

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff SABRINA AGRIFOGLIO
individually and on behalf of similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

SABRINA AGRIFOGLIO, individually and
on behalf of all other similarly situated
employees,

Plaintiff,

vs.

UROGYNECOLOGY CONSULTANTS
MEDICAL CORPORATION, a California
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 24CV002735

*Assigned for All Purposes to Hon. Jill H. Talley,
Department 23*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION TO APPROVE PRIVATE
ATTORNEYS GENERAL ACT SETTLEMENT**

Reservation No. A-02735-001

Date: November 15, 2024

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill H. Talley

Filed: February 14, 2024

Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on November 15, 2024, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard in Department 23 of the above-entitled Court, Plaintiff Sabrina Agrifoglio
4 (“Plaintiff”) will, and hereby does, move for entry of an Order for the following:

- 5 1. Finding that Plaintiff exhausted administrative remedies under the Private Attorneys General
6 Act (“PAGA”) and, as such, was authorized to enter into this settlement on behalf of the
7 Labor and Workforce Development Agency;
- 8 2. Approving the \$35,000 PAGA Settlement, which is incorporated by reference as if stated
9 here in full;
- 10 3. Approving the application for payment to Plaintiff’s Counsel of reasonable costs in the
11 amount of \$2,951.76;
- 12 4. Approving the appointment of ILYM Group, Inc. as the Settlement Administrator and for
13 payment to ILYM Group, Inc., for administering said settlement in the amount of \$2,950;
- 14 5. Approving the application for payment to Plaintiff’s Counsel of reasonable attorney’s fees of
15 35% of the Gross Settlement Amount;
- 16 6. Approving as to form and content the proposed Notice of Settlement, which provides
17 individuals within the scope of the Settlement information regarding the Settlement;
- 18 7. Approving the proposed procedures to notify, and deliver payment to, the individuals within
19 the scope of the Settlement;
- 20 8. Directing Defendant to report employment information, including social security numbers, to
21 the Settlement Administrator to administer the settlement proceeds;
- 22 9. Directing that any amount from settlement checks that were not cashed by the check cashing
23 deadline be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers
24 Rights under the doctrine of *cy pres*; and
- 25 10. Approving and adopting the Proposed Order and its implementation schedule, which is filed
26 herewith and incorporated by reference.

27 This Motion is being made pursuant to California Labor Code section 2699(l)(2) on the grounds
28 that the proposed PAGA settlement is fair, reasonable, and adequate and furthers the purpose behind the

1 asserted California Labor Code statutes in deterring non-compliance. As a result, the PAGA settlement
2 should be approved by the Court. This motion will be based on the notice of motion, memorandum of
3 points and authorities, the Declaration of Justin P. Rodriguez, the Declaration of Sabrina Agrifoglio,
4 exhibits, the record and files of this case, and any further oral or documentary evidence introduced at the
5 hearing of this motion.

6 **Pursuant to Local Rule 1.06(A), the court will make a tentative ruling on the merits of this matter**
7 **by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the**
8 **department may be downloaded off the court's website. If the party does not have online access,**
9 **they may call the dedicated phone number for the department as referenced in the local telephone**
10 **directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and**
11 **receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the**
12 **court day before the hearing, no hearing will be held.**

13 Dated: October 23, 2024

Shimoda & Rodriguez Law, PC

14 By: _____

15 Galen T. Shimoda
16 Justin P. Rodriguez
17 Renald Konini
18 Attorneys for Plaintiff
19
20
21
22
23
24
25
26
27
28

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff SABRINA AGRIFOGLIO
individually and on behalf of similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

SABRINA AGRIFOGLIO, individually and
on behalf of all other similarly situated
employees,

Plaintiff,

vs.

UROGYNECOLOGY CONSULTANTS
MEDICAL CORPORATION, a California
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 24CV002735

*Assigned for All Purposes to Hon. Jill H. Talley,
Department 23*

**MEMORANDUM OF POINTS & AUTHORITIES
IN SUPPORT OF PLAINTIFF'S MOTION TO
APPROVE PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT**

Reservation No. A-02735-001

Date: November 15, 2024

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill H. Talley

Filed: February 14, 2024

Trial Date: None Set

TABLE OF CONTENTS

I.	Introduction and Opening Summary of Argument	1
II.	Procedural and Litigation History.....	2
III.	Investigation and Discovery Conducted	2
IV.	Negotiation and Proposed Settlement.....	3
	a. Plaintiff and Defendant Engaged in Extensive Arm's Length Negotiations	3
	b. The Terms of the Agreement	3
	c. Allocation of Settlement Funds	5
V.	The Agreement Should Be Approved As Plaintiff Met All Statutory Requirements For Proceeding With The PAGA Claim And The Agreement Is Fair, Reasonable, And Adequate	6
	a. Plaintiff has Met All Statutory Requirements For Proceeding With A PAGA Claim	7
	b. The Terms of The Settlement Are Fair, Reasonable, and Adequate	7
	i. The Agreement is a Result of Extensive, Non-Collusive Arm's Length Negotiations Between the Parties	8
	ii. The Extent of Investigation and Discovery Completed Provided Ample Information to Enter into an Informed and Reasonable Settlement	8
	iii. Plaintiff's Counsel is Experienced in Similar Litigation	8
	iv. The Settlement is Fair and Reasonable Based on the Strength of Plaintiff's Case and the Risks and Costs of Further Litigation	9
	v. The Proposed Settlement is a Reasonable Compromise of Claims	10
	vi. Plaintiff's Individual Settlement Agreement Reasonably Compensates Her In Exchange For A General Release Of Her Individual Claims And Objective Criteria Demonstrates That No Improper Preference Was Given To the Individual Claims Over The PAGA Claims In Resolving The Action	11
VI.	The Amounts Requested for Attorney's Fees And Costs And Settlement Administrator Costs Are Reasonable And Should Be Approved.....	11
VII.	Conclusion	14

1 **TABLE OF AUTHORITIES**

2 **CALIFORNIA CASES**

3 *Arias v. Superior Ct.*, 46 Cal.4th 969 (2009) 4

4 *Children’s Hosp. and Med. Ctr. v. Bonta*, 97 Cal.App.4th 740 (2002) 13

5 *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794 (1996) 8, 12

6 *In re Microsoft I-V Cases*, 135 Cal.App.4th 706 (2006) 5

7 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008) 11

8 *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480 (2016) 12

9 *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56 (2021) 6, 7

10 *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399 (2010) 10

11 *Mut. Life Ins. Co. v. City of Los Angeles*, 50 Cal.3d 402 (1990) 5

12 *Neary v. Regents of Univ. of Cal.*, 3 Cal.4th 273 (1992) 8

13 *Serrano v. Priest*, 20 Cal.3d 25 (1977) 11

14 *Syers Props. III, Inc. v. Rankin*, 226 Cal.App.4th 691 (2014) 13

15 *Wackeen v. Malis*, 97 Cal.App.4th 429 (1992) 5

16 **CALIFORNIA STATUTES AND OTHER AUTHORITIES**

17 Cal. Lab. Code § 2699 5, 6, 7

18 Cal. Lab. Code § 2699.3 6

19 Newberg on Class Actions, § 14.03 (3rd Ed.), 1992 12

20 **FEDERAL CASES**

21 *Abrams v. Lightolier, Inc.*, 50 F.3d 1204 (3d Cir. 1995) 13

22 *Birch v. Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 12

23 *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980) 11

24 *Boyd v. Bechtel Corp.*, 485 F.Supp. 610 (N.D. Cal. 1979) 8

25 *Bratcher v. Bray-Doyle Indep. Sch. Dist. No. 42*, 8 F.3d 722 (10th Cir. 1993) 14

26 *Chamberlain v. Baker Hughes, a GE Co., LLC*, 2020 WL 4350207 (E.D. Cal. 2020) 6, 8

27 *Chavez et al. v. Petrissans et al.*, USDC Eastern District, Case No. 1:08-cv-00122 14

28 *Chem. Bank v. City of Seattle (In re Wash. Pub. Power Supply Sys. Sec. Litig.)*,

1	19 F.3d 1291 (9th Cir. 1994)	13
2	<i>Chu v. Wells Fargo Investments, LLC</i> , 2011 WL 672645 (N.D. Cal. 2011)	10
3	<i>City of Detroit v. Grinnell Corp.</i> , 495 F.2d 448 (2d Cir. 1974).....	10
4	<i>Davis v. Cox Commc 'ns California, LLC</i> , 2017 U.S. Dist. LEXIS 63514 (S.D. Cal. 2017).....	9
5	<i>Franco v. Ruiz Food Prod., Inc.</i> , 2012 WL 5941801 (E.D. Cal. 2012).....	10
6	<i>Garcia v. Gordon Trucking, Inc.</i> , 2012 U.S. Dist. LEXIS 160052 (E.D. Cal. 2012)	9
7	<i>Gutilla v. Aerotek, Inc.</i> , 2017 U.S. Dist. LEXIS 41655 (E.D. Cal. 2017)	6
8	<i>Harris v. Marhoefer</i> , 24 F.3d 16 (9th Cir. 1994).....	13
9	<i>Hensley v. Eckerhart</i> , 461 U.S. 424 (1983)	13
10	<i>Hopson v. Hanesbrands Inc.</i> , 2009 U.S. Dist. LEXIS 33900 (N.D. Cal. 2009).....	9
11	<i>In re Synacor ERISA Litigation</i> , 516 F.3d 1095 (9th Cir. 2008)	8
12	<i>Jack v. Hartford Fire Ins. Co.</i> , 2011 U.S. Dist. LEXIS 118764 (S.D. Cal. 2011)	9
13	<i>Jennings v. Open Door Marketing, LLC</i> , 2018 WL 4773057 (N.D. Cal. 2018)	9
14	<i>Jordan v. NCI Group, Inc.</i> , 2018 WL 1409590 (C.D. Cal. 2018)	6
15	<i>Juarez v. Villafan</i> , 2017 U.S. Dist. LEXIS 137205 (E.D. Cal. 2017).....	6,
16	<i>Junkersfeld v. Med. Staffing Sols., Inc.</i> , 2022 WL 2318173 (E.D. Cal. 2022)	9
17	<i>Linney v. Cellular Alaska P'ship</i> , 151 F.3d 1234 (9th Cir. 1998)	10
18	<i>Martin v. Ameripride Servs.</i> , 2011 U.S. Dist. LEXIS 61796 (S.D. Cal. 2011)	12
19	<i>Mills v. Electric Auto-Lite Co.</i> , 396 U.S. 375 (1970)	11
20	<i>Moore v. Fitness Int'l, LLC</i> , 2014 U.S. Dist. LEXIS 8358 (S.D. Cal. 2014).....	9
21	<i>Ochoa-Hernandez v. Cjaders Foods, Inc.</i> , 2010 WL 1340777 (N.D. Cal. 2010)	4
22	<i>O'Connor v. Uber Technologies, Inc.</i> , 201 F.Supp.3d 1110 (N.D. Cal. 2016)	6
23	<i>Patel v. Nike Retail Services, Inc.</i> , 2019 WL 2029061 (N.D. Cal. 2019).....	6, 14
24	<i>Paul, Johnson, Alston & Hunt v. Graulity</i> , 886 F.2d 268 (9th Cir. 1989)	12
25	<i>Ramirez v. Benito Valley Farms, LLC</i> , 2017 U.S. Dist. LEXIS 137272 (N.D. Cal. 2017)	6,
26	<i>Rincon v. W. Coast Tomato Growers, LLC</i> , 2018 U.S. Dist. LEXIS 22886 (S.D. Cal. 2018).....	6
27	<i>Rippee v. Boston Mkt. Corp.</i> , USDC Southern District, Case No. 05cv1359 BTM.....	12
28	<i>Ruch v. AM Retail Grp., Inc.</i> , 2016 WL 5462451 (N.D. Cal. 2016)	9

1	<i>Salazar v. Sysco Cent. Cal., Inc.</i> , 2017 U.S. Dist. LEXIS 14971 (E.D. Cal. 2017)	6
2	<i>Singer v. Becton Dickenson and Co.</i> , 2010 U.S. Dist. LEXIS 53416 (S.D. Cal. 2010)	9
3	<i>Smith v. H.F.D. No. 55, Inc.</i> , 2018 U.S. Dist. LEXIS 67192 (E.D. Cal. 2018)	6
4	<i>Syed v. M-I, L.L.C.</i> , 2017 U.S. Dist. LEXIS 24880 (E.D. Cal. 2017)	9
5	<i>United Steelworkers of Am. v. Phelps Dodge Corp.</i> , 896 F.2d 403 (9th Cir. 1990)	13
6	<i>Vincent v. Hughes Air West, Inc.</i> , 557 F.2d 759 (9th Cir. 1977)	11
7	<i>Williams v. MGM-Pathe Communications Co.</i> , 129 F.3d 1026 (9th Cir. 1977)	13

I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT

Plaintiff Sabrina Agrifoglio (“Plaintiff”) seeks approval of a non-reversionary Private Attorneys General Act (“PAGA”) Settlement in the gross amount of \$35,000. *See generally* Exhibit A (Proposed PAGA Settlement [“Agreement”]). Plaintiff brought the PAGA claim on behalf of the Labor and Workforce Development Agency (“LWDA”) and Aggrieved Employees who worked for Defendant Urogynecology Consultants Medical Corporation, (“Defendant”) (Plaintiff and Defendant sometimes collectively referred to as the “Parties”). *See generally* Exhibit B (Plaintiff’s Operative Complaint). There are approximately 39 Aggrieved Employees.

Plaintiff has alleged that Defendant 1) failed to pay overtime wages, 2) failed to pay minimum wages, 3) failed to provide meal periods or pay premiums in lieu thereof, 4) failed to provide rest periods or pay premiums in lieu thereof, 5) failed to provide accurate wage statements, 6) failed to pay final wages, 7) failed to pay reimbursements for expenses, 8) violated Labor Code sections 558 and 558.1 regarding provisions regulating hours and days of work in any Industrial Welfare Commission Order, 9) failed to maintain accurate records, and 10) failed to provide sick leave. *See generally* Exhibit B; *see also* Declaration of Justin P. Rodriguez (“Decl. Rodriguez”), ¶¶ 3, 10-11. Defendant has denied all of Plaintiff’s allegations and any liability or wrongdoing of any kind. *See* Decl. Rodriguez, ¶ 6. However, subject to Court approval, the Parties have been able to compromise and settle all asserted claims as a result of extensive investigations, document and data exchanges, and extended negotiations. *See* Exhibit A. Plaintiff and Plaintiff’s counsel believe the proposed Agreement is fair, reasonable, and adequate based on the investigations, informal discovery, employee data exchanges, negotiations, and a detailed knowledge of the issues in this case. *See* Decl. Rodriguez, ¶¶ 7-11; Declaration of Sabrina Agrifoglio (“Decl. Agrifoglio”) ¶ 10. The Agreement was entered into in good faith by the Parties to resolve heavily contested claims and guarantees a reasonable recovery for Aggrieved Employees and the LWDA. Accordingly, Plaintiff requests that the Court: (1) make a finding that Plaintiff has exhausted all administrative remedies and that Plaintiff is authorized to enter into the proposed Agreement on behalf of the LWDA; (2) approve the proposed Agreement as fair, reasonable, and adequate; (3) set dates for and direct distribution of payment and the Notice of Settlement (Exhibit E) to Aggrieved

1 Employees affected by the settlement as set forth in the Agreement and (4) adopt the implementation
2 schedule contained in the proposed order.

3 **II. PROCEDURAL AND LITIGATION HISTORY**

4 On December 8, 2023, Plaintiff gave written notice to the LWDA and Defendant providing facts
5 and the legal basis for all claims asserted in the Complaint and the claims that are being resolved under
6 the Agreement. *See* Exhibit C (Plaintiff's Ltr. to the Labor and Workforce Development Agency).
7 Plaintiff also submitted the \$75.00 filing fee. *See* Decl. Rodriguez ¶ 4. The December 8, 2023, notice
8 was also sent via certified mail to Defendant on the same day. *See* Exhibit C. The LWDA did not
9 provide any response to Plaintiff's notice correspondence within the statutorily required time frame and,
10 as a result, Plaintiff became authorized to act as a Private Attorney General for the asserted claims. *See*
11 Decl. Rodriguez ¶ 4. Plaintiff filed this lawsuit on February 14, 2024, and uploaded a copy of the filed
12 Complaint to the LWDA. *See* Decl. Rodriguez ¶ 4. No trial date has been set in this matter. *See id.*

13 **III. INVESTIGATION AND DISCOVERY CONDUCTED**

14 Plaintiff thoroughly investigated the merits of the claims and potential damages for such claims.
15 *See id.* at ¶¶ 4, 7-11; Decl. Agrifoglio ¶¶ 5-7, 10. Plaintiff worked during the time all of Defendant's
16 policies and practices at issue in the Complaint were in effect and provided information regarding these
17 policies and practices, enabling pre-filing investigations to take place. *See* Decl. Agrifoglio ¶¶ 2-3, 5-7;
18 Decl. Rodriguez ¶ 8. The Parties engaged in informal discovery and exchange of documents, including
19 a representative sampling of employee data, such as timecards, paystubs, payroll data and relevant
20 policies for the entirety of the statute of limitations applicable to the asserted claims. The discovery
21 covered all aspects of the asserted claims, including merits issues, damages, the scope and configuration
22 of Aggrieved Employees, the content and implementation of the wage and hour policies at issue, issues
23 relating to manageability concerns at trial, among other relevant areas. *See* Decl. Rodriguez ¶¶ 7-8. The
24 information allowed Plaintiff to determine the extent and frequency of any violations in accordance with
25 Plaintiff's contentions and create an accurate damages model to assess the reasonableness of any
26 settlement. *See id.* at ¶¶ 8, 10-11.

IV. NEGOTIATION AND PROPOSED SETTLEMENT

a. Plaintiff and Defendant Engaged in Extensive Arm's Length Negotiations

The final settlement occurred only after extended, arm's length negotiations. Over the course of approximately nine (9) months, Plaintiff has been investigating the claims and discussing with Defendant's counsel the merits of the claims and issues present in this case. *See id.* at ¶¶ 7-11. The Parties exchanged substantial amounts of information and legal analysis in connection with these discussions. *See id.* It was only after these extended discussions, that the Parties were able resolve all claims and enter into the Agreement. *See id.* at ¶ 9.

b. The Terms of the Agreement

1. The scope of Aggrieved Employees covered under the Agreement includes all non-exempt employees who worked or continue to work for Defendant in California at any time between December 8, 2022, up to either (1) the Final Approval Date, or (2) August 13, 2024, whichever is earlier. *See Exhibit A, ¶ 1.2.* There are approximately 39 Aggrieved Employees. *See id.*

2. Defendant will pay the Gross Settlement Amount of \$35,000. *See id.* at ¶ 5.1. No portion of the Gross Settlement Amount will revert to Defendant. *See id.* at ¶ 5.4.

3. Subject to Court approval, the Parties have selected ILYM Group, Inc. to act as the Settlement Administrator, who has provided a maximum cost estimate of \$2,950. *See Exhibit D (ILYM Group, Inc. Quote); Exhibit A, ¶ 1.33; Decl. Rodriguez, ¶ 25.*

4. The Parties agree that up to Thirty Five Percent (35%) of the Gross Settlement Amount (\$12,250) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendant will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2. Additionally, the Parties agree that Plaintiff will also be entitled to the actual litigation costs as approved by the Court in an amount not to exceed \$5,000. *See id.* At the time this motion was filed, the estimated total costs incurred and that will be incurred in the future as a result of the litigation and implementing the terms of the Agreement are \$2,951.76. *See Decl. Rodriguez ¶ 24; Exhibit G (Plaintiff's Itemized Costs).*

5. Any allocated amounts under the Agreement for Settlement Administrator Costs and attorney's fees and costs that are not ultimately awarded by the Court will remain part of the Net

1 Settlement Amount and be paid out to the LWDA and Aggrieved Employees as set forth in the
2 Agreement. *See* Exhibit A, ¶¶ 1.11, 1.13, 1.17, 5.2-5.3, 5.7. These amounts will be paid from the Gross
3 Settlement Amount, not in addition to the Gross Settlement Amount. *See id.* at ¶¶ 1.13, 1.17, 5.1-5.3,
4 5.7.

5 6. Any and all claims for civil penalties under the PAGA that were asserted in Plaintiff's
6 notice letter to the LWDA and any additional claims for civil penalties under the PAGA that could have
7 been brought based on the facts alleged therein will be deemed fully, finally, and forever released
8 against the Released Parties. *See* Exhibit A, ¶¶ 1.16, 1.23-1.24, 6.1.

9 7. The Settlement Administrator will perform searches to locate Aggrieved Employees
10 based on the last contact information in Defendant's possession. *See id.* at ¶¶ 7.2, 7.5-7.7. The searches
11 will include reference to the U.S. Postal Service's National Change of Address Database and, for any
12 notice returned as undeliverable, skip tracing using the individual's social security number and other
13 pertinent identifying information. *See id.* Although not required to provide a notice of settlement to
14 Aggrieved Employees in connection with the Individual Settlement Amount, the Agreement provides
15 that Aggrieved Employees will receive a notice giving them information concerning all material terms
16 of the settlement. *See id.* at ¶ 7.5; Exhibit E; *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL
17 1340777, *5 (N.D. Cal. 2010) ("Unnamed employees need not be given notice of the PAGA claim, nor
18 do they have the ability to opt-out of the representative PAGA claim"); *see also Arias v. Superior Ct.*, 46
19 Cal.4th 969, 984-988 (2009) (rejecting a defendant's due process argument that aggrieved employees
20 must be given notice similar to class members in class actions).

21 8. For any portion of the Net Settlement Amount allocated to Aggrieved Employees that is
22 not claimed by them by cashing their respective settlement checks within 180 days of issuance, the
23 remaining amount shall be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for
24 Workers' Rights under the doctrine of *cy pres*. *See* Exhibit A, at ¶ 5.4. The designated beneficiaries
25 clearly promote the law consistent with the objectives and purposes underlying the lawsuit, as they are
26 non-profits aimed at assisting employees with wage and hour claims who cannot afford legal
27 representation, including providing representation for employees in wage claims before the California
28

Labor Commissioner. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718, 720, 722-724 (2006); *see also* Decl. Rodriguez, ¶¶ 28-37.

9. Upon the Effective Date, the Released PAGA Claims and the Action will be dismissed with prejudice as to all Parties and all causes of action subject to the Court’s continuing jurisdiction to monitor and enforce the terms of this approved Agreement pursuant to California Civil Procedure Code section 664.6. *See* Exhibit A, ¶ 9.1; *see also* *Wackeen v. Malis*, 97 Cal.App.4th 429, 439 (1992) (“We construe the second sentence of section 664.6 to mean, and we so hold, that even though a settlement may call for a case to be dismissed, or the plaintiff may dismiss the suit of its own accord, the court may nevertheless retain jurisdiction to enforce the terms of the settlement, until such time as all of its terms have been performed by the parties, if the parties have requested this specific retention of jurisdiction”).¹

c. Allocation of Settlement Funds

A Net Settlement Amount will be determined by subtracting from the Gross Settlement Amount any attorneys’ fees and costs and Settlement Administrator Costs awarded by the Court. *See* Exhibit A, ¶¶ 1.13, 5.7. The Net Settlement Amount shall be divided between the PAGA Payment and payment to Aggrieved Employees. The PAGA Payment to the LWDA will be 75% of the Net Settlement Amount. *See* Cal. Lab. Code § 2699(i).² 25% of the Net Settlement Amount will be paid to Aggrieved Employees. *See id.* Each Individual Settlement Amount shall be determined by taking the Qualifying Pay Periods for the individual Aggrieved Employee and dividing that by the Qualifying Pay Periods for all Aggrieved Employees and multiplying that fraction by the 25% share of the Net Settlement Amount. *See* Exhibit A, ¶¶ 1.2, 1.11, 1.13, 5.7.

¹ Although California Rules of Court 3.769 & 3.770 state, with respect to class actions, that a judgment may not simultaneously include provision for dismissal of a case in connection with class settlement approval proceedings, the dismissal prohibition has not been held to apply to PAGA settlement approval proceedings. Rules 3.769 and 3.770 were amended in 2009 to incorporate the dismissal prohibition. As PAGA has been in effect since 2004, excluding reference to PAGA demonstrates an intent to exclude PAGA for the dismissal prohibition in settlement approval proceedings. *See* *Mut. Life Ins. Co. v. City of Los Angeles*, 50 Cal. 3d 402, 410 (1990).

² Although recently amended to require a different allocation, the amendments specifically state they are applicable to cases filed after June 19, 2024. *See* Cal. Lab. Code § 2699(v)(1). Because Plaintiff’s notice predates this, the original allocations set forth in the statute are utilized here and all references to the PAGA will be based on the statutory numbering applicable prior to the July 1, 2024, amendment.

1 **V. THE AGREEMENT SHOULD BE APPROVED AS PLAINTIFF MET ALL**
2 **STATUTORY REQUIREMENTS FOR PROCEEDING WITH THE PAGA CLAIM AND**
3 **THE AGREEMENT IS FAIR, REASONABLE, AND ADEQUATE**

4 A PAGA settlement is not effective unless the statutory requirements for becoming an authorized
5 representative of the LWDA have been complied with and the Court has reviewed and approved the
6 terms of the PAGA settlement. *See* Cal. Lab. Code §§ 2699(1)(2), 2699.3(a), (c). The Court has broad
7 discretion in making the decision to approve or reject a settlement for civil penalties as the statutory
8 scheme authorizes the Court to determine whether, in certain circumstances, penalties should be
9 assessed and, if assessed, the appropriate amount of penalties based on the facts and circumstances of
10 the case. *See id.* at § 2699(e)(1)-(2). In evaluating a PAGA settlement, the Court must determine
11 “whether it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law
12 violations, deter future ones, and to maximize enforcement of state labor laws.” *Moniz v. Adecco USA,*
13 *Inc.*, 72 Cal.App.5th 56, 77 (2021). In setting this standard, the *Moniz* Court invoked the same
14 established framework Courts use to evaluate whether class action settlements are fair, reasonable, and
15 adequate. *See id.*; *see also Chamberlain v. Baker Hughes, a GE Co., LLC*, 2020 WL 4350207, *4 n.5
16 (E.D. Cal. 2020) (expressly incorporating the multi-factor test used in class cases); *O’Connor v. Uber*
17 *Technologies, Inc.*, 201 F.Supp.3d 1110, 1132-1134 (N.D. Cal. 2016) (evaluating the settlement by
18 comparing the amount paid in relation to the likely available damages and risks of litigation); *Jordan v.*
19 *NCI Group, Inc.*, 2018 WL 1409590, *1–*2 (C.D. Cal. 2018) (same). This framework has been used
20 many times over by multiple Courts. *See, e.g., Salazar v. Sysco Cent. Cal., Inc.*, 2017 U.S. Dist. LEXIS
21 14971, *6, n.4-5 (E.D. Cal. 2017); *Juarez v. Villafan*, 2017 U.S. Dist. LEXIS 137205, *5 n.4 (E.D. Cal.
22 2017); *Ramirez v. Benito Valley Farms, LLC*, 2017 U.S. Dist. LEXIS 137272, *8-9 (N.D. Cal. 2017);
23 *Gutilla v. Aerotek, Inc.*, 2017 U.S. Dist. LEXIS 41655, *7, n.4 (E.D. Cal. 2017); *Smith v. H.F.D. No. 55,*
24 *Inc.*, 2018 U.S. Dist. LEXIS 67192, *6 (E.D. Cal. 2018); *Rincon v. W. Coast Tomato Growers, LLC*,
25 2018 U.S. Dist. LEXIS 22886, *6 (S.D. Cal. 2018); *Patel v. Nike Retail Services, Inc.*, 2019 WL
26 2029061, *2 (N.D. Cal. 2019). An important difference in the analysis, however, is that the evaluation
27 should focus on the amount of the settlement as a whole rather than any individual aggrieved
28 employee’s share because a PAGA lawsuit is fundamentally a law enforcement action where the “relief

1 is designed to protect the public[,] not to benefit private parties.” *See Moniz*, 72 Cal.App.5th at 74
2 (internal quotation and citations omitted).

3 **a. Plaintiff has Met All Statutory Requirements For Proceeding With A PAGA Claim**

4 An aggrieved employee must give written notice of the facts, theories, and statutes supporting
5 the violations to the LWDA by online filing and by certified mail to the employer as well as pay a filing
6 fee of \$75.00. *See* Cal. Lab. Code §§ 2699.3(a)(1)(A)-(B), (c)(1)(A)-(B). An “aggrieved employee”
7 means any person who was employed by the alleged violator and against whom one or more of the
8 alleged violations was committed.” *id.* at § 2699(c). If the LWDA does not provide notice of its intent
9 to investigate within 65 calendar days of the notice, the aggrieved employee may commence a civil
10 action. *See id.* at §§ 2699.3(a)(2)(A), 2699.5. For alleged violations of the Labor Code sections not
11 enumerated in section 2699.5, an aggrieved employee may commence a civil action if the employer has
12 not cured the alleged violations within 33 calendar days of the notice. *See id.* at § 2699.3(c)(2)(A). An
13 aggrieved employee must also submit a copy of any proposed PAGA settlement to the LWDA at the
14 same time the agreement is submitted to Court. *See id.* at § 2699(l)(2).

15 As set forth above, Plaintiff complied with all statutory requirements to commence a civil action.
16 *See* Decl. Rodriguez ¶ 4; Exhibit C. The notice letter to the LWDA sets forth all claims and theories of
17 liability stated in the Complaint as well as supporting facts. *See* Exhibit C. Plaintiff also paid the
18 \$75.00 filing fee. *See* Decl. Rodriguez ¶ 4. As the LWDA did not provide any notice of its intent to
19 investigate within the required time frame and no cure under the statute took place, Plaintiff is
20 authorized resolve those claims contained in the notice letter(s) and the operative Complaint. *See id.*;
21 Exhibit B; Exhibit C. Furthermore, Plaintiff has provided a copy of the Agreement *and* this entire
22 motion for approval to the LWDA for its consideration at the same time this motion was filed. *See*
23 Rodriguez ¶ 26; Exhibit F (Proof of Submission of Proposed Settlement Agreement to LWDA).

24 **b. The Terms of The Settlement Are Fair, Reasonable, and Adequate**

25 Factors to consider in determining whether the PAGA Settlement Agreement is fair, reasonable,
26 and adequate include the strength of the case, the risk, expense, complexity and likely duration of further
27 litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the
28 extent of discovery completed and the stage of the proceedings, and the experience and views of

counsel. *See Chamberlain*, 2020 WL 4350207, *4 n.5; *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). However, this Court should begin its analysis with a presumption that the proposed settlement is fair. “A presumption of fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation” *Dunk*, 48 Cal.App.4th at 1802. Indeed, the law favors settlement of lawsuits, particularly complex litigation cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v. Regents of Univ. of Cal.*, 3 Cal.4th 273, 277-81 (1992); *In re Synacor ERISA Litigation*, 516 F.3d 1095, 1101 (9th Cir. 2008);.

i. The Agreement is a Result of Extensive, Non-Collusive Arm’s Length Negotiations Between the Parties

Settlement of the PAGA claims was reached only after substantial litigation and extensive arm’s length negotiations lasting nearly nine (9) months. *See Decl. Rodriguez*, ¶¶ 4, 7-11. At all times, the negotiations were adversarial, although still professional in nature. *See id.*

ii. The Extent of Investigation and Discovery Completed Provided Ample Information to Enter into an Informed and Reasonable Settlement

The Parties were in possession of all necessary information during the negotiations. The Parties engaged in substantial informal discovery, which included all necessary components for evaluating the PAGA claims and creating an accurate damages model. *See id.* at ¶¶ 7-11. Plaintiff was in possession of this information prior to calculating any damages in this case. *See id.* As a result, Plaintiff was able to make a reasonable estimation of Defendant’s potential liability. *See id.* For these reasons, the settlement now before the Court was reached at a stage where “the parties certainly have a clear view of the strengths and weaknesses of their cases” sufficient to support the settlement. *See Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

iii. Plaintiff’s Counsel is Experienced in Similar Litigation

Plaintiff’s counsel have considerable experience in complex litigation such as class and PAGA actions. *See Decl. Rodriguez*, ¶¶ 14-20. Thus, Plaintiff’s counsel are qualified to evaluate the PAGA claims, the value of settlement versus moving forward with litigation, and viability of possible

1 affirmative defenses. Plaintiff's counsel believe that the Agreement is fair, reasonable, and adequate in
2 light of the risks associated with the claims, the uncertainties of complex litigation, and the secured
3 benefit to Aggrieved Employees and the LWDA that the Agreement provides. *See id.* at ¶ 12.

4 **iv. The Settlement is Fair and Reasonable Based on the Strength of Plaintiff's Case**
5 **and the Risks and Costs of Further Litigation**

6 Plaintiff's claims and the manageability of the litigation proceeding as a PAGA action were
7 heavily disputed by Defendant. *See Decl. Rodriguez*, ¶¶ 6, 10-11. Based on the records and facts of this
8 case, Plaintiff has secured a gross recovery of approximately 8% of the maximum value of the claims in
9 this matter and between 22% and 201% of the more realistic range of recovery. *See Decl. Rodriguez*, ¶¶
10 10-11. The \$35,000 Gross Settlement Amount is a reasonable compromise and exceeds approved
11 settlement ranges in other PAGA cases whether comparing either absolute numbers or as a percentage of
12 total available damages. *See Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, *8 n.2 (E.D.
13 Cal. 2022) (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v. Open*
14 *Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA claims
15 at 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016 WL
16 5462451, *7 (N.D. Cal. 2016) (approving \$10,000 PAGA settlement allocation where total PAGA
17 penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox*
18 *Commc 'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily approving
19 \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S. Dist. LEXIS
20 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award alone
21 amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal.
22 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*,
23 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000
24 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009)
25 (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist.
26 LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000
27 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated
28 value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, *7 (E.D. Cal. 2012)

(approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

v. The Proposed Settlement is a Reasonable Compromise of Claims

In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), the Court required additional information be presented in representative action settlements “to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399 (2010), clarified that *Kullar* does not require an illusory prediction of the outer reaches of exposure without taking into account the actual risks of litigation such as dispositive motions and trial. *Kullar* also does not require an explicit statement of the maximum amount to be recovered if Plaintiff prevailed on all the claims, provided there is a record that allows “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” *Id.* at 409.

Plaintiff has thoroughly set forth the realistic range of outcomes in this litigation as well as the data points relied upon in reaching these ranges. *See* Decl. Rodriguez ¶¶ 10-11. The record demonstrates that the compromises made by Plaintiff were reasonable and have resulted in a settlement with recovery percentage well within the range of what has been found to be sufficient in several other cases. *See, supra*, Section V.b.iv; *see also Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (“The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved”); *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974) (“In fact there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery”).

1 **c. Plaintiff's Individual Settlement Agreement Reasonably Compensates Her In Exchange**
2 **For A General Release Of Her Individual Claims And Objective Criteria Demonstrates**
3 **That No Improper Preference Was Given To the Individual Claims Over The PAGA**
4 **Claims In Resolving The Action**

5 Plaintiff has entered into a separate individual settlement agreement resolving her individual
6 claims for \$25,000 in exchange for a waiver of all her individuals claims, including a waiver of the
7 protections under Code of Civil Procedure section 1542. *See* Decl. Rodriguez ¶ 38; Decl. Agrifoglio ¶
8 9. The individual settlement was not contingent on Court approval of the PAGA settlement nor was it
9 contingent on Plaintiff's support of the Agreement. Plaintiff has already been paid under the individual
10 settlement. *See id.* Based on her payroll information and experience working for Defendants, Plaintiff's
11 individual damages were calculated to be \$98,772.64. *See* Decl. Rodriguez ¶ 38. Given the facts of the
12 individual claims, \$25,000 represents a reasonable compromise of Plaintiff's individual claims. In fact,
13 Depending on the extent of discretionary reductions to civil penalties under the PAGA that the Court
14 may have applied if Plaintiff was successful at trial, the compromise applied to Plaintiff's individual
15 claims is equal to or greater than the amount of compromise applied to the PAGA claims. *See id.* This
16 demonstrates that no preferential treatment was given to Plaintiff's individual claims over the PAGA
17 claims. *See id.*

18 **VI. THE AMOUNTS REQUESTED FOR ATTORNEY'S FEES AND COSTS AND**
19 **SETTLEMENT ADMINISTRATOR COSTS ARE REASONABLE AND SHOULD BE**
20 **APPROVED**

21 California state and federal courts have recognized that when a litigant's efforts create or
22 preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally
23 among all the beneficiaries to compensate those who created the fund. *See Boeing Co. v. Van Gemert*,
24 444 U.S. 472, 477-481 (1980) ("A lawyer who recovers a common fund for the benefit of persons other
25 than . . . his client is entitled to a reasonable attorney's fee from the fund as a whole."); *Vincent v.*
26 *Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375
27 (1970); *see also Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1
28 Cal.5th 480, 506 (2016); *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026, 1027 (9th Cir.
1977). Courts have approved use of a percentage of the fund to calculate reasonable attorney fee awards
where the amount of the settlement is certain or is an easily calculable sum of money. *See Dunk*, 48

1 Cal.App.4th at 1808. The Ninth Circuit has also held that the common fund doctrine applies when: (1)
2 the class of beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the
3 fee can be shifted with some exactitude to those benefitting. *See Paul, Johnson, Alston & Hunt v.*
4 *Graulty*, 886 F.2d 268, 271 (9th Cir. 1989). These criteria are “easily met” when “each member of a
5 represented group has an undisputed and mathematically ascertainable claim to part of a lump-sum
6 settlement recovered on his behalf.” *Id.* at 271 (citations omitted).

7 Although this litigation is under the PAGA and not a class action, the basis for a common fund
8 applies with equal force. The three (3) factors set forth in *Paul, Johnson, Alston & Hunt*, exist in this
9 case because there is a sufficiently identifiable class of beneficiaries (*e.g.* Aggrieved Employees and the
10 LWDA), the benefits can be accurately traced to the Agreement Plaintiff and Plaintiff counsel were able
11 to negotiate on behalf of the LWDA and Aggrieved Employees, and the fee can be shifted with
12 exactitude to those benefiting as the fee request is a specific, lump-sum of the common fund.

13 Historically, attorneys’ fee awards in common fund cases in general range from 20% to 50% of
14 the fund, depending on the circumstances of the case. *See Newberg on Class Actions*, (3rd Ed. 1992), §
15 14.03 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are
16 generally approved as reasonable in representative litigation settlements below \$10 million. *See Martin*
17 *v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011) (collecting cases); *Birch v.*
18 *Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a
19 \$16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern
20 District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class
21 action settlement). Plaintiff’s request of \$12,250 (35%) falls within these typical fee arrangements. *See*
22 *Decl. Rodriguez*, ¶¶ 21-23.

23 A lodestar-multiplier cross check validates the proposed fee. *See Laffitte v. Robert Half Internat.*
24 *Inc.*, 1 Cal.5th 480, 496, 504 (2016). Plaintiff’s counsel will have spent a combined 123.3 hours
25 litigating this action by the time the settlement is fully implemented and monitoring the settlement
26 through the complete distribution of all funds and reporting at compliance hearing(s) is done. *See Decl.*
27 *Rodriguez*, ¶ 22. Plaintiff’s counsel reasonably spent a substantial amount of time pursuing the ultimate
28 result obtained in this case. *See Hensley v. Eckerhart*, 461 U.S. 424, 431 (1983); Exhibit H (Plaintiff’s

1 Attorney's Fee Summary Chart); *Syers Props. III, Inc. v. Rankin*, 226 Cal. App. 4th 691, 699 (2014)
2 ("Because time records are not required under California law ... , there is no required level of detail that
3 counsel must achieve.") (internal quotations omitted). At Plaintiff's counsel's hourly rates, this equates
4 to a combined lodestar of approximately \$66,302.50. See Decl. Rodriguez, ¶ 22. The hourly rates used
5 by Plaintiff's counsel to calculate the lodestar have been judicially approved since 2022. See Decl.
6 Rodriguez, ¶ 23. Prior judicial determinations of an attorney's rates is satisfactory evidence that those
7 rates are reasonable, prevailing market rates. See *United Steelworkers of Am. v. Phelps Dodge Corp.*,
8 896 F.2d 403, 407 (9th Cir. 1990) ("rate determinations in other cases, particularly those setting a rate
9 for the plaintiffs' attorney, are satisfactory evidence of the prevailing market rate"); *Children's Hosp.*
10 *and Med. Ctr. v. Bonta*, 97 Cal.App.4th 740, 783 (2002) (noting rates were reasonable where they were
11 "within the range of reasonable rates charged by and judicially awarded comparable attorneys for
12 comparable work").

13 An award of \$12,250 for attorney's fees would result in a negative multiplier, representing only
14 18.5% of the total lodestar. Although appropriate attorney's fee award should include a multiplier to
15 account for the contingent nature and risk associated with fee, the fact that the attorney's fee award in
16 this case would result in a negative multiplier is further evidence of the reasonableness of the requested
17 fee. See *Chem. Bank v. City of Seattle (In re Wash. Pub. Power Supply Sys. Sec. Litig.)*, 19 F.3d 1291,
18 1299 (9th Cir. 1994).

19 Plaintiff's counsel seeks reimbursement of \$2,951.76 for the expenses they have and will
20 continue to incur while prosecuting this litigation through any compliance hearing(s). This is less than
21 the \$5,000 provided for in the Agreement. An itemization for these costs is being filed with this motion
22 as Exhibit G. All expenses were necessarily incurred to properly litigate this case. See *id.* The
23 appropriate analysis in determining whether particular costs are compensable is whether they are of the
24 type typically billed by attorneys to paying clients in the marketplace. *Harris v. Marhoefer*, 24 F.3d 16,
25 19 (9th Cir. 1994) ("Harris may recover as part of the award of attorney's fees those out-of pocket
26 expenses that 'would normally be charged to a fee paying client.'"); *Abrams v. Lightolier, Inc.*, 50 F.3d
27 1204, 1225 (3d Cir. 1995) (expenses recoverable if customary to bill clients for them); *Bratcher v.*
28 *Bray-Doyle Indep. Sch. Dist. No. 42*, 8 F.3d 722, 725-26 (10th Cir. 1993) (expenses reimbursable if

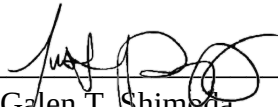
1 normally billed to client). The categories of expenses for which Plaintiff's counsel seek reimbursement
2 here are categories normally charged to hourly clients and, therefore, should be reimbursed out of the
3 common fund. See Decl. Rodriguez, ¶ 24. The \$2,950 in Settlement Administrator Costs is also within
4 ranges approved by Courts and should be approved in this case. See *Patel v. Nike Retail Servs., Inc.*,
5 2019 WL 2029061, *2 (N.D. Cal. 2019) (\$5,261 for settlement administrator's fees was not excessive
6 where PAGA group consisted of 40 employees); Exhibit D; Decl. Rodriguez, ¶ 25

7 **VII. CONCLUSION**

8 For all of the foregoing reasons, Plaintiff respectfully requests that this Court find that Plaintiff
9 has met all statutory requirements to commence a PAGA civil action; approve the Agreement, including
10 Plaintiff's Counsel's application for reasonable attorneys' fees and costs and Settlement Administrator
11 Costs; approve the Notice of Settlement and payment distribution procedures; and adopt the
12 implementation schedule identified in the proposed order, which is being filed concurrently herewith.

13 Dated: October 23, 2024

Shimoda & Rodriguez Law, PC

14
15 By: 
16 Galen T. Shimoda
17 Justin P. Rodriguez
18 Renald Konini
19 Attorneys for Plaintiff
20
21
22
23
24
25
26
27
28

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff SABRINA AGRIFOGLIO
individually and on behalf of similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

SABRINA AGRIFOGLIO, individually and
on behalf of all other similarly situated
employees,

Plaintiff,

vs.

UROGYNECOLOGY CONSULTANTS
MEDICAL CORPORATION, a California
Corporation; and DOES 1 to 100, inclusive,
Defendants.

Case No. 24CV002735

*Assigned for All Purposes to Hon. Jill H. Talley,
Department 23*

**DECLARATION OF JUSTIN P. RODRIGUEZ IN
SUPPORT OF PLAINTIFF'S MOTION TO
APPROVE PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT**

Reservation No. A-02735-001

Date: November 15, 2024

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill H. Talley

Filed: February 14, 2024

Trial Date: None Set

1 I, Justin P. Rodriguez, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of
3 California and an attorney of record for Plaintiff Sabrina Agrifoglio (“Plaintiff”) herein. I am making
4 this declaration on behalf of Plaintiff, and in support of Plaintiff’s Motion to Approve Private Attorneys
5 General Act Settlement. A true and correct copy of the Private Attorneys General Act Settlement is
6 being filed with this Motion as Exhibit A.

7 2. Pursuant to the Rule 2.99.05 of the Local Rules for the Superior Court of California,
8 County of Sacramento, I have reviewed the Court’s class action and PAGA settlement checklist and
9 believe I have prepared the moving papers in compliance with the checklist as well as the California
10 Rules of Court.

11 3. This case was brought asserting both individual and Private Attorneys General Act
12 (“PAGA”) claims for alleged violations of the California Labor Code. Plaintiff contends that
13 Defendant Urogynecology Consultants Medical Corporation (“Defendant”) failed to pay overtime
14 wages, failed to pay minimum wages, failed to provide meal periods or pay premiums in lieu thereof,
15 failed to provide rest periods or pay premiums in lieu thereof, failed to provide accurate wage
16 statements, failed to pay final wages, failed to pay reimbursements for expenses, violated Labor Code
17 sections 558 and 558.1 regarding provisions regulating hours and days of work in any Industrial
18 Welfare Commission Order, failed to maintain accurate records, and failed to provide sick leave. These
19 claims primarily stemmed from Plaintiff’s allegations that Defendant violated California law by 1) not
20 paying Plaintiff and Aggrieved Employees overtime for all hours worked in excess of eight (8) per day,
21 2) failing to pay double time for all hours worked in excess of twelve (12) per day, 3) regularly failing
22 to properly calculate the regular rate of pay for Plaintiff and Aggrieved Employees as Defendant did
23 not incorporate the value of bonuses into the regular rate of pay covering the time period the bonuses
24 were earned over, 4) failing to properly calculate the regular rate of pay for sick leave wages and meal
25 and rest period premiums, 5) failing to pay Plaintiff and Aggrieved Employees for off-the-clock work,
26 6) failing to authorize and permit Plaintiff and Aggrieved Employees to take meal and rest periods in a
27 timely manner, completely free from duty, 7) failing to provide Plaintiff and Aggrieved Employees
28 with a second meal period or third rest period for shifts of more than ten (10) hours, even where those

1 shifts were in excess of twelve (12) hours, 8) failing to pay Plaintiff and Aggrieved Employees meal
2 and/or rest period premiums for non-compliant meal and/or periods, 9) failing to reimburse Plaintiff
3 and Aggrieved Employees for the use of their personal cell phones for work purposes and for driving
4 their personal cars to pick up supplies, 10) failing to provide the appropriate amount of sick leave based
5 on actual hours worked, and (11) failing to provide accurate wage statements.

6 4. Plaintiff is the only named Plaintiff in this matter. From our initial investigations of
7 Plaintiff's claims and documents, we believed these claims had merit and could be maintained as a
8 PAGA action. We investigated whether there may be a sufficient number of employees for numerosity
9 in any class certification proceeding. It did not appear that there would be a substantial number of
10 employees during the applicable statute of limitations, so the claims were only asserted on an individual
11 and PAGA basis rather than also including putative class claims. Plaintiff filed the original complaint
12 on February 14, 2024. Prior to filing the Complaint, Plaintiff exhausted administrative remedies
13 through the Labor and Workforce Development Agency ("LWDA") in order to pursue penalties under
14 the PAGA. Plaintiff filed a notice with the LWDA on December 8, 2023, setting forth the facts and
15 theories of liability. A true and correct copy of the notice filed with the LWDA is being filed with this
16 Motion as Exhibit C. A copy of the notice was also sent to Defendant via certified mail and the \$75.00
17 filing fee was remitted to the LWDA at that time. There was no response by the LWDA regarding its
18 intent to investigate the claims alleged in Plaintiff's notice. As such, Plaintiff became authorized to
19 commence a civil action under the PAGA. A copy of the Complaint was uploaded to the LWDA after
20 we received a file stamped copy back from Court. A true and correct copy of Plaintiff's operative
21 Complaint is being filed with this Motion as Exhibit B. Currently, there is no trial date set in this
22 matter.

23 5. Because the settlement is a PAGA only settlement, no certification procedures have or
24 need to occur in the context of approving the Agreement pursuant to *Arias v. Superior Court*, 46
25 Cal.4th 969, 975 (2009) and California Labor Code section 2699(1)(2). The settlement notice being
26 provided to employees within the PAGA settlement identifies the scope of the settlement and that no
27 other claims of the Aggrieved Employees, class or otherwise, are being compromised as part of the
28 settlement.

1 6. Defendant is represented in this matter by Jennifer Duggan and Katie Collins of Duggan
2 McHugh Law Corporation. From the beginning, Defendant has contested the merits of this case, the
3 manageability of the case at trial, and Plaintiff's ability to prove a violation in each pay period for each
4 employee among other defenses and contentions they made challenging the propriety of this action.
5 Defendant further contended that, even assuming there was a finding supporting the imposition of
6 PAGA penalties, the Court would likely exercise its discretion to substantially reduce any such
7 penalties owed based on evidence of good faith attempts to comply with Labor Code obligations by
8 Defendant. Notwithstanding its agreement to settle this matter, Defendant believe the practices
9 Plaintiff is contending are unlawful either do not exist or, to the extent they do exist, fully comply with
10 all state and federal employment laws with respect to Plaintiff and Aggrieved Employees.

11 7. Based on the expected testimony from Plaintiff and Aggrieved Employees, a review of
12 Defendant's policies and procedures and other documents relating to the alleged claims, information on
13 the number of Aggrieved Employees, Aggrieved Employees' dates of employment, and a representative
14 sample of Aggrieved Employees' payroll data, the scope of the potential penalties at issue in light of the
15 claims alleged, the Court's statutorily authorized discretion to reduce any penalties assessed, and the
16 negotiations that have taken place, I am convinced that the proposed settlement is in the best interest of
17 the Plaintiff, Aggrieved Employees affected by the Agreement and the LWDA. The length and risks of
18 trial and other normal perils of complex litigation that impact the value of the claims were also
19 considered and weighed in reaching the proposed settlement. These risks were also exacerbated in this
20 case in that it would have been necessary for Plaintiff to litigate the existence of violations for numerous
21 individual Aggrieved Employees in each pay period that they worked. In addition, I carefully
22 considered the difficulties of complex litigation, and the lengthy process of establishing specific
23 damages and various possible delays and appeals in agreeing to the proposed settlement. I further
24 considered the fact that penalties under the PAGA could be substantially cut at the discretion of the
25 Court even if Plaintiff was successful on proving those claims and there was risk that a Court could find
26 no willfulness in the failure to pay wages at separation, which would eliminate the value of the waiting
27 time penalty entirely. Overall, I believe it is more beneficial to secure a guaranteed benefit for
28

1 Aggrieved Employees and the LWDA now rather than to proceed with litigation and potentially obtain
2 zero funds due to legal or factual issues.

3 8. My office, including my partner, Galen T. Shimoda, our paralegals, and myself, along
4 with Plaintiff's assistance, thoroughly investigated the merits of the claims and potential damages for
5 such claims. The parties engaged in informal discovery and exchange of documents, including a 25%
6 representative sampling of employee data, such as timecards, paystubs, payroll data and relevant policies
7 for the entirety of the statute of limitations applicable to the PAGA claims. The discovery covered all
8 aspects of the asserted claims, including merits issues, damages, the scope and configuration of
9 Aggrieved Employees, the content and implementation of the wage and hour policies at issue, issues
10 relating to manageability concerns at trial, among other relevant areas. From this production we were
11 able to determine information critical to a reliable damages analysis such as the average hourly rate,
12 average daily hours worked, the frequency and extent of potential violations based on the asserted
13 claims, and the number of former employees. This information allowed my office to assess both
14 liability and damages and create an accurate damages model. Plaintiff assisted in all aspects of this
15 litigation including providing factual information relating to Defendant's employment conditions,
16 potential witness information, and answered questions regarding Defendant's factual contentions in this
17 matter. This was important because it directly related to our ability to maintain this case as a PAGA
18 action under manageability concerns and our ability to obtain a favorable settlement for the PAGA
19 claims.

20 9. Throughout this litigation, our office had numerous communications with Defendant's
21 Counsel discussing our respective positions. It was only after approximately nine (9) months of
22 extensive, arm's length negotiations that the parties were able to reach a settlement. The negotiations
23 were at all times contentious and adversarial, though still professional in nature. Although we had
24 scheduled a mediation to take place, it became apparent during the informal discovery production that
25 there was a limited number of individuals and pay periods at issue. In order to avoid costs potentially
26 exceeding the reasonable value of any potential settlement, the Parties engaged in direct negotiations in
27 an effort to reach a compromise before any mediator fees became non-refundable. Ultimately, we were
28

able to settle the asserted claims, cancel the mediation, and recoup the mediator fees, which led to less costs incurred and more funds being payable to the LWDA and Aggrieved Employees.

10. The following represents the maximum recovery for Plaintiff's PAGA claim based on my office's analysis of Defendant's relevant policies and the data produced by Defendant, including a sample of time and payroll records for Aggrieved Employees. There were 39 Aggrieved Employees who worked 710 pay periods during the applicable one-year claim period. The average hourly rate of pay was approximately \$25.39. Additionally, based on our research, we did not find any prior Labor Commissioner or court decisions that stated Defendant's practices and/or policies were improper. As such, a "subsequent violation" may not be found for penalty calculation purposes, and the exposure analysis here is based on an "initial violation" valuation being adopted by any fact finder if this matter went to trial. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207-1209 (2008):

- a) Minimum Wages: This portion of the PAGA claim is based on allegations that Defendant failed to pay Plaintiff and Aggrieved Employees for all hours worked due to Aggrieved Employees working during times they were clocked out for meal periods and is also based on allegations that Plaintiff and Aggrieved Employees worked off-the-clock prior to and/or after their shift in order to finish charts, respond to patient messages and complete daily tasks. At the time of mediation, the maximum penalties possible for this claim based on information from Plaintiff and Defendant's records was \$33,938. The allegations underlying these claims affected only a subset of employees, like Plaintiff, who worked in positions where charting and responding to patients was a part of their job duties. Plaintiff worked as a Licensed Vocational Nurse ("LVN"). Approximately 47.8% of all pay periods were worked by individuals with these types of job duties. Thus, the total penalty amount ($710 \times \$100 = \$71,000$) was multiplied by 47.8% to narrow the claim to the affected pay periods. This amount does not take into account any potential risks with respect to Plaintiff proving the merits or damages. Defendant had a written policy that employees should record all their hours worked accurately and strictly prohibited working off-the-clock. Defendant contends that because Aggrieved Employees entered their own hours and certified their hours were

1 correct, it had no knowledge of any off-the-clock work to the extent any was performed.
2 Also, there are instances in its records where employees worked longer than their
3 scheduled hours and were compensated for that time. Taking these factors into account,
4 I believe a more realistic range of recovery on this claim is between \$11,878.30 to
5 \$22,059.70 (35%-65% reduction based on risk);

- 6 b) Unpaid Overtime: The theory of liability for this portion of the PAGA claim is based, in
7 part, on the same factual allegations that form the basis for the minimum wage claim, *i.e.*
8 working off-the-clock before and after scheduled shifts as well as during time periods
9 clocked out for meal periods. Thus, it is subject to the same risks outlined above. The
10 claim was also based, in part, on allegations that Defendant failed to pay for all overtime
11 hours worked. Plaintiff alleged that Defendant had invalidated its alternative workweek
12 election by regularly requiring employees to work schedules that were different than the
13 approved alternative workweeks. Again, the allegations underlying these claims
14 affected only a subset of employees, like Plaintiff, who worked in positions where
15 charting and responding to patients was a part of their job duties. The maximum
16 penalties for this claim are approximately \$16,969 (\$50 penalty per pay period per
17 violation x 339.38 pay periods as only 47.8% of pay periods were affected out of 710
18 pay periods). Plaintiff has assumed that all unpaid hours qualified as overtime. This
19 amount does not take into account any potential risks with respect to Plaintiff proving
20 the merits or damages. Beyond those risks identified for the off-the-clock theory of
21 liability identified above, liability based on invalidating the alternative workweek
22 election was highly disputed. In reviewing the payroll records, while Plaintiff would
23 typically work beyond the 10-hour day alternative workweek schedule without overtime,
24 other individuals would typically work less than the 10-hour day or less than the 4 days
25 per week. Plaintiff contended regularly scheduling employees to work less than the
26 voted on alternative workweek effectively invalidated the alternative workweek because
27 there was, in effect, no longer any *regularly scheduled* alternative workweek. However,
28 it was heavily disputed whether any such changes were merely to accommodate a

request of employees, which may not cause liability in some circumstances. *Compare* DLSE Manual § 56.23.8 *with* §§ 56.23.9-56.23.10. To the extent that the alternative workweek was still deemed valid despite any alleged regular scheduling of less than 10-hour days, this may preclude liability for those working less than ten hours. *See Mitchell v. Yoplait*, 122 Cal. App. 4th Supp. 8 (2004). Taking the risks into account, I believe a more realistic range of recovery for this theory of liability is between \$2,545.35 to \$4,242.25 (75%-85% reduction based on risk);

- c) Meal Periods: This portion of the PAGA claim is based on the allegations that Defendant regularly failed to provide complaint meal periods owed to Plaintiff and Aggrieved Employees due to high workloads and nature of the work and interrupted Plaintiffs and Aggrieved Employees during meal periods. The maximum penalties for this claim are approximately \$35,500 (\$50 penalty per pay period per violation x 710 pay periods). This amount does not take into account any potential risks associated with this claim, which was heavily disputed. For example, Defendant had a written policy that employees were entitled to meal periods and Defendant contends it communicated this policy to Aggrieved Employees and informed them that they should take legally compliant meal periods. Defendant produced a meal period policy where it stated that Aggrieved Employees are not permitted to perform off-the-clock work during meal periods and hide or alter time spent working during meal periods in their timecards. Additionally, the policy stated that managers are not allowed or authorized to instruct Aggrieved Employees how to spend their time during meal and rest periods. As a result, Defendant contends that they provided Aggrieved Employees with an opportunity to take meal periods and that to the extent they were not taken or were taken late it was due to employee choice. Additionally, review of the payroll records demonstrated a violation rate of approximately 51.9% (*e.g.* no meal punch, meal periods lasting less than thirty (30) minutes, not second meal period for shifts longer than ten (10) hours, etc.). While, on average, this would mean at least one (1) violation in every pay period, it is highly unlikely that a 100% violation rate would hold when evaluating every pay

1 period for every employee independently. Taking these factors into account, I believe a
2 more realistic range of recovery for penalties this claim is between \$14,200 to \$21,300
3 (40%-60% reduction to account for potential risk);

4 d) Rest Breaks: This claim was based on the same allegations as the meal period claim.
5 Plaintiff assumed that the circumstances that created an employee's inability to take a
6 meal period on a particular day also would have interfered with their ability to take a rest
7 period. Thus, the estimated violation rate is the same for rest periods as it was for meals.
8 Based on Plaintiff's investigations and the payroll records, the maximum penalties for
9 this claim are approximately \$71,000 (\$100 penalty per pay period per violation x 710
10 pay periods). However, this does not account for the risk associated with this claim.
11 Because this claim is based on the same factual basis as the meal period claims, it is also
12 subject to the same risks as detailed above. Defendant had a written policy that
13 employees were entitled to rest periods and Defendant contends it communicated this
14 policy to Aggrieved Employees and informed them that they should take legally
15 compliant rest periods. Defendant contends that it provided Aggrieved Employees with
16 an opportunity to take rest periods and that to the extent they were not taken it was due
17 to employee choice. Additionally, this claim does not benefit from any presumptive
18 violation based on time records under the law like meal period claims do. Taking these
19 factors into account, I believe a more realistic range of recovery for this claim would be
20 between \$14,200-\$21,300 (75%-80% reduction to account for potential risk);

21 e) Reimbursement: This portion of the PAGA claim is based on allegations that Aggrieved
22 Employees were required to use their personal cellphones for work without being
23 reimbursed and drive to other offices to pick up and transport supplies. The maximum
24 exposure for penalties for this claim is \$71,100 (\$100 penalty per pay period per
25 violation x 710 pay periods). This amount does not take into account any potential risks
26 associated with this claim. Defendant heavily disputed whether use of personal cell
27 phones was required given the presence of company phones available on premises.
28 Defendant contended that the use of any applications on a personal device was, at most,

1 a personal choice of convenience by Aggrieved Employees. Additionally, Defendant
2 contented that it had a policy against allowing Aggrieved Employees using personal cell
3 phones while working at its offices and during business hours. Defendant produced a
4 policy that stated if an Aggrieved Employee did use a cell phone for work purposes, then
5 they will receive reimbursement. In investigating the travel claims, there were few
6 employees who actually did travel, like Plaintiff, and the instances were generally less
7 than 20 miles each time. Similarly, the average use of cell phones for work purposes
8 was approximately 10%. While not directly affecting the liability analysis, this would
9 be relevant when it came to issuing penalties as it would be very unlikely that a Court
10 would impose a \$100 per pay period penalty when the actual loss suffered was between
11 \$2.00 to \$5.00 per week. Based on these risks, I believe a more realistic range of
12 recovery for this claim would be between \$17,750 to \$35,500 (50%-75% reduction of
13 penalties to account for potential risk);

14 f) Sick Time: This portion of the PAGA claim is based on allegations that Defendant
15 failed to provide Plaintiff and Aggrieved Employees with all sick leave accruals
16 applicable for them based on the actual hours worked because Defendant based the
17 accrual allocation on a standard 8-hour day. Approximately 47.8% of pay periods had
18 hours worked beyond the 8-hour day, which would trigger liability under this theory.
19 Thus, maximum damages for this claim is \$33,938 (\$100 penalty per pay period per
20 violation x 339.38 pay periods as only 47.8% of pay periods were affected out of 710
21 pay periods). This amount does not take into account any potential risks with respect to
22 Plaintiff proving the merits or damages. Defendant contends that it did not deny
23 employees the use of paid sick time, contending it provided a flat amount of sick leave
24 each year rather than an accrual method during the time covered by the PAGA claim. It
25 was disputed whether the imposition of an alternative workweek would alter the total
26 sick leave accrual requirements and, to the extent any alternative workweek schedule
27 was deemed invalid, whether that would nullify the claim for additional accrued sick
28 leave hours. Taking these factors into account, a more realistic range of recovery for

1 this claim is \$22,059.70 to \$25,453.50 (25%-35% reduction to account for potential
2 risk);

3 g) Wage Statement: This PAGA portion of this claim is derivative of the claims above and
4 therefore carries the same risks. The maximum possible penalties for this claim based
5 on information from Plaintiff and Defendant's data production was \$71,000. This
6 amount was calculated using a \$100 penalty violation rate for the 710 pay periods in the
7 claim period. This amount does not take into account the potential risks associated with
8 this claim. Because this claim is derivative of Plaintiff's other claims, the same risks
9 identified above for Plaintiff's minimum wages, overtime, meal period, and rest period,
10 claims apply here as well, substantially affecting the potential value of this claim. Given
11 the factual and legal disputes, I believe a more realistic range of recovery would be
12 between \$10,650 to \$53,250 (25%-85% reduction to account for potential risk);

13 h) Waiting Time: This portion of the PAGA claim is derivative of the failure to pay
14 minimum wages, failure to pay overtime, and failure to provide meal and rest periods.
15 Thus, the same risks identified above apply to this claim. The maximum damages for
16 this claim based on the data and information provided by Aggrieved Employees was
17 \$79,216. This amount was calculated similar to waiting time penalties under Labor
18 Code section 203 pursuant to Labor Code section 256. Based on the payroll records,
19 there were 13 former employees. Plaintiff assumed an average of at least 8 hours per
20 day and multiplied this by the average rate of pay (\$25.39) to calculate the daily rate of
21 pay (\$203.12). Plaintiff assumed the full thirty-day penalty period for each of the 13
22 former employees. In addition to the risks identified above, Defendants disputed
23 whether penalties under this provision should be calculated under the default PAGA
24 penalty or the amount provided by Labor Code section 256 and 203. To the extent the
25 Court agreed with Defendants on the correct penalty valuation, the available damages
26 for this claim would be reduced to \$1,300. Taking these risks regarding the merits and
27 damages valuations account, a more realistic range of recovery for this claim is between
28 \$520 and \$31,686.72 (60% risk reduction to each of the penalty valuation methods);

1 i) Failure to Keep Accurate Records: This portion of the PAGA claims is entirely
2 derivative and overlapping with the PAGA claims identified above, *e.g.* the failure to
3 pay minimum wages, overtime wages, failure to provide meal and rest periods, failure to
4 provide sick leave. The maximum damages for this claim is \$19,500 (\$500 per
5 employee under Labor Code section 1174.5 x 39 employees). Because this claim is
6 derivative it carries all the same risks identified in the claims above. Additionally, it is
7 unlikely that a Court would award the full value of the potential applicable penalty when
8 the same conduct is being penalized through other statutes. Taking the risks associated
9 with the underlying claims into account, I believe a more realistic range of recovery for
10 this claim is between \$2,925 to \$14,625 (25%-85% reduction to account for potential
11 risk);

12 11. In total, the maximum exposure for PAGA penalties in this case is \$432,061.80.
13 However, in addition to the risks on the merits and disputes regarding the proper valuation of the
14 penalty amounts, I believe the Court may exercise its discretion to reduce PAGA penalties in this case
15 in light of some of the violations are due to technical non-compliance with the Labor Code, such as
16 derivative wage statement violations, Defendant produced legally compliant policies among other
17 documents that a Court may find demonstrates a good faith attempt at compliance, and there were
18 several instances where the actual substantive loss experienced by Aggrieved Employees was
19 substantially less per pay period than the potential maximum penalty that could be imposed. Courts are
20 statutorily authorized to use discretion to reduce penalties and the range of discretion used varies
21 substantially. *See Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30%
22 reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82%
23 reduction). The 82% reduction equates to roughly \$9-\$20 worth of civil penalties per pay period per
24 employee depending on the total potential value of the civil penalty (*i.e.* \$50-\$100), which is more in
25 line with actual awards based on my experience and review of awards in other cases. Thus, even if
26 using the maximum values possible and setting aside risks of proving the claims on the merits, the total
27 exposure may be cut to approximately \$77,771.12 (82% reduction) to \$302,443.26 (30% reduction) or
28 lower. Using the more realistic ranges of recovery (\$96,728.35 to \$225,867.17), a discretionary

1 reduction of penalties could lower the potential exposure further to \$17,411.10 (82% reduction from
2 \$96,728.35) to \$158,107.02 (30% reduction from \$225,867.17). The Gross Settlement Amount
3 represents approximately 8% of the maximum value of the claims (\$35,000/\$432,061.80) in this matter,
4 which equates to \$49.30 per pay period, and between 22% (\$35,000/\$158,107.02) and 201%
5 (\$35,000/\$17,411.10) of the more realistic range of recovery.

6 12. I believe the Agreement represents a reasonable compromise of claims based on the
7 legal and factual disputes in this case, especially in light of amounts that Courts have approved as
8 reasonable valuations in other cases. See *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173,
9 *8 n.2 (E.D. Cal. 2022) (collecting cases with PAGA settlement values ranging from .037%-1%);
10 *Jennings v. Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement
11 of PAGA claims at 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp.,*
12 *Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016) (approving \$10,000 PAGA settlement allocation where
13 total PAGA penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis*
14 *v. Cox Commc'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily
15 approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S.
16 Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award
17 alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D.
18 Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson*
19 *& Co.*, 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in
20 \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal.
21 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S.
22 Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000
23 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated
24 value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, *7 (E.D. Cal. 2012)
25 (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*,
26 2012 WL 5941801, *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement
27 fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, *1 (N.D. Cal. 2011) (approving PAGA
28 settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

1 13. In agreeing to represent Plaintiff and take on the case for all Aggrieved Employees, our
2 office agreed to take this case on a contingency basis, meaning that we would take a percentage of any
3 settlement or judgment should we recover a monetary amount. We took a risk that we would not
4 recover any money in this matter if we were unsuccessful at trial. We also took on the risk that the case
5 may be subject to an unfavorable summary judgment ruling. However, we believe it is important to
6 make sure employees are able to find affordable representation in order to ensure that employers are
7 complying with all their legal obligations towards employees and paying employees all their hard-
8 earned wages.

9 14. I am a shareholder at Shimoda & Rodriguez Law, PC. My law firm is a boutique law
10 practice that focuses primarily in employment litigation, emphasizing wage and hour litigation. I
11 attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the
12 Departmental Citation for Academic Achievement in the Philosophy program. I was one of only two
13 recipients of this award out of the entire Philosophy Department. After U.C. Davis, I attended the
14 University of the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris
15 Doctorate. I graduated in the top 20% of my class and was a member of the Traynor Honor Society at
16 McGeorge. Other academic achievements of mine include receiving a Witkin Award (top grade) in my
17 legal research and writing course, a Witkin Award in complex civil litigation, being a member of the
18 Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from
19 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global Business &*
20 *Development Law Journal* from 2010–2011, and being selected as a Sacramento County Bar
21 Association Diversity Fellow in 2009. I was also a member of the Employment and Labor Law Society
22 and an officer for the Latino Law Students Association from 2009 to 2010.

23 15. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda
24 Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp.
25 became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent
26 rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to present, I have
27 been recognized as a Super Lawyer (Rising Star). I have been a panel speaker and presented a number
28 of seminars covering issues in wage and hour litigation in general and complex class and PAGA

litigation in particular. These engagements include the following: (1) *Epic Systems*, PAGA, and the Future of Employment Arbitration in California (Sacramento County Bar Assoc., Sept. 2018); (2) Class Actions and PAGA Claims (Assoc. of Defense Counsel of Northern California & Nevada, Jul. 2020); (3) Mediation: The Experienced Trial Lawyers Perspective (Sacramento County Bar Assoc., Sept. 2020); (4) How to Become a Pivotal Part of Any Wage and Hour Practice Group (Sacramento County Bar Assoc., Mar. 2021); (5) Emerging Trends and Issues Relating to Arbitration and PAGA Claims in a Post-Viking River Cruises World (Sacramento County Bar Assoc., Nov. 2022). I was elected to the Sacramento County Bar Association Labor and Employment Law Section's executive committee in 2019 and was the Chair of the executive committee for 2022. I have also been a member of the Presiding Judge Civil Law Advisory Committee for Sacramento County Superior Court since August 2020. My practice focuses on complex civil litigation, including wage and hour class actions, PAGA claims, and Fair Labor Standards Act ("FLSA") claims. I am actively involved in most all of the complex litigation handled by our firm. Class and/or PAGA actions I have litigated or am currently litigating, including the instant case, includes, but is not limited to, the following:

- *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- *Adams-Angway v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080 (San Joaquin Sup. Ct.);
- *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup. Ct.);
- *Barkhausen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);

- *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-00271174 (Sac. Sup. Ct.);
- *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);
- *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
- *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-00222101 (Sac. Sup. Ct.);
- *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup. Ct.);
- *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);

- *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-EFB (E.D. Cal.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- *Salmon v. Ovarions Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.) ;
- *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.) ;
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);

- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

16. The preceding list does not include those cases where, for various reasons, the case was filed as a class action and/or PAGA action, but did not maintain that status through the end of the case.

17. My partner, Galen T. Shimoda, Esq., worked with me on this matter and was critical in assisting with all aspects of the litigation of this case. Mr. Shimoda and I are some of only a handful of plaintiff attorneys located in Sacramento who handle wage and hour class actions. Mr. Shimoda attended and graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a number of employment law articles for journals and our firm regularly publishes articles on our firm's website. Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar) Employment Review seminars from 2014 to the present. His speaking engagements include the following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6) CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21, 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour Panel and AB 1825 Training: Updates on California's New Wage Laws and Manager Compliance

1 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
2 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
3 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
4 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
5 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
6 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);
7 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
8 Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,
9 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized
10 as a Super Lawyer from 2014 to present.

11 18. Mr. Shimoda has practiced law in California since being admitted to the State Bar in
12 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases.
13 Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington &
14 Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is
15 in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and
16 Federal Courts, including up to certification, settlement, preliminary and final approval, and
17 disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel.
18 Some of the class action and/or PAGA cases he is litigating and/or has litigated as lead or co-counsel
19 include the following:

- 20 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 21 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 22 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 23 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 24 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 25 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 26 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 27 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 28 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.

- Sup. Ct.);
- *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
 - *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
 - *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
 - *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac. Sup. Ct.);
 - *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
 - *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
 - *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
 - *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613 (Sac. Sup. Ct.);
 - *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
 - *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
 - *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
 - *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San Joaquin Sup. Ct.);
 - *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
 - *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac. Sup. Ct.);
 - *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
 - *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
 - *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-300000003 (Sac. Sup. Ct.);
 - *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
 - *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);

- *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.);
- *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup. Ct.);
- *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);

- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

19. The preceding list of cases does not include those where, for a variety of reasons, the case was initially filed as a class and/or PAGA action, but did not maintain that status through the end of the case.

20. My associate, Renald Konini, Esq., also worked with me on this case. In May 2011, Mr. Konini graduated from Seton Hall University School of Law. Prior to moving to California, he practiced law in New Jersey. While working for my firm, Mr. Konini has worked on a variety of individual and class action cases, including those involving wage and hour claims, Private Attorney General Act claims, wrongful termination claims, discrimination claims, retaliation claims, and harassment claims. Mr. Konini passed the July 2016 California Bar Examination and started practicing as an associate at my firm from approximately April 2019 to February 2021 and rejoined my firm in September 2022. Mr. Konini has worked on the written and oral discovery, including defending a PAGA representative's deposition, drafting special interrogatories and request for production of documents, calculating class-wide damages, communicating with class representatives, drafting mediation briefs, negotiating, drafting correspondence to defendants' counsel regarding the damages calculated per plaintiffs' claims against defendant companies, and more. Mr. Konini worked on other class and/or PAGA wage and hour actions that my firm has filed, namely *Bertelli v. Air Products and Chemicals, Inc.*, Case No. 34-2018-00236898 (Sac. Sup. Ct.), *Carr v. Howroyd-Wright Employment Agency, Inc.*, Case No. 34-2018-00228290 (Sac. Sup. Ct.), *Gomez v. Vander Schaaf Dairy, et al.*, Case No. STK-CV-UOE-2020-0003954 (San Joaquin Sup. Ct.), *Haggins v. Kelly Services, Inc.*, Case No. 34-2017-00220473 (Sac. Sup. Ct.), *Hussaini v. Integrated Resources, Inc.*, et al, Case No. 34-2021-00297152 (Sac. Sup. Ct.), *Kee, et al. v. Dr. Jeffrey A. Saladin, Dental Corporation (D/B/A Children's Choice Pediatric Dental Care), et al.*, Case No. 34-2020-00290072 (Sac. Sup. Ct.), *Lear v. Raxium, Inc.*, Case No. 21CV004358 (Alameda Sup. Ct.), *Serrano v. Cool Time, LLC*, Case No. 34-2021-00312356 (Sac. Sup. Ct.), *Grebe v. Mary Ann's Baking Co., Inc.*, Case No. 34-2020-00285254-CU-OE-GDS (Sac. Sup. Ct.), *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.), *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.), *Miller v. Caldwell*

1 *Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct), *Pek, et al v. Varris*
2 *Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin Sup. Ct.), *Valencia v. Lowbrau*
3 *Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct). Mr. Konini's practice largely
4 revolves around wage and hour matters, including PAGA claims.

5 21. My office is requesting attorneys' fees and costs pursuant to the common fund doctrine
6 as I believe it to be applicable to the present case pursuant to *Laffitte v. Robert Half Internat. Inc.*, 1
7 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989);
8 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980). Plaintiff and our firm have been able to
9 secure an identifiable benefit on behalf of Aggrieved Employees and the LWDA and equity counsels
10 that the cost of the representation should be born equally amongst all who are receiving these benefits.
11 The settlement recovery provides a good result and is the product of substantial time and effort in
12 analyzing the facts and law applicable to this case. There was substantial risk in agreeing to take this
13 case on a contingency basis and as representative action with the possibility that our firm would not
14 receive any compensation their time and efforts due to issues regarding the merits and/ have carried that
15 risk over the course of the case. I have reviewed fee arrangements and Court ordered fee awards in
16 similar class cases and I believe that the Thirty Five Percent (35%) fee request is within the accepted
17 ranges. Historically, attorneys' fee awards in common fund cases in general range from 20% to 50% of
18 the fund, depending on the circumstances of the case. See Newberg on Class Actions, (3rd Ed. 1992), §
19 14.03 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are
20 generally approved as reasonable in representative litigation settlements below \$10 million. See *Martin*
21 *v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011) (collecting cases); *Birch*
22 *v. Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee
23 on a \$16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern
24 District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class
25 action settlement). In my experience, the attorney's fee request of thirty-five percent (35%) of the
26 common fund is within ranges typically approved in representative actions as well as wage and hour
27 class action litigation. This includes awards in Sacramento County Superior Court. Moreover, in
28 November 2022, this Court approved a fee request of 35% and the same hourly rates for Mr. and

myself, in connection with a motion for final approval of a wage and hour class action settlement in *Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.).

22. I believe a lodestar cross check supports finding a 35% fee award is appropriate in this case. The total lodestar is approximately \$66,302.50 based on approximately 123.3 hours, which includes approximately 10 hours of time for myself and 15 hours of time for Mr. Konini in working with the Settlement Administrator to ensure that the settlement is fully implemented and reporting on the implementation through a compliance hearing and/or hearings. I have reviewed our firm's billing records with Mr. Shimoda and Mr. Konini and have created a summary chart showing the task categories and hours worked by each billing attorney in each category. A true and correct copy of the summary chart is being filed with this Motion as Exhibit H. In reviewing the entries, I believe the hours reported are accurate. To the extent we believe it appropriate to do so in any given assignment, we attempt to assign tasks to the billing attorney with the lower rate in order to reduce costs that otherwise might inhibit the likelihood a case will resolve. Our firm uses billing software, which tracks the entries by day and time. Our billing software also records time in 1/10 of an hour increments. Our billing software also enables the use of a start/stop timer that can be used to more accurately record how long a particular task takes. A summary of the entries in Exhibit H by timekeeper is as follows:

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Lodestar</u>
Galen T. Shimoda	9.8	\$725	\$7,105
Justin P. Rodriguez	54.8	\$625	\$34,250
Renald Konini	58.7	\$425	\$24,947.50
Total:	123.3		\$66,302.50

23. I believe the requested rates are within the prevailing market rates for Sacramento County and elsewhere. Mr. Konini, myself, and Mr. Shimoda have approximately 8 years, 13 years, and 20 years of experience, respectively, litigating complex wage and hour class and PAGA actions. Again, this Court approved these rates for myself and Mr. Shimoda, in November 2022. *See Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.). Mr. Konini was approved at these rates in connection with a wage and hour class action in Sacramento County Superior

1 Court in January 2023. *See Kee, et al. v. Dr. Jeffrey A. Saladin, Dental Corporation (D/B/A Children's*
2 *Choice Pediatric Dental Care), et al.*, Case No. 34-2020-00290072. Awarding fees at the hourly rate in
3 effect at the time of the fee request is an appropriate and judicially approved method. *See Missouri v.*
4 *Jenkins by Agyei*, 491 U.S. 274, 283 (1989). For the foregoing reasons, I believe the request of \$12,250
5 (35%) for attorneys' fees is justified given the results obtained on behalf of the class.

6 24. Although the Agreement set out a maximum of \$5,000.00 for potential attorney's costs,
7 the total costs incurred or that will be incurred through a compliance hearing is anticipated to be
8 \$2,951.76. A true and correct copy of my firm's itemized costs incurred prior to the filing of this
9 Motion and the expected costs incurred through the compliance hearing(s) is attached to this
10 declaration as Exhibit G. The difference in the actual costs and the maximum amount allocated under
11 the Agreement will be added to the Net Settlement Amount and disbursed to Aggrieved Employees.

12 25. I have used several settlement administrator companies in the wage and hour class
13 actions and PAGA actions I have resolved in the past and believe ILYM Group, Inc. will provide the
14 best service to administer the proposed class settlement. A true and correct copy of a cost estimate
15 provided by ILYM Group, Inc. is filed with this Motion as Exhibit D. Any difference in the actual costs
16 and the allocated amounts to cover costs will be redistributed to Aggrieved Employees pro rata per the
17 terms of the Agreement.

18 26. A copy of the proposed Agreement and the entire Motion to Approve the PAGA
19 Settlement was submitted to the LWDA at the same time the Motion was submitted to the Court
20 pursuant to California Labor Code section 2699(1)(2). A true and correct copy of documents
21 demonstrating the settlement documents were provided to the LWDA and that the LWDA has
22 confirmed receipt are being filed with this Motion as Exhibit F.

23 27. A true and correct copy of the proposed Notice of Settlement to be distributed to
24 Aggrieved Employees informing them of the settlement and all material terms is being filed with this
25 Motion as Exhibit E.

26 28. The designated *cy pres* beneficiaries in this case are Capital Pro Bono, Inc. ("CPB") and
27 The Center For Workers Rights ("CFWR"). Only those funds that remain from uncashed settlement
28 checks will be sent to the *cy pres* beneficiaries pursuant to section 5.6 of the Agreement.

1 29. CPB is a 501(c)(3) nonprofit in good standing with the State of California that was
2 established in 1981 and incorporated in 1986 to provide free civil legal services to the indigent,
3 primarily through the use of volunteer attorneys. The formal service area includes Sacramento, Yolo,
4 San Joaquin, El Dorado and Placer counties, however it also regularly provides assistance, whether in
5 person or by phone, to individuals residing outside those counties, including Solano, Nevada, Merced,
6 Sutter, Yuba, and Stanislaus counties. CPB changed its name in 2020 from Voluntary Legal Services
7 Program of Northern California (“VLSP”) to Capital Pro Bono, Inc. CPB has been the recipient of *cy*
8 *pres* funds from several jurisdictions in the State of California, including from Sacramento County
9 Superior Court.

10 30. If CPB is approved as a *cy pres* beneficiary, any funds received will be dedicated to the
11 Employment Law Clinic and Advice Line project, which assists the indigent with legal matters related to
12 their current or former employment. This assistance regularly includes, but is not limited to, free legal
13 advice regarding claims for unpaid wages, failure to provide meal and rest periods, failure to pay
14 reimbursement, and waiting time penalty claims. CPB provides legal advice, assistance with legal
15 forms, and direct representation in administrative hearings, including administrative hearings in front of
16 the California Labor Commissioner for unpaid wages. CPB has a staff attorney and clinic coordinator
17 who provide assistance, along with experienced employment law attorney volunteers. These services
18 have been a focus of the Employment Law Clinic and Advice Line project since its inception with VLSP
19 and continuing through today under CPB.

20 31. CFWR is also a qualified *cy pres* designee in class actions, under section 384, as it is a
21 501(c)(3) nonprofit in good standing with the State of California providing free civil legal services to the
22 indigent. Since its inception in 2014 and in partnership with Legal Aid at Work, the CFWR offers one-
23 on-one legal consultations for low-wage workers. The CFWR discusses employment issues with
24 workers and advises them as to the available legal remedies. In addition to individual counseling on
25 employment issues, the CFWR educates workers, unions, and community members about workplace
26 laws and remedies through “Know-Your-Rights” trainings conducted by the CFWR staff and volunteers.

27 32. The CFWR provides limited representation for low-wage workers in wage claims before
28 the California Labor Commissioner. The CFWR has provided services to low-wage workers in a variety

1 of industries across the entire state of California. CFWR primarily focuses on the enforcement of basic
2 workplace protections, including claims for unpaid wages, minimum wage violations, failure to pay
3 overtime, failure to pay reimbursement, waiting time penalties, and meal and rest period violations. The
4 CFWR helps workers navigate the wage claim process before the California Labor Commissioner
5 through advice given at its legal consultation clinics and/or, in some cases, through representing workers
6 in these claims. If the CFWR is approved as a *cy pres* beneficiary, the funds received will be dedicated
7 towards assisting low-wage workers with wage claims and enforcing the California Labor Code with
8 respect to those wage claims.

9 33. I believe the services provided by CPB and the CFWR promote the law consistent with
10 the objective of wage and hour class actions in general and in this case specifically.

11 34. I have spoken with every other attorney at my firm to determine whether they have any
12 relationship with either of the proposed *cy pres* beneficiaries.

13 35. I have volunteered for both organizations numerous times over the past several years,
14 either directly in the advice clinics or by presenting seminars on wage and hour laws for law students
15 seeking to also volunteer at advice clinics. I have also volunteered by sitting on CPB's advisory
16 committee. These organizations are non-profits that assist low-income workers throughout California,
17 giving free legal advice regarding employment law issues and representing employees with wage claims
18 before the California Labor Commissioner. I have witnessed firsthand the quality service and attention
19 these entities provide to individuals in need of employment law advice and representation at the
20 California Labor Commissioner.

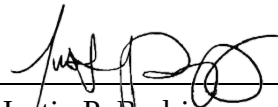
21 36. Galen T. Shimoda has volunteered for both organizations on and off over the past several
22 years through either presenting wage and hour seminars to law students who staff the free advice clinics
23 or helping at the advice clinics themselves. However, Mr. Shimoda has not performed any volunteer
24 work with either organization since approximately March 2020. Mr. Shimoda has never received
25 payment or compensation of any kind in connection with any work he's done with either of the proposed
26 *cy pres* beneficiaries. Renald Konini has never done any work, volunteer or otherwise with Capital Pro
27 Bono, Inc. or the Center For Workers' Rights.

1 37. Neither my firm, myself, Mr. Konini, nor Mr. Shimoda have ever received any
2 compensation, direct or indirect, for designating CFWR or CPB as *cy pres* beneficiaries or in connection
3 with any of the volunteer work we have done with the organizations.

4 38. Plaintiff has entered into a separate individual settlement agreement resolving her
5 individual claims for failure to pay overtime wages, failure to pay minimum wages, failure to provide
6 meal periods or pay premiums in lieu thereof, failure to provide rest periods or pay premiums in lieu
7 thereof, failure to provide accurate wage statements, failure to pay final wages, failure to pay
8 reimbursements for expenses, failure to pay sick leave, and engaging in unfair competition, in exchange
9 for a waiver of all her individual, non-PAGA claims. The amount of the individual settlement is
10 \$25,000, which is separate and apart from the Gross Settlement Amount and not contingent on
11 Plaintiff's support of the PAGA settlement or Court approval of the PAGA settlement. Payment to
12 Plaintiff of her individual settlement has already occurred. Based on her hourly rate of \$36.50, 186
13 workweeks with the four year statutory claim period for her individual claims, her average unpaid hours
14 and overtime hours per week, and average missed meal and rest periods per week, we calculated
15 Plaintiff's individual damages for the asserted wage and hour violations to be \$98,772.64. Given the
16 facts of the individual claims, I believe \$25,000 to be a reasonable compromise of Plaintiff's individual
17 claims. Her individual claims are not subject to any discretionary reduction by the Court like civil
18 penalties under the PAGA and many of the issues negatively affecting liability and damages for
19 Aggrieved Employees did not affect Plaintiff. For example, Plaintiff regularly worked in excess of the
20 alternative workweek schedule without being paid overtime premiums for those additional hours. As
21 stated above, many of the other Aggrieved Employees worked less than the alternative workweek
22 schedule. Thus, legal risk associated with the alternative workweek schedule did not apply to Plaintiff.
23 Also, I believe the waiting time claim for Plaintiff was especially strong given the unpaid overtime
24 issues present. Her overtime and waiting time penalty claims alone totaled \$26,556. Plaintiff resolving
25 her claims for approximately 25.3% of its calculated worth is a substantial compromise. Depending on
26 the amount of any discretionary reductions to assessed civil penalties by the Court, Plaintiff's
27 compromise on her individual claims is equal to or greater than that applied to the PAGA claims. There
28

1 was no inappropriate preferential treatment for Plaintiff's individual claims over the PAGA claims in
2 any way.

3 I declare under penalty of perjury under the laws of the State of California that the foregoing is
4 true and correct. Executed on October 23, 2024, in Sacramento, California.

5
6 
7 _____
8 Justin P. Rodriguez
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff SABRINA AGRIFOGLIO
individually and on behalf of similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

SABRINA AGRIFOGLIO, individually and
on behalf of all other similarly situated
employees,

Plaintiff,

vs.

UROGYNECOLOGY CONSULTANTS
MEDICAL CORPORATION, a California
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 24CV002735

*Assigned for All Purposes to Hon. Jill H. Talley,
Department 23*

**DECLARATION OF SABRINA AGRIFOGLIO
IN SUPPORT OF PLAINTIFF'S MOTION TO
APPROVE PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT**

Reservation No. A-02735-001

Date: November 15, 2024

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill H. Talley

Filed: February 14, 2024

Trial Date: None Set

1 I, Sabrina Agrifoglio, declare:

2 1. I am a competent adult, I have personal knowledge of the facts set forth in this
3 declaration, and I am making this declaration on behalf of myself, as a named plaintiff, and in support
4 of Plaintiff's Motion To Approve Private Attorneys General Act Settlement.

5 2. I worked for Defendant Urogynecology Consultants Medical Corporation ("Defendant")
6 from approximately May 2015 to November 2018 and from July 26, 2019, to September 21, 2023, as a
7 non-exempt employee. I was subject to all of Defendant's policies and practices that have been alleged
8 as unlawful in the complaint and the notice sent to the Labor and Workforce Development Agency
9 ("LWDA"), including the following: failure to pay overtime, failure to pay minimum wages, failure to
10 provide accurate wage statements, failure to timely pay final wages, failure to provide meal and rest
11 periods or pay premiums in lieu thereof, failure to pay all sick leave wages owed, and failure to pay
12 reimbursement for expenses.

13 3. I have actively participated in the litigation of this case for the benefit of Aggrieved
14 Employees and the LWDA. Prior to bringing this lawsuit, I researched potential attorneys I felt were
15 qualified to bring the claims we are alleging, looking through their history and qualifications stated on
16 their websites. I also researched claims we intended to bring, so I could be sure I could have an
17 informed discussion with the attorneys about the claims and have a better idea of what to expect in
18 litigation and how to help the case proceed. After securing Shimoda & Rodriguez Law, PC, I
19 continued to be actively involved in the case to help ensure a positive outcome.

20 4. My attorneys explained to me the risks and benefits of bringing a claim under the
21 Private Attorneys General Act ("PAGA") instead of filing just as an individual claim. I was uncertain
22 of the total number of employees working for the company over the last four years and not sure there
23 was enough to be a class action. However, because I had many coworkers I believed were subject to
24 the same policies and practices I felt violated the law, I felt it was appropriate to bring at least a
25 representative action under the PAGA in addition to asserting my own individual wage and hour
26 claims. I understood that pursuing a PAGA case meant that it could take substantially longer than
27 pursuing just my own individual claims and that the PAGA claims were for civil penalties, not for
28 individual claims. I understood that I risked getting nothing in the end, but I believed it was important

1 to make sure that Defendant followed the law for everyone. As the named PAGA representative, I also
2 took on the risk of having to pay Defendant's costs if we were unsuccessful in bringing our claims.

3 5. During the course of this litigation, I have given detailed accounts of all the facts related
4 to my employment. I provided my attorneys with extensive documentation that I believe supported the
5 claims brought against Defendant. I met with and assisted my attorneys in understanding these
6 documents and providing context for Defendant's payroll process as it applied to me and how I
7 believed it applied to Defendant's other employees. I worked there for a long period of time, so I was
8 able to discuss the similarities of the wage and hour policies and practices among all Aggrieved
9 Employees.

10 6. The work I performed for this case included an extensive review of documents and
11 payroll practices to show and explain to my attorneys what was happening and why I thought it was
12 unlawful. I provided my attorneys with timesheets, paystubs, policies, and text messages related to the
13 wage and hour claims of this case. I also explained the job duties of the various positions held by
14 Aggrieved Employees members, the type of tasks and work performed, how these raised wage and hour
15 issues, estimates of the total number of employees for each position during my time working there,
16 typical schedules, and the policies of the Defendant and how they affected myself and Aggrieved
17 Employees. I helped review and explain paystubs and payroll records, payroll policies, meal and rest
18 period policies, timecards, and Defendants' practices in implementing these policies. The review
19 became even more detailed when my attorneys asked me questions about the payroll data sample that
20 was produced as part of informal discovery to facilitate negotiations. Overall, I have spent a substantial
21 amount of time assisting in the prosecution of this case. I estimate that I have spent approximately 28-
22 32 hours working on this case.

23 7. I participated in the negotiations and settlement discussions in this case, speaking with
24 my attorneys to answer questions, provide any additional information needed to assist the negotiations,
25 and discussing the potential terms of the Agreement to evaluate its adequacy. Throughout the course of
26 this litigation I have asked questions when I needed clarification about various aspects of this case to
27 make sure there were continually steps taken to advance the interests of the Aggrieved Employees and
28 the LWDA.

8. I have experienced substantial burdens as a result of filing this lawsuit that other Aggrieved Employees were not subject to. For example, in bringing the lawsuit, I assumed the risk of having to pay Defendant's costs if the Court or jury rules against us on the claims. My understanding is that this is a substantial risk because the costs associated with litigation, in general, are very high and this cost is multiplied many times over in complex litigation like PAGA actions. I have spent a substantial amount of time in this case, securing a monetary benefit for many individuals who have not had to do anything whatsoever to have the opportunity to receive it. I have been employed during the majority of the time this case has been pending. As a result, the time I have spent on this case has to occur during my lunch and/or break times, after hours, and on my days off. Rather than spend this time with friends and family, I have spent this time for the benefit of Aggrieved Employees and the LWDA.

9. I have entered into a settlement agreement with Defendant to resolve the individual claims I brought in this matter. The individual settlement was for \$25,000 in exchange for a release of all claims except for the PAGA wage and hour claims. My individual settlement was not contingent on my approval of the class and PAGA settlement in any way. Given what I experienced, I believe the \$25,000 is a reasonable compromise to resolve my individual claims.

10. I have reviewed the Private Attorneys General Act Settlement, discussed the terms with my attorneys, and asked my attorney any questions I had. I believe the terms of the Settlement and allocations are fair and reasonable given the facts of the case.

11. I do not have any interest, financial or otherwise, in the designated *cy pres* beneficiaries.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 20, 2024, in Rio Oso, California.

Sabrina Agrifoglio
Sabrina Agrifoglio (Oct 20, 2024 21:12 PDT)

Sabrina Agrifoglio

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff SABRINA AGRIFOGLIO
individually and on behalf of similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

SABRINA AGRIFOGLIO, individually and
on behalf of all other similarly situated
employees,

Plaintiff,

vs.

UROGYNECOLOGY CONSULTANTS
MEDICAL CORPORATION, a California
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 24CV002735

*Assigned for All Purposes to Hon. Jill H. Talley,
Department 23*

**EXHIBIT LIST AND EXHIBITS IN SUPPORT
OF PLAINTIFF'S MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT**

Reservation No. A-02735-001

Date: November 15, 2024

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill H. Talley

Filed: February 14, 2024

Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Proposed Private Attorneys General Act Settlement
B	Plaintiff's Operative Complaint
C	Plaintiff's Letter to the Labor and Workforce Development Agency
D	ILYM Group, Inc. Quote
E	Proposed Notice of Settlement
F	Proof of Submission of Proposed Settlement Agreement to LWDA
G	Plaintiff's Itemized Costs
H	Plaintiff's Attorney's Fee Summary Chart

Dated: October 23, 2024

Shimoda & Rodriguez Law, PC

By: 
 Galen T. Shimoda
 Justin P. Rodriguez
 Renald Konini
 Attorneys for Plaintiff

Exhibit A

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff SABRINA AGRIFOGLIO individually
and on behalf of similarly situated employees

Jennifer E. Duggan - SBN: 183833
Jennifer@dugganmchugh.com
Katie A. Collins - SBN: 309475
Katie@dugganmchugh.com
DUGGAN McHUGH LAW CORPORATION
641 Fulton Ave., Suite 100
Sacramento, CA 95825
Telephone: 916.550.5309

Attorneys for Defendant UROGYNECOLOGY CONSULTANTS MEDICAL CORPORATION

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

SABRINA AGRIFOGLIO, individually and on
behalf of all other similarly situated employees,

Plaintiff,

vs.

UROGYNECOLOGY CONSULTANTS
MEDICAL CORPORATION, a California
Corporation; and DOES 1 to 100, inclusive,

Defendant.

Case No.: 24CV002735

**PRIVATE ATTORNEYS GENERAL ACT
ACTION SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Filed: February 14, 2024

Trial Date: None Set

1 This Private Attorneys General Act Settlement is made and entered into between the Plaintiff
2 Sabrina Agrifoglio (“Plaintiff”), on behalf of herself, the Labor and Workforce Development Agency,
3 and Aggrieved Employees, and Defendant Urogynecology Consultants Medical Corporation
4 (“Defendant”). This Agreement is subject to the terms and conditions set forth below and approval of the
5 Court.

6 **1. DEFINITIONS**

7 The following terms, when used in this Agreement, have the following meanings:

8 1.1 “Action” means the above stated lawsuit, *Sabrina Agrifoglio v. Urogynecology*
9 *Consultants Medical Corporation*, Sacramento County Superior Court, Case No. 24CV002735, filed
10 February 14, 2024.

11 1.2 “Aggrieved Employee(s)” means all non-exempt employees who worked, or continue to
12 work, for Defendant in California at any time between December 8, 2022, up to either (1) the Final
13 Approval Date, or (2) August 13, 2024, whichever is earlier. The estimated number of Aggrieved
14 Employees is 39.

15 1.3 “Agreement” or “Settlement” or “Settlement Agreement” means this Private Attorneys
16 General Act Settlement.

17 1.4 “Complaint” means the operative Complaint on file in the Action with the Court.

18 1.5 “Court” means the Sacramento County Superior Court.

19 1.6 “Defendant” means Urogynecology Consultants Medical Corporation.

20 1.7 “Defendant’s Counsel” means Jennifer Duggan and Katie Collins of Duggan McHugh Law
21 Corporation.

22 1.8 “Effective Date” means the Final Approval Date unless there is a timely objection lodged
23 that has not later been withdrawn, in which case the Effective Date will be either (a) the 60th calendar day
24 after a signed order approving this settlement has been filed provided no appellate proceeding having been
25 filed; or (b) seventh (7th) calendar day after any appellate proceeding opposing the settlement has been
26 finally dismissed with no material change to the terms of this settlement and there is no right to pursue
27 further remedies or relief, whichever is later.

1 1.9 “Final Approval Date” means the date the Court enters a signed order granting approval of
2 the Agreement.

3 1.10 “Gross Settlement Amount” is the sum of Thirty-Five Thousand Dollars (\$35,000).

4 1.11 “Individual Settlement Amount” means an individual Aggrieved Employees’ allocation of
5 the Net Settlement Amount, as defined in Section 1.13 and 5.7.

6 1.12 “LWDA” means the California Labor and Workforce Development Agency.

7 1.13 “Net Settlement Amount” is the portion of the Gross Settlement Amount available for
8 distribution between Aggrieved Employees and the LWDA pursuant to Labor Code section 2699(i), after
9 deduction of Plaintiff’s attorneys’ fees and litigation costs, and Settlement Administrator Costs.

10 1.14 “Notice of Settlement” means the document substantially in the form attached hereto as
11 Exhibit 1.

12 1.15 “PAGA” means Private Attorneys General Act.

13 1.16 “PAGA Claim Period” means December 8, 2022, up to either (1) the Final Approval Date
14 or (2) August 13, 2024, whichever is earlier.

15 1.17 “PAGA Payment” means the 75% share of the Net Settlement Amount paid to the LWDA
16 pursuant to Labor Code section 2699(i).

17 1.18 “Parties” mean Defendant and Plaintiff.

18 1.19 “Plaintiff” means Sabrina Agrifoglio.

19 1.20 “Plaintiff’s Counsel” means Galen T. Shimoda, Justin P. Rodriguez and Renald Konini of
20 Shimoda & Rodriguez Law, PC.

21 1.21 “QSF” means a Qualified Settlement Fund set up by the Settlement Administrator for the
22 benefit of the Aggrieved Employees and from which the payments under this Agreement shall be made.
23 Any amounts Defendant has agreed to pay under this Agreement shall remain the property of Defendant
24 until the payments required under the Agreement are made.

25 1.22 “Qualifying Pay Periods” are pay periods worked by Aggrieved Employees during the
26 PAGA Claim Period in California. The calculation of an Aggrieved Employee’s pay periods and a
27 determination as to whether an Aggrieved Employee was actively employed in California in a particular
28 pay period shall be construed from Defendant’s records.

1 1.23 “Released PAGA Claims” means any and all claims for civil penalties that were brought
2 under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, that were asserted in Plaintiff's
3 notice letter to the LWDA and any additional claims for civil penalties under the PAGA that could have
4 been brought based on the facts alleged therein during the PAGA Claim Period. Aggrieved Employees
5 cannot opt out of this waiver of claims.

6 1.24 “Released Parties” means Defendant, as well as Defendant' officers, shareholders,
7 directors, agents, employees, attorneys, and insurers.

8 1.25 “Settlement Administrator” means and refers to ILYM Group, Inc., the third-party entity
9 that will administer the Agreement as outlined in Section 7, or any other third-party administrator agreed
10 to by the Parties and approved by the Court for the purposes of administering this Agreement. The Parties
11 each represent that they do not have any financial interest in the Settlement Administrator.

12 1.26 “Settlement Administrator Costs” means the fees and expenses reasonably incurred by the
13 Settlement Administrator as a result of the procedures and processes expressly required by this Agreement,
14 and shall include all costs of administering the Agreement, including, but not limited to, all tax document
15 preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and
16 fees associated with preparing, issuing and mailing any and all notices and other correspondence to
17 Aggrieved Employees; all costs and fees associated with communicating with Aggrieved Employees,
18 Plaintiff's Counsel, and Defendant' Counsel; all costs and fees associated with computing, processing,
19 reviewing, and paying the Individual Settlement Amounts, and resolving disputes; all costs and fees
20 associated with calculating tax withholdings and payroll taxes, if any, making related payment to federal
21 and state tax authorities, if any, and issuing tax forms relating to payments made under the Agreement; all
22 costs and fees associated with preparing any tax returns and any other filings required by any governmental
23 taxing authority or agency; all costs and fees associated with preparing any other notices, reports, or filings
24 to be prepared in the course of administering Individual Settlement Amounts; and any other costs and fees
25 incurred and/or charged by the Settlement Administrator in connection with the execution of its duties
26 under this Agreement.

27 **2. DESCRIPTION OF THE LITIGATION**

28

1 2.1 On or about December 8, 2023, Plaintiff sent notice to the LWDA to exhaust administrative
2 remedies under the PAGA for (1) Failure to Pay Overtime Wages, (2) Failure to Pay Minimum Wages,
3 (3) Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof, (4) Failure to Provide Rest Periods
4 or Pay Premiums in Lieu Thereof (5) Failure to Provide Accurate Wage statements, (6) Failure to Pay
5 Final Wages, (7) Failure to Pay Reimbursement for Expenses, (8) Violation of Labor Code §§ 558, 558.1
6 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order), (9)
7 Failure to Maintain Accurate Records (10) Failure to Provide Paid Sick Leave. The LWDA did not
8 respond to the notice within the statutorily required time frame and, as such, Plaintiff became authorized
9 to act as a Private Attorneys General on all alleged PAGA claims.

10 2.2 After exhausting administrative remedies, Plaintiff filed a Complaint on February 14, 2024,
11 in Sacramento County Superior Court on behalf of herself and Aggrieved Employees for claims alleged
12 in the December 8, 2023, notice to the LWDA.

13 2.3 Through informal discovery, Defendant and Defendant's Counsel provided Plaintiff's
14 Counsel with copies of all applicable versions of its policies and procedures, employee handbooks,
15 information on the number of Aggrieved Employees, including, but not limited to, Aggrieved Employees'
16 workweeks, dates of employment, total number of Aggrieved Employees, their rates of pay, and pay
17 periods as well as timecard data and payroll reports for a randomly selected sample of Aggrieved
18 Employees.

19 2.4 After Plaintiff's Counsel received the data, the Parties engaged in settlement negotiations,
20 and were able to come to a resolution after several months of negotiations. At all times, the Parties'
21 settlement negotiations have been non-collusive, adversarial, and at arm's length.

22 2.5 Discussions between Plaintiff and Plaintiff's Counsel, between counsel for the Parties,
23 document productions, extensive legal analysis, the provision of information by Defendant to Plaintiff and
24 the detailed analysis of the sampled records have permitted each side to assess the relative merits of the
25 PAGA claims and the defenses to those claims.

26 2.6 In the Action, Plaintiff contends that Defendant violated California law by 1) not paying
27 Plaintiff and Aggrieved Employees overtime for all hours worked in excess of eight (8) per day, 2) failing
28 to pay double time for all hours worked in excess of twelve (12) per day, 3) regularly failing to properly

1 calculate the regular rate of pay for Plaintiff and Aggrieved Employees as Defendant did not incorporate
2 the value of bonuses into the regular rate of pay covering the time period the bonuses were earned over,
3 4) failing to properly calculate the regular rate of pay for sick leave wages and meal and rest period
4 premiums, 5) failing to pay Plaintiff and Aggrieved Employees for off-the-clock work, 6) failing to
5 authorize and permit Plaintiff and Aggrieved Employees to take meal and rest periods in a timely manner,
6 completely free from duty, 7) failing to provide Plaintiff and Aggrieved Employees with a second meal
7 period or third rest period for shifts of more than ten (10) hours, even where those shifts were in excess of
8 twelve (12) hours, 8) failing to pay Plaintiff and Aggrieved Employees meal and/or rest period premiums
9 for non-compliant meal and/or periods, 9) failing to reimburse Plaintiff and Aggrieved Employees for the
10 use of their personal cell phones for work purposes and for driving their personal cars to pick up supplies,
11 10) failing to provide the appropriate amount of sick leave based on actual hours worked, and (11) failing
12 to provide accurate wage statements. Defendant has denied each of Plaintiff's claims. The agreed upon
13 Gross Settlement Amount was reached after evaluating the Parties' theories of potential exposure for the
14 PAGA claims. The Parties, also assessed appropriate discounts to the potential liability based on
15 Defendant' factual and legal contentions and defenses.

16 2.7 The Parties enter into this Settlement to resolve the dispute that has arisen between them
17 and to avoid the burden, expense and risk of continued litigation. In entering into this Settlement,
18 Defendant does not admit, and specifically denies, that it violated any federal, state, or local law; violated
19 any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations
20 or legal requirements; breached any contract; violated or breached any duty; engaged in any
21 misrepresentation or deception; or engaged in any other unlawful conduct with respect to its employees.
22 Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations
23 connected with it, will be construed as an admission or concession by Defendant of any such violations
24 or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of
25 this Settlement, this Settlement Agreement and its terms and provisions will not be offered or received as
26 evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to
27 establish the existence of any condition constituting a violation of, or a non-compliance with, federal,
28 state, local or other applicable law.

2.8 The Parties agree that the above-described investigation and evaluation, as well as discovery and the information exchanged to date, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Plaintiff's Counsel, Defendant, and Defendant's Counsel have concluded that it is desirable that the PAGA claims asserted in the Action be settled in a manner and upon such terms and conditions set forth herein in order to avoid further expense, inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the Parties potentially face. Plaintiff, Plaintiff's Counsel, Defendant, and Defendant's Counsel are of the opinion that the Agreement for the consideration and terms set forth herein is fair, reasonable, and adequate in light of all known facts and circumstances.

3. THE CONDITIONAL NATURE OF THIS AGREEMENT

3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose of settling the PAGA claims asserted in the Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. The Parties enter into this Agreement and associated settlement on a conditional basis in order for the Court to evaluate and approve the settlement. If the Effective Date does not occur, or if the Court's approval of the settlement is reversed or materially modified on appellate review, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

3.2 Defendant has denied all claims as to liability, damages, penalties, interest, fees, injunctive relief and all other forms of relief asserted in the Action. Defendant have agreed to resolve the asserted PAGA claims in the Action via this Agreement, but, to the extent this Agreement is deemed void or the Effective Date does not occur, Defendant does not waive, and are expressly reserving, all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability to challenge representative or collective treatment on any grounds, as well as to assert any and all other potential defenses or privileges.

4. SCOPE OF THE AGGRIEVED EMPLOYEES

1 4.1 The scope of individuals encompassed under the Agreement, who are entitled to all benefits
2 as authorized under the Agreement and subject to all obligations and duties required under the Agreement,
3 shall include all Aggrieved Employees as defined in Section 1.2.

4 4.2 Aggrieved Employees entitled to recover under this Agreement will include only those
5 individuals who are identified in Defendant's records as having worked as an Aggrieved Employee.

6 4.3 No Right to Exclusion or Objections to the PAGA Settlement. Because this settlement
7 resolves claims and actions brought pursuant to PAGA by Plaintiffs acting as proxies and as Private
8 Attorneys General of, and for, the State of California and the LWDA, the Parties agree that no PAGA
9 Member has the right to exclude himself or herself from the release of the Released PAGA Claims, and
10 all PAGA Members will receive their shares of the PAGA Fund. The Parties also agree that no PAGA
11 Member has the right to object to the PAGA Settlement Amount.

12 **5. TERMS OF THE SETTLEMENT**

13 The Parties agree as follows:

14 5.1 Gross Settlement Amount: In consideration and exchange for the releases described in
15 Section 6, Defendant shall pay the Gross Settlement Amount (\$35,000). Funding of the Gross Settlement
16 Amount shall occur within twenty-eight (28) calendar days after the Effective Date to be held in trust in a
17 QSF by the Settlement Administrator. The Gross Settlement Amount represents the maximum amount
18 payable under this Agreement by Defendant, and includes without limitation, the PAGA Payment, all
19 payments to the Aggrieved Employees, all attorneys' fees, costs and litigation expenses directly related to
20 the Action incurred to date, as well as all such fees and costs incurred in documenting the Agreement,
21 administering the Agreement (including Settlement Administrator Costs), and obtaining approval of the
22 Agreement.

23 5.2 Attorneys' Fees and Costs: Plaintiff's Counsel will apply to the Court for attorney's fees
24 of 35% of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount.
25 Defendant have agreed to not oppose Plaintiff's Counsel's application for attorneys' fees so long as it does
26 not exceed the 35% threshold. Plaintiff's Counsel will also be entitled to reimbursement for advanced
27 litigation expenses not to exceed \$5,000, which shall be paid from the Gross Settlement Amount.
28 Defendant have agreed to not oppose Plaintiff's Counsel's request for reimbursement for advanced

litigation expenses so long as they do not exceed the \$5,000 threshold. The Settlement Administrator will issue Class Counsel an IRS Form 1099 for the attorneys' fees and costs paid under this Agreement. In the event that the Court awards less than the requested attorney's fees and/or costs, the portion of the requested amounts not awarded to Plaintiff's Counsel shall be added to the Net Settlement Amount as defined in section 1.13.

5.3 Settlement Administrator Costs: The Settlement Administrator Costs shall be paid from the Gross Settlement Amount and shall not exceed \$2,950. The difference between any actual costs and the allocated \$2,950 shall be added to the Net Settlement Amount as defined in section 1.13.

5.4 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount allocated to Aggrieved Employees that was not claimed by Aggrieved Employees by cashing their respective settlement checks before the deadline to do so, that remaining amount shall be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers' Rights under the doctrine of *cy pres*. No portion of the Gross Settlement Amount will revert to Defendant for any reason.

5.5 No Additional Benefits Contributions: All Individual Settlement Amounts paid to Aggrieved Employees shall be deemed to be income solely in the year in which such amounts were actually received by Aggrieved Employees. It is expressly understood and agreed that the receipt of such Individual Settlement Amounts will not entitle any Aggrieved Employee to any new or additional compensation or benefits under any company bonus or other compensation or benefit plan or agreement in place during the period covered by the Agreement, nor will it entitle any Aggrieved Employee to any increased retirement, 401(k) benefits or matching benefits, or deferred compensation benefits. It is the intent of this Agreement that the Individual Settlement Amounts provided for in this Agreement are the sole payments to be made by Defendant to the Aggrieved Employees in connection with this Agreement (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the period covered by this Agreement).

5.6 Tax Allocation: The Parties recognize that the Individual Settlement Amounts to be paid to Aggrieved Employees reflect settlement of a dispute over claimed penalties. The characterization of Individual Settlement Amounts to Aggrieved Employees are as follows:

1 5.6.1 One Hundred percent (100%) of each Aggrieved Employees' Individual Settlement
2 Amount shall be allocated for payment of disputed civil penalties. This portion of the Individual
3 Settlement Amount consists of other income, not wages, for which the Aggrieved Employees shall receive
4 an IRS form 1099-MISC.

5 5.6.2 Aggrieved Employees shall be solely responsible for the reporting and payment of
6 their share of any federal, state and/or municipal income or other taxes on payments made pursuant to this
7 Agreement. No party has made any representation to any of the other Parties as to the taxability of any
8 payments pursuant to this Agreement, including the payments to Aggrieved Employees, the payments to
9 Plaintiff's Counsel, or otherwise as to tax implications of any provision of this Agreement.

10 5.7 Pro Rata Distribution Formula: After Court approved attorneys' fees and costs, and
11 Settlement Administrator Costs are determined and a Net Settlement Amount has been established, that
12 Net Settlement Amount shall be divided between the PAGA Payment and payment to Aggrieved
13 Employees. The PAGA Payment to the LWDA will be 75% of the Net Settlement Amount. 25% of the
14 Net Settlement Amount will be paid to Aggrieved Employees. Each individual Aggrieved Employees'
15 Individual Settlement Amount shall be determined by taking the Qualifying Pay Periods for the individual
16 Aggrieved Employee and dividing that by the Qualifying Pay Periods for all Aggrieved Employees and
17 multiplying that fraction by the 25% share of the Net Settlement Amount. Payment to Aggrieved
18 Employees of their Individual Settlement Amount will not require the submission of any claim form.

19 5.8 No Additional Contribution by Defendant: Defendant's monetary obligation under this
20 Agreement is limited to the Gross Settlement Amount as described above. All other costs and expenses
21 arising out of or in connection with the performance of this Agreement shall be paid from the Gross
22 Settlement Amount, unless expressly provided otherwise herein. However, in the event this agreement is
23 deemed null and void as described in Section 3, then Defendant and Plaintiff shall be equally responsible
24 for the Settlement Administrator Costs incurred between the date the Agreement was executed and the
25 date of such event.

26 **6. RELEASE**

27 6.1 Upon the Effective Date, Plaintiff and each Aggrieved Employee shall be deemed to fully,
28 finally, and forever release the Released Parties from all Released PAGA Claims.

1 **7. SETTLEMENT ADMINISTRATION**

2 7.1 Duties of Settlement Administrator: The Settlement Administrator shall be responsible
3 for: 1) receiving and reviewing for accuracy Aggrieved Employee contact information; 2) calculating
4 estimated Individual Settlement Amounts and any and all taxes associated with the Individual Settlement
5 Amount, including employer taxes, if any; 3) taking appropriate steps to trace and locate any individual
6 Aggrieved Employees whose address or contact information as provided to the Settlement Administrator
7 is inaccurate or outdated and mailing the Notice of Settlement to Aggrieved Employees; 4) providing
8 notification to the appropriate state officials of this Agreement as required; 5) maintaining the Gross
9 Settlement Amount in a QSF; 6) determining and paying the final amounts due to be paid under the
10 Agreement after resolution of awarded attorneys' fees and costs and Settlement Administrator Costs; 7)
11 paying any residual funds from uncashed checks to the *cy pres* beneficiaries; 8) reporting to Plaintiff's
12 Counsel and Defendant' Counsel regarding the statistics of the administration, including (a) the number
13 of initial Notice of Settlements mailed; (b) the number of forwarded Notice of Settlements; (c) the number
14 of re-mailed Notice of Settlements; (d) the number of total undeliverable Notice of Settlements; (e) the
15 number of address traces performed for undeliverable Notice of Settlements; (g) the number of Notice of
16 Settlements undeliverable from traced addresses; 9) providing a declaration to the Court regarding the
17 final statistics of the administration and compliance with all payment obligations under the Agreement;
18 10) completing all necessary tax reporting on the QSF and payment of the Individual Settlement Amounts
19 to Aggrieved Employees; and 11) carrying out other related tasks as necessary to effectuate the terms of
20 this Agreement and any Order of the Court. All disputes relating to the Settlement Administrator's ability
21 and need to perform its duties shall be referred to the Court, if necessary, which will have continuing
22 jurisdiction over the terms and conditions of this Agreement, until all payments and obligations
23 contemplated by the Agreement have been fully executed.

24 7.2 Aggrieved Employee Data: Within seven (7) calendar days after the Effective Date,
25 Defendant shall provide the Settlement Administrator with the name, last known mailing address, last
26 known telephone number, Social Security Number, and Qualifying Pay Periods of each Aggrieved
27 Employee. The Settlement Administrator shall review the data to determine the number of Qualifying
28 Pay Periods for each Aggrieved Employee. Defendant shall not provide any information for pay periods

1 during which an Aggrieved Employee may have worked as an exempt employee, worked outside
2 California, or worked outside the PAGA Claim Period. The Settlement Administrator shall maintain all
3 information received from Defendant confidential to itself, and Defendant' Counsel. However, Plaintiff's
4 Counsel shall be able to review the breakdown of Qualified Pay Periods and estimated Individual
5 Settlement Amounts for Aggrieved Employees prior to mailing for quality assurance.

6 7.3 Determination of Payments to Aggrieved Employees, Plaintiff's Counsel, and the LWDA:

7 Within seven (7) calendar days after Defendant have provided the Settlement Administrator with
8 information regarding Aggrieved Employees, the Settlement Administrator shall calculate the final Net
9 Settlement Amount, PAGA Payment, and the final Individual Settlement Amounts for Aggrieved
10 Employees, and report the results of these calculations to Plaintiff's Counsel and Defendant's Counsel.

11 7.4 Settlement Administrator Payments to Aggrieved Employees, Plaintiff's Counsel, and the
12 LWDA: Defendant shall wire the Gross Settlement Amount as described in Section 5.1 to the Settlement
13 Administrator within fourteen (14) calendar days after receiving the funding calculation and report from
14 the Settlement Administrator to be to be held in trust in a QSF. Within seven (7) calendar days after the
15 Settlement Administrator receives the Gross Settlement Amount, the Settlement Administrator shall
16 deliver payment of Plaintiff's Counsels' attorney's fees and costs, the PAGA Payment payable to the
17 LWDA, Settlement Administrator Costs, and payment for Individual Settlement Amounts to Aggrieved
18 Employees as required under this Agreement and approved by the Court. Plaintiff's Counsel shall provide
19 the Settlement Administrator with the pertinent taxpayer identification number and payment instructions
20 for the attorney's fees and costs after the Effective Date.

21 7.5 Notice to Aggrieved Employees: Defendant represent and warrant that Aggrieved
22 Employees are able to read and write in English such that no translation of the Notice of Settlement into
23 another language is necessary. The Settlement Administrator will provide a Notice of Settlement,
24 substantially in the form attached as Exhibit 1, to each Aggrieved Employee concurrently with providing
25 payment for Individual Settlement Amounts as described in Sections 5.7 and 7.4. The Notice of
26 Settlement will inform Aggrieved Employees of a summary of the terms and conditions of the Agreement.
27 The Notice of Settlement will also inform Aggrieved Employees of the Gross Settlement Amount, Net
28 Settlement Amount, attorneys' fees and costs allocations, Settlement Administrator Cost allocations,

PAGA Payment allocations, the scope of individuals covered by this Agreement, and the nature and extent of the Released PAGA Claims.

7.6 Aggrieved Employee Mailing: Within seven (7) calendar days after the Settlement Administrator receives the Gross Settlement Amount, the Settlement Administrator will perform a national change of address ("NCOA") search, update the addresses per the results of the NCOA search and will mail the respective Individual Settlement Amount, as determined in Sections 5.7 and 7.4, and Notice of Settlement, to each Aggrieved Employee by first-class mail, postage prepaid.

7.7 Returned and/or Re-mailed Notice Packets: In the event that a Notice of Settlement and Individual Settlement Amount payment is returned to the Settlement Administrator as undeliverable, the Notice of Settlement and Individual Settlement Amount payment shall be sent to the forwarding address affixed thereto within seven (7) calendar days. If no forwarding address is provided, then the Settlement Administrator shall promptly attempt to determine a correct address using a single skip-trace, computer or other search using the name, address and/or Social Security number of the individual involved, and shall then perform a single re-mailing within seven (7) calendar days. Following each search that does not result in a corrected address, for those Aggrieved Employees who appear to be current employees of Defendant at the time of the Effective Date, the Settlement Administrator shall contact Defendant' Counsel for assistance and Defendant shall cooperate in good faith with the Settlement Administrator's reasonable efforts to obtain valid mailing addresses for Aggrieved Employees to the extent they were active employees of Defendant at the time of the Effective Date. In the event the procedures in this paragraph are followed and the intended recipient of a Notice of Settlement and Individual Settlement Amount payment still does not receive the Notice of Settlement and/or Individual Settlement Amount payment, the Aggrieved Employee shall still be bound by all terms of the Agreement, including the releases contained in Sections 1.23 and 6.1, and any final judgment entered by the Court.

7.8 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.2 to 7.7 shall constitute due and sufficient notice to Aggrieved Employees of the Action and the Agreement and shall satisfy Aggrieved Employees' due process rights. Nothing else shall be required of the Parties, Plaintiff's Counsel, or Defendant' Counsel to provide notice of the Agreement except as expressly required by the Court.

7.9 Settlement Check Expiration and Cy Pres: The Settlement Administrator shall issue Individual Settlement Amounts to Aggrieved Employees in the form of a check, which shall become null and void if not deposited within one hundred eighty (180) calendar days of issuance. After one hundred eighty (180) calendar days of issuance, the checks shall be voided and funds from all undeposited checks shall be transmitted to the *cy pres* beneficiaries identified in Section 5.4. The Settlement Administrator shall deliver the *cy pres* funds within fourteen (14) calendar days after the check cashing deadline.

7.10 Settlement Administrator Declaration Regarding Settlement Administration: Within twenty-one (21) calendar days after the last day for Aggrieved Employees to cash their settlement checks, the Settlement Administrator shall provide Plaintiff's Counsel and Defendant' Counsel with a signed declaration under penalty of perjury providing a complete and detailed report regarding the settlement administration and that all the obligations of the Settlement Administrator have been completed.

8. SETTLEMENT ADMINISTRATION SCHEDULE

8.1 The schedule may be modified depending on whether and when the Court grants necessary approvals, orders notice to Aggrieved Employees, and sets further hearings, if any. The schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures as expeditiously as reasonably practicable. The schedule for notice and payment procedures carrying out the Agreement is as follows.

Last day for Defendant to provide Settlement Administrator with Aggrieved Employee information	Within 7 calendar days after the Effective Date
Last day for Settlement Administrator to calculate and report to the Parties the Net Settlement Amount, PAGA Payment, and Individual Settlement Amounts for Aggrieved Employees	Within 7 calendar days after receiving Aggrieved Employee information
Last day for Defendant to fund Gross Settlement Amount	Within 14 calendar days after the Settlement Administrator calculates and reports to the Parties the Net Settlement Amount, PAGA Payment, and Individual Settlement Amounts for Aggrieved Employees

Last day for Settlement Administrator to complete NCOA search, update Aggrieved Employee mailing information, and complete mailing	Within 7 calendar days after Defendant have funded the settlement
Last day for Settlement Administrator to deliver payment of Plaintiff's Counsel's attorney's fees and costs, PAGA Payment, Settlement Administrator Costs, and payment to Aggrieved Employees	Within 7 calendar days after Defendant have funded the settlement
Last day for Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

9. MISCELLANEOUS TERMS

9.1 Dismissal and Retention of Jurisdiction to Enforce: Upon the Effective Date, the Released PAGA Claims and the Action will be dismissed with prejudice as to all Parties and all causes of action, with the Court to retain jurisdiction over the Parties to enforce the terms of the Agreement pursuant to Civil Procedure Code section 664.6. The prevailing party in any action to enforce the terms of the Agreement shall be entitled to reasonable attorneys' fees and costs. The Parties agree to meet and confer in good faith to resolve any issue before any such motion for attorney's fees and costs is filed.

9.2 Additional Pay Period Contingency: At the onset of settlement negotiations, Defendant represented that there were no more than 710 pay periods during the PAGA Claim Period. In the event the number of pay periods during the PAGA Claim Period is now more than 852 (*i.e.*, greater than 20% more than 710), then Defendant may (1) limit the PAGA Claim Period to ensure that no more than 852 pay periods are included or (2) increase the Gross Settlement Amount proportionally by the pay periods in excess of 710. For example, if there were 11,000 pay periods represented to exist during the PAGA Claim Period, but there are actually 12,500 pay periods in the PAGA Claim Period, then Defendant

would have to increase the Gross Settlement Amount by 13.6% (12,500 - 11,000 pay periods = 1,250 excess pay periods. 1,250 divided by 11,000 = 13.6%).

9.3 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Agreement. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other action as may reasonably be necessary to fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by Court order, or otherwise, to effectuate this Agreement and the terms set forth herein. This may include modifying and/or resubmitting the Agreement for approval. Plaintiff's Counsel shall be responsible for drafting the court approval paperwork. All parties agree to act immediately and diligently to perform their obligations under this Agreement, including the review and approval of settlement documents, such that there are no substantial delays in seeking court approval or administration of this settlement. Plaintiff's Counsel shall endeavor to file a motion for approval of this settlement within sixty (60) calendar days of the date this Agreement is signed. Plaintiff's Counsel shall provide Defendant' Counsel with a draft approval motion within 1 week after this Agreement is fully executed. Defendant's Counsel will provide comments and/or proposed revisions within 1 week after receipt of the draft motion.

9.4 No Admission of Liability: Neither the acceptance nor the performance by Defendant of the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to be, construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations in the Complaint, the representative character of the Action, the validity of any of the claims that were or could have been asserted by Plaintiff and/or Aggrieved Employees in the Action, or of any liability or guilt of Defendant in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by Defendant of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Aggrieved Employees, or any other person, and Defendant have specifically disclaimed any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Aggrieved Employees, or any other person. Each of the Parties has entered into this Agreement with the intention to avoid further disputes and litigation.

9.5 Notices: Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of

the third business day after mailing by United States certified mail, return receipt requested, addressed as follows:

To the Plaintiff:

Galen T. Shimoda,
Justin P. Rodriguez
Renald Konini
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624

To Defendant:

Jennifer Duggan
Katie Collins
Duggan McHugh Law Corporation
641 Fulton Avenue, Suite 100
Sacramento, CA 95825

9.6 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its counsel participated in the drafting of this Agreement.

9.7 Binding Effect of Agreement: The Parties, by signing this Agreement, are bound by the terms herein. The Parties waive their rights to file an appeal, writ, or any challenge whatsoever to the terms of this Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, Settlement Administrators, successors, and assigns.

9.8 Attorneys' Fees and Costs Limitations: Neither Plaintiff's Counsel nor any other attorneys acting for, or purporting to act for, Aggrieved Employees, or Plaintiff, may recover or seek to recover any amounts for fees, costs, or disbursements from the Released Parties or the Gross Settlement Amount except as expressly provided herein.

9.9 No Modifications: This Agreement may not be changed, altered, or modified, except in writing signed by the Parties hereto and approved by the Court. This Agreement may not be discharged except by performance in accordance with its terms.

9.10 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement

1 and to take all appropriate action required or permitted to be taken by such Parties pursuant to this
2 Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of
3 this Agreement

4 9.11 Counterparts: This Agreement shall become effective upon its execution by all of the
5 undersigned. Plaintiff, Plaintiff's Counsel, Defendant and Defendant' Counsel may execute this
6 Agreement in counterparts, and execution of counterparts shall have the same force and effect as if each
7 had signed the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the
8 same force and effect of originals.

9 9.12 Choice of Law: The Agreement and the exhibits hereto shall be considered to have been
10 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and
11 the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance
12 with, and governed by, the substantive laws of the State of California without giving effect to that State's
13 choice of law principles.

14 9.13 Headings and Captions: Paragraph titles or captions contained in the Agreement are
15 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the
16 scope of this Agreement, or any provision thereof.

17 9.14 No Retaliation or Discouragement: The Parties agree they will take no action that could
18 be construed as retaliation against any Aggrieved Employees for participating in this settlement.

19 9.15 Integrated Agreement: This Agreement sets forth the entire understanding between the
20 Parties with regard to any and all material terms or otherwise and supersedes any and all prior agreements,
21 oral or written, pertaining to the subject matter hereof regarding the PAGA claims. Each party
22 acknowledges that there is no representation, inducement, promise or agreement which has been made,
23 orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which is not
24 expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the terms
25 of this Agreement are fully understood and voluntarily accepted by the Parties.

26 9.16 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
27 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
28 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

1 9.17 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
2 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
3 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

4 9.18 Waiver of Compliance: No waiver of any condition or covenant contained in this
5 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
6 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy

7 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
8 attorneys, as of the day and year herein set forth.

9 **For Plaintiff:**

10 Date: 7/14/24



Sabrina Agrifoglio (Jul 14, 2024 22:14 PDT)

Sabrina Agrifoglio

12 **For Defendant:**

13 Date: 07 / 22 / 2024



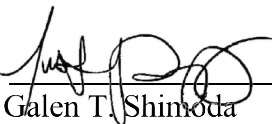
By: Wesley Hilger

For Urogynecology Consultants Medical
Corporation

16 APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

18 Dated: 7/15/2024

By: 

Galen T. Shimoda

Justin P. Rodriguez

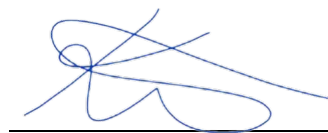
Renald Konini

Attorneys for Plaintiff and Aggrieved
Employees

22 APPROVED AS TO FORM

DUGGAN MCHUGH LAW
CORPORATION

24 Dated: 7/22/2024

By: 

Jennifer Duggan

Katie Collins

Attorneys for Defendant

Exhibit 1

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

) **Case No. 24CV002735**

SABRINA AGRIFOGLIO, individually and on
behalf of all other similarly situated employees,

Plaintiff,

vs.

UROGYNECOLOGY CONSULTANTS MEDICAL
CORPORATION, a California Corporation; and
DOES 1 to 100, inclusive,

Defendant.

) **NOTICE OF PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT PAYMENT**

TO: All non-exempt employees who worked, or continue to work, for Defendant in California at any time between December 8, 2022, up to [REDACTED] (the "Aggrieved Employees")

This Notice is being provided to you to inform you of a Private Attorneys General Act ("PAGA") Settlement and your proportional share of this settlement payment. The payment is a result of a Court approved PAGA Settlement in the case of *Agrifoglio v. Urogynecology Consultants Medical Corporation*, Sacramento County Superior Court of California, Case No. 24CV002735, filed February 14, 2024 (the "Action"). You are receiving this letter because you fall within the definition of Aggrieved Employees identified above.

In the Action, Plaintiff Sabrina Agrifoglio ("Plaintiff") sought to obtain civil penalties, fees, and costs on behalf of herself and Aggrieved Employees. Plaintiff alleged that Urogynecology Consultants Medical Corporation ("Defendant") violated California law by 1) Failing to Pay Overtime Wages, 2) Failing to Pay Minimum Wages, 3) Failing to Provide Meal Periods or Pay Premiums in Lieu Thereof, 4) Failing to Provide Rest Periods or Pay Premiums in Lieu Thereof 5) Failing to Provide Accurate Wage statements, 6) Failing to Pay Final Wages, 7) Failing to Pay Reimbursement for Expenses, 8) Failing to Maintain Accurate Records, and 9) Failing to Provide Paid Sick Leave. Defendant has denied all of Plaintiff's allegations.

This notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the Action or the merits of the claims or defenses asserted. Defendant has denied engaging in any unlawful conduct in any respect and further disputes all of Plaintiff's allegations in the Action. By entering into the PAGA Settlement, Defendant does not admit any liability to Plaintiff or to any other current or former employees, and Defendant does not admit that any violations of Plaintiff's rights, or the rights of any other current or former employees has occurred.

Plaintiff filed a notice with the California Labor and Workforce Development Agency ("LWDA") to exhaust administrative remedies and pursue claims under the PAGA, California Labor Code §§ 2698 *et seq.*, predicated on violations of Labor Code sections 201-203, 226, 226.3, 226.7, 246, 246.5, 248.5, 256, 510, 512, 558, 558.1, 1174, 1194, 1197.1, and 2802. The scope of the PAGA Settlement includes all of the Aggrieved Employees for the time period identified above. In exchange for payment under the Settlement, Plaintiff has agreed to waive any and all claims for civil penalties that were brought under the PAGA that were asserted in Plaintiff's notice letter to the LWDA and any additional claims for civil penalties under the PAGA that could have been brought based on the facts alleged therein between December 8, 2022, to [REDACTED]. Aggrieved Employees cannot opt out of this waiver of claims. However, the waiver **does not** extend to any non-PAGA claims you may have.

Under the terms of the Settlement, Defendant has agreed to pay a Gross Settlement Amount of \$35,000 to resolve the PAGA claims alleged in the Action ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount were sums approved by the Court for attorneys' fees \$[REDACTED], attorneys' costs in the amount of \$[REDACTED], the fees and expenses of the Settlement Administrator in the amount of \$[REDACTED], which will result in a "Net Settlement Amount" of \$[REDACTED] for distribution to between Aggrieved Employees and the Labor and Workforce Development Agency ("LWDA") as required by the California Labor Code. 75% of the Net Settlement Amount (\$[REDACTED]) is being paid to the LWDA and 25% of the Net Settlement Amount (\$[REDACTED]) is being paid to Aggrieved Employees pursuant to Labor Code section 2699(i). Each individual Aggrieved Employee's share of the Net Settlement Amount was determined by taking their individual number of pay periods worked between December 8, 2022, to [REDACTED], dividing

that number by the number of pay periods worked for all Aggrieved Employees between December 8, 2022, to the , and then multiplying that fraction by the 25% share of the Net Settlement Amount.

Enclosed in this mailing, you will find a check containing your share of the PAGA Settlement based on this allocation. Should you have any questions or concerns, you may contact counsel for Plaintiff and/or Defendant.

Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
On behalf of Plaintiff

Jennifer Duggan
Katie Collins
Duggan McHugh Law Corporation
641 Fulton Avenue, Suite 100
Sacramento, CA 95825
Phone: 916-550-5309
Fax: 916-404-5900
On behalf of Defendant

Exhibit B

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Renald Konini (Cal. State Bar No. 312080)
4 **Shimoda & Rodriguez Law, PC**
5 9401 East Stockton Boulevard, Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiff SABRINA AGRIFOGLIO

ELECTRONICALLY FILED
Superior Court of California
County of Sacramento
02/14/2024
By: H. Thomas Deputy

10 **SUPERIOR COURT OF CALIFORNIA**
11 **FOR THE COUNTY OF SACRAMENTO**

12 SABRINA AGRIFOGLIO,

13 Plaintiff,

14 vs.

15 UROGYNECOLOGY CONSULTANTS
16 MEDICAL CORPORATION, a California
17 Corporation; and DOES 1 to 100, inclusive,

18 Defendants.

Case No. **24CV002735**

COMPLAINT FOR DAMAGES:

1. **Failure to Pay Overtime Wages**
2. **Failure to Pay Minimum Wages**
3. **Meal Period Violations**
4. **Rest Period Violations**
5. **Wage Statement Violations**
6. **Waiting Time Penalties**
7. **Failure to Reimburse Expenses**
8. **Unfair Competition**
9. **Private Attorneys General Act**

DEMAND FOR JURY TRIAL

20
21
22 Plaintiff SABRINA AGRIFOGLIO ("Plaintiff"), hereby files this Complaint against
23 Defendants UROGYNECOLOGY CONSULTANTS MEDICAL CORPORATION, a California
24 Corporation; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as "Defendants").
25 On information and belief, Plaintiff allege the following:

26 **INTRODUCTION**

27 1. This is an individual and Private Attorneys General Act ("PAGA") lawsuit brought by
28 Plaintiff for failure to provide overtime wages, failure to provide minimum wages, meal and rest period

violations, wage statement violations, waiting time penalties, failure to reimburse expenses, and unfair competition.

JURISDICTION AND VENUE

2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to California Code of Civil Procedure section 410.10 to determine alleged violations of the California Labor Code, California Business and Professions Code, and Wage Order No. 5.

3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), and 395.5, in that Defendants identified their principal place of business and/or residence as being within Sacramento County on filings submitted to the California Secretary of State. Additionally, that some of the wrongful acts and violations of law asserted herein against Aggrieved Employees occurred within Sacramento County, and Defendants' obligation to pay wages arose in Sacramento County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

4. Plaintiff sought permission pursuant to California Labor Code section 2699 *et seq.* to pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of herself and other Aggrieved Employees. Pursuant to California Labor Code section 2699.3, Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency (“LWDA”) on approximately December 8, 2023. Plaintiff provided facts and legal basis for her claims within the notice to the LWDA on all violations asserted under the Private Attorneys General Act cause of action. Plaintiff also submitted the \$75.00 filing fee. The December 8, 2023, notice was also sent via certified mail to Defendants on the same day. To date, the LWDA has not provided any response to Plaintiff’s notice correspondence. Accordingly, Plaintiff has exhausted all administrative remedies pursuant to the Private Attorneys General Act (“PAGA”) and may bring this action on behalf of herself and all similarly situated employees, *i.e.* Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees include, but is not limited to the following: all non-exempt employees who worked, or continue to work, for Defendants in California at any time between December 8, 2022 to the present.

//

//

PARTIES

5. SABRINA AGRIFOGLIO is an individual over the age of eighteen (18) and is a resident of the State of California.

6. On information and belief, Plaintiff alleges, UROGYNECOLOGY CONSULTANTS MEDICAL CORPORATION, is now and/or at all times mentioned in this Complaint was a California Corporation and the owner and operator of an industry, business and/or facility doing business in the State of California.

7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true names and capacities of these DOE Defendants when they are ascertained.

8. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiff.

9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint employment, joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuance of said joint employment, joint venture, partnership and common enterprise.

10. Defendants, and each of them, now and/or at all times mentioned in this Complaint approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

11. Defendants proximately caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

GENERAL ALLEGATIONS

12. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 13 as though fully set forth herein.

13. Plaintiff was employed with Defendants from May 2015 to November 2018 and from July 26, 2019, to September 21, 2023. Plaintiff was a non-exempt employee, and her final rate of pay was \$38.00 per hour. Plaintiff worked as a licensed vocational nurse ("LVN") out of the Roseville

1 office. Defendants provide urogynecology medical services to patients. Defendants have offices in
2 Sacramento, Roseville, and Folsom, California. Plaintiff's job duties and tasks include but were not
3 limited to performing office visits with patients, communicating test results to patients, charting,
4 addressing patients' calls and responding to patients' messages, requests, concerns, and instant
5 messaging. Plaintiff had a full day of scheduled appointments. The appointments varied between fifteen
6 (15) minutes to one hour. Plaintiff had anywhere from nine (9) to eighteen (18) appointments per day.
7 Plaintiff worked in a fast paced overornament where she had to provide patient care and respond to
8 patients quickly.

9 14. Plaintiff and Aggrieved Employees worked over eight (8) hours per day and forty (40)
10 hours per week on a regular basis. Initially, Plaintiff's and Aggrieved Employees' work schedule was
11 8:00 a.m. to 4:30 p.m. After November 2021, Plaintiff and other Aggrieved Employees began a four (4)
12 days per week, ten (10) hours per day work schedule. Although Plaintiff regularly worked in excess of
13 ten (10) hours days, Plaintiff's schedule changed to three (3) days per week where she was scheduled to
14 work two ten (10) hour days and a twelve (12) hour day. Plaintiff also worked over ten (10) hours per
15 day and over twelve (12) hours per day during this period. Plaintiff is informed and believes that other
16 Aggrieved Employees similarly worked over their scheduled shifts, including the ten (10) hour shifts.
17 Defendants did not pay Plaintiff and Aggrieved Employees overtime for all hours worked in excess of
18 eight (8) per day. Defendants also failed to pay double time for all hours worked in excess of twelve
19 (12) per day. For overtime wages that Defendants did pay, they regularly failed to properly calculate the
20 regular rate of pay for Plaintiff and Aggrieved Employees as Defendants did not incorporate the value of
21 bonuses into the regular rate of pay covering the time period the bonuses were earned over. The failure
22 to properly calculate the regular rate of pay also caused the underpayment of sick leave wages and meal
23 and rest period premiums.

24 15. Defendants had a high-volume practice and suffered from a lack of staffing which made
25 it difficult for Plaintiff and Aggrieved Employees to finish all the daily appointments and complete all
26 the daily tasks and messages. As a result, Plaintiff reported to work early prior to the start of her shift
27 and started working before clocking in. Plaintiff would also work after she had clocked out in order to
28 finish charts, respond to patient messages and complete daily tasks. Plaintiff estimates that she worked

1 approximately one (1) to two (2) hours off-the-clock per week. Plaintiff is informed and believes that
2 other Aggrieved Employees also worked off the clock pre- and post-shift in order to finish daily tasks.
3 Plaintiff and Aggrieved Employees were not paid for off-the-clock work, resulting in unpaid minimum
4 and overtime wages.

5 16. Moreover, Defendants failed to authorize and permit Plaintiff and Aggrieved Employees
6 to take meal and rest periods in a timely manner, completely free from duty, and uninterrupted due to the
7 fast pace of the work, the number of patients to be seen, responding to patient messages, and lack of
8 staffing. Plaintiff and Aggrieved Employees regularly missed their meal and rest periods, were unable
9 to take timely meal periods, and were interrupted for those meal and rest periods they attempted. For
10 example, Plaintiff was not able to take her meal and/or rest periods due to the volume of work and
11 nature of task, including the back-to-back scheduling of appointments without provision for breaks, and
12 appointments continuing into any time that was others scheduled to be a break. Plaintiff is informed and
13 believes that Aggrieved Employees were similarly unable to take their meal and rest periods due to the
14 volume of work and nature of tasks. Defendants' time records demonstrate a pattern of untimely meal
15 periods and/or the lack of a meal period when Plaintiff and Aggrieved Employees would have been
16 entitled to one. Defendants did not provide Plaintiff and Aggrieved Employees with a second meal
17 period or third rest period for shifts of more than ten (10) hours, even where those shifts were in excess
18 of twelve (12) hours. Defendants did not pay Plaintiff meal and/or rest period premiums for non-
19 compliant meal and/or rest periods. Plaintiff is informed and believes that Defendants similarly failed to
20 pay Aggrieved Employees meal and/or rest period premiums for non-compliant meal and/or periods.

21 17. Furthermore, Defendants also did not have a policy to reimburse Plaintiff and Aggrieved
22 Employees for the use of their personal cell phones for work purposes. Defendants required Plaintiff and
23 Aggrieved Employees to clock in and out using a Paylocity app. Aggrieved Employees used their cell
24 phones to clock in and out via the app. Also, Plaintiff and other nurses used their personal cell phones to
25 communicate with co-workers and physicians for work purposes. Defendants did not reimburse Plaintiff
26 and Aggrieved Employees for using their personal cell phones for work purposes. Additionally,
27 Defendants required Plaintiff and Aggrieved Employees to drive to other offices to pick up supplies.
28

Defendants did not reimburse Plaintiff and Aggrieved Employees for driving their personal cars to pick up supplies.

18. Finally, Defendants failed to provide Plaintiff and Aggrieved Employees with all their earned sick pay. Because Defendants required Plaintiff and Aggrieved Employees to work off-the-clock, Plaintiff and Aggrieved Employees did not accrue the appropriate amount of sick leave based on actual hours worked. Additionally, even excluding off-the-clock hours worked, Defendants required Plaintiff and Aggrieved Employees to accrue sick leave at a rate less than one (1) hour of sick leave for every thirty (30) hours worked. Defendants utilized a lesser, flat rate accrual per pay period that resulted in less than twenty-four (24) hours of sick leave being available by the 120th day of employment. This resulted in the failure to pay Plaintiff and Aggrieved Employees all sick leave wages they would have otherwise been due and prevented Plaintiff and Aggrieved Employees from taking all their earned sick days.

19. As a result of Defendants' failure to pay Plaintiff and Aggrieved Employees all minimum wages, overtime wages, meal and rest period premiums, and sick leave wages, the wage statements Defendants issued were inaccurate. The paystubs that Defendants issued did not accurately itemize all hours worked, the accurate rates of pay, minimum and overtime wages earned, the number of meal and rest period premiums owed, the accurate accrued sick leave pay, and the accurate gross and net wages earned.

20. To date, Defendants have not paid Plaintiff and Aggrieved Employees all the minimum wages, overtime wages, meal and rest period premiums, and sick leave wages.

CAUSES OF ACTION

FIRST CAUSE OF ACTION **FAILURE TO PAY OVERTIME WAGES** **(As to all Defendants)**

21. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 20 as though fully set forth herein.

22. During the period Plaintiff was employed by Defendants, Defendants were required to compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for

1 hours worked in excess of twelve (12) hours per day. *See, e.g.,* IWC Wage Order No. 5, section (3)(A);
2 Cal. Lab. Code §§ 510, 1194.

3 23. Plaintiff worked in excess of eight (8) hours per day and/or forty (40) hours per week on
4 several occasions while employed by Defendants. However, Defendants failed to compensate Plaintiff
5 and for all overtime hours worked at their regular rate of pay.

6 24. Plaintiff was not exempt from overtime protections employees under the California Wage
7 Orders and Labor Code.

8 25. As a proximate result of Defendants' conduct, Plaintiff has been damaged as stated in the
9 section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth
10 here in full.

11 **SECOND CAUSE OF ACTION**
12 **FAILURE TO PAY MINIMUM WAGES**
13 **(As to all Defendants)**

14 26. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 25 as though fully
15 set forth herein.

16 27. For the period preceding the filing of this Complaint, Defendants were required to
17 compensate Plaintiff at least California's applicable minimum for every hour worked. *See* MW-Order
18 2019; IWC Wage Order, No. 5, section 4(A); Cal. Lab. Code § 1194.

19 28. Plaintiff was not exempt from the State's Minimum Wage Order. Defendants were aware
20 of their obligation to pay the minimum wage for each hour worked but failed to do so.

21 29. As a proximate result of Defendants' conduct, Plaintiff has been damaged as stated in the
22 section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth
23 here in full.

24 **THIRD CAUSE OF ACTION**
25 **MEAL PERIOD VIOLATIONS**
26 **(As to all Defendants)**

27 30. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 29 as though fully
28 set forth herein.

31. An employer must provide an employee a meal period in accordance with the
applicable Wage Order, and California Labor Code sections 226.7 and 512.

1 32. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 5, section
2 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30)
3 minutes for each work period of more than five (5) hours.

4 33. California Labor Code section 512 and Wage Order No. 5 section 11(B) further
5 provide that employers may not employ employees for a work period for more than ten (10) hours
6 per day without providing the employee with a second meal period of at least thirty (30) minutes.
7 However, if the total hours worked is no more than twelve (12) hours, the second meal period may
8 be waived so long as there was no waiver as to the first meal period. Employees are entitled to one
9 (1) hour of pay at their regular rate of compensation for each meal period not provided.

10 34. Defendants employed Plaintiff for periods of more than five (5) hours without
11 providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30)
12 minutes when Plaintiff worked more than ten (10) hours in a day. Defendants also failed to allow
13 Plaintiff to take her first meal period before the completion of their fifth hour of work and failed to
14 allow Plaintiff to take her second meal period before the completion of her tenth hour of work.
15 Plaintiff did not waive her rights to all meal periods throughout their employment.

16 35. Defendants further failed to pay Plaintiff the applicable meal period premiums for any
17 such missed meal breaks.

18 36. As a proximate result of Defendants' conduct, Plaintiff has been damaged as stated in
19 the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set
20 forth here in full.

21 **FOURTH CAUSE OF ACTION**
22 **REST PERIOD VIOLATIONS**
23 **(As to all Defendants)**

24 37. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 36 as though fully
25 set forth herein.

26 38. An employer must provide an employee a rest period in accordance with the
27 applicable Wage Order and California Labor Code section 226.7.
28

39. California Labor Code section 226.7 and Wage Order No. 5, section 12(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

40. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff to take paid rest periods of at least ten (10) minutes for each work period that she worked more than four (4) hours or a major fraction thereof.

41. Defendants further failed to pay Plaintiff and Aggrieved the applicable rest period premiums for any such missed rest periods.

42. As a proximate result of Defendants' conduct, Plaintiff has been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

43. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 42 as though fully set forth herein.

44. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at

1 *the place of employment or at a central location within the State of*
2 *California.*

3 45. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
4 itemized statement or failed to provide an accurate and complete itemized statement showing the
5 requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not
6 accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime
7 and double time hours worked and corresponding rates of pay, and gross and net wages earned. The
8 paystubs also did not accurately itemize Plaintiff's total hours worked due to Defendants' lack of
9 staffing, timekeeping practices, meal and rest period policies and practices that interrupted Plaintiff
10 during her meal and rest breaks, that resulted in off-the-clock work. Plaintiff was not able to
11 promptly and easily determine her total hours worked from her paystubs alone. Additionally,
12 Plaintiff suffered confusion over whether she received all wages owed and was prevented from
13 effectively challenging information on her wage statements.

14 46. As a proximate result of Defendants' conduct, Plaintiff has been damaged as stated in
15 the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set
16 forth here in full.

17 **SIXTH CAUSE OF ACTION**
18 **WAITING TIME PENALTIES**
19 **(As to all Defendants)**

20 47. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 46 as though fully
21 set forth herein.

22 48. An employer must pay an employee who is terminated all unpaid wages immediately
23 upon termination. *See* Cal. Lab. Code § 201.

24 49. An employer must pay an employee who resigns all unpaid wages within seventy-two
25 (72) hours of their resignation. *See* Cal. Lab. Code § 202.

26 50. Plaintiff did not receive all wages, including minimum and overtime wages, meal and rest
27 period premiums, or all sick leave pay owed at her termination or within the required time after her
28 separation from employment.

1 51. An employer who willfully fails to pay an employee wages in accordance with California
2 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
3 days. *See* Cal. Lab. Code § 203.

4 52. Defendants knew of their obligation to pay Plaintiff's her final wages when her
5 employment terminated. Indeed, Defendants had knowledge that Plaintiff worked off the clock and
6 worked through meal and rest periods and took late meal and rest periods because Defendants scheduled
7 appointments during Plaintiff's meal period times or required Plaintiff to perform patient visits, charting,
8 or respond to messages during meal and rest periods. Such conduct shows Defendants had knowledge
9 of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining
10 wages owed.

11 53. As a proximate result of Defendants' conduct, Plaintiff has been damaged and deprived
12 of her wages and thereby seeks her daily rate of pay multiplied by thirty (30) days for Defendants'
13 failure to pay all wages due.

14 **SEVENTH CAUSE OF ACTION**
15 **FAILURE TO REIMBURSE EXPENSES**
16 **(As to all Defendants)**

17 54. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 53 as though fully
18 set forth herein.

19 55. California Labor Code section 2802(a) states that "An employer shall indemnify his or
20 her employee for all necessary expenditures or losses incurred by the employee in direct consequence of
21 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
22 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
23 unlawful."

24 56. Defendants required Plaintiff to use her personal cell phone to clock in and out using a
25 Paylocity app. Defendants required Plaintiff to use her personal cell phone to communicate with co-
26 workers and physicians for work purposes. Defendants did not reimburse Plaintiff for using her personal
27 cell phone for work purposes. Additionally, Defendants required Plaintiff to drive to other offices to
28 pick up supplies. Defendants did not reimburse Plaintiff for driving her personal cars to pick up supplies.

57. As a proximate result of Defendants' conduct, Plaintiff has been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to UROGYNECOLOGY CONSULTANTS MEDICAL CORPORATION and DOES 1 to 100)

58. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 57 as though fully set forth herein.

59. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See* California Business and Professions (“B&P”) Code § 17200.

60. Plaintiff was not paid all wages owed, including minimum and overtime wages, and meal and rest period premiums, paid sick leave, or reimbursed for business expenses, during her employment or any time thereafter. Moreover, through Defendants conduct Plaintiff was denied statutory protections regarding meal and rest periods.

61. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law (“UCL”) (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

62. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff is entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 226.7, 245 et seq, 510, 512, and 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

63. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 62 as though fully set forth herein.

64. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 5, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 5, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226.7, 512 and Wage Order No. 5, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7 and Wage Order No. 5, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)

65. Plaintiff seeks civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

66. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

67. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Interest for the wages due pursuant to California Labor Code section 1194;
 - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
 - d. Liquidated damages pursuant to California Labor Code section 1194.2;
4. As to the Third Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
5. As to the Fourth Cause of Action:
 - a. Wages in an amount to be proven at trial;
 - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
6. As to the Fifth Cause of Action:
 - a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);

- b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);

7. As to the Seventh Cause of Action:

- a. An amount to be proven at trial;
b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

8. As to the Ninth Cause of Action:

- a. For civil penalties as provided in the Labor Code for each enumerated violation;
b. For those Labor Code sections where there is no civil penalty provided for their violation, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;
c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
d. For any other remedies as allowed by law and/or deemed appropriate by the Court;

9. For such other and further relief as this Court may deem just and proper, including, but not limited to:

- a. Wages as proved at trial;
b. Injunctive and Declaratory relief;
c. Attorney's fees and costs as provided for by law; and
d. Interest.

Dated: February 14, 2024

Shimoda & Rodriguez Law, PC

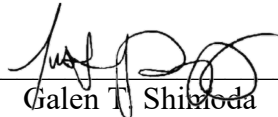
By: 
Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Attorneys for Plaintiff

Exhibit C



Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd.
Suite #120
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

December 8, 2023

For Online Filing:

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Sabrina Agrifoglio v. Urogynecology Consultants Medical Corporation, et al.*

Dear Labor Commissioner,

As counsel for Sabrina Agrifoglio (“Plaintiff”), I am writing to provide you and the following “employers” notice pursuant to California Labor Code section 2699.3:

Urogynecology Consultants Medical Corporation
2801 K Street, Suite 200
Sacramento, CA 95816

Wesley Hilger
2801 K Street, Suite 200
Sacramento, CA 95816

Seshadri Kasturi
2801 K Street, Suite 200
Sacramento, CA 95816

We are setting forth the “facts and theories” to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against Urogynecology Consultants Medical Corporation, Wesley Hilger, and Seshadri Kasturi (“Defendants”). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to the following: all non-exempt employees who worked or continue to work for Defendants in California at any time between one (1) year prior to the filing of this notice to the present. Plaintiff is clearly entitled to bring a Private Attorneys General Act (“PAGA”) claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).



A. FACTS

Plaintiff was employed with Defendants from May 2015 to November 2018 and from July 26, 2019, to September 21, 2023. Plaintiff was a non-exempt employee, and her final rate of pay was \$38.00 per hour. Plaintiff worked as a licensed vocational nurse (“LVN”) out of the Roseville office. Defendants provide urogynecology medical services to patients. Defendants have offices in Sacramento, Roseville, and Folsom, California. Plaintiff’s job duties and tasks include but were not limited to performing office visits with patients, communicating test results to patients, charting, addressing patients’ calls and responding to patients’ messages, requests, concerns, and instant messaging. Plaintiff had a full day of scheduled appointments. The appointments varied between fifteen (15) minutes to one hour. Plaintiff had anywhere from nine (9) to eighteen (18) appointments per day. Plaintiff worked in a fast paced overornament where she had to provide patient care and respond to patients quickly.

Plaintiff and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week on a regular basis. Initially, Plaintiff’s and Aggrieved Employees’ work schedule was 8:00 a.m. to 4:30 p.m. After November 2021, Plaintiff and other Aggrieved Employees began a four (4) days per week, ten (10) hours per day work schedule. Although Plaintiff regularly worked in excess of ten (10) hours days, Plaintiff’s schedule changed to three (3) days per week where she was scheduled to work two ten (10) hour days and a twelve (12) hour day. Plaintiff also worked over ten (10) hours per day and over twelve (12) hours per day during this period. Plaintiff is informed and believes that other Aggrieved Employees similarly worked over their scheduled shifts, including the ten (10) hour shifts. Defendants did not pay Plaintiff and Aggrieved Employees overtime for all hours worked in excess of eight (8) per day. Defendants also failed to pay double time for all hours worked in excess of twelve (12) per day. For overtime wages that Defendants did pay, they regularly failed to properly calculate the regular rate of pay for Plaintiff and Aggrieved Employees as Defendants did not incorporate the value of bonuses into the regular rate of pay covering the time period the bonuses were earned over. The failure to properly calculate the regular rate of pay also caused the underpayment of sick leave wages and meal and rest period premiums.

Defendants had a high-volume practice and suffered from a lack of staffing which made it difficult for Plaintiff and Aggrieved Employees to finish all the daily appointments and complete all the daily tasks and messages. As a result, Plaintiff reported to work early prior to the start of her shift and started working before clocking in. Plaintiff would also work after she had clocked out in order to finish charts, respond to patient messages and complete daily tasks. Plaintiff estimates that she worked approximately one (1) to two (2) hours off-the-clock per week. Plaintiff is informed and believes that other Aggrieved Employees also worked off the clock pre- and post-shift in order to finish daily tasks. Plaintiff and Aggrieved Employees were not paid for off-the-clock work, resulting in unpaid minimum and overtime wages.



Moreover, Defendants failed to authorize and permit Plaintiff and Aggrieved Employees to take meal and rest periods in a timely manner, completely free from duty, and uninterrupted due to the fast pace of the work, the number of patients to be seen, responding to patient messages, and lack of staffing. Plaintiff and Aggrieved Employees regularly missed their meal and rest periods, were unable to take timely meal periods, and were interrupted for those meal and rest periods they attempted. For example, Plaintiff was not able to take her meal and/or rest periods due to the volume of work and nature of task, including the back-to-back scheduling of appointments without provision for breaks, and appointments continuing into any time that was others scheduled to be a break. Plaintiff is informed and believes that Aggrieved Employees were similarly unable to take their meal and rest periods due to the volume of work and nature of tasks. Defendants' time records demonstrate a pattern of untimely meal periods and/or the lack of a meal period when Plaintiff and Aggrieved Employees would have been entitled to one. Defendants did not provide Plaintiff and Aggrieved Employees with a second meal period or third rest period for shifts of more than ten (10) hours, even where those shifts were in excess of twelve (12) hours. Defendants did not pay Plaintiff meal and/or rest period premiums for non-compliant meal and/or rest periods. Plaintiff is informed and believes that Defendants similarly failed to pay Aggrieved Employees meal and/or rest period premiums for non-compliant meal and/or periods.

Furthermore, Defendants also did not have a policy to reimburse Plaintiff and Aggrieved Employees for the use of their personal cell phones for work purposes. Defendants required Plaintiff and Aggrieved Employees to clock in and out using a Paylocity app. Aggrieved Employees used their cell phones to clock in and out via the app. Also, Plaintiff and other nurses used their personal cell phones to communicate with co-workers and physicians for work purposes. Defendants did not reimburse Plaintiff and Aggrieved Employees for using their personal cell phones for work purposes. Additionally, Defendants required Plaintiff and Aggrieved Employees to drive to other offices to pick up supplies. Defendants did not reimburse Plaintiff and Aggrieved Employees for driving their personal cars to pick up supplies.

Finally, Defendants failed to provide Plaintiff and Aggrieved Employees with all their earned sick pay. Because Defendants required Plaintiff and Aggrieved Employees to work off-the-clock, Plaintiff and Aggrieved Employees did not accrue the appropriate amount of sick leave based on actual hours worked. Additionally, even excluding off-the-clock hours worked, Defendants required Plaintiff and Aggrieved Employees to accrue sick leave at a rate less than one (1) hour of sick leave for every thirty (30) hours worked. Defendants utilized a lesser, flat rate accrual per pay period that resulted in less than twenty-four (24) hours of sick leave being available by the 120th day of employment. This resulted in the failure to pay Plaintiff and Aggrieved Employees all sick leave wages they would have otherwise been due and prevented Plaintiff and Aggrieved Employees from taking all their earned sick days.

As a result of Defendants' failure to pay Plaintiff and Aggrieved Employees all minimum wages, overtime wages, meal and rest period premiums, and sick leave wages, the wage



statements Defendants issued were inaccurate. The paystubs that Defendants issued did not accurately itemize all hours worked, the accurate rates of pay, minimum and overtime wages earned, the number of meal and rest period premiums owed, the accurate accrued sick leave pay, and the accurate gross and net wages earned.

As of this date of this letter, Defendants have not paid Plaintiff and Aggrieved Employees all the minimum wages, overtime wages, meal and rest period premiums, and sick leave wages.

Plaintiff is informed and believes that Wesley Hilger and Seshadri Kasturi were the Chief Executive Officer and Secretary of Urogynecology Consultants Medical Corporation from at least 2022 to present. Mr. Hilger and Mr. Kasturi were responsible for creating, implementing, and overseeing the wage and hour policies and practices outlined herein that resulted in the violation of the California Labor Code.

B. ALLEGATIONS AND CHARGES

Count 1 – Violation of Labor Code §§ 510, 1194; IWC Wage Order 5, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week and were not paid all overtime wages owed. Plaintiff and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.

Count 2 – Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 5, § 4 (Failure to Pay Minimum Wages)

During the period Plaintiff and Aggrieved Employees were employed by Defendants they were entitled to be paid at least the State's minimum wage rate for each hour that they worked. *See, e.g.*, IWC Wage Order MW-2019; IWC Wage Order No. 5, § (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendants did not pay Plaintiff and Aggrieved Employees for all hours worked. Thus, Plaintiff and Aggrieved Employees were not paid at least the applicable state minimum wage for those hours worked. This is against the law.



Count 3 - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 5, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 5, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 5, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendants also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

Count 4 – Violation of Labor Code § 226.7 and Wage Order No. 5, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 5, section 12(A) require employers to provide employee's paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendants also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.

Count 5 – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” For the reasons stated above, Defendants failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This is in violation of the law.



Count 6 – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including overtime, minimum wages, meal and rest period premiums, and sick leave wages be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.

Count 7 – Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Defendants failed to pay any reimbursements to Plaintiff and Aggrieved Employees for the use of personal cell phones and personal cars for work purposes. This was in violation of the law.

Count 8 – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf of an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendants, by and through Defendants agents, violated Plaintiff and Aggrieved Employees’ rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. Mr. Hilger and Mr. Kasturi were officers, directors, shareholders, and/or managing agents of Defendants responsible for the violations stated herein as they were in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead. This is against the law.

Count 9 – Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)

Labor Code section 226.3 provides that any employer who fails to maintain records required by Labor Code section 226(a) or provide records required by 226(a) shall be subject shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each



violation in a subsequent citation. Labor Code section 1174(d) provides that employers must keep and maintain accurate payroll records showing the hours worked daily by, and the wages paid to, employees. Defendants failed to maintain the accurate records required by law and, instead, maintained incomplete, inaccurate records regarding Plaintiff and Aggrieved Employees' wage records and hours worked. This was against the law.

Count 10 – Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

Labor Code sections 246, *et seq.*, mandate that employers must provide California employees, who work thirty (30) or more days within a year for the employer, paid sick leave of at least one (1) hour for every thirty (30) hours worked that begins to accrue at the commencement of employment. An employer may use a different accrual method, other than providing one (1) hour per every thirty (30) hours worked, provided that the accrual is on a regular basis so that an employee has no less than twenty-four (24) hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. An employer may limit the use of sick leave to either twenty-four (24) hours or the equivalent of three (3) days, whichever is greater, during a year period. However, employers using an accrual method rather than a lump sum method must allow employees to accrue up to forty-eight (48) hours or the equivalent of six (6) days at any given time. Employers must authorize employees to take paid sick leave under the conditions set forth in the Healthy Workplaces, Healthy Families Act of 2014 ("HWHFA") for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member. Any sick leave taken must be paid at the employee's regular rate of pay. Defendants failed to provide Plaintiff and Aggrieved Employees with all their earned sick pay based on the hours worked because Defendants did not consider Plaintiff's and Aggrieved Employees' off-the-clock hours worked in calculating the sick pay accrual for them. As a result of such policies, Defendants prevented Plaintiff and Aggrieved Employees from accruing all sick leave hours they were entitled to and, therefore, prevented them from taking all their earned sick days. For the reasons stated above, Defendants failed to provide Plaintiff and Aggrieved Employees with sick leave meeting the requirements set forth in HWHFA.



If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda & Rodriguez Law, PC

By: _____
Justin P. Rodriguez

JPR:rk
cc: Client via e-mail

1 *Agrifoglio v. Urogynecology Consultants Medical Corporation, et al.*

2 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
3 **and California Rules of Court, Rule 1.21 and Rule 2.150**

4 I, Elias Tapia declare that:

5 I am a citizen of the United States and am over the age of eighteen years and not a party to
6 the within above-entitled action.

7 On December 8, 2023, I served the following documents on the party below:

- 8 • PRIVATE ATTORNEYS GENERAL ACT LETTER

9

10 Urogynecology Consultants Medical Corporation 2801 K Street, Suite 200 Sacramento, CA 95816	Wesley Hilger 2801 K Street, Suite 200 Sacramento, CA 95816
12 Seshadri Kasturi 2801 K Street, Suite 200 Sacramento, CA 95816	

14

15 [XXX] [By Certified Mail] I am familiar with my employer's practice for the collection
16 and processing of correspondence for mailing with the United States Postal
17 Service and that each day's mail is deposited with the United States Postal
18 Service that same day in the ordinary course of business. On the date set forth
19 above, I served the aforementioned document(s) on the parties in said action by
placing a true copy thereof enclosed in a sealed envelope with postage thereon
fully prepaid, for collection and mailing on this date, following ordinary business
practices, at Elk Grove, California, addressed as set forth above.

20 [] [By Personal Service] By personally delivering a true copy thereof to the office
of the addressee above.

21 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
22 personally delivered via the following overnight courier service:_____.

23 I declare under penalty of perjury under the laws of the State of California that the foregoing
24 is true and correct, and that this declaration was executed on December 8, 2023, at Elk Grove,
California.

25 
26 _____
Elias Tapia

27

28

Exhibit D

DECLARATION OF LISA MULLINS

1
2
3 1. I am a resident of the United States of America and am over the age of 21. I am the
4 President for ILYM Group, Inc., (herein after referred to as “ILYM Group”), a professional class action
5 services provider. I am preparing this declaration at the request of Plaintiff’s Counsel. I have personal
6 knowledge of the facts herein, and, if called upon to testify, I could and would testify competently to such
7 facts.

8 2. ILYM Group has extensive experience in disseminating PAGA settlements and
9 administering class action settlements, including direct mail services, telephone, and web-based support,
10 database management, opt-out processing, and settlement fund distribution services for class actions
11 ranging in size from 26 to 4.5 million Class Members. Attached hereto, as **Exhibit A**, is a true and
12 correct copy of ILYM Group’s current CV, reflecting our primary competencies as they relate to class
13 action administration. Attached hereto, as **Exhibit B** is ILYM Group’s Security Summary and Protocol.
14 ILYM Group is insured with E&O and Cyber Insurance policies. ILYM Group is insured with E&O
15 Insurance policies up to \$2,000,000 per incident and Cyber Insurance policies up to \$5,000,000 per
16 incident.

17 3. ILYM Group has never had any financial interests in nor affiliation with the parties or
18 counsel in the *Agrifoglio v. Urogynecology Consultants Medical Corporation, et al.* matter.

19 4. Upon appointment, ILYM Group will provide a mailing address and toll-free telephone
20 number to receive correspondence and inquiries from aggrieved employees. After receiving the data file
21 from Defendant, which should contain the aggrieved employees’ names, last known addresses, and
22 social security numbers, ILYM Group will upload the data into our database and check for duplicates
23 and other possible discrepancies.

24 5. As part of the preparation for notice and disbursement, ILYM Group will process
25 aggrieved employees’ names and addresses against the National Change of Address (“NCOA”) database,
26 maintained by the United States Postal Service (“USPS”), to update and confirm the mailing addresses of
27 the aggrieved employees before the mailing of the notice. To the extent an updated address is found in
28 the NCOA database, ILYM Group will use the updated address for mailing the notice. If ILYM Group

1 does not locate an updated address in the NCOA database, it will use the original address provided by
2 Defendant for mailing the notice.

3 6. ILYM Group's Disbursement Process will include but is not limited to; (a) applying for
4 case EIN; (b) establishing Qualified Settlement Fund ((QSF) Escrow Account), with administering tasks
5 including but not limited to overview and reconciliation of account; (c) calculating the individual
6 settlement amounts; (d) preparing, administering, and distributing settlement award checks to the
7 Participating Aggrieved Employees, including necessary tax forms (W2 and/or 1099); (e) calculating and
8 withholding all applicable state and federal taxes; (f) should any disbursements be returned to ILYM
9 Group's office as undeliverable, ILYM Group will attempt to locate an updated address using the NCOA
10 database and/or other skip trace efforts and will promptly remail the disbursement; (g) performing other
11 such duties as the Parties and/or the Courts direct. The above services are included in ILYM Group's
12 initial quote. Attached hereto, as **Exhibit C**, is a true and correct copy of ILYM Group's capped quote for
13 this matter.

14 7. ILYM Group's fees associated with the administration of this settlement are capped at:
15 **\$2,950.00.**

16 I declare, under penalty of perjury under the laws of the State of California that the foregoing is
17 true and correct. Executed this 30th day of September 2024, at Tustin, California.

18
19 

20 _____
21 Lisa Mullins
22
23
24
25
26
27
28

EXHIBIT “A”

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Overview of Our Firm:

ILYM Group, Inc is a class action administration, legal notification, and direct media outlets firm. With over 20 years of combined experience, our primary commitments are to client satisfaction, cutting edge technology and data management security, seamless case management and delivery of case expectations. Because, of our adherence to these commitments, ILYM Group, Inc is a one of the fastest growing, Woman Owned Business (NAPW), in the industry and has become the go-to firm for class action administration and legal notification. ILYM Group, Inc works with the top defense and plaintiff firms across the United States.

AREAS OF EXPERTISE:

- Wage and Hour
- FLSA
- Insurance and Health Care
- Consumer
- Finance
- ERISA
- TCPA
- Antitrust
- Securities

Ramirez v JC Penney.

- ERISA Case with a class size of 26,000.

Kruger, et al. v. Novant Health

- ERISA Case with a class size of \$32 million.

Abbott, et al. v. Lockheed Martin Corp.

- ERISA Case with \$62 million.

Jacqueline Jones vs. I.Q. Data International, Inc.

- TCPA Case with a class size of 93,993. Performed a reverse look-up to obtain Class Member information. We were able to obtain contact information for 93.82% of the Class that did not have a name or address.

Reza Barani vs. Wells Fargo Bank, N.A.

- TCPA Case with a class size of 82,874. Performed a reverse look-up to obtain Class Member information. We were able to obtain contact information for 87.84% of the Class that did not have a name or address.

Kimberly Roberts, et al. v. T.J. Maxx of CA, LLC, et al.

- Wage & Hour Case with a class size of 82,549.

Robert Stone, et al. v. Universal Protection Services, LP, et al.

- Wage & Hour Case with a class size of 75,351.

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

ILYM Group, Inc. is operational 24/7 delivering true client and class member availability. Our call center is open 24/7/365 days a year, even holidays and is full digital, automated and multilingual. ILYM Group Inc.'s mail and media center is a state-of-the-art facility, fully digital and USPS integrated. We can accommodate cases of any size, from ten class members to multi-millions. ILYM Group, Inc. prides itself on its commitment to service, quality, value pricing and availability. We've committed ourselves to being the best Class Action Administration and Notification Company in our industry. Through our years of experience, ILYM Group, Inc. is dedicated to exceeding our client's expectations.

PRE-SETTLEMENT CONSULTATION

- **Administration Consultation:** Meeting to determine objectives and expectations by both parties. All reporting and responsibilities will be agreed upon as will the seamless process to access data. We will also discuss the opportunities to identify class members with the proposed print and web-based media for optimum reach. Additionally, all expectations and delivery of those results will be planned for and mapped accordingly.

MAILING AND NOTIFICATION

- **Fulfillment and Correspondence:** All provided settlement information will be published via United States Postal Service (USPS first class standards) to the proposed mailing class. Notifications will include a Claim ID and how to respond, or Opt-Out, based on the stipulations.
- **Reverse Lookup:** A confidential reverse phone or reverse cell lookup will provide; owner's name, location, address history, carrier, phone type (landline or cell phone) and more. Our reverse lookup is powered by an extensive database which includes hundreds of millions of cell phone, landline, residential and unlisted number. Our software collects data from multiple data sources and carriers across the US. Our average "hit ratio" ranges from 93% - 98%.
- **Creating Class Database:** All Data is verified and filtered to eliminate duplication against the United States Postal Service (USPS) National Change of Address (NCOA) database. ILYM Group, Inc. will also certify and validate with the Coding Accuracy Support System (CASS) and Track Your Class (TYC) for zone delivery.
- **Claim Forms:** ILYM Group, Inc. will email all claim forms, whenever possible, to have accurate reporting and tracking of all class requests. Emails will contain full text claim forms.
- **Translations:** When needed, ILYM Group, Inc. will translate notices to any language needed to reach Class members.
- **Remails:** Returned mail will be scanned, re-verified and re-mailed. All returned mail is data warehoused and reported to both parties' counsels in a weekly report.

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

MEDIA & INTERNET BANNER ADS

Notice Publication

- **Legal Notices:** ILYM Group, Inc. can provide a Media Proposal to maximize reach based on quantitative and qualitative methodologies.
- **Electronic Publication (Banner Ads):** ILYM Group, Inc. will utilize Internet Banner Noticing efforts and web technologies for maximum reach via the World Wide Web.
- **Electronic Mail Notices:** ILYM Group, Inc. can email an estimated number of class members a full text notice. We are compliant with all search engines and Internet Service Providers (ISP) so that our emails are always “White List” accepted with minimal returns.
- **Reach:** Every case has its own proposed reach and exposure percentage. We filter, verify and scrub the data to improve reach results.
- **Services Included:** Analysis, Documentation, Research and Methodologies, Execution and Reporting.

PROJECT MANAGEMENT

- **Case Notification, Maintenance and Management:** ILYM Group, Inc.’s Senior Project Managers will provide all Account Management, Pre-Consultation to Case Conclusion, Reporting and Claims Processing. Design, negotiation and implementation, upon approval, of all forms and notices, all distribution reporting and filings with the court.
- **Claims Processing:** All claims can be submitted by USPS, Internet, Fax, and Email or Online submission. Claims will be processed and recorded with matching ILYM database ID's. E-claims will have corresponding records of intake. All deficient claims will be notified via USPS and make provisions for class member to re-submit claims.
- **Call Center:** ILYM Group, Inc. will support class members with a toll-free number to get the most up-to-date case settlement information. Customer service representatives will be available 24/7/365 as will recorded messages. All class members are given the options to best serve their needs and to receive case information.
- **Internet Support:** Class members can log on to a provided website and view, print or submit information and claim forms regarding the settlement. Frequently Asked Questions (FAQ's) will be provided as well. Class members may download the claim form with mailing and fax instructions provided on the form.
- **Objection and Request for Exclusion:** All objections and request for exclusion, opt-out, will be data warehoused, dated and reported. Postmarks will serve for exclusion dating and will be forwarded to both counsels' no more than 5 days post submission. Objection will be reviewed by ILYM Group, Inc. to determine the timeliness and basis of the objection. All information will be forwarded to both parties counsel, along with any representation information from the class member, within 5 days.

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

DATA ADMINISTRATION AND NETWORK SECURITY

- **Network Security:** All provided data is encrypted, stored and hosted in a Tier 4, SAS70 certified environment.
- **Database Administration:** To be developed with all electronically provided data. Class members will be assigned ILYM Group, Inc. internal tracking ID's to ensure all collected member data coincides with all received claims.

DISTRIBUTION AND SETTLEMENT FUNDING

- **Distribution and Management:** Upon receipt of settlement funds, ILYM Group, Inc. will open a QSF Account for proceeds of the Gross Settlement Payment. The deposited funds will then be managed per the Settlement Agreement. All funds will be settled with class members and counsel along with all federal and state income tax reporting.
- **Check Printing and Mailing:** Claims processed, quantified and approved by clients, will be processed for distribution. All checks will be printed and mailed via USPS first class standards. ILYM Group, Inc. will reissue checks in accordance with the Settlement Agreement.
- **Preparation, Filing and Reporting of Taxes:** ILYM Group, Inc. will ensure taxes are filed in accordance to all federal, state and local employment tax returns. All taxes associated with the settlement will be paid on time to tax authorities. All filings and returns (e.g., 1099s, W-2s, etc.) will be done properly and timely with the appropriate authorities. All QSF steps and obligations with federal, state and/or local law will be followed.

CASE CONCLUSION

- **Data Manager Final Report:** All database and electronic documentation will be sent in reports weekly and at the conclusion of the Administration engagement. Call center activity, e-claims, mailed, and faxed claims will be included in all reporting.
- **Project Manager Final Report:** All case and class related information will be provided on a weekly basis and at the conclusion of the Administration engagement. Mailing and media final analysis, exclusions, objections, and all other claims processing outcomes, status reports and final court documentations will be included.
- **Affidavits:** ILYM Group, Inc. will provide all affidavits in support of analysis and media reach, final approvals and settlement. Expert Testimony and Media Methodologies will be determined.
- **Document Retention:** Unless otherwise directed, ILYM Group, Inc. will destroy all undeliverable notices on the effective date of the settlement or when the case is no longer subject to appeal. ILYM Group, Inc. will correspond for one year after the final distribution or until the case is no longer subject to appeal.

EXHIBIT “B”

ILYM Group, Inc. (ILYM) in conjunction with our security and Information Technology (IT) vendor(s), maintains the highest level of confidentiality of class member data. The class data and all forms of communication received by ILYM, will be held in strict confidentiality and will not be disclosed. Data provided to the administrator for purposes of notice, settlement, or award administration will be used solely for settlement implementation and for no other purpose. ILYM will set up a login for Defense Counsel to transmit the class data through our encrypted secure portal. ILYM processes adhere to the Settlement Administration Data Protection Checklist in the Northern District of California and are summarized in the tables below.

Technical Controls

Firewalls and intrusion detection/prevention systems	Yes
Endpoint Detection and Response (EDR) Systems	Yes
Complex Password Requirements	Yes
MultiFactor Authentication for Access to Systems and Data	Yes
Malware Protection and AntiVirus	Yes
Vulnerability Scanning/Pen Testing	Yes
Data Encryption	Yes
Key Management for access to encrypted Data	Yes
Access only provided on need-to-know basis	Yes
Security Operations Center (SOC)	Yes
Managed Detection and Response (MDR)	Yes
Security Information and Event Management (SIEM)	Yes
Software Defined Global Network (SGN) with next gen firewall	Yes

Administrative Policies

Personnel and support staff risk assessment and management, including pre-hire background checks and screening processes	Yes
Personnel and support staff required to enter into non-disclosure and confidentiality agreements	Yes
Access controls to systems and data, including guidance for granting, modifying, and reviewing access rights	
Information security and privacy policy training, including policy review, best practices, and data security	Yes
No remote access to systems for Employees	No
Exit interviews/confirmation that terminated/departed employees are immediately cut off from access	Yes
Robust audits of data privacy policies by third-party vendors	Yes
Accreditation in accordance with ISO 27001 and SOC2 (among the industry standards listed below)	Compliant
Disclosure of external certifications and any notice of expiration	Yes

Crisis and Risk Management

Incident response/disaster plan for immediate response to security incidents such as data breach.	Yes
Process and timing for notification to attorneys, claimants, and other stakeholders of a data breach and consideration of resources and/or remedies to provide thereto	Yes
Vendor management program that determines and defines requirements to manage risk associated with outsourcing	Core Vendors are limited and have been vetted. New program being implemented as part of SOC 2

Physical Access Controls

Physical Access Security Security Guards Access Cards to facilities with assignment of identification card subject to approval and review Logs of Access	Logs and “codes” No cards – just codes No security guards Logs are kept
Alarm Systems	Yes
CCTV recording Systems	Yes

Data Collection and Retention

Minimization of collection of personally identifiable information, e.g., social security numbers and banking information	Yes
Data collection only required to extent necessary for settlement administration	Yes
Various methods for ensuring data protection and security of Data classification (including implementation of appropriate safeguards to protect from theft, loss, and/or unauthorized disclosure, use, access, destruction) Compliance with applicable laws and regulations (see below) Secure data transfer	Yes

Data Destruction

Preservation of data only for so long as required for administration of the settlement and any relevant reporting required following the payments or distributions	Yes
Secure data destruction (e.g., 6 months – 1 year or when no longer required)	Yes
Physical media (e.g., paper, CDs) shredded or destroyed to point where they cannot be reconstructed	Yes
Destruction of all derivative copies and/or back-ups	Yes

Applicable Laws, Standards, and Other Regulation

Industry standards: National Institute of Standards and Technology (NIST), HIPAA, FISMA, System and Organization Controls (SOC1 and SOC2) or more advanced assessment, ISO 27001	Yes
Local, national, international privacy regulations (including CCPA)	Yes

Ethical Rules

Administrative policies and/or employee handbook incorporating commitment to ethical rules (e.g., company, court ethical rules) setting forth standards of ethical and legal behavior	Yes
Enforcement clauses, violation resulting in disciplinary action including and up to termination of employment	Yes

Customer Service Measures

Description of settlement website and posting thereto of relevant privacy policies or statements (including portal for reporting suspected loss of confidential data submitted with claim)	Yes
--	-----

Explanation of role of claims administrator and how to prevent phishing (e.g., clear indication that administrator will not request confidential information by e-mail and how to identify a valid e-mail sent from the administrator)	Yes
--	-----

EXHIBIT “C”

Case Name: Agrifoglio v. Urogynecology Consultants Medical Corporation, et al.

Tuesday, June 18, 2024

Requesting Attorneys Name:

E-Mail:

ILYM Contact:

E-Mail:

Contact Number:

Renald Konini

rkonini@shimodalaw.com

Lisa Mullins

Lisa@ilymgroup.com

714.878.8836

Estimate For Administrative Solutions: PAGA

KEY ASSUMPTIONS	
Total Number of Aggreived Employees	45
Estimated Percentage of Remails	15%
Certified Spanish Translation	No
ILYM Group Static Website	No
NCOA	Yes
Case Duration (Years)	1

Summary Estimate: ILYM Group Fees & Expenses

Case Startup:	\$440.70
Distribution (Includes EIN, Bank Acct * /QSF Setup):	\$2,039.30
Case Conclusion:	\$470.00

Capped ILYM Fees & Expenses: \$2,950.00

Case Name: Agrifoglio v. Urogynecology Consultants Medical Corporation, et al.

Tuesday, June 18, 2024

Requesting Attorneys Name: Renald Konini

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - <i>Import and Formatting of Data*</i>	Hourly	\$150.00	1	\$150.00
Project Manager (Case notification and maintenance)	Hourly	\$120.00	2	\$240.00
NCOA	Flat Rate	\$20.00	1	\$20.00
Toll-Free Call Center	Flat Rate	\$30.70	1	\$30.70

*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.

Subtotal \$440.70

DISTRIBUTION (Includes EIN, Bank Acct /QSF Setup)*				
Distribution Setup & Management	Hourly	\$150.00	1	\$150.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	1	\$125.00
Notice, Check, Stub & Release - (including 1099)	Per Check	\$1.50	45	\$67.50
USPS First Class 1oz Postage	Per Piece	\$0.64	45	\$28.80
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	9	\$18.00
Preparation of Taxes	Hourly	\$150.00	1	\$150.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

*Additional Bank fees may apply

Subtotal \$2,039.30

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Process Unclaimed Funds to <i>cy pres</i>	Flat Fee	\$250.00	1	\$250.00
Declaration	Hourly	\$120.00	1	\$120.00

Subtotal \$470.00

Capped ILYM Fees & Expenses: \$2,950.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

Exhibit E

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

) **Case No. 24CV002735**

SABRINA AGRIFOGLIO, individually and on
behalf of all other similarly situated employees,

Plaintiff,

vs.

UROGYNECOLOGY CONSULTANTS MEDICAL
CORPORATION, a California Corporation; and
DOES 1 to 100, inclusive,

Defendant.

) **NOTICE OF PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT PAYMENT**

TO: All non-exempt employees who worked, or continue to work, for Defendant in California at any time between December 8, 2022, up to [REDACTED] (the "Aggrieved Employees")

This Notice is being provided to you to inform you of a Private Attorneys General Act ("PAGA") Settlement and your proportional share of this settlement payment. The payment is a result of a Court approved PAGA Settlement in the case of *Agrifoglio v. Urogynecology Consultants Medical Corporation*, Sacramento County Superior Court of California, Case No. 24CV002735, filed February 14, 2024 (the "Action"). You are receiving this letter because you fall within the definition of Aggrieved Employees identified above.

In the Action, Plaintiff Sabrina Agrifoglio ("Plaintiff") sought to obtain civil penalties, fees, and costs on behalf of herself and Aggrieved Employees. Plaintiff alleged that Urogynecology Consultants Medical Corporation ("Defendant") violated California law by 1) Failing to Pay Overtime Wages, 2) Failing to Pay Minimum Wages, 3) Failing to Provide Meal Periods or Pay Premiums in Lieu Thereof, 4) Failing to Provide Rest Periods or Pay Premiums in Lieu Thereof 5) Failing to Provide Accurate Wage statements, 6) Failing to Pay Final Wages, 7) Failing to Pay Reimbursement for Expenses, 8) Failing to Maintain Accurate Records, and 9) Failing to Provide Paid Sick Leave. Defendant has denied all of Plaintiff's allegations.

This notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the Action or the merits of the claims or defenses asserted. Defendant has denied engaging in any unlawful conduct in any respect and further disputes all of Plaintiff's allegations in the Action. By entering into the PAGA Settlement, Defendant does not admit any liability to Plaintiff or to any other current or former employees, and Defendant does not admit that any violations of Plaintiff's rights, or the rights of any other current or former employees has occurred.

Plaintiff filed a notice with the California Labor and Workforce Development Agency ("LWDA") to exhaust administrative remedies and pursue claims under the PAGA, California Labor Code §§ 2698 *et seq.*, predicated on violations of Labor Code sections 201-203, 226, 226.3, 226.7, 246, 246.5, 248.5, 256, 510, 512, 558, 558.1, 1174, 1194, 1197.1, and 2802. The scope of the PAGA Settlement includes all of the Aggrieved Employees for the time period identified above. In exchange for payment under the Settlement, Plaintiff has agreed to waive any and all claims for civil penalties that were brought under the PAGA that were asserted in Plaintiff's notice letter to the LWDA and any additional claims for civil penalties under the PAGA that could have been brought based on the facts alleged therein between December 8, 2022, to [REDACTED]. Aggrieved Employees cannot opt out of this waiver of claims. However, the waiver **does not** extend to any non-PAGA claims you may have.

Under the terms of the Settlement, Defendant has agreed to pay a Gross Settlement Amount of \$35,000 to resolve the PAGA claims alleged in the Action ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount were sums approved by the Court for attorneys' fees \$[REDACTED], attorneys' costs in the amount of \$[REDACTED], the fees and expenses of the Settlement Administrator in the amount of \$[REDACTED], which will result in a "Net Settlement Amount" of \$[REDACTED] for distribution to between Aggrieved Employees and the Labor and Workforce Development Agency ("LWDA") as required by the California Labor Code. 75% of the Net Settlement Amount (\$[REDACTED]) is being paid to the LWDA and 25% of the Net Settlement Amount (\$[REDACTED]) is being paid to Aggrieved Employees pursuant to Labor Code section 2699(i). Each individual Aggrieved Employee's share of the Net Settlement Amount was determined by taking their individual number of pay periods worked between December 8, 2022, to [REDACTED], dividing

that number by the number of pay periods worked for all Aggrieved Employees between December 8, 2022, to the , and then multiplying that fraction by the 25% share of the Net Settlement Amount.

Enclosed in this mailing, you will find a check containing your share of the PAGA Settlement based on this allocation. Should you have any questions or concerns, you may contact counsel for Plaintiff and/or Defendant.

Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
On behalf of Plaintiff

Jennifer Duggan
Katie Collins
Duggan McHugh Law Corporation
641 Fulton Avenue, Suite 100
Sacramento, CA 95825
Phone: 916-550-5309
Fax: 916-404-5900
On behalf of Defendant

Exhibit F

Exhibit G

Date	Description	Amount
12/8/2024	Administration Fee - Phone, Fax, Scan, Copying, Westlaw Legal Research Fee	\$500.00
12/8/2023	Payment to LWDA - PAGA Filing Fee	\$75.00
12/8/2023	Certified Mail - PAGA Letters	\$15.66
2/15/2024	One Legal Service Fee - Complaint	\$1,494.22
5/6/2024	One Legal Service Fee - Proof of service	\$16.88
7/1/2024	Mediation Non-refundable JAMS Case Management Fee	\$500.00
Anticipated	One Legal Service Fee - PAGA Approval Motion	\$125.00
Anticipated	Service Fee - Capital Process: PAGA Approval Motion	\$150.00
Anticipated	One Legal Service Fee - Case Management Statement	\$25.00
Anticipated	One Legal Service Fee - Notice of Entry of Order	\$25.00
Anticipated	One Legal Service Fee - Compliance Statement	\$25.00

Total: \$2,951.76

Exhibit H

<u>TASK CATEGORY</u>			
<u>Pre-filing investigation, Pleadings, Admin Exhaustion, and Related Law & Motion.</u> Includes time spent during initial client meetings and review of claims and documents; Pre-filing investigation/research; Review of payroll records and prior filings against Defendant; Drafting pleadings, notices, administrative filings; Reviewing and responding to pleadings and court filings; Communications with opposing counsel regarding same, internal communications regarding same, and communications with client regarding same.	<u>GTS</u>	<u>JPR</u>	<u>RK</u>
	2.2	7.6	13.5
<u>Case Review, Management, Strategy Meetings, Dispositive Motions.</u> Includes time spent discussing general plan of action updates and strategies in weekly meetings; Research and analysis regarding claim elements and issues affecting representative litigation; Preparing for case management conferences and related meet/confer, drafting of statements, and attendance for hearings; Reviewing minute orders and general correspondence from the Court regarding case management and assignments; Research regarding certification elements – numerosity; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same.	3.7	6	6.2
<u>Discovery / Investigation for Mediation / Direct Negotiations.</u> Includes time spent preparing informal discovery specifically geared towards mediation and direct negotiations; reviewing informal document and data productions, including data, analyses, documents, and public records regarding Alternative Workweeks and prior Labor Commissioner claims; Perform damages analysis; Direct negotiations with opposing counsel; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same.	-	8.9	11
<u>Drafting Settlement Agreements.</u> Includes time spent preparing long form agreement and exhibits, revisions relating thereto; Research regarding any approval procedures or issues regarding disputed terms; Solicit and review settlement administrator bids; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same.	1.4	9.1	2
<u>Settlement Approval and Administration.</u> Includes time spent drafting motion for approval of PAGA settlement, supporting declarations, and order; Includes estimated 10 hours for J. Rodriguez and 15 hours for R. Konini in overseeing the settlement administration process, including, but not limited to communications with Aggrieved Employees, communications with Settlement Administrator, Aggrieved Employee data and disbursement calculation review, speaking with Settlement Administrator regarding calculations, distributions, finalizing the Notice of Settlement, reviewing and finalizing compliance declaration, and attending compliance hearing; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same.	2.5	23.2	26
TOTAL:	9.8	54.8	58.7

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Renald Konini (Cal. State Bar No. 312080)
Shimoda & Rodriguez Law, PC
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff SABRINA AGRIFOGLIO
individually and on behalf of similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

SABRINA AGRIFOGLIO, individually and
on behalf of all other similarly situated
employees,

Plaintiff,

vs.

UROGYNECOLOGY CONSULTANTS
MEDICAL CORPORATION, a California
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 24CV002735

*Assigned for All Purposes to Hon. Jill H. Talley,
Department 23*

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT**

Reservation No. A-02735-001

Date: November 15, 2024

Time: 9:00 a.m.

Dept.: 23

Judge: Hon. Jill H. Talley

Filed: February 14, 2024

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion to Approve Private Attorneys General Act Settlement (“Motion”) in the above
3 referenced case came before this Court, on November 15, 2024, at 9:00 a.m. in Department 23 before
4 the Honorable Jill H. Talley, presiding. Plaintiff Sabrina Agrifoglio (“Plaintiff”) filed this Private
5 Attorneys General Act (“PAGA”) action on February 14, 2024. The operative Complaint alleges that
6 Urogynecology Consultants Medical Corporation (“Defendant”) violated California law by failing to
7 pay overtime wages, failing to pay minimum wages, failing to provide meal periods or pay premiums in
8 lieu thereof, failing to provide rest periods or pay premiums in lieu thereof, failing to provide accurate
9 wage statements, failing to pay final wages, failing to pay reimbursements for expenses, violating Labor
10 Code sections 558, 558.1 regarding provisions regulating hours and days of work in any Industrial
11 Welfare Commission Order, failing to maintain accurate records, and failing to provide sick leave. The
12 Complaint further alleges that Defendant is liable for civil penalties under the PAGA as a result of the
13 alleged violations. Defendant has denied all of Plaintiff’s allegations. Plaintiff sought attorneys’ fees
14 and costs as part of this Action.

15 The parties have agreed to a settlement of the PAGA claims. Defendant will provide monetary
16 consideration in exchange for a release of claims and dismissal consistent with the terms of the PAGA
17 Settlement (“Agreement” or “Settlement”). Any capitalized terms herein shall have the same meaning
18 as set forth in the Agreement. The Court, having received and considered Plaintiff’s Motion, the
19 declarations in support, the Agreement, the Notice of Settlement, and other evidence, HEREBY
20 ORDERS AND MAKES DETERMINATIONS AS FOLLOWS:

21 **I. SCOPE OF INDIVIDUALS WITHIN THE PAGA SETTLEMENT – AGGRIEVED**
22 **EMPLOYEES**

23 The Court finds that Plaintiff has exhausted all administrative remedies required to bring the
24 PAGA claims asserted in this litigation. Plaintiff is authorized to act on behalf of the Labor and
25 Workforce Development Agency (“LWDA”) with respect to the PAGA claims being released under the
26 Agreement. The Court finds the scope of individuals subject to the terms and conditions of the
27 Agreement, its releases, and all rights and obligations thereunder include the following:
28

1 All non-exempt employees who worked or continue to work for Defendant
2 in California at any time between December 8, 2022, up to August 13,
3 2024.

4 The Court recognizes that the foregoing definition is for Aggrieved Employee identification
5 purposes only and is not intended to capture the claims at issue or limit or alter the released claims under
6 the Agreement.

7 **II. APPROVING THE AGREEMENT**

8 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
9 A. The Court finds that the Agreement is fair, reasonable, and adequate, and, therefore, is approved as
10 required under California Labor Code sections 2698 *et seq.* Based on the potential amount of penalties
11 at issue, the risk of loss on the merits, the risk of being able to prove violations in each pay period as to
12 each individual as required by statute for damages purposes, and the Court's statutorily authorized
13 discretion to reduce penalties, the Agreement represents a substantial recovery for Aggrieved Employees
14 and the LWDA to further the LWDA's purpose in enforcing the California Labor Code. The Court also
15 finds that the Agreement provides a recovery that creates an effective, substantial deterrent to any
16 potential future non-compliance, furthering the purpose of the California Labor Code and LWDA.

17 The Court has reviewed the monetary recovery being provided as part of the PAGA Settlement
18 Agreement and recognizes the significant value afforded to LWDA and the PAGA Settlement Members
19 given the facts of this case. Furthermore, Plaintiff's Counsel has disclosed the terms of Plaintiff's
20 separate individual settlement agreement, releasing all of her individual claims, and how those claims
21 were valued in comparison to the PAGA Claims. The Court is satisfied that no improper preference was
22 given to the individual claims over the PAGA claims and that any difference in monetary consideration
23 between the two is based on objective criteria and/or risks solely affecting the PAGA Claims, including,
24 but not limited to, the Court's ability to exercise its discretion in reducing any penalties that might be
25 assessed pursuant to California Labor Code section 2699(e). The Parties are directed to effectuate the
26 PAGA Settlement according to its terms.

27 The Court approves of the PAGA penalty allocations set forth in the Agreement wherein 75% of
28 the Net Settlement Amount will be paid to the LWDA and 25% of the Net Settlement Amount will be
paid to Aggrieved Employees as civil penalties pursuant to California Labor Code section 2699(i).

1 Additionally, because the Court finds the Parties' settlement to have been agreed upon only after
2 extensive and costly investigation, arms-length negotiations, and in an attempt to avoid further delays
3 and costs, the Court approves the Agreement and terms stated therein, which is incorporated by
4 reference in its entirety, as if stated here in full, including the \$35,000 Gross Settlement Amount.

5 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
6 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Aggrieved employees and the
7 LWDA), the benefits can be accurately traced as set forth in the Agreement, Plaintiff and Plaintiff's
8 Counsel were able to negotiate on behalf of Aggrieved employees and the LWDA, and the fee can be
9 shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the
10 Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 271 (9th Cir.
11 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th
12 480, 506 (2016). The Court finds the attorneys' fees request of Thirty Five Percent (35%) of the Gross
13 Settlement Amount, *i.e.* \$12,250, to be appropriate compensation for Plaintiff's Counsel. The attorneys'
14 fees request is within the range of percentages that have been approved by other Courts in similar cases
15 and is reasonable in light of the circumstances of this case, the substantial and beneficial results obtained
16 on behalf of Aggrieved Employees and the LWDA, and the contingent nature of the recovery over the
17 course of this case, which included potential loss at summary judgment and/or trial proceedings.
18 Furthermore, the Court has performed a lodestar cross check, which supports the percentage requested
19 as a reasonable one. Additionally, the Court orders that \$2,951.76 of the Gross Settlement Amount will
20 be paid to Plaintiff's Counsel for reasonable costs incurred in this case.

21 The Court orders and approves ILYM Group, Inc. to act as the Settlement Administrator in this
22 case. The Settlement Administrator will take its fees out of the Gross Settlement Amount, which are not
23 to exceed \$2,950. Any difference between the actual Settlement Administrator Costs and the allocated
24 amount in the Agreement will be added to the Net Settlement Amount for distribution between the
25 LWDA and Aggrieved Employees consistent with the allocations and formulas set forth in the
26 Agreement.
27
28

1 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to
2 Aggrieved Employees that are not cashed by the deadline to do so shall be donated equally, *i.e.* 50/50, to
3 Capital Pro Bono, Inc., and the Center for Workers' Rights. *See In re Microsoft I-V Cases*, 135
4 Cal.App.4th 706, 718 (2006). No portion of the Gross Settlement Amount will revert to Defendant for
5 any reason.

6 The releases and waivers for Aggrieved Employees are also approved by the Court as set forth in
7 the Agreement.

8 **III. APPROVAL OF THE NOTICE OF SETTLEMENT**

9 The Court finds that the proposed Notice of Settlement, attached to this Order as Exhibit A and
10 incorporated by reference, fairly and adequately advised Aggrieved Employees about the Agreement
11 and its effect. The Court further finds that the Notice of Settlement and distribution of such notice by
12 first class mail to each identified Aggrieved Employees at his or her most recent address based on a
13 National Change of Address database search from the Aggrieved Employees' last known address and a
14 skip trace on any Aggrieved Employees who have their notice returned as "undeliverable" or "not at this
15 address" comported with all constitutional requirements, including those of due process.

16 The Court also finds that because there is a strong interest in providing Aggrieved Employees the
17 opportunity to recover under the Agreement, along with the parties' efforts to minimize any intrusion to
18 privacy rights, the sharing of employment information, including social security numbers, is not a
19 serious intrusion on their privacy rights. Hence, the Court orders Defendant to provide first and last
20 name, last known mailing address, social security number, and hire and termination dates for pay period
21 calculations to the Settlement Administrator only, and not to Plaintiff or Plaintiff's Counsel, in order to
22 process this settlement as contemplated within the Agreement and approved by this Order. The
23 Settlement Administrator shall only use this information for settlement purposes identified herein, and
24 this information shall be kept confidential, not be shared with any third-party, and used only to
25 administer the settlement.

26 **IV. IMPLEMENTATION SCHEDULE**

27 Accordingly, with good cause shown, the Court hereby approves and orders that the following
28 implementation schedule be adhered to:

Last day for Defendant to provide Settlement Administrator with Aggrieved Employee information	Within 7 calendar days after the Effective Date
Last day for Settlement Administrator to calculate and report to the Parties the Net Settlement Amount, PAGA Payment, and Individual Settlement Amounts for Aggrieved Employees	Within 7 calendar days after receiving Aggrieved Employee information
Last day for Defendant to fund Gross Settlement Amount	Within 14 calendar days after the Settlement Administrator calculates and reports to the Parties the Net Settlement Amount, PAGA Payment, and Individual Settlement Amounts for Aggrieved Employees
Last day for Settlement Administrator to complete NCOA search, update Aggrieved Employee mailing information, and complete mailing	Within 7 calendar days after Defendant has funded the settlement
Last day for Settlement Administrator to deliver payment of Plaintiff's Counsel's attorney's fees and costs, PAGA Payment, Settlement Administrator Costs, and payment to Aggrieved Employees	Within 7 calendar days after Defendant has funded the settlement
Last day for Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

1 IT IS FURTHER ORDERED that, upon the Effective Date, the Released PAGA Claims and the
2 Action will be dismissed with prejudice as to all Parties and all causes of action subject to the Court's
3 continuing jurisdiction to monitor and enforce the terms of this order and the approved Agreement
4 pursuant to California Civil Procedure Code section 664.6.

5 The Court sets a further Compliance Hearing for September 5, 2025, at 10:30 a.m. At least 15
6 calendar days prior to the hearing, Plaintiff's Counsel shall file a declaration from the Settlement
7 Administrator regarding the status of the distribution of the settlement funds. If the Court is satisfied
8 that the settlement funds have been fully distributed, no appearance will be required.

9 IT IS SO ORDERED.

10
11 Date: _____

By: _____

12 Judge of the Superior Court
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28