: (i) Settlement-Administration Expenses, (ii) Plaintiff’s Counsel’s Fees and Costs, and (iii) Plaintiff’s Service Award.

O. “PAGA Period” means the time period of May 26, 2022, through the date that this Agreement is fully executed.

P. “Parties” means Plaintiff and Defendant.

Q. “Plaintiff” means Andrea Mendoza.

R. “Plaintiff’s Counsel” means Gaines & Gaines, APLC.

S. “Plaintiff’s Counsel’s Fees and Costs” means an amount totaling up to 35% of the Gross PAGA Fund, which Plaintiff’s Counsel will duly request in connection with seeking approval of the Settlement, plus amounts for actually incurred and documented attorneys’ expenses. Defendant will not oppose this request.

T. “Service Award” means the amount to be paid to Plaintiff to compensate her for her time and effort on behalf of the Allegedly Aggrieved Employees, which Plaintiff’s Counsel will duly request in connection with seeking approval of the Settlement. The Service Award requested by Plaintiff’s Counsel will not exceed \$5,000.00 (five-thousand dollars). Defendant will not oppose this request.

U. “Settlement” means the terms and conditions set forth in this Agreement.

V. “Settlement-Administration Expenses” means the expenses incurred by the Settlement Administrator in administering the Settlement pursuant to the procedures set forth in this Agreement. The Parties estimate that Settlement-Administration Expenses will not exceed \$3,000.00.

W. “Settlement Administrator” means a third-party company, mutually agreed to by the Parties and approved by the Court, that is responsible for administering the Settlement. The Parties will propose to the Court a Settlement Administrator in which they have no financial interest, and with which they have no other relationship that could create a conflict of interest.

X. “Workweeks” means the number of weeks that an Allegedly Aggrieved Employee worked for Defendant in California during the PAGA Period as a non-exempt in-home caregiver, which will be calculated by the Settlement Administrator using inclusive dates of employment during the PAGA Period to determine the total number of days an employee was employed by Defendant, and dividing that number by seven to compute the number of Workweeks.

2. PLAINTIFF’S FILING OF THE COMPLAINT, AND DEFENDANT’S PAYMENT OF THE GROSS PAGA FUND.

Within five court days of the full execution of this Agreement, and for the purpose of effectuating the Settlement, Plaintiff shall file the Complaint with the Court.

Defendant agrees to pay the Gross PAGA Fund into a qualified settlement fund established by the Settlement Administrator, pursuant to the timetable set forth below. The Gross PAGA Fund includes all amounts for (i) Settlement-Administration Expenses, (ii) Plaintiff’s Counsel’s Fees and Costs, and (iii) Plaintiff’s Service Award.

After deducting the above amounts, Defendant shall pay the Gross PAGA Fund to the Settlement Administrator within thirty calendar days after the Effective Date. To the extent that the Court awards less than whatever amounts are requested for Settlement-Administration Expenses, Plaintiff’s Counsel’s Fees and Costs, or Plaintiff’s Service Award, any amounts not awarded will remain in the Net PAGA Payment for distribution as part of the Caregiver PAGA Payment and the LWDA PAGA Payment.

The entire Caregiver PAGA Payment shall be divided pro rata among the Allegedly Aggrieved Employees from the Net PAGA Fund, based on their respective shares of Workweeks. Since the Gross PAGA Fund constitutes civil penalties, the amounts paid from the Caregiver PAGA Payment shall be issued via an IRS Form 1099.

Within thirty calendar days after the Effective Date, Defendant shall provide the Employee Data to the Settlement Administrator. Within fifteen calendar days of receiving the Employee Data, the Settlement Administrator shall use the United States Postal Service National Change of Address Database to locate updated addresses for each Allegedly Aggrieved Employee, and shall mail a check to each Allegedly Aggrieved Employee for his or her share of the Caregiver PAGA Payment. The checks will be accompanied by the Caregiver Letter. Any mailed checks that are returned as non-delivered shall be re-mailed to the forwarding address affixed thereto. If no

forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by lawful use of a robust skip-tracing procedure or other search.

Notwithstanding the foregoing, the check for the Caregiver PAGA Payment to Plaintiff, as well as her Service Award (if any is awarded by the Court), shall be sent via U.S. Mail to Plaintiff's Counsel no later than forty calendar days after the Effective Date.

Settlement checks issued to the Allegedly Aggrieved Employees will expire 180 calendar days after the date that they are issued. Any unclaimed funds after that period shall be remitted by Defendant to the LWDA. Accordingly, none of the Gross PAGA Fund will revert to Defendant.

3. PLAINTIFF'S COUNSEL'S FEES AND COSTS, AND SETTLEMENT-ADMINISTRATION EXPENSES.

Plaintiff's Counsel's Fees and Costs, as approved by the Court, will be distributed by the Settlement Administrator from the Gross PAGA Fund to Plaintiff's Counsel within forty calendar days after the Effective Date. Plaintiff's Counsel's Fees and Costs shall be reported on an IKS Form 1099.

Other than Plaintiff's Counsel's Fees and Costs, the Parties agree that they will bear their own attorneys' fees and costs incurred in connection with the Matter, including all of the matters pled in the Complaint.

Settlement-Administration Expenses, as approved by the Court, will be paid to the Settlement Administrator from the Gross PAGA Fund to the Settlement Administrator upon the completion of all duties required to be performed by the Settlement Administrator under the terms of this Agreement, or as otherwise required by the Court.

4. LIMITED RELEASE BY THE ALLEGEDLY AGGRIEVED EMPLOYEES.

Upon the Effective Date, and subject to Defendant's payment of the Gross PAGA Fund, each Allegedly Aggrieved Employee (inclusive of Plaintiff), on behalf of themselves and their respective executors, administrators, representatives, agents, heirs, successors, assigns, trustees, spouses, and guardians, as well as the State of California, shall be deemed to have fully released and forever discharged any and all claims against Defendant and Defendant's current and former subsidiaries, parents, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, officials, directors, managing agents, attorneys, human-resources representatives, payroll representatives, personal representatives, executors, and shareholders, including their respective pension, profit-sharing, savings, health, and other employee benefits plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, and fiduciaries, for civil penalties under PAGA that were or could have been brought based on the facts and theories asserted in the Complaint.

It is expressly understood and agreed that this release does not apply to any transaction, cause, event, matter, or thing whatsoever that occurs, arises out of, or results from, any act or event occurring outside the PAGA Period. Furthermore, it is expressly understood and agreed that this

release does not absolve Defendant from liability, if any, to the Allegedly Aggrieved Employees for any claims they may assert against Defendant other than those seeking civil penalties through PAGA.

5. GENERAL RELEASE BY PLAINTIFF ONLY.

Upon the Effective Date, and subject to Defendant's payment of the Gross PAGA Fund, Plaintiff, on behalf of herself and her executors, administrators, representatives, agents, heirs, successors, assigns, trustees, spouses, and guardians, unconditionally and irrevocably releases, acquits, and discharges, to the fullest extent permitted by law, Defendant and Defendant's current and former subsidiaries, parents, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, officials, directors, managing agents, attorneys, human-resources representatives, payroll representatives, personal representatives, executors, and shareholders, including their respective pension, profit-sharing, savings, health, and other employee benefits plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, and fiduciaries, from any and all claims, causes of action, suits, liabilities, demands, remedies, damages, debts, costs, and expenses of whatever kind or nature, whether at law, equity, or otherwise, and whether known or unknown, foreseen or unforeseen, or suspected or unsuspected, that have arisen on or before the date that this Agreement is fully executed.

All of the foregoing waived and released claims include, but are not limited to, claims that in any way relate to employment, the separation of employment, or other dealings of any kind; claims for wages, compensation, meal- or rest-break premium payments, damages, penalties, bonuses, or benefits for services rendered under the Fair Labor Standards Act, the California Business and Professions Code, or the California Labor Code; claims under Title VII of the Civil Rights Act of 1964 or the California Fair Employment and Housing Act; claims under the Americans with Disabilities Act; claims under the Age Discrimination in Employment Act; claims under the Employee Retirement Income Security Act; claims under the Family and Medical Leave Act or the California Family Rights Act; claims under the Civil Rights Act of 1966; claims under the Worker Adjustment and Retraining Notification Act; claims for personal injuries, damage to property, disability, physical impairment, or mental impairment under common law or any federal, state, or local law, regulation, or ordinance; claims of wrongful discharge, retaliation, emotional distress, defamation, misrepresentation, fraud, detrimental reliance, breach of alleged contractual obligations, promissory estoppel, negligence, assault and battery, or violation of public policy; and claims for monetary damages, other personal recovery or relief, costs, expenses, and attorneys' fees of any kind.

The foregoing release by Plaintiff is intended to release all such claims even if the Parties are unaware of the claims, and even if knowledge of those claims would have materially affected the acceptance of this Agreement. Accordingly, Plaintiff waives the protections of California Civil Code section 1542, and any other analogous rule or principle of law, as to all such claims. Section 1542 states:

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.

Based on the foregoing, Plaintiff agrees that she will not, at any time hereafter, and to the fullest extent permitted by law, commence, maintain, or prosecute any action, at law or otherwise, or assert any claim or enforce any judgment for damages or losses of any kind or amount, arising directly or indirectly from events that have occurred in connection with, or related to, Plaintiff's alleged employment with Defendant or the cessation of that employment.

Notwithstanding the foregoing, nothing in this Agreement is intended to preclude Plaintiff from participating in any manner in any charge or complaint, or any investigation of a charge or complaint, by any local, state, or federal agency, including, but not limited to, the Equal Employment Opportunity Commission, the National Labor Relations Board, the Occupational Safety and Health Administration, and the Securities and Exchange Commission. However, this Agreement does preclude Plaintiff from any monetary recovery resulting from any such charge or complaint, to the fullest extent permitted by law.

Furthermore, the Parties expressly agree that Plaintiff's release does not include claims arising after the date that this Agreement is fully executed; claims that may not be waived by private agreement without judicial or governmental supervision; claims for workers' compensation benefits or unemployment-insurance benefits; or any claims for the benefits provided by this Agreement, including those in furtherance of the enforcement of the terms of this Agreement.

6. COURT APPROVAL.

Nothing said or represented in connection with obtaining approval of the Settlement by the Court shall be admissible for any purpose other than to obtain approval by the Court of this Settlement, or to interpret or enforce the terms of this Agreement.

This Agreement is contingent on the approval by the Court of the Settlement. In connection with requesting the Court's approval of this Agreement, the Parties shall file the Stipulation and [Proposed] Order for Approval of the Parties' Settlement Under the California Labor Code Private Attorneys General Act attached hereto as Exhibit 3 within fourteen calendar days after the Complaint is filed with the Court. Should the Court not approve the Settlement, Defendant shall have no obligation to pay the Gross PAGA Fund. Furthermore, Defendant does not waive, and instead expressly reserves, its right to challenge the propriety of Plaintiff's seeking any form of relief from Defendant, should the Court not approve the Settlement. In the event that the Settlement is not approved by the Court for any reason, or if the approval is reversed on appeal for any reason, then the Parties shall be returned to their respective positions in the Matter as they existed immediately before the filing of the Stipulation and [Proposed] Order for Approval of the Parties' Settlement Under the California Labor Code Private Attorneys General Act attached hereto.

The Parties agree that neither they nor their respective Counsel will solicit or otherwise

encourage, directly or indirectly, any Allegedly Aggrieved Employee to object to, contest, or appeal the Court's approval of the Settlement.

7. ADDITIONAL TERMS.

A. Not Void Due to Change in Law. The Parties may not void this Agreement because of changes in the law or results of litigation in other cases.

B. No Admission of Liability. It is understood and agreed by Plaintiff that this Agreement represents a compromise and settlement of the Matter, and that the promises, payments, and consideration of this Agreement shall not be construed to be an admission of any liability or obligation either by Defendant, on the one hand, or any of the releasees identified in sections 4 and 5 of this Agreement, on the other hand. Plaintiff further understands and agrees that this Agreement cannot be used as evidence, nor can it be referred to or relied upon, in any arbitration, administrative proceeding, court proceeding, or legal proceeding (other than to enforce the terms of this Agreement or as required by a valid court order). Defendant disclaims and denies any liability, obligation, or responsibility to Plaintiff whatsoever.

C. No Publicity. The Parties and their respective counsel agree that they will not issue any press release, initiate any contact with the press, respond to any press inquiry, or have any communication with the press about this case or the fact, amount, or terms of this Settlement. In addition, the Parties and their respective counsel agree that they will not engage in any advertising or distribute any marketing materials relating to the Settlement, including, but not limited to, any postings on any website maintained by Plaintiff's Counsel. Any communication about the Settlement to Allegedly Aggrieved Employees (other than Plaintiff) prior to approval of the Settlement will be limited to a statement that a settlement has been reached and that the details will be communicated in a forthcoming Court-approved Notice. Nothing in the Agreement shall restrict Plaintiff's Counsel from disclosing or including all publicly available information regarding this case and the Settlement in any documents filed with any court or in any judicial submission (e.g., CVs, declarations regarding adequacy or experience, etc.).

D. Confidentiality. Until the Stipulation and [Proposed] Order for Approval of the Parties' Settlement Under the California Labor Code Private Attorneys General Act attached hereto as Exhibit 3 is filed, the negotiations, terms, and existence of this Agreement will remain strictly confidential and shall not be discussed with anyone other than the Parties, Plaintiff's Counsel, Defendant's Counsel, and the Settlement Administrator. Any confidentiality associated with the terms of this Settlement shall expire upon the filing of the Stipulation and [Proposed] Order for Approval of the Parties' Settlement Under the California Labor Code Private Attorneys General Act attached hereto as Exhibit 3, except the negotiations and discussions prior to entering into this Agreement shall remain strictly confidential unless otherwise ordered by the Court or necessary to obtain Court approval of the Settlement. Defendant may disclose the Settlement in filings that it is required to make by law, including, but not limited to, filings with the Securities and Exchange Commission, including 10-Q and 10-K filings, as applicable.

E. Acknowledgment. The Parties acknowledge that there is a genuine dispute as to the matters alleged in the Matter.

F. Entire Agreement and Modification of the Settlement. This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof. This Agreement supersedes all prior agreements, written or oral, between the Parties regarding the Matter and the Settlement. No other agreement, statement, or promise made by one Party to another as to any matter addressed in this Agreement shall be binding or valid. This Agreement cannot be orally modified. Any amendment or modification to this Agreement must be in writing, signed by the Parties, and approved by the Court.

G. No Reliance upon Representations by the Other Side. Plaintiff represents and acknowledges that, in executing this Agreement, she did not rely, and has not relied, upon any representation or statement made by Defendant or its agents, attorneys, or representatives with regard to the subject matter of this Agreement, or its basis, or the effects of this Agreement, other than those representations specifically set forth in this written document.

H. Binding Nature; No Assignment. This Agreement, and all the terms and provisions contained herein, shall bind the heirs, personal representatives, successors and assigns, subsidiaries and related entities, and all other entities with whom Plaintiff has been, is now, or may hereafter be affiliated with, and shall inure to the benefit of Plaintiff, her agents, directors, officers, employees, servants, successors, and assigns. Plaintiff promises and guarantees that she has not made, and will not make, any assignment of any claim, chose in action, right of action, or any right of any kind whatsoever, embodied in any of the claims that are released herein, and that no other person or entity of any kind had or has any interest in any of the claims released herein.

I. Construction. This Agreement is the product of arms' length negotiations and is considered to be jointly drafted. As such, it shall not be construed against any Party because that Party caused it to be reduced to a written instrument.

J. Fairness of Settlement. Plaintiff agrees that this Settlement is fair, reasonable, and adequate.

K. Effect of Illegality. Should any part, term, or provision of this Agreement be declared or determined by any Court of competent jurisdiction to be wholly or partially illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, or provisions of this Agreement shall not be affected thereby. Said illegal, invalid, or unenforceable part, term, or provision shall be deemed not to be a part of this Agreement.

L. Compliance with Terms; No Waiver. The failure to insist upon compliance with any term, covenant, or condition contained in this Agreement shall not be deemed a waiver of that term, covenant, or condition; nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

M. Governing Law and Jurisdiction. This Agreement shall be interpreted under the laws of the State of California, both as to interpretation and performance. The Court shall retain jurisdiction over the Matter, the Parties, and the Allegedly Aggrieved Employees for

purposes of supervising, implementing, enforcing, construing, administering, and interpreting this Agreement, as well as any matters related or ancillary thereto, including under California Code of Civil Procedure section 664.6.

N. Section Headings. The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

O. Counterparts; PDF and Facsimile Signatures. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an executed Agreement, and each of which shall be deemed to be one and the same instrument. A facsimile, electronic, or .PDF signature shall be treated as an original signature for all purposes.

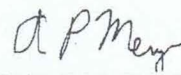
P. Representative Capacity. Each Party executing this Agreement in a representative capacity represents and warrants that it or she is empowered to do so.

Q. Survival of Warranties and Representations. The warranties and representations of this Agreement are deemed to survive the date of execution thereof.

R. Voluntary and Knowing: This Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the Parties hereto.

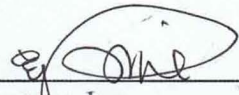
The Parties, with the benefit of representation and advice of counsel, have read this Agreement and fully understand each and every provision contained in it.

Dated: 02 / 15 / 2024



Andrea Mendoza

Dated: 02/16/2024



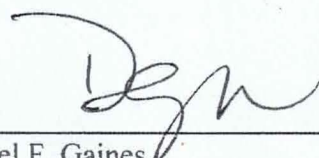
CP Homecare, Inc.

By: LOISA PINEPA

Its: ADMINISTRATOR

Approved as to form and content:

Dated: 2/15/2024



Daniel F. Gaines
GAINES & GAINES, APLC
Attorneys for Plaintiff

Dated: February 16, 2024

David Zelenski

ZELENSKI LAW, PC
David Zelenski
Abigail Zelenski
Attorneys for Defendant

EXHIBIT 1

Name
Street Address
City, State, and Zip Code

Employee's Name:

On _____, 2024, the _____ Superior Court granted approval of a settlement of a representative claim for civil penalties brought in a lawsuit by Andrea Mendoza against CP Homecare, Inc. ("CP Homecare"), titled *Andrea Mendoz v. CP Homecare, Inc.*, _____ Court Case No. _____. CP Homecare denies any and all of the allegations made by Ms. Mendoza.

In the lawsuit, Ms. Mendoza contends that individuals who were employed by CP Homecare as non-exempt in-home caregivers at any time on or after May 22, 2022, through _____ are entitled to a portion of civil penalties owed under the Private Attorneys General Act ("PAGA"), section 2698 *et seq.* of the California Labor Code, for alleged failures to provide proper meal and rest periods, timely pay all wages (stemming from the alleged underlying failure to provide proper meal and rest periods), provide proper wage statements (stemming, in part, from the alleged underlying failure to provide proper meal and rest periods), and provide reimbursement for business expenses.¹

The Court has not made a determination about the merits of Ms. Mendoza's civil-penalties claim, and CP Homecare denies any liability or wrongdoing—including on the ground that in-home caregivers are not entitled to employer-provided meal or rest periods under California law. Instead, Ms. Mendoza and CP Homecare have agreed to settle the civil-penalties claim. In connection with that settlement, CP Homecare has agreed to establish a settlement fund to pay civil-penalty amounts allegedly owed to the State of California, a portion of which is to be shared under PAGA by individuals employed by CP Homecare as in-home caregivers since May 22, 2022. You are receiving this letter because, according to CP Homecare's records, you worked for CP Homecare as an in-home caregiver at some point since May 22, 2022.

Please note that you are NOT being sued in the lawsuit. Instead, you are receiving this letter because you are entitled to a portion of the settlement fund described in the preceding paragraph. Enclosed with this letter is a check in the amount of \$ _____, which represents your share of the settlement fund.

¹ Please understand that this letter only summarizes the claims at issue in the *Mendoza* action.

EXHIBIT 2

1 DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
2 ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
3 **GAINES & GAINES, APLC**
4 4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Telephone: (818) 703-8985
5 Facsimile: (818) 703-8984

6 Attorneys for Plaintiff Andrea Mendoza, on behalf of herself and all "aggrieved employees"
7 pursuant to Labor Code § 2698 *et seq.*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF IMPERIAL**

10 ANDREA MENDOZA, on behalf of herself
11 and all "aggrieved employees" pursuant to
Labor Code § 2698 *et seq.*,
12

13 Plaintiff,

14 v.

15 CP HOMECARE INC., a California
corporation, and DOES 1 through 10,
16 inclusive,

17 Defendants.
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CASE NO:

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE §§
201, 202, 204, 226(a), 226.7, 246, 512, AND
2802 AND PURSUANT TO LABOR CODE
§ 2699(a) FOR VIOLATIONS OF LABOR
CODE §§ 210, 226.3, AND 558**

1 Plaintiff ANDREA MENDOZA ("Plaintiff"), on behalf of herself and others as an "aggrieved
2 employee" under the Labor Code Private Attorneys General Act of 2004, codified as Labor Code §§
3 2698 *et seq.*, complains of CP HOMECARE INC., a California corporation, and/or any subsidiaries
4 or affiliated companies (hereinafter collectively referred to as "Defendants"), and each of them, as
5 follows:

6 I.

7 **INTRODUCTION AND FACTUAL BACKGROUND**

8 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
9 Plaintiff and other non-exempt California in-home caregiver employees who currently work or
10 formerly worked for Defendants ("Aggrieved Employees").

11 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
12 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
13 Labor Code § 2698 *et seq.*, and continuing to the present (the "liability period"), Defendants have had
14 consistent policies of:

15 a. Failing to pay premium wages to Plaintiff and other Aggrieved Employees who
16 were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 5-2001.
17 Plaintiff and other Aggrieved Employees were routinely unable to take a 10-minute rest period for
18 every four (4) hours of work or major fraction thereof, but were not paid premium wages of one
19 hour's pay for each missed rest period. Plaintiff and Aggrieved Employees were rarely permitted, if
20 ever, to take their legally entitled rest periods. When they were able to take a rest period, they were
21 required to remain on Defendant's premises, thereby resulting in an on-duty rest period. This violates
22 Labor Code § 226.7 and IWC Wage Order No. 5-2001;

23 b. Failing to pay premium wages to Plaintiff and other Aggrieved Employees who
24 were denied proper meal periods, in violation of Labor Code §§ 226.7, 512, and 558 and IWC Wage
25 Order 5-2001. Plaintiff and other Aggrieved Employees were routinely denied, and not authorized to
26 take, a timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours,
27 or a second timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten
28 hours, but were not paid premium wages of one hour's pay for each missed first or second meal

1 period. When they were able to take a meal period, Defendant impermissibly required them to remain
2 on the premises, thereby resulting in an on-duty meal period. This violates Labor Code §§ 226.7, 512,
3 and 558 and IWC Wage Order 5-2001;

4 c. Failing to reimburse Plaintiff and other Aggrieved Employees for necessary
5 business expenses incurred in direct consequence of the discharge of their duties, in violation of Labor
6 Code § 2802, including, but not limited to, the use of their personal vehicle. Labor Code § 2802
7 requires that an employer must indemnify its employees for all necessary expenditures or losses
8 incurred by the employee in direct consequence of the discharge of their duties, and Defendant's
9 failure to do so has violated this section;

10 d. Failing to timely pay all wages due to Plaintiff and Aggrieved Employees
11 during their employment, in violation of Labor Code §§ 204 and 210. Defendant paid Plaintiff and
12 other California employees on a bi-weekly basis, but failed to issue them all their wages within seven
13 calendar days of the conclusion of the payroll period, as required by Labor Code § 204(d); instead,
14 Plaintiff and other California employees were sometimes paid eight or more days after the close of
15 each pay period. This subjects Defendant to penalties as authorized by Labor Code § 210;

16 e. Failing to provide Plaintiff and all other Aggrieved Employees with wage
17 statements that fully and accurately itemized the requirements set forth in Labor Code §§ 226(a) and
18 226.3. Plaintiff and other Aggrieved Employees were not paid all wages due, as stated above. As
19 such, the wage statements provided by Defendant failed to accurately state all gross wages earned, in
20 violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§
21 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all
22 applicable hourly rates in effect during the pay period and the corresponding number of hours worked,
23 in violation of Labor Code §§ 226(a)(9) and 226.3;

24 f. Failing to pay Plaintiff and other Aggrieved Employees all wages due at the
25 separation of their employment based on the time frames required by Labor Code §§ 201 and 202. As
26 stated above, Plaintiff and other Aggrieved Employees were not paid all wages due during the course
27 of their employment and, as a result of this failure, they were not timely paid all wages due at the
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1 separation of their employment. This violates Labor Code §§ 201-202 and is alleged on behalf of
2 Plaintiff and Aggrieved Employees no longer employed by Defendant; and

3 g. Failing to provide Plaintiff and other Aggrieved Employees with written notice
4 that sets forth the amount of paid sick leave available either on a wage statement or a separate writing
5 provided on the designated pay date with the employee's payment of wages. This violates Labor Code
6 § 246(i).

7 3. Plaintiff, on behalf of herself and all Aggrieved Employees pursuant to Labor Code §
8 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

9 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
10 Defendants employed Aggrieved Employees throughout the State of California, including in Imperial
11 County.

12 II.

13 TOLLING AGREEMENT

14 5. Plaintiff and Defendants entered into agreements to toll the statute of limitations,
15 pursuant to California Code of Civil Procedure § 360.5, from July 26, 2023 through March 1, 2024.
16 As such, all periods of limitation (statutory or otherwise) affecting any and all claims or causes of
17 actions which Plaintiff may have against Defendants have been tolled between July 26, 2023 and the
18 date of filing of this Action.

19 III.

20 PARTIES

21 A. Plaintiff

22 6. Plaintiff ANDREA MENDOZA was employed by Defendants from July 2021 through
23 April 2023 as a non-exempt in-home caregiver employee and performed work for Defendants in
24 California.

25 B. Defendants

26 7. Defendant CP HOMECARE INC. is a California corporation that employed Plaintiff
27 and Aggrieved Employees throughout California.
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8. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

9. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

10. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more provisions of the California Labor Code as alleged herein.

IV.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 204, 226(a), 226.7, 246, 512, AND 2802 AND PURSUANT TO
LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 210, 226.3, AND 558**

11. Plaintiff incorporates paragraphs 1 through 10 of this Complaint as though fully set forth herein.

12. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.*

13. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- 1 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for
2 each subsequent violation of Labor Code §§ 201, 202, 204, 226(a), 226.7, 246,
3 512, and 2802; and
4 b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code
5 §§ 210, 226.3, and 558.

6 14. Penalties recovered will be allocated 75% to the Labor and Workforce Development
7 Agency, and 25% to the affected employees.

8 15. On May 26, 2023 and July 20, 2023, Plaintiff sent letters, by online submission to the
9 LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and
10 theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.*
11 Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within
12 sixty-five (65) calendar days of May 26, 2023 or July 20, 2023. Plaintiff may therefore commence
13 this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

14 Wherefore, Plaintiff and the Aggrieved Employees she seeks to represent request relief as
15 described below.

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V.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;
3. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable law; and
4. Such other and further relief as this Court may deem just and proper.

Dated: February 15, 2024

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: _____
DANIEL F. GAINES
ALEX P. KATOFISKY
Attorneys for Plaintiff

EXHIBIT 3

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Attorneys for Plaintiff Andrea Mendoza, on behalf of herself and all “aggrieved employees”
pursuant to Labor Code § 2698 et seq.

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

ANDREA MENDOZA, on behalf of
herself and all “aggrieved employees”
pursuant to Labor Code § 2698 et seq.,

Plaintiff,

v.

CP HOMECARE INC., a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO:

Assigned to the Hon. XX, Dept. XX

**STIPULATION AND [PROPOSED] ORDER
APPROVING SETTLEMENT OF PRIVATE
ATTORNEYS GENERAL ACT CLAIMS AND
DISMISSING ACTION WITH PREJUDICE**

Complaint Filed: February 14, 2024

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STIPULATION

Plaintiff Andrea Mendoza (“Plaintiff”) and Defendant CP Homecare, Inc. (“Defendant”) submit this Stipulation based on the following facts:¹

1. Plaintiff filed her Representative Action Complaint against Defendant on February 14, 2024, seeking civil penalties pursuant to the Private Attorneys General Act (“PAGA”), California Labor Code section 2698 *et seq.*

2. Plaintiff’s PAGA claim stems, in large part, from Defendant’s purported failure to provide proper meal periods and proper rest periods to those individuals employed by Defendant as in-home caregivers. Specifically, Plaintiff seeks the following:

a. Civil penalties on behalf of caregivers based on Defendant’s alleged violation of Labor Code sections 226.7 and 512, for the alleged ***underlying*** failure to provide proper meal and rest periods;

b. Civil penalties on behalf of caregivers for the alleged failure to timely provide all wages under Labor Code sections 201 and 202 at the termination of employment, ***derivative*** of the alleged underlying failure to provide proper meal and rest periods;

c. Civil penalties on behalf of caregivers for alleged improper wage statements under Labor Code section 226, including ***derivative*** civil penalties stemming from the alleged underlying failure to provide proper meal and rest periods;

d. ***Non-derivative*** civil penalties on behalf of caregivers for the alleged failure to timely pay wages under Labor Code section 204, stemming from a purported failure by Defendant to pay wages on proper paydays;

e. ***Non-derivative*** civil penalties on behalf of caregivers for an alleged failure by Defendant to reimburse employees under Labor Code section 2802 for necessary business expenses; and

f. ***Non-derivative*** civil penalties on behalf of caregivers for Defendant’s purported violation of Labor Code section 246, stemming from an alleged failure to provide notices

¹ Plaintiff and Defendant are collectively referred to herein as “Parties.”

1 itemizing the caregivers' respective amounts of available paid sick-leave.

2 3. Plaintiff contends that, on May 26, 2023, and July 20, 2023, she exhausted her
3 administrative remedies for her PAGA claim by sending letters via online submission to the
4 California Labor and Workforce Development Agency ("LWDA"), and via certified mail to
5 Defendant, setting forth the facts and theories for the above-described alleged violations.

6 4. Based on the foregoing, the within action concerns all individuals who were
7 employed by Defendant as non-exempt in-home caregivers at any time from May 26, 2022, through
8 February 16, 2024. May 26, 2022, is the date one year prior to the date when Plaintiff purported
9 exhausted her administrative remedies for her PAGA claim, and these individuals are referred to
10 herein as the "Allegedly Aggrieved Employees."

11 5. Since May 26, 2023, the Parties have been actively engaged in settlement
12 discussions relating to the within action, including exchanging information and documents
13 sufficient to enable the Parties to meaningfully discuss potential resolution. In connection with this
14 information exchange, Defendant has identified a total of approximately ninety Allegedly
15 Aggrieved Employees.

16 6. Defendant denies all of the allegations made by Plaintiff in the within action, and
17 denies having committed any misconduct, statutory or regulatory violation, wrongdoing, or any
18 other actionable conduct.

19 7. This case involves arguable questions of fact and law, which the Parties desire to
20 settle. A copy of the Settlement Agreement and Release Under the California Labor Code Private
21 Attorneys General Act ("Agreement") is attached the concurrently filed Declaration of Daniel
22 Gaines as **Exhibit D**.

23 8. The Parties agree that the settlement memorialized in the above-referenced
24 Agreement represents a fair compromise of Plaintiff's PAGA claim, including the related costs of
25 litigation and risk. The Parties negotiated the Agreement only after such discovery and
26 investigation had been performed.

27 9. PAGA provides that the LWDA may assess and collect civil penalties from
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1 employers for violations of certain provisions of the Labor Code. *See* Cal. Lab. Code § 2699(a).
2 PAGA also provides that, if an “aggrieved employee” duly complies with certain administrative-
3 exhaustion requirements, the employee may, “as an alternative” to enforcement by the LWDA,
4 bring a civil action under PAGA to recover civil penalties for the benefit of the LWDA. *See id.*
5 “[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to
6 the [State] . . . and 25 percent to the aggrieved employees.” *Id.* § 2699(i).

7 10. PAGA requires court approval of any settlement of any PAGA claim. *See id.*
8 § 2699(l)(2). Section 2699 also provides that, even if a PAGA claim is not settled and instead
9 proceeds to a judgment against an employer, the court has discretion to “award a lesser amount
10 than the maximum civil penalty.” *Id.* § 2699(e)(2).

11 11. Based on the information and documents obtained through informal discovery,
12 Plaintiff assesses the maximum value of the PAGA claims (without stacking) to be approximately
13 \$149,200.00 (at the rate of a \$100.00 penalty for 1,492 total pay periods at issue for approximately
14 90 employees during the applicable time frame). (Gaines Decl. at ¶¶ 11–14). The amount of the
15 settlement reflected in the Agreement is \$40,000.00, which represents over 26% of the maximum
16 recoverable discretionary penalties, and includes an apportionment of attorneys’ fees and costs and
17 a Service Award to Plaintiff. (Gaines Decl. at ¶ 15).

18 12. The Agreement provides as follows:

19 a. In exchange for the limited release set forth in the Agreement, Defendant
20 agrees to pay the total sum of \$40,000.00 (“Gross PAGA Fund”) to the State of California and to
21 the Allegedly Aggrieved Employees, after deducting (i) settlement-administration expenses to be
22 incurred by the neutral third-party settlement administrator selected by the Parties, currently
23 estimated to be \$3,000.00; (ii) Plaintiff’s counsel’s fees and costs in an amount totaling up to 35%
24 of the Gross PAGA Fund, plus amounts for actually incurred and documented attorneys’ expenses,
25 presently estimated to be approximately \$500.00; and (iii) a service award to Plaintiff in the amount
26 of \$5,000.00, to compensate her for her time and effort on behalf of the Allegedly Aggrieved
27 Employees. (Gaines Decl. Ex. D at §§ 1.K, 1.N, 2.) The funds available for distribution to the
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1 State (via the LWDA) and to the Allegedly Aggrieved Employees after deducting the foregoing
2 amounts are referred to as the “Net PAGA Fund.” Based on the foregoing numbers, the Net PAGA
3 Fund equals approximately \$17,500.00 (= \$40,000.00 – \$14,000.00 in attorneys’ fees – \$500.00 in
4 attorneys’ costs – \$3,000.00 in settlement-administration expenses – \$5,000.00 for Plaintiff’s
5 service award).

6 b. Pursuant to section 2699 of PAGA, a total of approximately \$13,125.00 (i.e.,
7 75%) of the Net PAGA Fund shall be paid to the LWDA. (Gaines Decl. Ex. D at §§ 1.L, 2.) Also
8 pursuant to section 2699, the remaining approximately \$4,375.00 (i.e., 25%) of the Net PAGA Fund
9 shall be paid to the Allegedly Aggrieved Employees (“Caregiver PAGA Payment”). (Gaines Decl.
10 Ex. D at §§ 1.C, 2.)

11 c. The entire Caregiver PAGA Payment shall be divided pro rata among the
12 Allegedly Aggrieved Employees (including Plaintiff), based on the number of weeks that each
13 worked for Defendant in California during the period of time from May 26, 2022, through February
14 16, 2024. (Gaines Decl. Ex. D at § 2.) Since the Gross PAGA Fund constitutes civil penalties, the
15 amounts paid from the Caregiver PAGA Payment shall be issued via an IRS Form 1099. (Gaines
16 Decl. Ex. D at § 2.) In addition, since it is estimated that there are only approximately ninety
17 Allegedly Aggrieved Employees, each Allegedly Aggrieved Employee’s net share of the Caregiver
18 PAGA Payment will, on average, be \$48.61 (= (\$4,375.00 Caregiver PAGA Payment ÷ 90
19 Allegedly Aggrieved Employees). This is more than what aggrieved employees in other PAGA
20 settlements typically receive. *See, e.g., Roe v. SFBSC Mgmt., LLC*, Nos. 14-cv-03616-LB, 16-cv-
21 03371-LB, 17-cv-00138-LB, 17-cv-052880LB, 17-cv-06971, 19-cv-03960-LB, 2022 U.S. Dist.
22 LEXIS 215122, at *7, 19 (N.D. Cal. Nov. 29, 2022) (approving a \$125,000.00 PAGA payment
23 from a \$6.5 million class-wide settlement, with \$31,250.00 of the PAGA payment going to 8,402
24 class members, resulting in an average civil-penalty payment to aggrieved employees of \$3.72);
25 *Roe v. Jose Torres L.D. Latin Club Bar, Inc.*, No. 19-cv-06088-LB, 2020 U.S. Dist. LEXIS 156837,
26 at *1, 4–5 (N.D. Cal. Aug. 27, 2020) (approving a \$2,000.00 PAGA payment from a \$135,000.00
27 class-wide settlement, with \$500.00 of the PAGA payment going to 93 class members, resulting in
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1 an average civil-penalty payment to aggrieved employees of \$5.38); *Turner v. Motel 6 Operating*
2 *L.P.*, No. CV 17-2544 PSG (SSx), 2018 WL 6977474, at *1, 7 (C.D. Cal. Nov. 6, 2018) (approving
3 a \$20,000.00 PAGA payment from a \$1.36 million class-wide settlement, with \$5,000.00 of the
4 PAGA payment going to 2,780 class members, resulting in an average civil-penalty payment to
5 aggrieved employees of \$1.80); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, No. 1:13-cv-
6 00474-DAD-BAM, 2017 WL 749018, at *5, 9 (E.D. Cal. Feb. 27, 2017) (approving a \$20,000.00
7 PAGA payment from a \$2.35 million class-wide settlement, with \$5,000.00 of the PAGA payment
8 going to 2,730 class members, resulting in an average civil-penalty payment to aggrieved
9 employees of \$1.83).

10 d. Within thirty calendar days after the date that the Court has signed the
11 Proposed Order accompanying this Stipulation, Defendant shall provide the settlement
12 administrator with the best information in Defendant's possession, custody, or control with respect
13 to each Allegedly Aggrieved Employee's last-known name, last-known address, Social Security
14 number, last-known telephone number, and dates of employment. (Gaines Decl. Ex. D at § 2.)
15 Within fifteen calendar days of receiving the data, the administrator shall use the United States
16 Postal Service National Change of Address Database to locate updated addresses for each Allegedly
17 Aggrieved Employee, and shall mail a check to each Allegedly Aggrieved Employee for his or her
18 share of the Caregiver PAGA Payment. (Gaines Decl. Ex. D at § 2.) The checks will be
19 accompanied by a mutually drafted letter advising them as to what the Caregiver PAGA Payment
20 is for; a template copy of that letter is appended to the Agreement as Exhibit 1. (Gaines Decl. Ex.
21 D at §§ 1.C, 2.) Any mailed checks that are returned as non-delivered shall be re-mailed to the
22 forwarding address affixed thereto. (Gaines Decl. Ex. D at § 2.) If no forwarding address is
23 provided, the Settlement Administrator shall promptly attempt to determine a correct address by
24 lawful use of a robust skip-tracing procedure or other search. (Gaines Decl. Ex. D at § 2.)

25 e. Settlement checks issued to the Allegedly Aggrieved Employees will expire
26 180 calendar days after the date that they are issued. (Gaines Decl. Ex. D at § 2.) Any unclaimed
27 funds after that period shall be remitted by Defendant to the LWDA. (Gaines Decl. Ex. D at § 2.)

1 Accordingly, none of the PAGA Fund will revert to Defendant. (Gaines Decl. Ex. D at § 2.)

2 f. Upon the date that the Court grants approval of the Agreement, the Allegedly
3 Aggrieved Employees (including Plaintiff) will be deemed to have fully released and forever
4 discharged any and all claims against Defendant and Defendant's current and former subsidiaries,
5 parents, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, officials,
6 directors, managing agents, attorneys, human-resources representatives, payroll representatives,
7 personal representatives, executors, and shareholders, including their respective pension, profit-
8 sharing, savings, health, and other employee benefits plans of any nature, the successors of such
9 plans, and those plans' respective current or former trustees and administrators, agents, employees,
10 and fiduciaries, for civil penalties under PAGA that were or could have been brought based on the
11 facts and theories asserted in the Complaint. (Gaines Decl. Ex. D at § 4.) The Agreement recites
12 that it is expressly understood and agreed that this release does not apply to any transaction, cause,
13 event, matter, or thing whatsoever that occurs, arises out of, or results from, any act or event
14 occurring after February 16, 2024. (Gaines Decl. Ex. D at § 4.) Likewise, the Agreement recites
15 that it is expressly understood and agreed that the release does not absolve Defendant from liability,
16 if any, to the Allegedly Aggrieved Employees for any claims they may assert against Defendant
17 other than those seeking civil penalties through PAGA. (Gaines Decl. Ex. D at § 4.) In other
18 words, the Agreement's release is limited specifically to civil-penalty claims—and then to only
19 those claims based on the specific facts and theories asserted in Plaintiff's Complaint.²

20 13. Based on their extensive experience litigating over 100 representative actions,
21 counsel for Plaintiff believes the settlement embodied in the Agreement is fair and reasonable, and
22 that it warrants approval by the Court. (Gaines Decl. at ¶¶ 2–5; Exhibit “A” to Gaines Decl.).
23 Defendant's counsel has reached a similar conclusion, based, in part, on the following:

24 a. Defendant contends that Plaintiff and the Allegedly Aggrieved Employees
25 are subject to California's Domestic Workers Bill of Rights, section 1450 *et seq.* of the Labor Code.

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27 ² Unlike all of the other Allegedly Aggrieved Employees, Plaintiff herself is entering into a
28 general release with Defendant. (Gaines Decl. Ex. D at § 5.) This is a further reason for approving
a service award for her in the amount of \$5,000.00.

Accordingly, Defendant's position is that neither Plaintiff nor any of the Allegedly Aggrieved Employees are entitled to meal or rest breaks under the law. *See Liday v. Sim*, 40 Cal. 5th 359, 371–72 (2019) (“Thus, the provisions restricting domestic workers’ number of hours and days of work, providing meal and rest periods, and requiring employers to keep certain records, among others did not apply to [the plaintiff].”). Defendant therefore contends that the primary underlying violation asserted by Plaintiff, as well as all alleged violations that are derivative thereof, fail as a matter of law.

b. On August 22, 2023, Defendant submitted a notice to the LWDA purporting to demonstrate that Defendant had cured any alleged violation of section 246 of the Labor Code as to all Allegedly Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(c)(2)(A) (providing that an employer alleged to have violated various provisions of the Labor Code may “cure the alleged violation,” which can eliminate the plaintiff’s ability to assert a PAGA claim). Defendant also provided cure notices to all Allegedly Aggrieved Employees. Plaintiff has not contested Defendant’s cure through any submission to the LWDA. Defendant therefore contends that Plaintiff cannot collect civil penalties for any purported violation of Labor Code section 246.

c. Even if Plaintiff could assert claims against Defendant for civil penalties under PAGA, any recovery she might obtain would be subject to a discretionary reduction by the Court. See *id.* § 2699(e)(2) (stating that the court has discretion to “award a lesser amount than the maximum civil penalty”).

14. The Parties respectfully request that the Court enter the accompanying Order approving the settlement memorialized by the Agreement and dismissing this Action with prejudice. (Gaines Decl. at ¶ 16). The Parties further agree that, after entry of the Order, and pursuant to California Code of Civil Procedure § 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this action over all Parties and Aggrieved Employees for purposes of supervising, implementing, enforcing, construing, administering, and interpreting the Agreement, as well as any matters related or ancillary thereto, including under California Code of Civil Procedure section 664.6.

1 15. Plaintiff has submitted a copy of the Settlement Agreement, together with this
2 Stipulation and the Declaration of Daniel F. Gaines, to the LWDA as required by PAGA. (Gaines
3 Decl. at ¶ 18; Exhibit "E"). As of the full execution of this Stipulation, neither Plaintiff's counsel
4 nor Defendant's counsel has received any objection from the LWDA to the terms of the Agreement.

5 Based on the foregoing, Plaintiff and Defendant **HEREBY STIPULATE** that the Court
6 execute the Proposed Order granting approval of the Parties' Settlement Agreement and Release
7 Under the California Labor Code Private Attorneys General Act.

8 **IT IS SO STIPULATED.**

9
10 **ATTORNEYS FOR PLAINTIFF:**

11 Dated: February 15, 2024

Respectfully submitted,

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13 GAINES & GAINES
14 A Professional Law Corporation

15 By: _____
Daniel F. Gaines
Alex P. Katofsky

16 **ATTORNEYS FOR DEFENDANT:**

17 Dated: February 15, 2024

ZELENSKI LAW, PC

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19 By: _____
20 David Zelenski
21 Abigail Zelenski
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