

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Hazel B. Abaya (“Plaintiff”) and Defendant Hospitalist Medicine Physicians of California, Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or each individually as a “Party.”

1. **DEFINITIONS.**

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant, captioned *Hazel B. Abaya, M.D. v. Hospitalist Medicine Physicians of California, Inc., et al.*, filed on November 17, 2023 in the Superior Court of the State of California, County of Ventura.
- 1.2. “Aggrieved Employee” means the two female hospitalists, including Plaintiff, who were employed by Defendant and who worked at Los Robles Hospital & Medical Center between January 1, 2023 and May 14, 2023.
- 1.3. “Court” means the Superior Court of California, County of Ventura.
- 1.4. “Defense Counsel” means Sandra K. Wootton, Marcia A. Washkuhn, Jason D. Stitt of the law firm of Kutak Rock, LLP.
- 1.5. “Effective Date” means the date on which the Court enters an Order approving the PAGA Settlement.
- 1.6. “Judgment” means the judgment entered by the Court based upon the Order granting Approval of the Settlement.
- 1.7. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code § 2699(i).
- 1.8. “PAGA Counsel” means Charles A. Swartz, or the law firm of Cornman & Swartz, the attorney representing Plaintiff in the Action.
- 1.9. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee received compensation from Defendant for worked performed between January 1, 2023 and May 14, 2023.
- 1.10. “PAGA” means the California Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

- 1.11. "PAGA Notice" means PAGA Counsel's August 31, 2023 letter to Defendant and the LWDA providing notice pursuant to Labor Code § 2699.3(a).
- 1.12. "Released Parties" means: Defendant and its insurers, brands, concepts, affiliates, subsidiaries, parent companies, predecessors, successors, assigns, employees, officers, directors, agents, attorneys, administrators, representatives, heirs, estates, powers-of-attorney, and any individual or entity that could be or is alleged to be jointly liable with Defendant.
- 1.13. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.14. "Settlement Amount" means ONE THOUSAND, FIVE HUNDRED DOLLARS AND NO/100 (\$1,500.00), which is the total amount Defendant agrees to pay under the Settlement, to be disbursed by Defendant in accordance with this Agreement.
- 1.15. "Attorneys' Fees" shall be in the amount of \$600.00 or such other amount as approved by the court and shall be payable to Charles A. Swartz Attorney at Law Trust Account.
- 1.16. "Net Settlement Amount" means the Settlement Amount less Attorneys' Fees.

2. **RECITALS.**

- 2.1. On November 17, 2023, Plaintiff commenced the Action by filing a Complaint alleging causes of action against Defendant based upon factual allegations that Defendant paid Plaintiff and similarly situated hospitalists less than at least one male employee with the same or substantially the same experience, failed to provide accurate wage statements, and failed to all wages owed upon termination. The Complaint included a cause of action against Defendant for civil penalties under PAGA. Defendant denies the allegations in the Complaint, denies any failure to comply with the laws identified in in the Complaint, and denies any and all liability for the causes of action alleged.
- 2.2. Pursuant to Labor Code § 2699.3(a), Plaintiff gave written notice to Defendant and the LWDA by sending the PAGA Notice.
- 2.3. Plaintiff has obtained, through informal discovery, documents and data necessary to prosecute Plaintiff's claims and to determine the proper scope of potential PAGA penalties

in relation to herself and potentially aggrieved employees.

2.4. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Settlement Amount. Defendant promises to pay ONE THOUSAND, FIVE HUNDRED AND NO/100 DOLLARS (\$1,500.00), and no more, as the Settlement Amount.

Defendant has no obligation to pay the Settlement Amount prior to the deadline stated in Paragraph 4.1 of this Agreement. The entire Settlement Amount will be disbursed in accordance with this Agreement and none of the Settlement Amount will revert to Defendant.

3.2. Payment to LWDA. Defendant shall disburse 75% of the Net Settlement Amount to the LWDA consistent with Labor Code § 2699(i).

3.3. Payment to Aggrieved Employees. Based upon review of records voluntarily exchanged between the Parties, the Parties agree that there are two Aggrieved Employees, inclusive of Plaintiff, who each worked six (6) PAGA Pay Periods, for a total of twelve (12) PAGA Pay Periods. Defendant shall disburse 25% of the Net Settlement Amount to the two Aggrieved Employees, each of whom shall receive one-half of 25% of the Net Settlement Amount. Each Aggrieved Employee's share of the Settlement Amount was calculated by dividing such Aggrieved Employee's respective number of PAGA Pay Periods by the total number of PAGA Pay Periods worked by both Aggrieved Employees.

3.4. Payment of Attorneys' Fees. Defendant shall disburse Attorneys' Fees to Charles A. Swartz Attorney at Law Trust Account.

3.5. No Other Payments. Apart from the payments set forth above, there shall be no further disbursements from the Settlement Amount, including but not limited to disbursements for attorneys' fees, litigation costs, or enhancement payments.

1 **4. SETTLEMENT FUNDING AND PAYMENTS.**

2 4.1. Funding of the Settlement Amount. Defendant shall disburse the Settlement Amount by
3 transmitting funds as set forth in Sections 3.2 and 3.3 no later than twenty-one (21) days
4 after the Effective Date.

5 4.2. Method of Disbursement of Settlement Amount. Defendant shall mail or overnight checks
6 in appropriate amounts to LWDA and the Aggrieved Employees at publicly available or
7 last known addresses, as the case may be. The disbursement to Plaintiff shall be
8 transmitted to PAGA Counsel.

9 4.3. For any Aggrieved Employee whose disbursement is uncashed after six months, Defendant
10 shall void the check issued to the Aggrieved Employee and transmit the funds represented
11 by such check to the California Controller's Unclaimed Property Fund in the name of the
12 Aggrieved Employee.

13 4.4. The payment of the disbursements described in this Agreement shall not obligate
14 Defendant to confer any additional benefits or make any additional payments to any
15 Aggrieved Employee (such as 401(k) contributions or bonuses) beyond those specified in
16 this Agreement.

17 **5. RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the entire
18 Settlement Amount, Plaintiff and PAGA Counsel will release claims against all Released Parties as
19 follows:

20 5.1. Plaintiff's Release.

21 5.1.1. Scope of Plaintiff's Release. In exchange for the Settlement Amount and the
22 consideration set forth within the separate "Individual Settlement Agreement and
23 Release" executed simultaneously herewith, Plaintiff and her respective former and
24 present spouses, representatives, agents, attorneys (including PAGA Counsel),
25 heirs, administrators, successors, and assigns, generally release and discharge
26 Released Parties from all claims, transactions, or occurrences that have occurred up
27 to the date of Plaintiff's execution of this Agreement including but not limited to all
28 claims that were or reasonably could have been alleged based upon the facts

1 contained in the Complaint and the PAGA Notice (“Plaintiff’s Release”).
2 Plaintiff’s Release does not extend to any claims or actions to enforce this
3 Agreement, or to any claims for vested benefits, unemployment benefits, disability
4 benefits, social security benefits, workers’ compensation benefits that arose at any
5 time. Plaintiff acknowledges that Plaintiff may discover facts or law different from,
6 or in addition to, the facts or law that Plaintiff now knows or believes to be true but
7 agrees, nonetheless, that Plaintiff’s Release shall be and remain effective in all
8 respects, notwithstanding such different or additional facts or Plaintiff’s discovery
9 of them.

10 5.1.2. Plaintiff’s Waiver of Rights Under California Civil Code § 1542. For purposes of
11 Plaintiff’s Release, Plaintiff expressly waives and relinquishes the provisions,
12 rights, and benefits, if any, of Section 1542 of the California Civil Code, which
13 reads:

14 **A general release does not extend to claims that the creditor or**
15 **releasing party does not know or suspect to exist in his or her favor**
16 **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.

17 5.2. Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on
18 behalf of themselves and their respective former and present representatives, agents,
19 attorneys, heirs, administrators, successors, and assigns, the Released Parties from all
20 claims for PAGA penalties that were alleged, or reasonably could have been alleged, based
21 on the facts stated in the Complaint and the PAGA Notice.

22 5.3. Release by PAGA Counsel: PAGA Counsel releases on behalf of itself and its present and
23 former attorneys, employees, agents, successors and assigns the Released Parties from all
24 claims for PAGA Fees incurred in connection with the Complaint and the facts stated in
25 the Complaint and the PAGA Notice.

26 **6. MOTION FOR APPROVAL OF SETTLEMENT**. The Parties agree to jointly prepare and
27 file an application or motion for approval of this Settlement.

28 6.1. Responsibilities of the Parties’ Counsel. PAGA Counsel and Defense Counsel will

1 expeditiously finalize and file an application or motion for approval of this Settlement no
2 later than thirty (30) days after the full execution of this Agreement and, if necessary,
3 obtain a prompt hearing date for the motion and appear at such hearing to advocate in favor
4 of the motion.

5 6.2. Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or
6 motion for approval of this Settlement and/or the supporting declarations and documents,
7 PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the
8 Parties by meeting in person or by telephone, and in good faith, to resolve the
9 disagreement. If the Court does not grant the motion for approval of this Settlement or
10 conditions its approval on any material change to this Agreement, PAGA Counsel and
11 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in
12 person or by telephone, and in good faith, to modify the Agreement and otherwise resolve
13 the Court's concerns.

14 **7. CONTINUING JURISDICTION AND WAIVER OF RIGHT TO APPEAL.**

15 7.1. Continuing Jurisdiction of the Court. The Parties agree that, after entry of the Judgment,
16 the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
17 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
18 administration matters, and (iii) addressing such post-Judgment matters as are permitted by
19 law.

20 7.2. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
21 conditions of this Agreement, the Parties and their respective counsel waive all rights to
22 appeal from the Judgment, including all rights to post-judgment and appellate proceedings,
23 the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and
24 appeals. The waiver of appeal does not include any waiver of the right to oppose such
25 motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to
26 perform under this Agreement will be suspended until such time as the appeal is finally
27 resolved and the Judgment becomes final, except as to matters that do not affect the
28 amount of the Settlement Amount.

1 **8. ADDITIONAL PROVISIONS.**

2 8.1. No Admission of Liability or Representative Manageability for Other Purposes. This
3 Agreement represents a compromise and settlement of highly disputed claims. Nothing in
4 this Agreement is intended or should be construed as an admission by Defendant that any
5 of the allegations in the Complaint have merit or that Defendant has any liability for any
6 claims asserted, nor should it be intended or construed as an admission by Plaintiff that
7 Defendant's defenses in the Action have merit. The Parties agree that representative
8 treatment is for purposes of this Settlement only. If for any reason the Court does not
9 approve this Settlement, Defendant reserves all available defenses to the claims in the
10 Action, and Plaintiff reserves the right to contest Defendant's defenses. The Settlement,
11 this Agreement and the Parties' willingness to settle the Action will have no bearing upon,
12 and will not be admissible in connection with, any litigation (except for proceedings to
13 enforce or effectuate the Settlement and this Agreement).

14 8.2. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
15 shall constitute the entire agreement between the Parties relating to the settlement of the
16 PAGA claims set forth in the Complaint and PAGA Notice, superseding any and all oral
17 representations, warranties, covenants, or inducements made to or by any Party.

18 8.3. Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and
19 represent that they are authorized by Plaintiff and Defendant, respectively, to take all
20 appropriate action required or permitted to be taken by such Parties pursuant to this
21 Agreement to effectuate its terms, and to execute any other documents reasonably required
22 to effectuate the terms of this Agreement including any amendments to this Agreement.

23 8.4. Cooperation. The Parties and their counsel will cooperate with each other and use their
24 best efforts, in good faith, to implement the Settlement by, among other things, modifying
25 the Settlement Agreement, submitting supplemental evidence and supplementing points
26 and authorities as requested by the Court. In the event the Parties are unable to agree upon
27 the form or content of any document necessary to implement the Settlement, or on any
28 modification of the Agreement that may become necessary to implement the Settlement,

the Parties will seek the assistance of a mediator and/or the Court for resolution.

8.5. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity, any portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.

8.6. No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

8.7. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by a written instrument signed by all Parties or their representatives, and approved by the Court.

8.8. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

8.9. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the state of California, without regard to conflict of law principles.

8.10. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in its drafting.

8.11. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during the pendency of the Action relating to the confidentiality of information shall survive the execution of this Agreement.

8.12. Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel in connection with evaluating the claims of Plaintiff and/or Aggrieved Employees, or in connection with effectuating the Settlement, may be used only with respect to this Settlement, and for no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after

Defendant disburses the Settlement Amount, Plaintiff shall destroy all paper and electronic versions of such information received from Defendant unless, prior to Defendant's payment of all Settlement Funds, Defendant makes a written request to PAGA Counsel for the return, rather than the destruction, of such information.

8.13. 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.

8.14. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and addressed as follows:

To Plaintiff:

Charles A. Swartz
CORNMAN & SWARTZ
2601 Main Street, Suite 1300
Irvine, CA 92614

To Defendant:

Sandra K. Wootton
KUTAK ROCK LLP
777 South Figueroa Street, Suite 4550
Los Angeles, CA 90017-5800

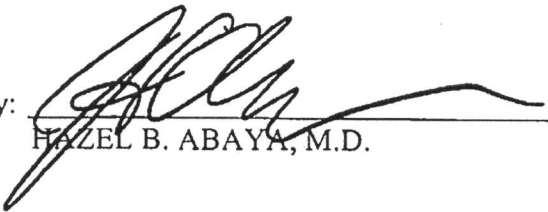
8.15. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

8.16. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement.

Signature Page Follows

1 **Plaintiff:**

2 Dated: 2-12-2024

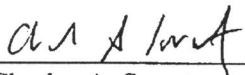
3 By: 

HAZEL B. ABAYA, M.D.

4 **Plaintiff's Counsel:**

CORNMAN & SWARTZ

5 Dated: 2-13-2024

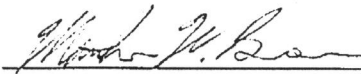
6 By: 

Charles A. Swartz

7 **Defendant:**

HOSPITALIST MEDICINE PHYSICIANS OF
CALIFORNIA, INC.

8 Dated: 2-12-2020

9 By: 

Print Name

10 Matt Greer

11 Signature

12 CFO

13 Title

14 **Defendant's Counsel:**

KUTAK ROCK LLP

15 Dated: 2-17-2020

16 By: 

Saundra K. Wootton
Marcia A. Washkuhn
Jason D. Stitt