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individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF PLACER

KATHLEEN ALVAREZ and JEANNE
BOOTH, individually and on behalf of all
other similarly situated employees,

Plaintiffs,

vs.

ROSEVILLE CARDIOLOGY MEDICAL
ASSOCIATES, INC., a California
Corporation; GEORGE FEHRENBACHER,
an individual; STEPHEN PETERS, an
individual; SANJAY YADLAPALLI, an
individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. S-CV-0051855

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA SETTLEMENT**

Date: October 8, 2024

Time: 8:30 a.m.

Dept.: 42

Judge: Hon. Trisha J. Hirashima

Filed: December 18, 2023

FAC Filed: February 29, 2024

Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on October 8, 2024, at 8:30 a.m., or as soon thereafter as the
3 matter may be heard in Department 42 of the above-entitled Court, Plaintiffs Kathleen Alvarez and
4 Jeanne Booth, individually and on behalf of all other similarly situated individuals, will, and hereby do,
5 move for entry of an Order for the following:

- 6 1. Preliminarily certifying the proposed class herein for purposes of settlement;
- 7 2. Preliminarily appointing Plaintiffs Kathleen Alvarez and Jeanne Booth as class
8 representatives for purposes of settlement;
- 9 3. Preliminarily appointing Shimoda & Rodriguez Law, PC, as Class Counsel for purposes of
10 settlement;
- 11 4. Preliminarily approving the proposed settlement, in the amount of \$310,000, which is
12 incorporated herein by reference;
- 13 5. Preliminarily approving the application for payment to Class Counsel of attorneys' fees in
14 the amount of 35% of the Gross Settlement Amount;
- 15 6. Preliminarily approving the application for payment to Class Counsel of reasonable costs not
16 to exceed \$15,000;
- 17 7. Preliminarily and conditionally approving the Enhancement Payments of \$10,000 each to the
18 Class Representatives, Plaintiffs Kathleen Alvarez and Jeanne Booth;
- 19 8. Preliminarily approving the appointment of Apex Class Action as the Settlement
20 Administrator and for payment to Apex Class Action for administering said class action
21 settlement in an amount not to exceed \$15,000;
- 22 9. Preliminarily approving the settlement of claims under the Private Attorneys General Act for
23 the total amount of \$10,000, 75% of which will be paid to the Labor and Workforce
24 Development Agency and 25% of which will be paid to Aggrieved Employees;
- 25 10. Approving as to form and content the Notice of Settlement, which provides Class Members
26 information regarding the settlement, their ability to opt out of, or object to, the class action
27 settlement and which provides instruction on how to dispute an individual's settlement
28 allocation under the proposed settlement agreement;

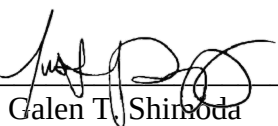
- 1 11. Approving the proposed procedures to notify the class and determining that the proposed
2 notification procedures and process comply with Class Members' due process rights and
3 directing the Notice of Settlement to be sent by first class mail to Class Members;
4 12. Directing Defendants to report employment information, including social security numbers,
5 to the Settlement Administrator to administer the settlement proceeds;
6 13. Scheduling a fairness hearing on the question of whether the proposed settlement should be
7 finally approved as fair, reasonable, and adequate;
8 14. Directing that any amount from settlement checks that were not cashed by the check cashing
9 deadline be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers
10 Rights under the doctrine of *cy pres*;
11 15. Preliminarily and conditionally approving and adopting the Proposed Order and its
12 implementation schedule, which is filed herewith and incorporated by reference.

13 This motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section
14 2699(l), and California Rules of Court 3.769 and 3.764, on the grounds that the proposed class action
15 and Private Attorneys General Act settlement is fair, reasonable, and adequate as to all Class Members
16 and should be approved by the Court. This motion will be based on the notice of motion, memorandum
17 of points and authorities, the Declaration of Justin P. Rodriguez, the Declaration of Kathleen Alvarez,
18 the Declaration of Jeanne Booth, exhibits, the record and files of this case, and any further oral or
19 documentary evidence introduced at the hearing of this motion.

20 **Pursuant to Local Rule 20.2.3, the court will issue a tentative ruling for this matter on the court**
21 **day before the hearing. The tentative ruling will be available after 12:00 noon as an audio**
22 **recording accessible at (916) 408-6480; the tentative ruling will also be available at the court's**
23 **website, www.placer.courts.ca.gov. The tentative ruling shall become the final ruling on the**
matter and no hearing will be held unless oral argument is timely requested or the tentative ruling
indicates otherwise. Requests for oral argument must be made by calling (916) 408-6481 no later
than 4:00 p.m. on the court day prior to the hearing.

24 Dated: September 13, 2024

Shimoda & Rodriguez Law, PC

25
26 By: 
27 Galen T. Shimoda
28 Justin P. Rodriguez
Renald Konini
Attorneys for Plaintiffs

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individual; SANJAY YADLAPALLI, an
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Defendants.

Case No. S-CV-0051855

CLASS ACTION

**MEMORANDUM OF POINTS & AUTHORITIES
IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

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I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT

Plaintiffs Kathleen Alvarez and Jeanne Booth (“Plaintiffs”) seek preliminary approval of a wage and hour class action and Private Attorneys General Act (“PAGA”) settlement in the gross amount of \$310,000. *See generally* Exhibit A (Joint Stipulation Regarding Class Action and PAGA Settlement and Release [“Agreement”]).¹ Plaintiffs brought this class action individually and on behalf of similarly situated employees who worked for Defendants Roseville Cardiology Medical Associates, Inc., George Fehrenbacher, Stephen Peters, and Sanjay Yadlapalli (“Defendants”) (Plaintiffs and Defendants sometimes collectively referred to as the “Parties”). *See generally* Exhibit B (Plaintiffs’ Operative Complaint). There are approximately 154 Class Members.

Plaintiffs have alleged that Defendants 1) failed to pay overtime wages, 2) failed to pay minimum wages, 3) failed to provide meal periods, 4) failed to provide rest periods, 5) failed to provide accurate wage statements, 6) failed to timely pay all final wages, 7) failed to reimburse employees for incurred expenses, 8) failed to pay vested vacation time, and 9) engaged in unfair competition. *See generally* Exhibit B; *see also* Decl. Rodriguez, ¶¶ 2-3, 9-10. Plaintiffs have also alleged Defendants are liable for civil penalties under the PAGA based on these violations. *See id.*; Exhibit C (Plaintiffs’ Ltr. to the Labor and Workforce Development Agency [“LWDA”] Regarding PAGA Claims). Defendants have denied all of Plaintiffs’ allegations in their entirety and any liability or wrongdoing of any kind. *See* Decl. Rodriguez, ¶ 5. Defendants have also denied that this case is appropriate for class certification other than for purposes of settlement. *See id.* 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. Plaintiffs and Plaintiffs’ counsel believe the proposed Agreement is fair, reasonable, and adequate based on the investigations, discovery, employee

¹ Defendant Stephen Peters was unavailable to sign the Agreement before the deadline for filing this Motion. However, Defendant Peters did sign a Memorandum of Understanding (“MOU”) setting forth the essential terms of the settlement that were ultimately memorialized in the Agreement. *See* Exhibit H. The MOU provides that even if a long form agreement is never finalized, either party may move for preliminary approval of the settlement on the basis of the terms in the MOU and that customary terms and procedures for the notice process and settlement administration are acceptable. *See* Exhibit H, ¶ 20. Given the MOU’s express authorization to file for preliminary approval even where not all parties have signed a long form agreement and all parties other than Defendant Stephen Peters have signed the Agreement, Plaintiffs are authorized to move forward with preliminary approval under these circumstances. Notwithstanding these facts, Plaintiffs still expect that a supplemental declaration will be filed containing Defendant Stephen Peters’ signature before the date of the hearing. *See* Declaration of Justin P. Rodriguez (“Decl. Rodriguez”), ¶ 1.

1 data exchanges, negotiations, and a detailed knowledge of the issues in this case. *See* Decl. Rodriguez,
2 ¶¶ 6, 9-10. The prospect of potential class certification issues and the uncertainty of class certification,
3 difficulties of complex litigation, the lengthy process of establishing specific damages and various
4 possible delays and appeals were carefully considered by Plaintiffs and Plaintiffs’ counsel in agreeing to
5 the proposed settlement. *See id.*

6 It is well within the discretion of this Court to grant preliminary approval of the Agreement as it
7 satisfied all applicable criteria under California law. Accordingly, Plaintiffs request that the Court: (1)
8 certify the proposed settlement class on a preliminary and conditional basis; (2) grant preliminary and
9 conditional approval of the proposed Agreement (Exhibit A); (3) approve the form and content of the
10 Notice of Settlement (Exhibit F) and the method for providing notice to Class Members as set forth in
11 the Agreement; and (4) adopt the implementation schedule contained in the proposed order.

12 **II. PROCEDURAL AND LITIGATION HISTORY**

13 Plaintiffs filed a class action complaint on approximately December 18, 2023, in Placer County
14 Superior Court against Defendants. Plaintiffs exhausted administrative remedies under the PAGA by
15 providing notice of the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code § 2699.3(a),
16 (c); Decl. Rodriguez, ¶ 3. Then, Plaintiffs filed a First Amended Class Action Complaint on
17 approximately February 29, 2024, to include a PAGA claim. *See id.*; Exhibit B. There is no date set for
18 a motion for certification or trial in this matter. *See* Decl. Rodriguez, ¶ 4.

19 **III. INVESTIGATION AND DISCOVERY CONDUCTED**

20 Plaintiffs thoroughly investigated issues affecting certification, the merits of the class claims, and
21 potential damages for such claims. *See id.* at ¶¶ 3, 6-10; Declaration of Kathleen Alvarez (“Decl.
22 Alvarez”) ¶¶ 5-7, 10; Declaration of Jeanne Booth (“Decl. Booth”) ¶¶ 4-7, 9. Plaintiffs worked during
23 the time all of Defendants’ policies and practices at issue in the Complaint were in effect and provided
24 information regarding these policies and practices, enabling pre-filing investigations to take place. *See*
25 Decl. Alvarez, ¶¶ 2-3, 5-7; Decl. Booth, ¶¶ 2, 4-7. The Parties engaged in informal discovery and
26 exchange of documents, including a representative sampling of employee data, such as timecards,
27 paystubs, payroll data, and relevant policies for the entirety of the statute of limitations applicable to the
28 asserted claims. The discovery covered all aspects of the asserted claims, including certification issues,

merits issues, damages, the scope and configuration of Class Members, the content and implementation of the wage and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas. *See* Decl. Rodriguez, ¶¶ 6-7. The information allowed Plaintiffs to determine the extent and frequency of any violations in accordance with Plaintiffs' contentions and create an accurate damages model to assess the reasonableness of any settlement. *See id.*

IV. NEGOTIATION AND PROPOSED SETTLEMENT

a. Plaintiffs and Defendants Engaged in Extensive Arm's Length Negotiations

The final settlement occurred only after extended, arm's length negotiations. Over the course of approximately one year, Plaintiffs have been investigating the claims and discussing with Defendants' counsel the merits of the claims and issues present in this case. *See id.* at ¶¶ 6-10. The Parties exchanged substantial amounts of information and legal analysis in connection with these discussions. *See id.* It was only after these extended discussions, which included a full day mediation with Steve Pearl, that the Parties were able resolve all claims and enter into the Agreement. *See id.* at ¶ 8.

b. The Terms of the Agreement

1. The following groups of individuals are covered by the Agreement: (a) all non-exempt employees who have worked, or continue to work, for Roseville Cardiology Medical Associates, Inc., in California at any time between December 18, 2019, up to the Preliminary Approval Date, or November 5, 2024, whichever is earlier; and (b) PAGA Members, which include all non-exempt employees who have worked, or continue to work, for Roseville Cardiology Medical Associates, Inc., in California between December 18, 2022, up to the Preliminary Approval Date, or November 5, 2024, whichever is earlier. *See* Exhibit A, ¶¶ 1.4, 1.22. There are approximately 154 Class Members and 89 PAGA Members. *See id.*

2. Defendants will pay the Gross Settlement Amount of \$310,000, which is exclusive of the employer's share of payroll taxes. *See id.* at ¶ 5.1. No portion of the Gross Settlement Amount will revert to Defendants. *See id.* at ¶ 5.6. PAGA Members will still be paid their share of the PAGA Payment regardless of whether they opt out of being Class Members. *See id.* at ¶¶ 7.7.1, 7.10.3.

1 3. Up to \$10,000 will be paid to each of the Plaintiffs as an Enhancement Payment. This
2 amount will be in addition to any amount Plaintiffs may be entitled to under the terms of the Agreement.
3 *See id.* at ¶ 5.4.

4 4. Subject to Court approval, the Parties have selected Apex Class Action to act as the
5 Settlement Administrator, who has provided a maximum cost estimate of \$4,990. *See* Exhibit D (Apex
6 Class Action Quote); Exhibit A, ¶ 1.33; Decl. Rodriguez, ¶ 20.

7 5. The Parties agree that \$10,000 of the Gross Settlement Amount shall be allocated to
8 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to
9 the LWDA and Twenty-Five percent (25%) will be paid to PAGA Members. *See* Exhibit A, ¶ 5.5.
10 Given the risk to proving the claims on the merits, the derivative nature of the penalties, the efforts by
11 Defendants to maintain compliant policies and take corrective action, the presence of what may likely be
12 deemed good faith disputes, and the Court's discretion to reduce any penalty award, Plaintiffs believe
13 the \$10,000 PAGA Payment allocation represents a meaningful settlement aimed at deterring non-
14 compliance given the facts of this case. *See* Decl. Rodriguez, ¶¶ 5-10; *see also Nordstrom Com. Cases*,
15 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA claims based on
16 their being disputed and being part of a class settlement which was evaluated based on the terms of the
17 agreement overall); *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, at *8 n.2 (E.D. Cal.
18 2022) (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v. Open Door*
19 *Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of PAGA claims at
20 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016 WL
21 5462451, *7 (N.D. Cal. 2016) (approving \$10,00 PAGA settlement allocation where total PAGA
22 penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox*
23 *Commc 'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily approving
24 \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S. Dist. LEXIS
25 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award alone
26 amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal.
27 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*,
28 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000

1 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009)
2 (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist.
3 LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000
4 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated
5 value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012)
6 (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*,
7 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement
8 fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal. 2011) (approving
9 PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

10 6. The Parties agree that up to Thirty Five Percent (35%) of the Gross Settlement Amount
11 (\$108,500) will be paid for Plaintiffs' attorneys' fees incurred in the litigation of this case. Defendants
12 will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2.
13 Additionally, the Parties agree that Plaintiffs will also be entitled to the actual litigation costs as
14 approved by the Court in an amount not to exceed \$15,000. *See id.* The proposed notice to be sent to
15 Class Members will state this information. *See* Exhibit F.

16 7. Any allocated amounts under the Agreement for Settlement Administrator Costs, Class
17 Representative Enhancement Payments, and attorney's fees and costs that are not ultimately awarded by
18 the Court will remain part of the Net Settlement Amount and be paid out to Participating Class Members
19 on a pro rata basis as set forth in the Agreement. *See* Exhibit A, ¶¶ 5.1-5.5, 5.8. These amounts will be
20 paid out from the Gross Settlement Amount, not in addition to the Gross Settlement Amount. *See*
21 Exhibit A, ¶¶ 5.1-5.5.

22 8. Class Members who fail to timely opt-out of this settlement will waive all Released Class
23 Claims as set forth in the Agreement. *See* Exhibit A, ¶¶ 1.4, 1.13, 1.26, 1.30, 1.32, 6.1. PAGA
24 Members will waive all Released PAGA Claims as set forth in the Agreement regardless of whether
25 they opt out of being a Class Member. *See id.* at ¶¶ 1.22, 1.13, 1.31-1.32, 6.2, 7.7.1.

26 9. For any portion of the Net Settlement Amount or PAGA Payment allocated to
27 Participating Class Members and/or PAGA Members that is not claimed by them by cashing their
28 respective settlement checks within 180 calendar days of issuance, that remaining amount shall be

1 donated equally, *i.e.*, 50/50 to Capital Pro Bono, Inc., and the Center for Workers' Rights under the
2 doctrine of *cy pres*. See Exhibit A, at ¶ 5.6. Because the Agreement provides for all funds such that
3 there is no residue, the provisions of California Civil Procedure Code section 384 are inapplicable. See
4 *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718, 720 (2006). The designated beneficiaries clearly
5 promote the law consistent with the objectives and purposes underlying the lawsuit as they are non-
6 profits aimed at assisting employees with wage and hour claims who cannot afford legal representation,
7 including providing representation for employees in wage claims before the California Labor
8 Commissioner. See *id.* at 722-724; see also Decl. Rodriguez, ¶¶ 23-32.

9 **c. Allocation of Settlement Funds**

10 Payment to Participating Class Members and PAGA Members will not require the submission of
11 a claim form. A Net Settlement Amount will be determined by subtracting from the Gross Settlement
12 Amount any attorneys' fees and costs, Enhancement Payment to the Class Representatives, Settlement
13 Administrator Costs, PAGA Payment that are approved and/or awarded by the Court. Each Class
14 Member's share will be determined by dividing their total weeks worked within the Class Period by the
15 total weeks worked by all Class Members within the Class Period. That fraction will then be multiplied
16 by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement
17 Amount. Each PAGA Member's share of the 25% portion of the PAGA Payment will be determined by
18 dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all
19 PAGA Members within the PAGA Claim Period. That fraction will then be multiplied by the 25%
20 portion of the PAGA Payment to arrive at the PAGA Member's individual share. See Exhibit A, at ¶¶
21 1.18, 5.5, 5.8.

22 **V. THE PROPOSED PROCEDURES TO NOTIFY CLASS MEMBERS SATISFY DUE**
23 **PROCESS AS THEY PROVIDE THE BEST NOTICE PRACTICABLE UNDER THE**
24 **CIRCUMSTANCES**

25 It is not required that Class Members be given actual notice of a class settlement; instead, the
26 best practicable notice under the circumstances is all that is required. See *Silber v. Mabon*, 18 F.3d
27 1449, 1453 (9th Cir. 1994); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir. 2017);
28 *Walsh v. CorePower Yoga LLC*, 2017 U.S. Dist. LEXIS 163991, at *12-14 (N.D. Cal. 2017); *Wright v.*
Linkus Enters., 259 F.R.D. 468, 474-75 (E.D. Cal. 2009). In *Silber v. Mabon*, 18 F.3d 1449 (9th Cir.

1994), the Court rejected a class member's argument that he had not received due process because he did not receive notice until after the opt out period, finding that, so long as the notice process utilized is the best practicable under the circumstances, due process is satisfied even if there is no actual receipt of the notice. *See Silber*, 18 F.3d at 1453-1454. A similar finding was made in *Briseno v. Conagra Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017). With regard to any potential for undeliverable notice mailings, the Court in *Rannis v. Recchia*, 380 F. App'x 646 (9th Cir. 2010) found that class members who did not receive actual notice due to their mailings being deemed undeliverable were still properly held to be part of the class settlement because they received the best notice practicable under the circumstances. *See Rannis v. Recchia*, 380 F. App'x at 650-651. In *Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980-984 (2019), the California Supreme Court noted that California has adopted a similar approach regarding providing notice to class members.

Under the proposed notice procedures, Class Members will have sixty (60) days from the date of mailing to review and respond to the Notice of Settlement, which will also be available online. *See* Exhibit A, ¶¶ 1.20, 7.2. The Notice of Settlement contains all information necessary for a Class Member to assess the litigation, the settlement, and whether they want to participate, object, or opt-out. *See id.* at ¶¶ 7.2, 7.7.1-7.7.4; Exhibit F. National change of address database searches, skip-traces, and surveying of current employees will be utilized as set out in the Agreement to provide the best practical means of ensuring Class Members receive the notice mailing. *See* Exhibit A, ¶¶ 7.3-7.5. Any individual whose initial mailing was deemed undeliverable will have additional time to respond. *See id.* at ¶ 7.6. Additional time to respond will also be provided to cure any deficiencies in opt-outs, objections, or disputes. *See id.* ¶ 7.7.4. This notice method is regularly utilized in wage and hour class actions and similar to the one approved in *Rannis*. Thus, the proposed procedures for notifying Class Members satisfy due process and should be approved in this case.

VI. THE AGREEMENT WARRANTS PRELIMINARY APPROVAL AS IT IS FAIR, REASONABLE, AND ADEQUATE AS TO ALL CLASS MEMBERS BASED ON THE FACTS OF THIS CASE

A class action may not be dismissed, compromised, or settled without Court approval and the decision to approve or reject a settlement is committed to the Court's sound discretion. *See* Cal. Rules

of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)²; *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001); *see also* Cal. Lab. Code §§ 2699(1)(2). However, “[d]ue regard should be given to what is otherwise a private consensual agreement between the parties. The inquiry ‘must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.’” *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *see also Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 581 (2010). The law favors settlement of lawsuits, particularly class actions and other complex cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-1118 (2009); *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 n.14 (2006); *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 581 (2010); *see also Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992).

a. The Terms of The Settlement Are Fair and Within the Range of Reasonableness

The purpose of the Court’s preliminary evaluation of a proposed class action settlement is to determine only whether it is within the range of possible approval such that notice to the class of its terms and conditions and the scheduling of a formal fairness hearing is warranted. *See Wershba*, 91 Cal. App. 4th at 234-35. If the Court finds a proposed settlement falls within “the range of reasonableness,” it should grant preliminary approval of the class action settlement. *See, e.g., North County Contr. ’s Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal. App. 4th 1085, 1089-90 (1994); *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 133 (2008). Factors to consider in determining whether the settlement is fair, reasonable, and adequate include the strength of the Plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th

²The California Supreme Court has authorized California’s trial courts to rely on these federal resources to decide class certification issues. *See Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

1 1794, 1801 (1996). However, this Court should begin its analysis with a presumption that the proposed
2 settlement is fair. “A presumption of fairness exists where: (1) the settlement is reached through arm’s
3 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
4 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
5 small.” *Id.* at 1802.

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

8 Settlement of this case was reached only after substantial litigation and extensive arm’s length
9 negotiations lasting nearly one year, which included a full-day mediation. *See* Decl. Rodriguez, ¶¶ 3, 6-
10 10. At all times, the negotiations were adversarial, although still professional in nature. *See id.* Further,
11 while Plaintiffs contend they would ultimately prevail on the claims and the issue of certification, this is
12 not a certainty and there is substantial risk in proceeding to further litigation. *See id.* The ability to
13 secure a guaranteed settlement now and ensure Class Members receive some compensation, rather than
14 proceed to further litigation and potentially recover nothing, was a motivating factor in reaching this
15 settlement. *See id.*

16 **ii. The Extent of Investigation and Discovery Completed Provided Ample**
17 **Information to Enter Into an Informed and Reasonable Settlement**

18 The Parties were in possession of all necessary information during the negotiations. The Parties
19 engaged in substantial informal discovery, which included all necessary components for evaluating the
20 class claims and creating an accurate damages model. *See id.* at ¶¶ 6-10. Plaintiffs were in possession
21 of this information prior to calculating any damages in this case. *See id.* As a result, Plaintiffs were able
22 to make a reasonable estimation of Defendants’ potential liability. *See id.* For these reasons, the
23 settlement now before the Court was reached at a stage where “the parties certainly have a clear view of
24 the strengths and weaknesses of their cases” sufficient to support the settlement. *See Boyd v. Bechtel*
25 *Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

26 **iii. Plaintiffs’ Counsel are Experienced in Similar Litigation**

27 Plaintiffs’ counsel have considerable experience in complex litigation such as class and PAGA
28 actions. *See* Decl. Rodriguez, ¶¶ 12-18. Thus, Plaintiffs’ counsel are qualified to evaluate the class

claims, the value of settlement versus moving forward with litigation, and viability of possible affirmative defenses. Plaintiffs' counsel believe that the Agreement is fair, reasonable, and adequate in light of the risks associated with the claims, the uncertainties of complex litigation, and the secured benefit to Class Members. *See id.*

iv. The Settlement is Fair, Reasonable, and Adequate Based on the Strength of Plaintiffs' Case and the Risks and Costs of Further Litigation

Plaintiffs' claims and the ability to obtain and maintain certification all the way through trial were heavily disputed by Defendants. *See* Decl. Rodriguez, ¶ 5. Based on the records and facts of this case, Plaintiffs have secured a gross recovery of approximately 6% of the maximum value of the claims in this matter and between 12% and 31% of the more realistic range of recovery. *See* Decl. Rodriguez, ¶¶ 9-10. The net recovery represents approximately 3% of the maximum value of the claims in this matter and between 6% and 14% of the more realistic range of recovery. The average net award is approximately \$918.83. *See id.*

This settlement is a reasonable compromise of the class and PAGA claims, and is within the percentile ranges of the total available damages that have been approved in other class settlements. *See Wershba*, 91 Cal.App.4th at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1990); *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in settlement of 6% of maximum potential recovery after reduction for attorney's fees was higher than median percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from 2000 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017) (approving a settlement where the net recovery to class members was approximately 7.5% of the projected maximum recovery amount); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal. 2017) (approving a settlement with a gross recovery of 11% of the projected maximum damages available and a net recovery of approximately 6.7% of the projected maximum recovery); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245 (N.D. Cal. 2015) (approving a settlement where the gross recovery was approximately 8.5% of the projected maximum recovery); *Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal. 2012) ("Class Members will receive an average of approximately

1 \$198.70, with the highest payment to a Class Member being \$695.78 . . . Overall, the Court finds that
2 the results achieved are good, which is highlighted by the fact that there was no objection to the
3 settlement amount or the attorneys’ fees requested.”); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS
4 47043, 18 (S.D. Cal. 2012) (“the results achieved in this case were very favorable. Class members are
5 provided with immediate monetary relief, with an average award of around several hundred dollars and
6 a minimum award of \$50”).

7 **v. The Proposed Settlement is a Reasonable Compromise of Claims**

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

18 Plaintiffs have thoroughly set forth the realistic range of outcomes in this litigation as well as the
19 data points relied upon in reaching these ranges. See Decl. Rodriguez ¶¶ 6-10. The record demonstrates
20 that the compromises made by Plaintiffs were reasonable and have resulted in a settlement with recovery
21 percentage well within the range of what has been found to be sufficient in several other cases. See,
22 *supra*, Section VI.a.iv; see also *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998)
23 (“The fact that a proposed settlement may only amount to a fraction of the potential recovery does not,
24 in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved”);
25 *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974) (“In fact there is no reason, at least in
26 theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a
27 single percent of the potential recovery”). This settlement represents a reasonable compromise given the
28 percentage of the total demand that was secured, the average recovery per class member, the Court’s

ability and discretion to cut PAGA penalties, and the uncertainty of class certification. *See* Decl. Rodriguez, ¶¶ 9-10.

vi. The Enhancement Payment to the Named Plaintiffs for Their Services to the Putative Class Is Reasonable and Routinely Awarded by Courts

The Enhancement Payment to the named Plaintiffs is intended to recognize the time and effort expended on behalf of the class and also in exchange for their general release of their individual claims. Indeed, Courts routinely approve enhancement payments to compensate named Plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation. *See Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001). In *Ingram*, the Court approved enhancement payments of \$300,000.00 to each named Plaintiffs in recognition of the services they provided to the class by responding to discovery, participating in the mediation process, and taking the risk of stepping forward on behalf of the class. *See Id.* at 694; *see also Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00 enhancement payment).

In this case, Plaintiffs provided and explained documents, being available at all times to discuss the class claims with Plaintiffs' counsel. *See* Decl. Rodriguez, ¶ 7; Decl. Alvarez, ¶¶ 4-9; Decl. Booth, ¶¶ 5-8. Plaintiffs spent a significant amount of time pursuing wage and hour claims for the benefit of all Class Members. *See id.* Plaintiffs brought this action knowing there would be a delay in any payment as the litigation progressed, rather than proceeding only with individual claims in front of the California Labor Commissioner. *See id.* Payment of \$10,000.00 to each Plaintiffs is appropriate given the risk, assistance, time required in bringing this case and resolution of this case. Decl. Alvarez, ¶¶ 4-9; Decl. Booth, ¶¶ 4-8.

vii. Awarding Attorneys' Fees as a Percentage of the Common Fund Is Reasonable and Customarily Approved by Courts

California state and federal courts have recognized that when a litigant's efforts create or preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally among all the beneficiaries to compensate those who created the fund. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980) ("A lawyer who recovers a common fund for the benefit of persons other than . . . her client is entitled to a reasonable attorney's fee from the fund as a whole."); *Vincent v.*

1 *Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375
2 (1970); *Waters v. Intern. Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999); *see also Serrano v.*
3 *Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016).
4 The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to “spread litigation
5 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
6 burden alone.” *Vincent*, 557 F.2d at 769; *Williams v. MGM-Pathe Communications Co.*, 129 F.3d 1026,
7 1027 (9th Cir. 1977). California state courts have approved use of a percentage of the fund to calculate
8 reasonable attorney fee awards where the amount of the settlement is certain or is an easily calculable
9 sum of money. *See Dunk*, 48 Cal. App. 4th at 1808.

10 The Ninth Circuit has also held that the common fund doctrine applies when: (1) the class of
11 beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the fee can be
12 shifted with some exactitude to those benefitting. *See Paul, Johnson, Alston & Hunt v. Gaulty*, 886
13 F.2d 268, 271 (9th Cir. 1989). These criteria are “easily met” when “each member of a certified class
14 has an undisputed and mathematically ascertainable claim to part of a lump-sum settlement recovered on
15 her behalf.” *Id.* at 271 (citations omitted). Under the three (3) factors set forth in *Paul, Johnson, Alston*
16 *& Hunt*, the common fund doctrine applies in this case because there is a sufficiently identifiable class
17 of beneficiaries (*e.g.* the settlement class), the benefits can be accurately traced to the settlement
18 Plaintiffs and Plaintiffs’ counsel were able to negotiate on behalf of the class, and the fee can be shifted
19 with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the common
20 fund. As set forth in the fee award examples provided below for the Court’s reference, it is an accepted
21 practice in wage and hour class action settlements to award attorneys’ fees based on a percentage of the
22 common fund. *See, e.g., Staton v. Boeing Co.*, 327 F.3d 938, 967-972 (9th Cir. 2003); *Sanders v. City of*
23 *Los Angeles*, 3 Cal.3d 252, 261, 263 (1970); *Wershba*, 91 Cal. App. 4th at 254; *Bell v. Farmers Ins.*
24 *Exchange*, 115 Cal. App. 4th 715, 726, 765 (2004).

25 Historically, attorneys’ fee awards in common fund cases in general range from 20% to 50% of
26 the fund, depending on the circumstances of the case. *See Newberg on Class Actions*, (3rd Ed.), 1992,
27 §14.03 (finding 50% to be the upper limit). Awards ranging between 30% and 40% of the fund are
28 generally approved as reasonable in wage and hour settlements below \$10 million:

1 More particularly, courts may award attorneys fees in the 30-40% range in wage and hour
2 class actions that result in recovery of a common fund under \$10 million. *See Vasquez v.*
3 *Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-492 (E.D. Ca. 2010) (citing to five
4 recent wage and hour class actions where federal district courts approved attorney fee
5 awards ranging from 30 to 33%); *Singer v. Becton Dickenson and Co.*, 2010 U.S. Dist.
LEXIS 53416, 2010 WL 2196104, *8 (S.D. Ca. June 1, 2010) (approving attorney fee
award of 33.33% of the common fund and holding that award was similar to awards in
three other wage and hour class action cases where fees ranged from 33% to 40%);
Romero v. Producers Dairy Foods, Inc., 2007 U.S. Dist. LEXIS 86270, 2007 WL
3492841 (E.D. Ca. Nov. 14, 2007).

6 *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796 at *22-23 (S.D. Cal. 2011). Plaintiffs'
7 request of thirty-five percent (35%) of the settlement sum for attorneys' fees is within established rates
8 for fee awards in class settlements pursuant to the common fund doctrine, especially in light of the
9 excellent results achieved in this case. *See In re Activision Sec. Litigation*, 723 F.Supp. 1373, 1379
10 (N.D. Cal. 1989); *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-cv-00634;
11 *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745; *Green, et al. v.*
12 *Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069; *Benitez et al. v.*
13 *Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122; *Chavez et al. v. Petrissans et al.*, USDC
14 Eastern District, Case No. 1:08-cv-00122; *Willis et al. v. Cal-Western Transport*, USDC Eastern
15 District, Case No. 1:00-cv-05695. To determine whether a percentage is reasonable, a court should
16 consider: (1) the percentage that would likely be negotiated between parties in a similar case; (2) the
17 percentage applied in other class actions; (3) the quality of class counsel; (4) the size of the award; and
18 (5) whether there are any objections by class members. *See In re Ikon Office Solutions, Inc. Secur.*
19 *Litig.*, 194 F.R.D. 166, 193 (E.D. Pa. 2000); *In re Heritage Bond Litig.*, 2005 WL 1594403, at *21 (C.D.
20 Cal. June 10, 2005) ("the absence of objections or disapproval by class members to class counsel's fee
21 request further supports finding the fee request reasonable").

22 These factors support Plaintiffs' request for reasonable attorneys' fees. The typical percentage
23 negotiated between parties ranges from thirty-five to forty percent (35% to 40%) in individual litigation
24 depending on the complexity of the case. In class action litigation, the typical percentage negotiated
25 between parties ranges from thirty to forty percent (30% to 40%) based on the same factors. Plaintiffs'
26 request of 35% (\$108,500) falls within these typical fee arrangements. *See Decl. Rodriguez*, ¶ 19. The
27 quality of counsel and the average net size of settlement payments to Class Members (\$1,032.21) also
28 support the fee request when compared to other settlements courts have considered as good results. *See*

1 *Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal. 2012) (“Class Members
2 will receive an average of approximately \$198.70, with the highest payment to a Class Member being
3 \$695.78 . . . Overall, the Court finds that the results achieved are good, which is highlighted by the fact
4 that there was no objection to the settlement amount or the attorneys’ fees requested.”); *Gardner v. GC*
5 *Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) (“the results achieved in this case were
6 very favorable. Class members are provided with immediate monetary relief, with an average award of
7 around several hundred dollars and a minimum award of \$50”).

8 Plaintiffs’ counsel also seeks reimbursement for the expenses they have and will continue to
9 incur while prosecuting this litigation through any compliance hearing(s). This is less than the \$15,000
10 provided for in the Agreement. An itemization for these costs is being filed with this motion as Exhibit
11 E. All expenses were necessarily incurred to properly litigate this case. *See id.* The appropriate
12 analysis in determining whether particular costs are compensable is whether they are of the type
13 typically billed by attorneys to paying clients in the marketplace. *Harris v. Marhoefer*, 24 F.3d 16, 19
14 (9th Cir. 1994) (“Harris may recover as part of the award of attorney’s fees those out-of pocket expenses
15 that ‘would normally be charged to a fee paying client.’”); *Abrams v. Lightolier, Inc.*, 50 F.3d 1204,
16 1225 (3d Cir. 1995) (expenses recoverable if customary to bill clients for them); *Bratcher v. Bray-Doyle*
17 *Indep. Sch. Dist. No. 42*, 8 F.3d 722, 725-26 (10th Cir. 1993) (expenses reimbursable if normally billed
18 to client). The categories of expenses for which Plaintiffs’ counsel seek reimbursement here are
19 categories normally charged to hourly clients and, therefore, should be reimbursed out of the common
20 fund. *See* Decl. Rodriguez, ¶ 19. The \$4,990 in Settlement Administrator Costs is also within ranges
21 approved by Courts and should be approved in this case. *See Patel*, 2019 WL 2029061, *2 (\$5,261 for
22 settlement administrator’s fees was not excessive where PAGA group consisted of 40 employees);
23 Exhibit D; Decl. Rodriguez, ¶ 20. This is less than the \$15,000 provided for in the Agreement. Exhibit
24 A, ¶ 5.3; Decl. Rodriguez, ¶ 20. Any allocated amounts not ultimately awarded by the Court will be
25 distributed to Class Members pro rata. *See* Exhibit A, ¶¶ 5.2-5.4, 5.8.

26 **a. Provisional Certification of the Class is Appropriate**

27 Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-
28 defined community of interest in the questions of law and fact involved affecting the parties to be

represented.” *Dunk*, 48 Cal. App. 4th at 1806. The “community of interest” element “embodies three factors: (1) common questions of law or fact predominate; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.* Here, the Parties agree that, for the purposes of settlement, these prerequisites are met. *See* Exhibit A.

i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous

The proposed settlement class is ascertainable because all putative Class Members can be readily identified through employee personnel and payroll files. *See Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are 154 individuals who fall within the definition of Class Member, which makes joinder of all members impracticable. *See Gay v. Waiters’ & Dairy Lunchmen’s Union*, 489 F.Supp. 282 (N.D. Cal. 1980), *aff’d* 694 F.2d 531 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017, 1030 (1972) (noting no set minimum to meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is acceptable). Thus, these requirements are satisfied.

ii. The Commonality, Predominance, and Typicality Requirements are Met

The commonality requirement is met when there are questions of law or fact regarding the class as a whole. *See Hanlon*, 150 F.3d at 1019. Commonality requires only that some common legal or factual questions exist; Plaintiffs need not show that all issues in the litigation are identical. *See Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d 447, 460 (1974). Common questions of law or fact must also predominate over individual questions and class-wide treatment of a dispute must be superior to individual litigation.³ *See Richmond*, 29 Cal.3d at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication by representation. *See Hanlon*, 150 F.3d at 1022. The typicality requirement is met when claims of the named representative are typical of those of the class, though “they need not be substantially identical.” *Id.* at 1020; *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983).

³When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

1 The common questions of law and fact in this case stem from Plaintiffs' contention that
2 Defendants violated California law by 1) failing to incorporate the value of nondiscretionary bonuses
3 into Plaintiffs' and putative class members' regular rates of pay for the purpose of calculating overtime
4 wages, meal and rest period premiums, and sick leave, 2) failing to authorize and permit Plaintiffs and
5 similarly situated employees to take uninterrupted meal and rest periods due to inadequate staffing and
6 high volume of work, 3) failing to pay Plaintiffs and similarly situated employees for working during
7 their meal periods while they were clocked out, 4) having a meal period policy that was defective
8 because Defendants' manager informed Plaintiffs and similarly situated employees that they were
9 supposed to take their meal periods prior to the completion of the sixth hour of work, 5) having practices
10 that resulted in Plaintiffs and similarly situated employees take late meal periods, 6) failing to provide
11 Plaintiffs and similarly situated employees with a second meal period when they worked shifts of ten
12 (10) hours or more, 7) having practices that resulted in Plaintiffs and similarly situated employees take
13 late rest periods, 8) failing to pay Plaintiffs and similarly situated employees for the time that they spent
14 reading and responding to work-related texts, and/or phone calls after work hours which also resulted in
15 unpaid overtime, 9) failing to have a policy to reimburse Plaintiffs and similarly situated employees for
16 the use of their personal cell phones and home internet for work purposes, 10) failing to pay Plaintiffs
17 and similarly situated employees for all the accrued vacation PTO that that they had earned during their
18 employment, and 11) failing to provide Plaintiffs and similarly situated employees with all their earned
19 sick pay based on the hours worked because Defendants did not consider Plaintiffs' and similarly
20 situated employees' off-the-clock hours worked during their meal periods and responding to texts in
21 calculating the sick pay accrual for them. *See* Exhibit B. The waiting time penalties, unfair
22 competition, and PAGA claims are derivative of these violations. *See id.* Plaintiffs and the Class
23 Members seek the same remedies under state law. Under these specific circumstances, the commonality
24 and predominance requirements are satisfied. Regarding the typicality requirement, Plaintiffs contends
25 they suffered from the same unlawful policies, treatment, and circumstances as Class Members did, will
26 request the same remedies, and will rely on the same methods of proof to establish liability and
27 damages. *See id.* Thus, the typicality requirement is also satisfied for settlement purposes.
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There is no conflict of interest between Plaintiffs and Class Members. Plaintiffs and Plaintiffs' counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class. Plaintiffs' counsel, with Plaintiffs' assistance, thoroughly investigated the claims made in this case by speaking with Plaintiffs and reviewing substantial amounts of documents. Plaintiffs' counsel thereafter engaged Defendants' counsel in settlement discussions over the course of approximately one year. Moreover, Plaintiffs' counsel has experience defending and bringing wage and hour claims. Because Plaintiffs' counsel has vigorously pursued Plaintiffs' and the Class Members' claims, the adequacy requirement is met. *See generally* Decl. Rodriguez.

For all of the foregoing reasons, Plaintiffs respectfully request that this Court preliminarily and conditionally certify the class for settlement purposes; grant preliminary and conditional approval of the proposed settlement; approve the proposed notification procedures, including the Notice of Settlement and proposed deadlines relating thereto; and schedule the final approval hearing. A copy of Plaintiffs' proposed order is being filed concurrently herewith.

Dated: September 13, 2024

18

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individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF PLACER

KATHLEEN ALVAREZ and JEANNE
BOOTH, individually and on behalf of all
other similarly situated employees,

Plaintiffs,

vs.

ROSEVILLE CARDIOLOGY MEDICAL
ASSOCIATES, INC., a California
Corporation; GEORGE FEHRENBACHER,
an individual; STEPHEN PETERS, an
individual; SANJAY YADLAPALLI, an
individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. S-CV-0051855

CLASS ACTION

**DECLARATION OF JUSTIN P. RODRIGUEZ
IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: October 8, 2024

Time: 8:30 a.m.

Dept.: 42

Judge: Hon. Trisha J. Hirashima

Filed: December 18, 2023

FAC Filed: February 29, 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 Plaintiffs Kathleen Alvarez and Jeanne Booth (“Plaintiffs”)
4 herein. I am making this declaration on behalf of the named Plaintiffs, the putative class members, and
5 in support of Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA Settlement
6 (“Motion”). A true and correct copy of the Joint Stipulation Regarding Class Action and PAGA
7 Settlement and Release (“Agreement”) in this matter is filed with this Motion as Exhibit A. Prior to
8 drafting and signing the Agreement, the parties drafted a Memorandum of Understanding (“MOU”)
9 setting forth the essential terms of the settlement. A true and correct copy of the MOU is filed with this
10 Motion as Exhibit H. Although the Agreement was finalized and circulated for signature of all parties
11 prior to filing, Defendant Stephen Peters remained unavailable to sign the Agreement before the
12 deadline for filing the Motion passed. Rather than reschedule the hearing and delay proceedings for
13 several months until the next available hearing date, the parties decided to move forward with
14 preliminary approval based on the prior signatures obtained on the MOU, which expressly authorizes
15 the parties moving forward with preliminary approval consistent with the essential terms therein even if
16 no long form agreement was ever finalized, in general or with reference to any particular party. I
17 conferred with Defendants’ counsel, Felipe Gomez, to confirm this course of action. Based on our
18 discussion, I expect that a supplemental declaration will be filed containing Defendant Stephn Peters’
19 signature on the Agreement before the date of hearing.

20 2. This case was brought as a wage and hour class action asserting causes of action against
21 Defendants Roseville Cardiology Medical Associates, Inc., George Fehrenbacher, Stephen Peters,
22 Sanjay Yadlapalli, (“Defendants”) for 1) failing to pay overtime wages, 2) failing to pay minimum
23 wages, 3) failing to provide meal periods, 4) failing to provide rest periods, 5) failing to provide
24 accurate wage statements, 6) failing to timely pay all final wages, 7) failing to reimburse employees for
25 incurred expenses, 8) failing to pay vested vacation time, and 9) engaging in unfair competition.
26 Plaintiffs also alleged liability for civil penalties under the Private Attorneys General Act (“PAGA”).
27 These claims were based allegations that Defendants violated California law by 1) failing to incorporate
28 the value of nondiscretionary bonuses into Plaintiffs and putative class members regular rates of pay for

1 the purpose of calculating overtime wages, meal and rest period premiums, and sick leave, 2) failing to
2 authorize and permit Plaintiff and similarly situated employees to take uninterrupted meal and rest
3 periods due to inadequate staffing and high volume of work, 3) failing to pay Plaintiff and similarly
4 situated employees for working during their meal periods while they were clocked out, 4) having a
5 meal period policy that was defective because Defendants manager informed Plaintiffs and similarly
6 situated employees that they were supposed to take their meal periods prior to the completion of the
7 sixth hour of work, 5) having practices that resulted in Plaintiff and similarly situated employees take
8 late meal periods, 6) failing to provide Plaintiff and similarly situated employees with a second meal
9 period when they worked shifts of ten (10) hours or more, 7) having practices that resulted in Plaintiff
10 and similarly situated employees take late rest periods, 8) failing to pay Plaintiffs and similarly situated
11 employees for the time that they spent reading and responding to work-related texts, and/or phone calls
12 after work hours which also resulted in unpaid overtime, 9) failing to have a policy to reimburse
13 Plaintiffs and similarly situated employees for the use of their personal cell phones and home internet
14 for work purposes, 10) failing to pay Plaintiffs and similarly situated employees for all the accrued
15 vacation PTO that that they had earned during their employment, and 11) failing to provide Plaintiffs
16 and similarly situated employees with all their earned sick pay based on the hours worked because
17 Defendants did not consider Plaintiffs and similarly situated employees off-the-clock hours worked
18 during their meal periods and responding to texts in calculating the sick pay accrual for them. The
19 PAGA, waiting time penalty, wage statement violation, and unfair competition claims also derive from
20 these violations.

21 3. Plaintiffs are the only named representatives in this matter. From our initial
22 investigations of Plaintiffs' claims and documents, we believed these claims had merit and could be
23 maintained as a class action. We filed the action on or about December 18, 2023. Plaintiff Kathleen
24 Alvarez exhausted administrative remedies through the Labor and Workforce Development Agency
25 ("LWDA") prior to amending the Complaint to add a PAGA claim. Plaintiff Kathleen Alvarez filed a
26 notice with the LWDA on December 18, 2023, setting forth the facts and theories of liability. A true
27 and correct copy of the notice filed with the LWDA is being filed with this Motion as Exhibit C. A
28 copy of the notice was also sent to Defendants via certified mail and the \$75.00 filing fee was remitted

1 to the LWDA at that time. There was no response by the LWDA regarding its intent to investigate the
2 claims alleged in notice letter for more than 65 days. As such, Plaintiff Kathleen Alvarez became
3 authorized to commence a civil action under the PAGA and filed a First Amended Complaint on
4 February 29, 2024. A true and correct copy of Plaintiffs' operative Complaint is filed with this Motion
5 as Exhibit B. A copy of the Complaint was uploaded to the LWDA, after we received an endorsed
6 copy back from Court.

7 4. Currently, there is no date set for a motion to certify the class and there is no trial date.

8 5. Defendants are represented in this matter by Jasmine Shams and Felipe A. Gomez of
9 Lewis Brisbois Bisgaard & Smith LLP. From the beginning, Defendants have contested the merits of
10 this case, the suitability of the case for class action or representative treatment, the manageability of the
11 case at trial, and Plaintiffs' ability to prove a violation in each pay period for each employee among
12 other defenses and contentions they made challenging the propriety of this action. Defendants further
13 contended, even assuming there was a finding supporting the imposition of PAGA penalties, that the
14 Court would likely exercise its discretion to substantially reduce any such penalties owed based on
15 evidence of good faith attempts to comply with California Labor Code obligations by Defendants.
16 Notwithstanding its agreement to settle this matter, Defendants believe the practices Plaintiffs are
17 contending are unlawful either do not exist or, to the extent they do exist, fully comply with all state
18 and federal employment laws with respect to Plaintiffs and Class Members. Also, Defendants have
19 contended that this matter is not appropriate for class certification outside of this proposed class
20 settlement.

21 6. Based on the expected testimony from Plaintiffs and Class Members, a review of
22 Defendants' policies and procedures and other documents relating to the alleged claims, information on
23 the number of Class Members, Class Members' dates of employment, and a representative sample of
24 Class Members' payroll data, the scope of the potential damages to Plaintiffs and Class Members in
25 light of the claims alleged, the uncertainty in the law with regard to certification, and the negotiations
26 that have taken place, I am convinced that the proposed settlement is in the best interest of the class.
27 The length and risks of trial and other normal perils of litigation that impact the value of the claims were
28 also considered and weighed in reaching the Agreement. In addition, I carefully considered the prospect

1 of potential class certification issues as well as the uncertainty of class certification, the difficulties of
2 complex litigation, and the lengthy process of establishing specific damages and various possible delays
3 and appeals in agreeing to the proposed settlement. I further considered the fact that penalties under the
4 PAGA could be substantially cut at the discretion of the Court even if Plaintiffs were successful on
5 proving those claims and there was risk that a Court could find no willfulness in the failure to pay wages
6 at separation, which would eliminate the value of the waiting time penalty claim entirely. Overall, I
7 believe it is more beneficial to secure a guaranteed benefit to the class now rather than to proceed with
8 litigation and potentially obtain zero funds to the class due to legal or factual issues in the case.

9 7. My office, including my partner, Galen T. Shimoda, my associate, Renald Konini, our
10 paralegal, and myself, along with Plaintiffs' assistance, thoroughly investigated the merits of the claims
11 and potential damages for such claims. The parties engaged in informal discovery and exchange of
12 documents, including a representative sampling of employee data, such as timecards, paystubs, payroll
13 data and relevant policies for the entirety of the statute of limitations applicable to the alleged claims.
14 The informal discovery covered all aspects of the asserted claims, including certification issues, merits
15 issues, damages, the scope and configuration of Class Members, the content and implementation of the
16 wage and hour policies at issue, issues relating to manageability concerns at trial, among other relevant
17 areas. From this production we were able to determine information critical to a reliable damages
18 analysis such as the average hourly rate, average daily hours worked, average number of workweeks and
19 pay periods that had potential violations based on the asserted claims, the frequency with which
20 violations occurred in a given week and/or pay period, and the number of former employees. This
21 information allowed my office to assess both liability and damages and create an accurate damages
22 model. Plaintiffs assisted in all aspects of this litigation including providing factual information relating
23 to Plaintiffs' and Class Members' employment conditions, providing a substantial number of documents,
24 and answering questions regarding Defendants' factual contentions in this matter. This was important
25 because it directly related to our ability to maintain this case as a class action and our ability to obtain a
26 favorable settlement for the class.

27 8. Throughout this litigation our office had numerous communications with Defendants'
28 Counsel discussing our respective positions. The parties engaged in mediation on June 25, 2024, using

1 an experienced mediator, Steve Pearl. It was only after approximately one year of extensive
2 investigations and arm's length negotiations that the parties were able to reach a settlement, which only
3 occurred after a full-day mediation. The negotiations were at all times contentious and adversarial,
4 though still professional in nature.

5 9. The following represents the potential maximum recovery for each of Plaintiffs' claims
6 based on my office's analysis of Defendants' relevant policies and the data produced by Defendants,
7 including a sample of time and payroll records for Class Members. There were 13,985 workweeks in
8 the Class Period, 6,455 PAGA pay periods, an average base hourly rate of \$30.10 and an average
9 overtime rate of \$45.15.

10 a). Minimum Wages: This claim is based on allegations that Defendants failed to pay
11 Plaintiffs and Class Members for all hours worked due to Class Members working
12 during times they were clocked out for meal periods and is also based on allegations that
13 Defendants communicated with Class Members outside of their scheduled work hours
14 and failed to pay Class Members for their additional time worked. At the time of
15 mediation, the maximum damages for this claim based on information from Plaintiffs
16 and Defendants' records was \$235,996.88. This amount was calculated based on an
17 estimate or assumption of 1.25 hours per week and the average minimum wage rate
18 during the Class Period of \$13.50. This amount does not take into account any potential
19 risks with respect to Plaintiff proving the merits or damages. Defendants had a written
20 policy prohibiting off-the-clock work and that employees should record all of their hours
21 worked accurately. Defendants also produced a written policy regarding accurate
22 timekeeping, reporting any timecard errors and also had Class Members review their
23 records and sign them to certify their accuracy. Defendant contends that because Class
24 Members certified their hours were correct, it had no knowledge of any off-the-clock
25 work to the extent any was performed. Also, there are instances in its records where
26 employees worked longer than their scheduled hours and were compensated for that
27 time. In order to be liable for off-the-clock work, an employer must know or have
28 reason to know it was occurring. *Brinker Rest. Corp. v. Superior Ct.*, 53 Cal.4th 1004,

1051 (2012). Because the hours worked forming the basis for this claim are also accounted for in Plaintiffs' overtime claim, the damages for this claim are entirely comprised of liquidated damages. A good faith dispute would eliminate liability for liquidated damages for unpaid minimum wages. See Cal. Lab. Code § 1194.2(b). Taking all these factors into account, I believe there is a substantial risk that the Court would find a good faith dispute and, therefore, there would be no recovery for this claim;

b). Unpaid Overtime (Off-the-Clock): The off-the-clock theory of overtime liability is based on the same factual allegations that form the basis for the minimum wage claim, which are stated above. The maximum damages for this claim are approximately \$789,278.44 ([13,985 workweeks x 1.25 hour off-the-clock per week] x \$45.15 average overtime rate). Plaintiff has assumed that all unpaid hours qualified as overtime. This amount does not take into account any potential risks with respect to Plaintiff proving the merits or damages. Because this theory of liability is based on the same facts supporting the minimum wage claims, it is subject to the same risks identified above. As noted above, there is a substantial risk that any time off-the-clock would not be compensable because of Defendants' policies and practices regarding Class Members certifying the accuracy of the hours worked and prohibiting off-the-clock work, which may result in a finding that Defendants were not aware of the off-the-clock hours. Given the risks associated with this claim, I believe a more realistic range of recovery for this theory of liability is between \$197,319.61 to \$394,639.22 (a reduction of 50%-75% based on risk);

Unpaid Overtime (Regular Rate of Pay): This theory of liability for unpaid overtime is based on allegations that Defendants failed to incorporate the value of monthly bonuses when calculating the regular rate of pay for overtime. The maximum damages for this claim are approximately \$888.22. Based on Class Members' time and payroll data, approximately 10.80% of the 6,455 total pay periods during the Class Period included overtime with a monthly bonus earned over the same period. Based on the average amount of a bonus attributable to each pay period (\$359.13), the average amount of overtime (1.23) worked per affected pay period, and the maximum non-overtime hours

1 worked per bi-monthly pay period (86.67), this equated to a total of \$888.22 in unpaid
2 overtime premiums. Although this number does not take into account the potential risks
3 associated with the claim, the overall damages is nominal and was more relevant for its
4 impact on derivative penalties like waiting time penalties and wage statement violation
5 penalties. Thus, the full claim value (\$888.22) is being used for purposes of the *Kullar*
6 analysis;

- 7 c). Meal Periods: This claim is based on the allegations that Defendants regularly failed to
8 provide complaint meal periods owed to Plaintiffs and Class Members due to high
9 workloads and nature of the work. Plaintiffs contended that they and Class Members
10 missed approximately 50% of all meal periods as a result of these working conditions.
11 Based on the number of total workweeks, an average of 5 shifts per week of at least five
12 (5) or more hours, and the average rate of pay, this resulted in a maximum of
13 approximately \$1,052,371.25 in unpaid meal period premiums. This amount does not
14 take into account any potential risks associated with this claim, which was heavily
15 disputed. For example, Defendant had a written policy that employees were entitled to
16 meal periods and Defendant contends it communicated this policy to Class Members and
17 informed them that they should take legally compliant meal periods. In fact, Defendants
18 produced mass emails of their manager informing and warning Class Members to take
19 timely meal periods and to inform Defendants if they were not able to take a meal
20 period. Additionally, Defendants contended that they warned Class Members that
21 disciplinary action would be taken if Class Members did not take compliant meal
22 periods or worked during meal periods. As a result, Defendants contend that they
23 provided Class Members with an opportunity to take meal periods and that to the extent
24 they were not taken or were taken late it was due to employee choice.
25 Also, even to the extent Plaintiff established liability, these facts created a substantial
26 risk that any damages would be greatly reduced based on how many instances a fact
27 finder determined were the result of a personal choice to forgo a meal period. These
28 disputes created a substantial risk that Plaintiffs would not be able to establish liability

and/or would only be able to prove limited damages. Taking these factors into account, a more realistic range of recovery for this claim is between \$263,092.81 to \$526,185.63 (50%-75% reduction to account for potential risk);

d). Rest Breaks: This claim was based on the same allegations as the meal period claim. Plaintiffs contended that Class members were not provided with lawful rest periods at the same frequency that they were unable to take meal periods. Plaintiffs contended that the same circumstances that created an employee's inability to take a meal period on a particular day also interfered with their ability to take a rest period. Thus, the estimated violation rate is the same for rest periods as it was for meals. Based on Plaintiffs' investigations and the payroll records, this equates to a maximum exposure of approximately \$1,052,371.25. However, this does not account for the risk associated with this claim. Because this claim is based on the same factual basis as the meal period claims, it is also subject to the same risks as detailed above. Defendants had a written policy that employees were entitled to rest periods and Defendants contend they communicated this policy to Class Members and informed them that they should take legally compliant rest periods. Defendants contend that they provided Class Members with an opportunity to take rest periods and that to the extent they were not taken it was due to employee choice. Additionally, this claim does not benefit from any presumptive violation based on time records under the law like meal period claims do. Taking these factors into account, a more realistic range of recovery for this claim would be between \$263,092.81 to \$526,185.63 (50%-75% reduction to account for potential risk);

e). Reimbursement: This claim is based on allegations that Class Members were required to use their personal cellphones for work without being reimbursed. The maximum exposure for this claim is \$80,682.69, which is based on a monthly cell phone bill of approximately \$100 and 25% work usage rate. This amount does not take into account any potential risks associated with this claim. Defendants heavily disputed whether use of personal cell phones was required given the presence of company phones available on premises. Defendants contended that the use of any applications on a personal device

1 was, at most, a personal choice of convenience by Class Members. Additionally,
2 Defendants contented that they had a policy against allowing Class Members using
3 personal cell phones while working in the work premises. Furthermore, it is unlikely
4 that all Class Members had their own standalone cell phone plans as opposed to being
5 billed as additional lines on a pre-existing plan. In my experience there has always been
6 a range of individuals whose cell phone plans are \$30-\$60 per month as additional lines
7 on a pre-existing plan. Thus, it is unlikely that the full amount of damages Plaintiffs
8 calculated would be established even if Plaintiffs were successful in certifying the class
9 and establishing liability. Based on these risks, I believe a more realistic range of
10 recovery for this claim would be between \$12,102.41 to \$28,238.94 (65%-85%
11 reduction to account for potential risk);

12 f). Sick Time: This claim is based on allegations that Defendants failed to provide
13 Plaintiffs and Class Members with all their earned sick pay based on the hours worked
14 because Defendants failed to incorporate the value of bonuses into the regular rate of
15 pay for sick leave premium purposes. Only .4% of pay periods had sick leave paid in
16 the same period where a bonus was earned. Based on the amount of sick leave take in
17 those pay periods and the average amount of underpayment per hour, this equated to
18 approximately \$15 in underpaid sick leave wages per occurrence for a total of \$387.28.
19 This amount does not take into account any potential risks with respect to Plaintiff
20 proving the merits or damages. However, because the amount of damages are nominal,
21 this claim did not have a substantial impact on the negotiations. Instead, this claim had
22 more of an impact in terms of the potential derivative waiting time penalties and wage
23 statement penalties it triggered. For purposes of this *Kullar* analysis, the total claim
24 value (\$387.28) is being used;

25 g). Wage Statement: This claim is derivative of the claims above and therefore carries the
26 same risks. At the time of mediation, the maximum damages for this claim based on
27 information from Class Members and Defendants' data was \$130,450. This amount was
28 calculated using a \$50 initial violation rate for the 2,609 pay periods in the claim period.

1 Labor Code section 226 requires a knowing and intentional violation and Defendants
2 contend that to the extent the wage statements it issued to Class Members were incorrect
3 it was not intentional. Based on our research, we did not find any prior Labor
4 Commissioner or court decisions that stated Defendants' practices and/or policies were
5 improper. As such, a "subsequent violation" may not be found for penalty calculation
6 purposes and the exposure analysis was based on an "initial violation" valuation being
7 adopted by any fact finder if this matter went to trial. *See Amaral v. Cintas Corp. No. 2*,
8 163 Cal.App.4th 1157, 1207-1209 (2008). This amount does not take into account the
9 potential risks associated with this claim. Because this claim is derivative of Plaintiffs'
10 other claims, the same risks identified above for Plaintiffs' minimum wages, overtime,
11 meal period, and rest period, claims apply here as well, substantially affecting the
12 potential value of this claim. Furthermore, under the recent California Supreme Court
13 case, *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal.5th 1056 (2024), employers now
14 have a good faith dispute defense against wage statement claims. Given the factual and
15 legal disputes discussed above, I believe there is a substantial risk that a Court would
16 find a good faith dispute, eliminating any recovery for this claim;

17 h). Waiting Time Penalties: This claim is derivative of the failure to pay minimum wages,
18 failure to pay overtime, and failure to provide meal and rest periods. Thus, the same
19 risks identified above apply to this claim. At the time of mediation, the maximum
20 damages for this claim based on the data and information provided by Class Members
21 was \$650,160. There were 90 former employees and the average daily rate of pay based
22 on an eight hour day was \$240.80, making the total owed after accounting for the
23 maximum 30 day period \$7,224 per member. This amount does not take into account
24 any potential risks with respect to Plaintiffs proving the merits or damages, which are
25 detailed above, including the risk of a good faith defense eliminating liability for this
26 claim. *See Diaz v. Grill Concepts Servs., Inc.*, 23 Cal.App.5th 859, 868 (2018). Taking
27 these factors into account, There is substantial risk that this claim would be eliminated
28 entirely;

- 1 i) PTO: This claim is based on allegations that Plaintiffs and Class Members were not
2 paid PTO at the regular rate when earning bonuses and taking PTO in the same period as
3 well as allegations that Defendants failed to accurately calculate accrued PTO such that
4 there was earned PTO that remained unpaid at termination. With respect to the regular
5 rate theory of liability, the payroll sample did not reveal any instances where PTO was
6 paid in the same period that a Class Member earned a bonus. Furthermore, while this
7 lawsuit was pending, Defendants issued payment to Class Members covering any unpaid
8 balance of PTO resulting from the alleged miscalculation. Because the sample did not
9 show any regular rate violations actually occurring and the underlying amounts owed
10 based on the accrual miscalculation theory, there were no substantive damages
11 associated with this claim. However, Plaintiffs' PAGA calculations account for the
12 violations notwithstanding the underlying substantive amounts were ultimately paid.
- 13 j). PAGA: This claim is derivative of the Labor Code violations identified above and would
14 be subject to all the same risks as the underlying claims it is based on. Additionally,
15 based on our research, we did not find any prior Labor Commissioner or court decisions
16 that stated Defendants' practices and/or policies were improper. As such, a "subsequent
17 violation" may not be found for penalty calculation purposes, and the exposure analysis
18 here is based on an "initial violation" valuation being adopted by any fact finder if this
19 matter went to trial. *See Amaral*, 163 Cal.App.4th at 1207-1209. Based on Class
20 Members' payroll data, the maximum exposure for this claim is \$1,533,643.60. This
21 amount does not take into account any of the risks in proving the merits of the
22 underlying claims that the PAGA damages are based on. Beyond the risks on the merits,
23 the correct valuation of civil penalty amounts for certain claims under PAGA were in
24 dispute. For example, the calculation valued civil penalties for failure to pay final wages
25 under Labor Code section 256 (which provides the civil penalty amount will not exceed
26 30 days' pay as waiting time under the terms of Section 203) for a total of \$180,600
27 instead of the \$100 per violation default penalty under Labor Code 2699(f), which
28 results in a reduction to \$2,500 for this claim. Using the lowered valuations would

1 reduce the maximum PAGA penalties to \$1,355,543.60. In addition to the risks on the
2 merits and disputes regarding the proper valuation of the penalty amounts, I believe the
3 Court would likely exercise its discretion to reduce PAGA penalties in this case in light
4 of the fact that a majority of the civil penalties being sought would be in addition to
5 amounts owed for substantive violations, some of the violations are due to technical
6 non-compliance with the Labor Code, such as derivative wage statement violations, and
7 Defendant produced legally compliant policies among other documents, that a Court
8 may find demonstrates a good faith attempt at compliance. Courts are statutorily
9 authorized to use discretion to reduce penalties, and the range of discretion used varies
10 substantially. *See Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112,
11 1135 (2012) (30% reduction); *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS
12 154590, *9 (C.D. Cal. 2011) (82% reduction). The 82% reduction equates to roughly
13 \$9-\$50 worth of civil penalties per pay period per employee depending on the total
14 potential value of the civil penalty (*i.e.* \$50-\$250), which is more in line with actual
15 awards based on my experience and review of awards in other cases. Thus, even if
16 using the maximum values possible and setting aside risks of proving the claims on the
17 merits, the total exposure may be cut to approximately \$276,055.85 (82% reduction) to
18 \$1,073,550.52 (30%) or lower. It is important to note that this discretionary reduction is
19 completely separate and in addition to any risks on the merits. Given the substantial
20 risks associated with the claims, I believe the amount that might ultimately be awarded
21 under this claim would be significantly lower than our maximum exposure calculation.
22 Allocating \$10,000 to the PAGA claims in this case is appropriate, especially in light of
23 amounts that Courts have approved as reasonable valuations in other cases. *See*
24 *Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to
25 the resolution of PAGA claims based on their being disputed and being part of a class
26 settlement which was evaluated based on the terms of the agreement overall);
27 *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, at *8 n.2 (E.D. Cal. 2022)
28 (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v.*

1 *Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving
2 settlement of PAGA claims at 0.6% of total estimated value due to risk of no recovery);
3 *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016) (approving
4 \$10,00 PAGA settlement allocation where total PAGA penalty exposure was
5 approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox Commc 'ns*
6 *California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily
7 approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l,*
8 *LLC*, 2014 U.S. Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA
9 allocation when attorneys' fees award alone amounted to \$200,000); *Jack v. Hartford*
10 *Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000
11 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010
12 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in
13 \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9
14 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v.*
15 *M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving
16 \$100,000 PAGA allocation in a \$3,950,000 settlement even though PAGA exposure was
17 calculated at \$53,600,000, or 0.2% of total estimated value); *Garcia v. Gordon*
18 *Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012) (approving
19 \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*,
20 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from
21 \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645,
22 at *1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA
23 out of \$6.9 million common-fund settlement).

24 10. In summary, Plaintiffs' gross recovery of \$310,000 under the Agreement equals
25 approximately 6% of the maximum value of the claims in this matter and between 12% and 31% of the
26 more realistic range of recovery. After deducting from the Gross Settlement Amount the proposed
27 allocations for attorneys' fees and costs, any Enhancement Payment to the Class Representatives,
28 Settlement Administrator Costs, and the PAGA Payment, the net recovery under the Agreement,

1 \$141,500, represents approximately 3% of the maximum likely value of the claims in this matter. The
2 net recovery also represents between 6% and 14% of the more realistic range of recovery. The average
3 net award is approximately \$918.83. I believe the Agreement represents a reasonable compromise of
4 claims based on the legal and factual disputes in this case. The ability to secure a guaranteed settlement
5 now and ensure Class Members receive some compensation, rather than proceed to further litigation
6 and potentially recover nothing, was a motivating factor in reaching this Agreement.

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

15 12. I am a shareholder at Shimoda & Rodriguez Law, PC. My law firm is a boutique law
16 practice that focuses primarily on employment litigation, emphasizing wage and hour litigation. I
17 attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the
18 Departmental Citation for Academic Achievement in the Philosophy program. I was one of only two
19 recipients of this award out of the entire Philosophy Department. After U.C. Davis, I attended the
20 University of the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris
21 Doctorate. I graduated in the top 20% of my class and was a member of the Traynor Honor Society at
22 McGeorge. Other academic achievements of mine include receiving a Witkin Award (top grade) in my
23 legal research and writing course, a Witkin Award in complex civil litigation, being a member of the
24 Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from
25 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global Business &*
26 *Development Law Journal* from 2010–2011, and being selected as a Sacramento County Bar
27 Association Diversity Fellow in 2009. I was also a member of the Employment and Labor Law Society
28 and an officer for the Latino Law Students Association from 2009 to 2010.

13. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp. became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to 2023, I have been recognized as a Super Lawyer (Rising Star). Since 2024, I have been recognized as a Super Lawyer. I have been a panel speaker and presented a number 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.);

- 1 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 2 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
- 3 Sup. Ct.);
- 4 • *Barkhausen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup.
- 5 Ct.);
- 6 • *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- 7 • *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-
- 8 00271174 (Sac. Sup. Ct.);
- 9 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
- 10 Ct.);
- 11 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
- 12 Ct.);
- 13 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
- 14 Sup. Ct.);
- 15 • *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- 16 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
- 17 Ct.);
- 18 • *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 19 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
- 20 00209613 (Sac. Sup. Ct.);
- 21 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 22 • *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-
- 23 00222101 (Sac. Sup. Ct.);
- 24 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- 25 • *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- 26 • *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- 27 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 28 • *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);

- 1 • *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup.
- 2 Ct.);
- 3 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 4 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 5 • *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac Sup. Ct.);
- 6 • *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- 7 • *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- 8 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 9 • *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- 10 • *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac Sup. Ct.);
- 11 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- 12 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 13 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 14 • *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- 15 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 16 • *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- 17 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 18 • *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-
- 19 EFB (E.D. Cal.);
- 20 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- 21 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 22 • *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 23 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-
- 24 00082201 (Sac Sup. Ct.);
- 25 • *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- 26 • *Salmon v. Ovarions Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.) ;
- 27 • *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.) ;
- 28 • *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.).

14. 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.

15. 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

1 Panel and AB 1825 Training: Updates on California's New Wage Laws and Manager Compliance
2 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –
3 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento
4 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of
5 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
6 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
7 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);
8 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
9 Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,
10 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized
11 as a Super Lawyer from 2014 to present.

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

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

- 1 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac.
2 Sup. Ct.);
- 3 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 4 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup.
5 Ct.);
- 6 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
7 Ct.);
- 8 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
9 Sup. Ct.);
- 10 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 11 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup.
12 Ct.);
- 13 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 14 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-
15 00209613 (Sac. Sup. Ct.);
- 16 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 17 • *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- 18 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- 19 • *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242
20 (San Joaquin Sup. Ct.);
- 21 • *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- 22 • *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac.
23 Sup. Ct.);
- 24 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 25 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 26 • *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-300000003 (Sac.
27 Sup. Ct.);
- 28 • *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.).

17. 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.

18. 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.),

1 *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.), *Miller v. Caldwell*
2 *Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.), *Pek, et al v. Varris*
3 *Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin Sup. Ct.), *Valencia v. Lowbrau*
4 *Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac. Sup. Ct). Mr. Konini's practice largely
5 revolves around wage and hour matters, including PAGA claims.

6 19. I am requesting attorneys' fees and costs pursuant to the common fund doctrine as I
7 believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977),
8 *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v.*
9 *Grauly*, 886 F.2d 268, 271 (9th Cir. 1989). Plaintiff and our firm have been able to secure an
10 identifiable benefit on behalf of the class and equity counsels that the cost of the representation should
11 be borne equally amongst all class members receiving these benefits. The settlement recovery provides
12 an excellent result and is the product of substantial time and effort in analyzing the facts and law
13 applicable to this case. I agreed to take this case on a contingency basis and as a class action with the
14 possibility that I would not receive any compensation for my time and efforts due to issues regarding
15 the merits and/or certification and have carried that risk over the course of the case. I have reviewed
16 fee arrangements and Court ordered fee awards in similar class cases and I believe that the thirty-five
17 percent (35%) fee request is within the accepted ranges. In my experience with contingency cases in
18 employment law cases, the typical percentage negotiated between parties ranges from thirty-five to
19 forty percent (35% to 40%) in individual litigation. In class action litigation, my experience in my own
20 firm and working with several other firms has been that the typical percentage negotiated between
21 parties and approved by a court ranges from thirty to forty percent (30% to 40%) based on the same
22 factors. I have also reviewed several recent Federal District Court Cases where the Court has approved
23 common fund-based fee requests. These cases include *In re Activision Sec. Litigation*, 723 F.Supp.
24 1373, 1379 (N.D. Cal. 1989), *Watson v. Raytheon Company*, USDC Southern District, Case No. 3:10-
25 cv-0063, *Dirienzo v. Dunbar Armored, Inc.*, USDC Southern District, Case No. 3:09-cv-02745, *Green,*
26 *et al. v. Penske Logistics, L.L.C., et al.*, USDC Southern District, Case No. 3:09-cv-00069, *Benitez et*
27 *al. v. Wilbur*, USDC Eastern District, Case No. 1:08-cv-01122, *Chavez et al. v. Petrissans et al.*, USDC
28 Eastern District, Case No. 1:08-cv-00122, and *Willis et al. v. Cal-Western Transport*, USDC Eastern

District, Case No. 1:00-cv-05695, which are cited in Plaintiff's Memorandum of Points and Authorities. I believe my request of \$108,500 (approximately 35%) for attorneys' fees is justified given the results obtained on behalf of the class. The expected total costs through final approval by Class Counsel are not expected to exceed \$15,000. Filed with this Motion as Exhibit E is a true and correct copy of the costs incurred to date and expected to be incurred through the completion of this case by Shimoda & Rodriguez Law, PC. Any difference in the actual costs and the maximum amount allocated under the Agreement will be added to the Net Settlement Amount.

20. I have used several class action administrator companies in the wage and hour class actions I have resolved in the past and believe Apex Class Action will provide the best service to administer the proposed class settlement. Apex Class Action has provided a quote for the estimated maximum cost of administering the class settlement of approximately \$4,990. A true and correct copy of a cost estimate provided by Apex Class Action is filed with this Motion as Exhibit D. This is only an estimate, and final pricing may vary depending on the issues, if any, that arise during the administration of the settlement. However, the difference between the actual, lesser costs and \$15,000, if any, will be paid to the Participating Class Members on a pro rata basis.

21. A copy of the Agreement and the entire Motion was submitted to the LWDA for review at the same time the Motion was submitted to the Court pursuant to California Labor Code section 2699(l)(2). A true and correct copy of documents demonstrating the settlement documents were provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as Exhibit G.

22. A true and correct copy of the proposed Notice of Settlement is being filed with this Motion as Exhibit F.

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

24. CPB is a 501(c)(3) nonprofit in good standing with the State of California that was established in 1981 and incorporated in 1986 to provide free civil legal services to the indigent, primarily through the use of volunteer attorneys. The formal service area includes Sacramento, Yolo,

San Joaquin, El Dorado and Placer counties, however it also regularly provides assistance, whether in person or by phone, to individuals residing outside those counties, including Solano, Nevada, Merced, Sutter, Yuba, and Stanislaus counties. CPB changed its name in 2020 from Voluntary Legal Services Program of Northern California (“VLSP”) to Capital Pro Bono, Inc. CPB has been the recipient of *cy pres* funds from several jurisdictions in the State of California, including from Sacramento County Superior Court.

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

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

27. The CFWR provides limited representation for low-wage workers in wage claims before the California Labor Commissioner. The CFWR has provided services to low-wage workers in a variety of industries across the entire state of California. CFWR primarily focuses on the enforcement of basic workplace protections, including claims for unpaid wages, minimum wage violations, failure to pay overtime, failure to pay reimbursement, waiting time penalties, and meal and rest period violations. The

CFWR helps workers navigate the wage claim process before the California Labor Commissioner through advice given at its legal consultation clinics and/or, in some cases, through representing workers in these claims. If the CFWR is approved as a *cy pres* beneficiary, the funds received will be dedicated towards assisting low-wage workers with wage claims and enforcing the California Labor Code with respect to those wage claims.

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

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

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

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

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

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct. Executed on September 13, 2024, in Sacramento, California.

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5 Justin P. Rodriguez
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Attorneys for Plaintiffs KATHLEEN ALVAREZ and JEANNE BOOTH
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF PLACER

KATHLEEN ALVAREZ and JEANNE
BOOTH, individually and on behalf of all
other similarly situated employees,

Plaintiffs,

vs.

ROSEVILLE CARDIOLOGY MEDICAL
ASSOCIATES, INC., a California
Corporation; GEORGE FEHRENBACHER,
an individual; STEPHEN PETERS, an
individual; SANJAY YADLAPALLI, an
individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. S-CV-0051855

CLASS ACTION

**DECLARATION OF JEANNE BOOTH IN
SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: October 8, 2024

Time: 8:30 a.m.

Dept.: 42

Judge: Hon. Trisha J. Hirashima

Filed: December 18, 2023

FAC Filed: February 29, 2024

Trial Date: None Set

1 I, Jeanne Booth, 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 Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement.

5 2. I worked for Defendants Roseville Cardiology Medical Associates, Inc., George
6 Fehrenbacher, Stephen Peters, and Sanjay Yadlapalli ("Defendants") during two different time periods
7 (2016 to February 2018 and March 2020 to October 2022), as a non-exempt employee. I was subject to
8 all of Defendants' policies and practices that have been alleged as unlawful in the Complaint, including
9 the following: failure to pay overtime, failure to pay minimum wages, failure to provide accurate wage
10 statements, failure to timely pay final wages, failure to provide meal and rest periods or pay premiums
11 in lieu thereof, failure to reimburse expenses, and failure to pay vested vacation time.

12 3. I have actively participated in the litigation of this case for the benefit of all Class
13 Members. My attorneys explained to me the risks and benefits of bringing a class action. I understood
14 that pursuing the case as a class action meant that it would take substantially longer than pursuing my
15 claims individually, whether in Court or with the California Labor Commissioner, and that I risked
16 getting nothing in the end, but I believed it was important to make sure that Defendants followed the
17 law for everyone. I understood that I took on the risk, both professionally and financially, in pursuing
18 the case as a class action rather than pursuing my claims individually, including the risk of having to pay
19 Defendants' costs if we were unsuccessful in bringing our claims.

20 4. During the course of this litigation, I have given detailed accounts of all the facts related
21 to my employment. I provided my attorneys with extensive documentation that I believe supported the
22 claims brought against Defendants. I met with and assisted my attorneys in understanding these
23 documents and providing context for Defendants' payroll process as it applied to me and how I
24 believed it applied to Defendants' other employees. I worked there for a considerable amount of time,
25 so I was able to discuss the similarities of the wage and hour policies and practices among all Class
26 Members.

27 5. The work I performed for this case included a substantial amount of document review as
28 well as reviewing the payroll practices to show and explain to my attorneys what was happening and

1 why I thought it was unlawful. I provided my attorneys with timesheets, paystubs, policies, pictures,
2 and text messages related to the wage and hour claims of this case. I also explained the job duties of the
3 various positions held by class members, the type of tasks and work performed, how these related to the
4 wage and hour issues we raised, estimates of the total number of class members for each position,
5 typical schedules, and the policies of the Defendant and how they affected myself and class members. I
6 helped review and explain to my attorney's different documents such as payroll documents, paystubs
7 and payroll records, payroll policies, meal and rest period policies, billing incentives, policies, bonuses,
8 and timecards. I believe this was very important as it helped not only the claims of failure to pay
9 minimum wages, failure to pay overtime, and failure to provide meal and rest periods, but also claims
10 related to waiting time penalties and failure to provide accurate wage statements. The review became
11 even more detailed when my attorneys asked me questions about the payroll data sample that was
12 produced as part of informal discovery to engage in mediation. Overall, I have spent an enormous
13 amount of time assisting in the prosecution of this case.

14 6. I participated in the negotiations and settlement discussions in this case, including
15 participating in mediation by phone, speaking with my attorneys to answer questions, provide any
16 additional information needed to assist the negotiations, and discussing the potential terms of the
17 Agreement to evaluate its adequacy. Throughout the course of this litigation, I have asked questions
18 when I needed clarification about various aspects of this case to make sure steps taken to advance the
19 interests of Class Members.

20 7. Although I have already spent a substantial amount of time on this case and assisting my
21 attorneys, I expect the amount of time I spend on this case will increase if preliminary approval is
22 granted because Class Members will likely reach out to me about the Settlement and the process for
23 receiving payment.

24 8. I have not received any benefits as a result of filing this lawsuit. I have, however,
25 experienced substantial burdens as a result of filing the lawsuit that other Class Members were not
26 subject to. For example, in bringing the lawsuit, I assumed the risk of having to pay Defendants' costs
27 if the Court or jury rules against us on the claims. My understanding is that this is a substantial risk
28 because the costs associated with litigation, in general, are very high and this cost is multiplied many

1 times over in complex litigation like class actions. I have spent a substantial amount of time in this
2 case, securing a monetary benefit for many individuals who have not had to do anything whatsoever to
3 have the opportunity to receive it. Rather than spend this time with friends and family, I have spent this
4 time for the benefit of Class Members. Finally, as part of the Settlement, Ms. Alvarez and I are the
5 only individuals providing a general release of all of our individual claims. No other Class Member is
6 subject to such a broad release.

7 9. I have reviewed the final Joint Stipulation of Class Action and PAGA Settlement and
8 Release, discussed the terms with my attorney, and asked my attorney any questions I had. I believe
9 the terms of the Settlement and allocations are fair and reasonable given the facts of the case.

10 10. I understand that any Class Representative Enhancement Payment I may receive is for
11 my participation as a Class Representative and it is not contingent on my support or approval of the
12 Agreement.

13 I declare under penalty of perjury under the laws of the State of California that the foregoing is
14 true and correct. Executed on 09/10/2024 in Sacramento, California.

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18 Jeanne Booth
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Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
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Attorneys for Plaintiffs KATHLEEN ALVAREZ and JEANNE BOOTH
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF PLACER

KATHLEEN ALVAREZ and JEANNE
BOOTH, individually and on behalf of all
other similarly situated employees,

Plaintiffs,

vs.

ROSEVILLE CARDIOLOGY MEDICAL
ASSOCIATES, INC., a California
Corporation; GEORGE FEHRENBACHER,
an individual; STEPHEN PETERS, an
individual; SANJAY YADLAPALLI, an
individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. S-CV-0051855

CLASS ACTION

**DECLARATION OF KATHLEEN ALVAREZ IN
SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: October 8, 2024

Time: 8:30 a.m.

Dept.: 42

Judge: Hon. Trisha J. Hirashima

Filed: December 18, 2023

FAC Filed: February 29, 2024

Trial Date: None Set

1 I, Kathleen Alvarez, 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 Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement.

5 2. I worked for Defendants Roseville Cardiology Medical Associates, Inc., George
6 Fehrenbacher, Stephen Peters, and Sanjay Yadlapalli ("Defendants") from approximately April 4,
7 2022, to September 29, 2023, as a non-exempt employee. I was subject to all of Defendants' policies
8 and practices that have been alleged as unlawful in the Complaint and the notice sent to the Labor and
9 Workforce Development Agency, including the following: failure to pay overtime, failure to pay
10 minimum wages, failure to provide accurate wage statements, failure to timely pay final wages, failure
11 to provide meal and rest periods or pay premiums in lieu thereof, failure to reimburse expenses, failure
12 to pay vested vacation time, and violation of Labor Code section 558.

13 3. I have actively participated in the litigation of this case for the benefit of all Class
14 Members. Prior to obtaining an attorney, I performed several hours of research trying to find a quality
15 attorney to handle the claims. I also performed several hours of research on the potential claims and
16 attempting to find witnesses, so I could be sure I could have an informed discussion with the attorneys
17 about the claims, be ready to prove them, and have a better idea of what to expect in litigation and how
18 to help the case proceed. After securing Shimoda & Rodriguez Law, PC, I continued to be actively
19 involved in the case to help ensure a positive outcome.

20 4. My attorneys explained to me the risks and benefits of bringing a class action and a
21 claim under the Private Attorneys General Act ("PAGA"). I understood that pursuing the case as a
22 class and PAGA action meant that it would take substantially longer than pursuing my claims
23 individually, whether in Court or with the California Labor Commissioner, and that I risked getting
24 nothing in the end, but I believed it was important to make sure that Defendants followed the law for
25 everyone. I undertook the professional and financial risk of pursuing the case as a class and PAGA
26 action rather than pursuing my claims individually, including the risk of having to pay Defendants'
27 costs if we were unsuccessful in bringing our claims.

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

8 6. I engaged in an extensive review of documents and payroll practices to show and
9 explain to my attorneys what practices and policies I believed were unlawful. I provided my attorneys
10 with timesheets, paystubs, written policies/memorandums, and text messages related to the wage and
11 hour claims in this case. I also discussed the various job duties of the positions held by class members,
12 the type of tasks and work performed, how these raised wage and hour issues, estimates of the total
13 number of class members for each position, typical schedules, and the policies of the Defendant and
14 how they affected myself and class members. I helped review and explain to my attorney's different
15 documents such as payroll documents, paystubs and payroll records, payroll policies, meal and rest
16 period policies, billing incentives, policies, bonuses, timecards, and Defendants' practices of such
17 policies. I believe this was very important as it helped not only the claims of failure to pay minimum
18 wages, failure to pay overtime, and failure to provide meal and rest periods, but also claims related to
19 waiting time penalties and failure to provide accurate wage statements. Even further detail was
20 required when my attorneys asked me questions about the payroll data sample that was produced as
21 part of informal discovery to engage in mediation. I also spent time finding witnesses for this case.
22 Overall, I have spent an enormous amount of time assisting in the prosecution of this case. I also spent
23 a substantial amount of time identifying and speaking to potential witnesses who could speak to my
24 attorneys to give their own insights. Overall, I have spent an enormous amount of time assisting in the
25 prosecution of this case.

26 7. I participated in the negotiations and settlement discussions in this case, including
27 participating in mediation by phone, speaking with my attorneys to answer questions, provide any
28 additional information needed to assist the negotiations, and discussing the potential terms of the

1 Agreement to evaluate its adequacy. Throughout the course of this litigation, I have asked questions
2 when I needed clarification about various aspects of this case to make sure steps were continually taken
3 to advance the interests of Class Members.

4 8. I have spent a substantial amount of time on this case and assisting my attorneys. I
5 believe the time I spend on this case will increase if preliminary approval is granted because Class
6 Members will likely reach out to me about the Settlement and the process for receiving payment.

7 9. I have not received any benefits as a result of filing this lawsuit. I have, however,
8 experienced substantial burdens as a result of filing the lawsuit that other Class Members were not
9 subject to. For example, in bringing the lawsuit, I assumed the risk of having to pay Defendants' costs
10 if the Court or jury rules against us on the claims. My understanding is that this is a substantial risk
11 because the costs associated with litigation, in general, are very high and this cost is multiplied many
12 times over in complex litigation like class actions. I have spent a substantial amount of time in this
13 case, securing a monetary benefit for many individuals who have not had to do anything whatsoever to
14 have the opportunity to receive it. Rather than spend this time with friends and family, I have spent this
15 time for the benefit of Class Members. Finally, as part of the Settlement, Ms. Booth and I are the only
16 individuals providing a general release of all of our individual claims. No other Class Member is
17 subject to such a broad release.

18 10. I have reviewed the final Joint Stipulation of Class Action and PAGA Settlement and
19 Release, discussed the terms with my attorney, and asked my attorney any questions I had. I believe
20 the terms of the Settlement and allocations are fair and reasonable given the facts of the case.

21 11. I understand that any Class Representative Enhancement Payment I may receive is for
22 my participation as a Class Representative and it is not contingent on my support or approval of the
23 Agreement.

24 I declare under penalty of perjury under the laws of the State of California that the foregoing is
25 true and correct. Executed on 09/10/2024 in Rancho Cordova, California.

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Kathleen Alvarez (Sep 10, 2024 12:33 PDT)

28 Kathleen Alvarez

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Attorneys for Plaintiffs KATHLEEN ALVAREZ and JEANNE BOOTH
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF PLACER

KATHLEEN ALVAREZ and JEANNE
BOOTH, individually and on behalf of all
other similarly situated employees,

Plaintiffs,

vs.

ROSEVILLE CARDIOLOGY MEDICAL
ASSOCIATES, INC., a California
Corporation; GEORGE FEHRENBACHER,
an individual ; STEPHEN PETERS, an
individual; SANJAY YADLAPALLI, an
individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. S-CV-0051855

CLASS ACTION

**EXHIBIT LIST AND EXHIBITS IN SUPPORT
OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: October 8, 2024

Time: 8:30 a.m.

Dept.: 42

Judge: Hon. Trisha J. Hirashima

Filed: December 18, 2023

FAC Filed: February 29, 2024

Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Joint Stipulation Regarding Class Action and PAGA Settlement and Release
B	Plaintiffs' Operative Complaint
C	Plaintiffs' Letter to the LWDA Regarding PAGA Claims
D	Apex Class Action Bid
E	Plaintiffs' Itemized Costs
F	Proposed Notice of Settlement
G	Proof of Submission of Proposed Settlement Agreement to LWDA
H	Memorandum of Understanding

Dated: September 13, 2024

Shimoda & Rodriguez Law, PC

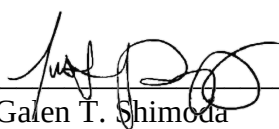
By: 
 Galen T. Shimoda
 Justin P. Rodriguez
 Renald Konini
 Attorneys for Plaintiffs

EXHIBIT A

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FEHRENBACHER, STEPHEN PETERS, and SANJAY YADLAPALLI

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF PLACER

KATHLEEN ALVAREZ and JEANNE BOOTH,
individually and on behalf of all other similarly
situated employees,

Plaintiffs,

vs.

ROSEVILLE CARDIOLOGY MEDICAL
ASSOCIATES, INC., a California Corporation;
GEORGE FEHRENBACHER, an individual;
STEPHEN PETERS, an individual; SANJAY
YADLAPALLI, an individual; and DOES 1 to
100, inclusive,

Defendants.

Case No.: S-CV-0051855

**JOINT STIPULATION REGARDING CLASS
ACTION AND PAGA SETTLEMENT AND
RELEASE**

Filed: December 18, 2023

FAC Filed: February 29, 2024

Trial Date: None Set

1 This Joint Stipulation Regarding Class Action and PAGA Settlement and Release is made and
2 entered into between the Plaintiffs Kathleen Alvarez and Jeanne Booth (“Plaintiffs”), on behalf of
3 themselves, the Labor and Workforce Development Agency, Class Members, and PAGA Members, and
4 Defendants Roseville Cardiology Medical Associates, Inc., George Fehrenbacher, Stephen Peters, and
5 Sanjay Yadlapalli (“Defendants”). This Agreement is subject to the terms and conditions set forth below
6 and the approval of the Court.

7 **1. DEFINITIONS**

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

9 1.1 “Action” means the above stated lawsuit, *Alvarez, et al., v. Roseville Cardiology Medical*
10 *Associates, Inc., et al.*, Placer County Superior Court, Case No. S-CV-0051855, filed December 18, 2023.

11 1.2 “Agreement” or “Settlement” or “Settlement Agreement” means this Joint Stipulation
12 Regarding Class Action and PAGA Settlement and Release.

13 1.3 “Class Counsel” means Galen T. Shimoda, Justin P. Rodriguez and Renald Konini of
14 Shimoda & Rodriguez Law, PC.

15 1.4 “Class Member(s)” means all non-exempt employees who have worked, or continue to
16 work, for Roseville Cardiology Medical Associates, Inc., in California at any time between December 18,
17 2019, up to the Preliminary Approval Date, or November 5, 2024, whichever is earlier. The estimated
18 number of Class Members is 154.

19 1.5 “Class Period” means December 18, 2019, up to the Preliminary Approval Date, or October
20 24, 2024, whichever is earlier.

21 1.6 “Class Representatives” means Plaintiffs Kathleen Alvarez and Jeanne Booth.

22 1.7 “Class Representatives’ Released Claims” means all claims arising from, could have been
23 asserted, or related in any way to the Class Representatives’ employment with Defendants, under federal,
24 state, or local laws, and/or ordinances, or tort or contract theories, whether known or unknown, and whether
25 anticipated or unanticipated, including but not limited to statutory, constitutional, contractual or common
26 law claims for lost wages, unpaid wages (including, but not limited to unpaid minimum wages, straight
27 time wages, overtime wages, double time wages, and vacation pay and all other types of wages), off-the-
28 clock work, failure to provide meal periods or any premiums owed, failure to provide rest breaks or any

premiums owed, failure to provide accurate itemized wage statements, failure to pay final wages, failure to properly calculate Paid Time Off, failure to pay vested vacation time, failure to reimburse business expenses or failure to indemnify, failure to properly pay sick leave, unfair and unlawful competition, waiting time penalties, withholding from wages and the related provisions of the Labor Code, emotional distress, punitive damages, special damages, damages, unpaid costs, penalties, liquidated damages, interest, attorneys' fees, litigation costs, restitution, equitable relief or other similar relief or claims. The Class Representatives' Released Claims exclude claims for workers' compensation, unemployment insurance benefits, or other claims that cannot be released as a matter of law.

1.8 "Complaint" means the operative Complaint on file in the Action with the Court.

1.9 "Court" means the Placer County Superior Court.

1.10 "Defendants" means Roseville Cardiology Medical Associates, Inc., George Fehrenbacher, Stephen Peters, and Sanjay Yadlapalli.

1.11 "Defendants' Counsel" means Jasmine Shams and Felipe Gomez of Lewis Brisbois Bisgaard & Smith LLP.

1.12 "Enhancement Payment" means the amount approved by the Court to be paid to the Class Representatives in recognition of the time and effort expended on behalf of Class Members for the benefit of Class Members, which is in addition to any Individual Settlement Amount paid to the Class Representatives as a Participating Class Member.

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

1.14 "Final Approval Date" means the date a signed order granting final approval of this Agreement is filed with the Court.

1.15 "Gross Settlement Amount" is the sum of Three Hundred Ten Thousand Dollars and Zero Cents (\$310,000).

1 1.16 “Individual Settlement Amount” means an individual Class Member’s and PAGA
2 Member’s allocation of the Net Settlement Amount and PAGA Payment respectively, as defined in
3 Sections 1.18, 1.22, 5.5, and 5.8.

4 1.17 “LWDA” means the California Labor and Workforce Development Agency.

5 1.18 “Net Settlement Amount” is the portion of the Gross Settlement Amount available for
6 distribution to Class Members, as described in this Agreement, after deduction of Class Counsel’s
7 attorneys’ fees and litigation costs, Settlement Administrator Costs, the PAGA Payment, Enhancement
8 Payments to the Class Representatives.

9 1.19 “Notice of Settlement” means the document substantially in the form attached hereto as
10 Exhibit 1.

11 1.20 “Notice Period” means sixty (60) calendar days from the initial mailing of the Notice of
12 Settlement to Class Members and PAGA Members.

13 1.21 “PAGA” means Private Attorneys General Act.

14 1.22 “PAGA Member(s)” means all non-exempt employees who have worked, or continue to
15 work, for Roseville Cardiology Medical Associates, Inc., in California between December 18, 2022, up to
16 the Preliminary Approval Date or November 5, 2024, whichever is earlier. The estimated number of PAGA
17 Members is 89.

18 1.23 “PAGA Payment” means the amount allocated from the Gross Settlement Amount towards
19 resolving claims under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*

20 1.24 “PAGA Claim Period” means December 18, 2022, up to the Preliminary Approval Date or
21 November 5, 2024, whichever is earlier.

22 1.25 “Parties” mean Defendants and Plaintiffs.

23 1.26 “Participating Class Member” means any and all Class Members who have not made any
24 timely request to opt-out of the Agreement.

25 1.27 “Preliminary Approval Date” means the date a signed order granting preliminary approval
26 of this Agreement is filed with the Court.

27 1.28 “QSF” means a Qualified Settlement Fund set up by the Settlement Administrator for the
28 benefit of the Participating Class Members and/or PAGA Members and from which the payments under

1 this Agreement shall be made. Any amounts Defendants have agreed to pay under this Agreement shall
2 remain the property of Defendants until the payments required under the Agreement are made.

3 1.29 “Qualifying Workweeks” are weeks worked by Class Members and/or PAGA Members
4 during the Class Period and/or PAGA Claim Period, respectively, in California. For Class Members,
5 workweeks shall be defined as the total length of service (in days) in California during the Class Period
6 divided by seven. For PAGA Members workweeks shall be defined as the total length of service (in days)
7 in California during the PAGA Claim Period divided by seven. The calculation of a Class Member’s and/or
8 PAGA Member’s workweeks and a determination as to whether a Class Member and/or PAGA Member
9 was actively employed in California in a particular workweek shall be construed from Defendants’ records.

10 1.30 “Released Class Claims” means any and all claims, demands, rights, liabilities and causes
11 of action that are alleged in the Complaint, and any additional wage and hour claims that could have been
12 brought based on the facts alleged in the operative Complaint, through the Class Period including but not
13 limited to claims for a) unpaid wages (including, but not limited to unpaid minimum wages, straight time
14 wages, overtime wages, double time wages, and vacation pay and all other types of wages), b) off-the-
15 clock work, c) failure to provide meal periods or any premiums owed, d) failure to provide rest breaks or
16 any premiums owed, e) failure to provide accurate itemized wage statements, f) failure to pay final wages,
17 g) failure to properly calculate Paid Time Off, h) failure to pay vested vacation time, i) failure to reimburse
18 business expenses or failure to indemnify, j) failure to properly pay sick leave, k) unfair and unlawful
19 competition, and l) interest, penalties, and attorneys’ fees, waiting time penalties, withholding from wages
20 and the related provisions of the Labor Code based on events occurring during the Class Period will be
21 released unless they opt-out of the Settlement. This release excludes the release of claims not permitted by
22 law. The Released Class Claims exclude claims for workers’ compensation or unemployment insurance
23 benefits.

24 1.31 “Released PAGA Claims” means any and all claims that were brought under the Private
25 Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in Plaintiffs’ notice letter to the LWDA and
26 any additional wage and hour PAGA claims that could have been brought based on the facts alleged in
27 Plaintiffs’ notice letter to the LWDA during the PAGA Claim Period. PAGA Members cannot opt out of
28 this waiver of claims.

1 1.32 “Released Parties” collectively means Defendants’ as well as former, current, and future
2 parent companies, divisions, subsidiaries, affiliates, shareholders, members, owners, managers, employees,
3 principles, heirs, representatives, agents (including, without limitation, any auditors, consultants,
4 investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers,
5 directors and employees) predecessors, successors, and assigns.

6 1.33 “Settlement Administrator” means and refers to Apex Class Action, the third-party entity
7 that will administer the Agreement as outlined in Sections 4 and 7, or any other third-party administrator
8 agreed to by the Parties and approved by the Court for the purposes of administering this Agreement. The
9 Parties each represent that they do not have any financial interest in the Settlement Administrator.

10 1.34 “Settlement Administrator Costs” means the fees and expenses reasonably incurred by the
11 Settlement Administrator as a result of the procedures and processes expressly required by this Agreement,
12 and shall include all costs of administering the Agreement, including, but not limited to, all tax document
13 preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees
14 associated with preparing, issuing and mailing any and all notices and other correspondence to Class
15 Members and/or PAGA Members; all costs and fees associated with communicating with Class Members
16 and/or PAGA Members, Class Counsel, and Defendants’ Counsel; all costs and fees associated with
17 computing, processing, reviewing, and paying the Individual Settlement Amounts, and resolving disputes;
18 all costs and fees associated with calculating tax withholdings and payroll taxes, if any, making related
19 payment to federal and state tax authorities, if any, and issuing tax forms relating to payments made under
20 the Agreement; all costs and fees associated with preparing any tax returns and any other filings required
21 by any governmental taxing authority or agency; all costs and fees associated with preparing any other
22 notices, reports, or filings to be prepared in the course of administering Individual Settlement Amounts;
23 and any other costs and fees incurred and/or charged by the Settlement Administrator in connection with
24 the execution of its duties under this Agreement.

25 **2. DESCRIPTION OF THE LITIGATION**

26 2.1 On or about December 18, 2023, Plaintiffs sent notice to the LWDA to exhaust
27 administrative remedies under the PAGA for (1) Failure to Pay Overtime Wages, (2) Failure to Pay
28 Minimum Wages, (3) Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof, (4) Failure to

1 Provide Rest Periods or Pay Premiums in Lieu Thereof, (5) Failure to Provide Accurate Wage statements,
2 (6) Failure to Pay Final Wages, (7) Failure to Pay Reimbursement for Expenses, (8) Violation of Labor
3 Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare
4 Commission Order), (9) Failure To Maintain Accurate Wage Records, (10) Failure to Provide Paid Sick
5 Leave, (11) Untimely Payment of Wages, and (12) Failure to Pay Vested Vacation Time. The LWDA did
6 not respond to the notice within the statutorily required time frame and, as such, Plaintiffs became
7 authorized to act as a Private Attorneys General on all alleged PAGA claims.

8 2.2 On or about December 18, 2023, Plaintiffs filed a class action Complaint in Placer County
9 Superior Court on behalf of themselves and Class Members alleging claims for (1) Failure to Pay Overtime
10 Wages, (2) Failure to Pay Minimum Wages, (3) Failure to Provide Meal Periods or Pay Premiums in Lieu
11 Thereof, (4) Failure to Provide Rest Periods or Pay Premium in Lieu Thereof, (5) Wage Statement
12 Violations, (6) Failure to Pay Final Wages, (7) Failure to Reimburse Expenses, (8) Failure to Pay Vested
13 Vacation Time, and (9) Unfair Competition. Plaintiffs filed a First Amended Complaint on approximately
14 February 29, 2024 to add a PAGA cause of action based on the violations alleged in the December 18,
15 2023 notice to the LWDA on behalf of themselves and PAGA Members.

16 2.3 Through informal discovery, Defendants and Defendants' Counsel provided Class
17 Counsel with copies of all applicable versions of its policies and procedures, employee handbooks,
18 information on Class Members including, but not limited to, Class Members' workweeks, dates of
19 employment, total number of Class Members, their rates of pay, and pay periods as well as timecard data
20 and payroll reports for a randomly selected sample of Class Members.

21 2.4 After Class Counsel received the data, the Parties participated in a lengthy mediation with
22 private mediator Steve Pearl on June 25, 2024. At the conclusion of the mediation, the Parties were able
23 to come to a resolution. At all times, the Parties' settlement negotiations have been non-collusive,
24 adversarial, and at arm's length.

25 2.5 Discussions between Plaintiffs and Class Counsel, between counsel for the Parties,
26 document productions, extensive legal analysis, the provision of information by Defendants to Plaintiffs
27 and the detailed analysis of the records, including expert analysis, have permitted each side to assess the
28 relative merits of the claims and the defenses to those claims.

1 2.6 In the Action, Plaintiffs contend that Defendants violated California law by 1) failing to
2 incorporate the value of nondiscretionary bonuses into Plaintiffs' and putative class members' regular rates
3 of pay for the purpose of calculating overtime wages, meal and rest period premiums, and sick leave, 2)
4 failing to authorize and permit Plaintiff and similarly situated employees to take uninterrupted meal and
5 rest periods due to inadequate staffing and high volume of work, 3) failing to pay Plaintiff and similarly
6 situated employees for working during their meal periods while they were clocked out, 4) having a meal
7 period policy that was defective because Defendants' manager informed Plaintiffs and similarly situated
8 employees that they were supposed to take their meal periods prior to the completion of the sixth hour of
9 work, 5) having practices that resulted in Plaintiff and similarly situated employees take late meal periods,
10 6) failing to provide Plaintiff and similarly situated employees with a second meal period when they worked
11 shifts of ten (10) hours or more, 7) having practices that resulted in Plaintiff and similarly situated
12 employees take late rest periods, 8) failing to pay Plaintiffs and similarly situated employees for the time
13 that they spent reading and responding to work-related texts, and/or phone calls after work hours which
14 also resulted in unpaid overtime, 9) failing to have a policy to reimburse Plaintiffs and similarly situated
15 employees for the use of their personal cell phones and home internet for work purposes, 10) failing to
16 pay Plaintiffs and similarly situated employees for all the accrued vacation PTO that that they had earned
17 during their employment, and 11) failing to provide Plaintiffs and similarly situated employees with all
18 their earned sick pay based on the hours worked because Defendants did not consider Plaintiffs' and
19 similarly situated employees' off-the-clock hours worked during their meal periods and responding to texts
20 in calculating the sick pay accrual for them. Defendants have denied each of Plaintiffs' claims and
21 Defendants have denied that this Action is appropriate for class certification for anything other than
22 settlement purposes. The agreed upon Gross Settlement Amount was reached after evaluating the Parties'
23 theories of potential exposure for the underlying claims and the class data supporting these claims. The
24 Parties, with the assistance of the mediator, also assessed appropriate discounts to the potential liability
25 based on Defendants' factual and legal contentions and defenses.

26 2.7 The Parties agree that the above-described investigation and evaluation, as well as discovery
27 and the information exchanged to date, are more than sufficient to assess the merits of the respective
28 Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiffs, Class Counsel,

Defendants, and Defendants' Counsel have concluded that it is desirable that 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 in the Action. Therefore, the Parties desire to resolve the claims in the Action. Plaintiffs, Class Counsel, Defendants, and Defendants' 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 Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a conditional basis. 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 Defendants have denied all claims as to liability, damages, liquidated damages, penalties, interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendants have agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or the Effective Date does not occur, Defendants do not waive, but rather expressly reserve, 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 class or collective treatment on any grounds, as well as to assert any and all other potential defenses or privileges.

3.3 It is understood and agreed by Plaintiffs that this Agreement represents a compromise and settlement for various matters and that the promises and payments and consideration of this Agreement shall not be construed to be an admission of any liability by Released Parties. Plaintiffs further agree that

1 this Agreement cannot be used as evidence, nor can it be referred to or relied upon, in any arbitration,
2 administrative, court, or legal proceeding (other than to seek preliminary and final court approval of this
3 Agreement, enforce the terms of this Agreement or as required by a valid court order). Defendant disclaims
4 and denies any liability, obligation, or responsibility to Plaintiffs whatsoever.

5 **4. SCOPE OF THE CLASS**

6 4.1 The scope of the class of individuals encompassed under the Agreement and subject to all
7 obligations and duties required under the Agreement, shall include all Class Members as defined in Section
8 1.4 and all PAGA Members as defined in Section 1.22. However, it shall not include any Class Members
9 who submit valid and timely requests to opt-out of the Agreement and settlement, as set forth in Section
10 7.5.1.

11 4.2 Only Participating Class Members and PAGA Members are entitled to recover under this
12 Agreement.

13 4.3 Any person who believes that he or she is a Class Member or PAGA Member and wishes
14 to participate in the Agreement, but did not receive a Notice of Settlement because his or her name did not
15 appear on the class list provided to the Settlement Administrator prior to mailing, may submit a data request
16 to the Settlement Administrator. The data request must contain all of the following information: (a) the
17 full name and, if applicable, Social Security Number of the individual making the request; (b) the name
18 used by such employee as of the time his or her employment with Defendants ended; (c) the individual's
19 dates of employment with Defendants; and (d) a return address to which a response may be sent. Every
20 data request must be postmarked on or before the conclusion of the Notice Period or otherwise submitted
21 to the Settlement Administrator such that it is received before the conclusion of the Notice Period. Upon
22 receipt of any data requests, the Settlement Administrator shall promptly (in no event more than two
23 business days) transmit the data requests to Defendants' Counsel and request that Defendants review their
24 records.

25 4.4 If Defendants agree that the person listed in a data request is a Class Member and/or PAGA
26 Member, the Settlement Administrator shall promptly mail a Notice of Settlement to the person who
27 submitted the data request, at the address designated for that purpose in the data request. All provisions of
28 this Agreement relating to the Notice of Settlement shall apply to Notice of Settlements sent in response to

1 data requests, and any person who submits a data request and is sent a Notice of Settlement in response
2 shall be treated by the Settlement Administrator as a Class Member and/or PAGA Member for all other
3 purposes.

4 4.5 If Defendants do not agree that the person listed in a data request is a Class Member and/or
5 PAGA Member, Defendants' Counsel and Class Counsel shall attempt to resolve any such dispute in good
6 faith within seven (7) calendar days of Class Counsel being advised in writing of the data request dispute.
7 Defendants' records shall control unless the individual submitting the data request provides persuasive
8 evidence to doubt the accuracy of those records. Each data request dispute that Defendants' Counsel and
9 Class Counsel cannot timely resolve shall be resolved by the Settlement Administrator. The Settlement
10 Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve the
11 dispute. The Settlement Administrator must resolve any dispute submitted to it within seven (7) calendar
12 days after Defendants' Counsel and Class Counsel submit the dispute to the Settlement Administrator. The
13 decision by the Settlement Administrator shall be final as between the parties, subject to Court review.

14 **5. TERMS OF THE SETTLEMENT**

15 The Parties agree as follows:

16 5.1 Gross Settlement Amount: In consideration and exchange for the releases described in
17 Section 6, Defendants shall pay the Gross Settlement Amount (\$310,000). Funding of the Gross Settlement
18 Amount shall occur within 30 calendar days after the Effective Date to be held in trust in a QSF by the
19 Settlement Administrator. The Gross Settlement Amount includes payments to Participating Class
20 Members, PAGA Members, all attorneys' fees, costs and litigation expenses related to the Action incurred
21 to date, as well as all such fees and costs incurred in documenting the Agreement, administering the
22 Agreement (including Settlement Administrator Costs), and obtaining final approval of the Agreement, the
23 Enhancement Payments to the Class Representatives and the PAGA Payment. Any monies necessary to
24 satisfy Defendants' tax obligations (*e.g.* employer FICA, FUTA and SDI contributions on wage payments)
25 on any monies distributed to Participating Class Members will be paid in addition to the Gross Settlement
26 Amount. For purposes of counting the deadline established by this section, court approval may be by way
27 of minute order, order from the bench, or by signed final approval order, whichever is earlier. Within seven
28 (7) calendar days after the Court grants final approval of this Agreement, the Administrator shall provide

Defendants with written notice of the total monies Defendants must deposit. Defendants shall be jointly and severally liable for payment of the Gross Settlement Amount.

5.2 Attorneys' Fees and Costs: Class Counsel will apply to the Court for attorney's fees of 35% of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount. Defendants have agreed to not oppose Class Counsel's application for attorneys' fees so long as it does not exceed the 35% threshold. Class Counsel will also be entitled to reimbursement for advanced litigation expenses not to exceed \$15,000, which shall be paid from the Gross Settlement Amount. Defendants have agreed to not oppose Class Counsel's request for reimbursement for advanced litigation expenses so long as they do not exceed the \$15,000 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 Class Counsel shall be added to the Net Settlement Amount to be distributed to Participating Class Members on a pro rata basis. However, any rejection and/or reduction by the Court of any such request will not affect the enforceability of the Settlement.

5.3 Settlement Administrator Costs: The Settlement Administrator Costs shall be paid from the Gross Settlement Amount and shall not exceed \$15,000. The difference between any actual costs and the allocated \$15,000 shall be added to the Net Settlement Amount to be distributed to Participating Class Members on a pro rata basis. However, any rejection and/or reduction by the Court of any such request for Settlement Administrator Costs will not affect the enforceability of the Settlement.

5.4 Enhancement Payment: Class Counsel, on behalf of Plaintiffs, shall apply to the Court for an Enhancement Payment to the Class Representatives in an amount not to exceed Ten Thousand Dollars (\$10,000) each to compensate for the risks, time, and expense of their involvement in the Action and securing the benefits of this Agreement for Class Members. The Enhancement Payment is in addition to the Individual Settlement Amount Plaintiffs would otherwise be due under the Agreement as a Participating Class Member. Defendants have agreed to not oppose Class Counsel's request for an Enhancement Payment to Plaintiffs so long as it does not exceed the amount stated herein. Plaintiffs acknowledge their responsibility to pay any and all taxes related to the Enhancement Payment, as set forth in Paragraph 5.10 below. The Enhancement Payment will be designated as a non-wage payment and reported on an IRS Form

1 1099-MISC. In the event that the Court awards less than the Enhancement Payment amount requested,
2 then any portion of the requested amount not awarded to the Class Representatives shall be added to the
3 Net Settlement Amount to be distributed to Participating Class Members on a pro rata basis. However,
4 any rejection and/or reduction by the Court of any such request will not affect the enforceability of the
5 Settlement.

6 5.5 PAGA Payment: Ten Thousand Dollars (\$10,000) of the Gross Settlement Amount shall
7 be allocated to resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will
8 be paid to the LWDA and Twenty-Five percent (25%) will be paid to PAGA Members on a pro rata basis
9 as described below in Section 5.8. Any amount not approved by the Court for the allocated PAGA Payment
10 shall be added to the Net Settlement Amount to be distributed to Participating Class Members on a pro rata
11 basis. However, any rejection and/or reduction by the Court of any such request will not affect the
12 enforceability of the Settlement.

13 5.6 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount or PAGA
14 Payment allocated to Participating Class Members and/or PAGA Members that were not claimed by
15 cashing their respective settlement checks before the deadline to do so, that remaining amount shall be
16 donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers' Rights under the doctrine
17 of *cy pres*. No portion of the Gross Settlement Amount will revert to Defendants for any reason.

18 5.7 No Additional Benefits Contributions: All Individual Settlement Amounts paid to
19 Participating Class Members and PAGA Members shall be deemed to be income solely in the year in which
20 such amounts were actually received. It is expressly understood and agreed that the receipt of such
21 Individual Settlement Amounts will not entitle any Participating Class Member or PAGA Member to any
22 new or additional compensation or benefits under any company bonus or other compensation or benefit
23 plan or agreement in place during the period covered by the Agreement, nor will it entitle any Participating
24 Class Member PAGA Member to any increased retirement, 401(k) and/or 403(b) benefits or matching
25 benefits, or deferred compensation benefits. It is the intent of this Agreement that the Individual Settlement
26 Amounts provided for in this Agreement are the sole payments to be made by Defendants to the
27 Participating Class Members and PAGA Members in connection with this Agreement (notwithstanding
28

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).

5.8 Pro Rata Distribution Formula: Payment to Participating Class Members and PAGA Members of their Individual Settlement Amount will not require the submission of a claim form. A Net Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for approved attorneys' fees and costs, any Enhancement Payment to the Class Representatives, the Settlement Administrator Costs, and the PAGA Payment. Each Class Member's share will be initially determined by dividing their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks of all Class Members. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Any funds allocated to Class Members under this formula who timely opt out of the Settlement will be redistributed to Participating Class Members on a pro rata basis, *i.e.* each Participating Class Member's share will be determined by dividing their total Qualifying Workweeks within the Class Period by the total Qualifying Workweeks of all Participating Class Members and that fraction will then be multiplied by the Net Settlement Amount to arrive at the Participating Class Member's individual share of the Net Settlement Amount. Each PAGA Member's share of the 25% portion of the PAGA Payment will be determined by dividing their total Qualifying Workweeks within the PAGA Claim Period by the total Qualifying Workweeks by all PAGA Members within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the PAGA Member's individual share.

5.9 Tax Allocation: The Parties recognize that the Individual Settlement Amounts to be paid to Participating Class Members and/or PAGA Members reflect a settlement of a dispute over claimed penalties and wages. The Settlement Administrator shall calculate the employer's share of payroll taxes on the amounts paid to Participating Class Members as wages as well as calculating all required withholdings and deductions from said wage payments. The characterization of Individual Settlement Amounts to Participating Class Members and PAGA Members are as follows:

5.9.1 Ten Percent (10%) of each Participating Class Members' share of the Net Settlement Amount shall be allocated for payment of disputed wages and shall be subject to required employer taxes.

1 Participating Class Members shall receive an IRS Form W-2 for reporting of this portion of their Individual
2 Settlement Amount.

3 5.9.2 Ninety Percent (90%) of each Participating Class Members' share of the Net
4 Settlement Amount shall be allocated for disputed statutory penalties and interest, and no amount shall be
5 deducted for any taxes. This portion of the Individual Settlement Amount consists of other income, not
6 wages, for which the Participating Class Members shall receive IRS Forms 1099-MISC and 1099-INT and
7 this payment shall be divided equally among the 1099-MISC and 1099-INT designations.

8 5.9.3 The entirety (100%) of each PAGA Member's share of the 25% portion of the
9 PAGA Payment shall be allocated for payment of disputed civil penalties, and no amount shall be deducted
10 for any taxes. This portion of the Individual Settlement Amount consists of other income, not wages, for
11 which the PAGA Members shall receive an IRS Form 1099-MISC.

12 5.10 Participating Class Members and PAGA Members shall be solely responsible for the
13 reporting and payment of their share of any federal, state and/or municipal income or other taxes on
14 payments made pursuant to this Agreement, and shall hold the Parties, Class Counsel, and Defendants'
15 Counsel free and harmless from any claims resulting from treatment of such payments as non-taxable,
16 including the treatment of such payments as not subject to withholding or deduction for payroll and
17 employment taxes. No party has made any representation to any of the other Parties as to the taxability of
18 any payments pursuant to this Agreement, including the payments to Participating Class Members, the
19 payments to PAGA Members, the payments to Class Counsel, the payments to the Class Representatives,
20 the payroll tax liability of Defendants, or the allocation of the Net Settlement Amount or PAGA Payment
21 to wage and non-wage income as provided in this Section, or otherwise as to tax implications of any
22 provision of this Agreement.

23 5.11 No Additional Contribution by Defendants: Defendants' monetary obligation under this
24 Agreement is limited to the Gross Settlement Amount and any employer side payroll taxes owed on
25 amounts characterized as wages under this Agreement. All other costs and expenses arising out of or in
26 connection with the performance of this Agreement shall be paid from the Gross Settlement Amount, unless
27 expressly provided otherwise herein. However, in the event this agreement is deemed null and void as
28 described in Section 3 because the Court, in its independent determination, finds that the Agreement does

not meet the standards for settlement approval, then Defendants and Plaintiffs shall be equally responsible for the costs of the Settlement Administrator incurred between the date the Agreement was executed and the date of such event.

5.12 Certification For Settlement Purposes: The Parties agree that, for purposes of settlement only, certification of the class as defined in Section 1.4 and 4.1 is appropriate and the requisites for establishing class certification have been met and are met.

5.13 Adequacy of Class Counsel and Class Representatives: The Parties agree that, for purposes of settlement only, Class Counsel and Plaintiffs are adequate representatives for Class Members and PAGA Members.

6. RELEASE

6.1 Release of Claims by Participating Class Members: Upon the Effective Date, all Participating Class Members will be deemed to fully, finally and forever release the Released Class Claims as to all Released Parties. In addition, on the Effective Date, all Participating Class Members and their successors in interest will be permanently enjoined and forever barred from prosecuting any of Released Class Claims against any of the Released Parties.

6.2 Release of Claims by PAGA Members: Upon the Effective Date, all PAGA Members will be deemed to fully, finally and forever release the Released PAGA Claims as to all Released Parties. In addition, on the Effective Date, all PAGA Members and their successors in interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA Claims against any of the Released Parties.

6.3 Release by Plaintiffs: Upon the Effective Date, Plaintiffs, on behalf of themselves and their heirs, successors, assigns, attorneys and agents, hereby release and forever discharge the Released Parties from any and all claims, demands, debts, duties, obligations, promises, liabilities, damages, accounts, payments, liens acts, costs, expenses, sums of money, suits, dues, actions or causes of action, both in law and in equity, whether known or unknown, matured or unmatured, suspected or unsuspected, which she ever had, now have, or may have in the future with regard to the Released Class Claims, Released PAGA Claims, and Class Representatives' Released Claims.. In addition, on the Effective Date, Plaintiffs, on behalf of their heirs, successors, assigns, attorneys and agents, will be permanently enjoined and forever

1 barred from prosecuting any of the Released Class Claims, Released PAGA Claims, and Class
2 Representatives' Released Claims against any of the Released Parties.

3 6.4 California Civil Code Section 1542. Plaintiff hereby agrees to waive all rights that she might
4 possess under Section 1542 of the Civil Code of the State of California related to any claims she may have
5 against any of the Released Parties. Section 1542 has been explained to Plaintiff by her counsel and
6 provides as follows:

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

11 7. SETTLEMENT ADMINISTRATION

12 7.1 Duties of Settlement Administrator: The Settlement Administrator shall be responsible for:
13 1) receiving Class Member and PAGA Member contact information and confirming addresses are valid;
14 2) calculating estimated Individual Settlement Amounts and any and all taxes associated with the Individual
15 Settlement Amounts, including employer taxes; 3) taking appropriate steps to trace and locate any
16 individual Class Members and PAGA Member whose address or contact information as provided to the
17 Settlement Administrator is inaccurate or outdated and mailing the Notice of Settlement to Class Members;
18 4) providing notification to the appropriate state and federal officials of this Agreement as required under
19 the law; 5) receiving, independently reviewing, and resolving any challenges (in consultation with Class
20 Counsel and Defendants' Counsel) from Class Members or PAGA Members, including any associated
21 documentation, regarding their Qualified Workweek calculations; 6) receiving and serving on Class
22 Counsel, Defendants' Counsel, and the Court, copies of any written objections, and/or any opt out
23 statements; 7) establishing a toll free telephone line and responding to inquiries and requests for
24 information or assistance from Class Members and/or PAGA Members; 8) maintaining a QSF; 9)
25 determining and paying the final amounts due to be paid under the Agreement after resolution of all
26 challenges, disputes, opt-outs, awarded attorneys' fees and costs, Settlement Administrator Costs, PAGA
27 Payment, taxes, any Enhancement Payments, and for funds that cannot be distributed due to the inability
28 to locate Class Members or PAGA Members; 10) determining the validity of any disputes or late opt-outs

1 by previously unidentified Class Members or PAGA Members; 11) paying any residual funds from
2 uncashed checks; 12) reporting to Class Counsel and Defendants' Counsel regarding the statistics of the
3 administration, including (a) the number of initial Notice of Settlements mailed; (b) the number of
4 forwarded Notice of Settlements; (c) the number of re-mailed Notice of Settlements; (d) the number of
5 total undeliverable Notice of Settlements; (e) the number of address traces performed for undeliverable
6 Notice of Settlements; (f) the number of Notice of Settlements undeliverable from traced addresses; (g) the
7 number of total objections received; (h) the number of opt-out requests received; (i) the number of disputes
8 received; (j) the number of disputes resolved; 13) providing a declaration to the Court regarding the final
9 statistics of the administration and compliance with all payment obligations under the Agreement; 14)
10 completing all necessary tax reporting on the QSF and payment of the Individual Settlement Amounts to
11 Participating Class Members and PAGA Members; and 15) carrying out other related tasks as necessary to
12 effectuate the terms of this Agreement and any Order of the Court. All disputes relating to the Settlement
13 Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which
14 will have continuing jurisdiction over the terms and conditions of this Agreement, until all payments and
15 obligations contemplated by the Agreement have been fully executed.

16 7.2 Notice to Class Members and PAGA Members: Defendants represent and warrant that
17 Class Members and PAGA Members are able to read and write in English such that no translation of the
18 Notice of Settlement into another language is necessary. The Notice of Settlement will provide Class
19 Members and PAGA Members with a summary of the terms and conditions of the Agreement, how to
20 participate in the settlement, how to object to the Agreement, how to dispute the individual's Qualifying
21 Workweeks, and how to opt-out from the Agreement. The Notice of Settlement will also inform Class
22 Members and PAGA Members of the Gross Settlement Amount, Net Settlement Amount, proposed
23 attorneys' fees and costs allocations, any proposed Enhancement Payments, proposed Settlement
24 Administrator Cost allocations, proposed PAGA Payment allocations, the scope of the class, the nature and
25 extent of the released claims, dates set for a fairness hearing and hearing on Class Counsels' motion for
26 attorneys' fees and costs. The Notice of Settlement shall include information regarding Class Member's
27 and PAGA Member's estimated Individual Settlement Amount. The Notice of Settlement will provide
28 information on how to access electronic copies online of the Notice of Settlement, any motions for approval

1 of the Agreement, any motions for approval of attorneys' fees and costs, and any other documents as the
2 Court directs. The Administrator shall provide weekly reports to the Parties regarding the status of the
3 administration process, including the number of opt-outs, objections, and disputes received.

4 7.3 Class Member Data: No later than fourteen (14) calendar days after the Preliminary
5 Approval Date, Defendants shall provide the Settlement Administrator with a confidential list of Class
6 Members and PAGA Members that contains their first and last names, last known mailing address, last
7 known telephone number, Social Security Number, and dates of employment (the "Database"), and any
8 other information the Settlement Administrator needs to effectuate notice to Class Members and PAGA
9 Members as outlined herein. The Settlement Administrator shall review the data to determine the number
10 of Qualifying Workweeks for each Class Member and PAGA Member. The class list and any other data
11 provided by Defendant to the Administrator shall be treated as confidential, and shall not be subject to
12 disclosure by the Administrator, except that: (a) relevant information may be provided to Class Counsel to
13 the extent necessary to address a disputed claim or to respond to a specific inquiry from either a Class
14 Member or a third-party; (b) to allow Defendant's counsel and Plaintiff's counsel to confirm that the
15 calculation of a particular Class Member's estimated share of the settlement is accurate; and (c) as is
16 otherwise necessary for the Administrator to perform its obligations described in this Agreement.
17 Furthermore, the Administrator (and Plaintiff's counsel, if appropriate) shall use commercially reasonable
18 efforts to secure the data provided by Defendant at all times so as to avoid inadvertent or unauthorized
19 disclosure or use of such data other than as permitted by this Agreement, and shall destroy the data and all
20 copies of it in a complete and secure manner when it is no longer required for purposes of this Agreement.
21 The Administrator shall ensure that the Notice and any other communications to Class Members shall not
22 include any Class Member's social security number, except for the last four digits.

23 7.4 Review and Approval: Within seven (7) calendar days from the receipt of such address
24 information, the Administrator will provide the Parties with a spreadsheet showing the Administrator's
25 calculations for anticipated payments to Class Members, the allocation of workweeks to Class Members.
26 Also within seven (7) of the receipt of such address information, the Administrator will provide the Parties
27 with a spreadsheet showing the Administrator's calculations for payments to the PAGA Members and the
28

1 allocation of workweeks to PAGA Members. The Administrator shall redact any identifying information
2 and instead use an employee number to differentiate (except as to the named Plaintiff to the Action) in
3 order to protect Class Members' and PAGA Members' confidential information. This will allow Plaintiff
4 and Defendant the opportunity to review the Administrator's calculations, and the Administrator will
5 confirm receipt and approval of the spreadsheet by the Parties prior to disbursing the class notices, as noted
6 below. Plaintiffs and Defendants shall review and confirm any approvals within three (3) business days
7 thereafter in order to allow the Settlement Administrator sufficient time to comply with the mailing
8 deadline in Paragraph 7.5 below.

9 7.5 Mailing: No later than twenty-one (21) calendar days after receipt of such address
10 information, the Settlement Administrator will perform a national change of address ("NCOA") search,
11 update the addresses per the results of the NCOA search, and then mail the Notice of Settlement,
12 substantially in the form attached as Exhibit 1, to each Class Member and PAGA Member by first-class
13 mail, postage prepaid. The Settlement Administrator shall maintain all information received from
14 Defendants confidential to itself, and Defendants' Counsel.

15 7.6 Returned and/or Re-mailed Notice of Settlements: In the event that a Notice of Settlement
16 is returned to the Settlement Administrator as undeliverable on or before the conclusion of the Notice
17 Period, the Notice of Settlement shall be sent to the forwarding address affixed thereto within five (5)
18 calendar days. If no forwarding address is provided, then the Settlement Administrator shall promptly
19 attempt to determine a correct address using a skip-trace, computer or other search using the name, address
20 and/or Social Security number of the individual involved, and shall then perform a single re-mailing within
21 five (5) calendar days to any more recent address found as a result of the search. Following each search
22 that does not result in a corrected address, for those Class Members who appear to be current employees
23 of Defendants at the time of the Preliminary Approval Date, the Settlement Administrator shall contact
24 Defendants' Counsel for assistance and Defendants shall cooperate in good faith with the Settlement
25 Administrator's reasonable efforts to obtain valid mailing addresses for Class Members to the extent they
26 are active employees of Defendants. In the event the Notice of Settlement is forwarded to a new address
27 and/or re-mailed to a Class Member, the deadline for the Class Member to submit any request to opt-out,
28

1 a dispute, or an objection shall be the end of the Notice Period or 10 days from the date of the re-
2 mailing/forwarding to a new address, whichever is later. In the event the procedures in this Section are
3 followed and the Class Member does not timely and properly request to opt-out, the Class Member shall
4 be bound by all terms of the Agreement, including the releases contained in Section 6.

5 7.7 Responses to Notice of Settlement:

6 7.7.1 *Opt-Outs:* The Notice of Settlement shall provide that Class Members who wish to
7 exclude themselves from the Agreement must submit a request to opt-out within sixty (60) days as provided
8 in this Section. The request to opt-out must (a) state the Class Member's full name and date of birth; (b) a
9 statement that he or she does not want to be a Class Member, does not want to participate in the settlement,
10 and/or wants to be excluded from the settlement; (c) identify the case name and number (*i.e. Alvarez, et al*
11 *v. Roseville Cardiology Medical Associates, Inc., et al.* , Case No. S-CV-0051855); (d) be signed; and (e)
12 be post-marked no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section
13 7.4. The Class Member must personally sign the request to opt-out. No request to opt-out may be made
14 on behalf of a group of Class Members. The date of the postmark on the return-mailing envelope shall be
15 the exclusive means used to determine whether a request to opt-out has been timely submitted. Any Class
16 Member who requests to opt-out of the Agreement will not be entitled to any portion of the Net Settlement
17 Amount nor will they have any right to object, appeal or comment thereon. The name of any Class Member
18 who submits a valid and timely opt out request will be specifically identified in any proposed order granting
19 final approval. Class Members who fail to submit a valid and timely request to opt-out shall be bound by
20 all terms of the Agreement and any order or final judgment thereon. Regardless of whether an PAGA
21 Member opts out of being a Class Member, they will still receive their share of the PAGA Payment as
22 PAGA Members cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA
23 Claims.

24 7.7.2 *Objection Procedures:* Any Class Member who does not opt-out, but who wishes
25 to object to this Agreement or otherwise to be heard concerning this Agreement, may submit a written
26 objection to the Settlement Administrator within sixty (60) days from the mailing date, who will promptly
27 provide copies of the objection to Class Counsel and Defendants' Counsel. The Notice of Settlement shall
28 make clear that the Court can only approve or deny the Agreement, not change the terms of the Agreement.

1 The written objection should (a) state the Class Member's full name and date of birth; (b) provide evidence
2 that the individual is, in fact, a Class Member; (c) state the reasons for the objection(s), including any
3 supporting documentation; (d) identify the case name and number (*i.e. Alvarez, et al v. Roseville*
4 *Cardiology Medical Associates, Inc., et al.* , Case No. S-CV-0051855); (e) be signed; and (f) be post-
5 marked no later than the conclusion of the Notice Period or the re-mailing timeline stated in Section 7.4.
6 Additionally, or in the alternative to sending a written objection to the Settlement Administrator, any Class
7 Member may appear at the final approval hearing to state their objection.

8 7.7.3 *Dispute Procedures:* Any Class Member who disputes the number of Qualifying
9 Workweeks on the Notice of Settlement shall contact the Settlement Administrator within sixty (60) days
10 of the mailing date. The dispute must (a) identify the nature of the dispute; (b) provide any information or
11 documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than the conclusion
12 of the Notice Period or the re-mailing timeline stated in Section 7.4. The Settlement Administrator shall
13 promptly (in no event more than two business days) forward all such disputes to Defendants' Counsel and
14 request that Defendants review the dispute. Defendants' records shall presumptively control unless the
15 Class Member can produce documentation evidencing other periods of employment worked. If Defendants
16 agree with submitted information, the Class Member shall be credited or subtracted Qualifying Workweeks
17 in accordance with their submitted dispute and that final number of Qualified Workweeks shall govern the
18 calculation of that Class Member's Individual Settlement Amount. If Defendants disagree with the
19 submitted information, Defendants' Counsel will promptly advise Class Counsel of the dispute, which
20 includes turning over any documentation submitted by the Class Member as part of the dispute.
21 Defendants' Counsel and Class Counsel shall attempt in good faith to resolve any such dispute within five
22 (5) calendar days of Class Counsel being advised of the dispute. Each dispute that Defendants' Counsel
23 and Class Counsel cannot timely resolve shall be resolved by the Settlement Administrator, subject to Court
24 review.

25 7.7.4 *Deficient Opt-Outs, Objections, or Disputes:* In the event that a deficient opt-out,
26 objection, or dispute is received on or before the conclusion of the Notice Period, the Settlement
27 Administrator shall mail a letter to the Class Member within five (5) calendar days informing them of the
28 deficiency. If a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure

the deficiency shall be the end of the Notice Period or 10 calendar days from the date of the deficiency letter, whichever is later.

7.8 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.1 to 7.7.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class Counsel or Defendants' Counsel to provide notice of the proposed Agreement.

7.9 Settlement Administrator Declaration Regarding Notice Period: Within fourteen (14) calendar days after the conclusion of the Notice Period, the Settlement Administrator shall provide Class Counsel and Defendants' Counsel with a signed declaration under penalty of perjury providing a complete and detailed report regarding the statistics and responses of settlement administration to date and all the Settlement Administrators' obligations under Sections 5.8 to 5.9.3 and 7.1 to 7.5.4.

7.10 Settlement Administrator Payments to Participating Class Members, Class Counsel and Plaintiffs: Within seven (7) calendar days after the Effective Date and the Court's determination of the amount of attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to Plaintiffs, the PAGA Payment, and Settlement Administrator Costs, the Settlement Administrator shall calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or PAGA Members, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendants' Counsel. The Administrator shall redact any identifying information and instead assign an employee value, except leaving the identifying information for the named Plaintiff, such that the Parties can review and approve the final distribution amounts to the Participating Class Members and the PAGA Members. Defendants shall wire the Gross Settlement Amount and applicable taxes necessary to fund the Settlement as described in Section 5.1 to the Settlement Administrator within thirty (30) calendar days after the Effective Date to be to be held in trust in a QSF. Within seven (7) calendar days after Defendants fund the settlement, the Settlement Administrator shall deliver payment of Class Counsels' attorney's fees and costs, the Enhancement Payment payable to Plaintiffs, the 75% portion of the PAGA Payment payable to the LWDA, Settlement Administrator Costs, and payment to Participating Class Members and/or PAGA Members as required under this Agreement and approved by Court.

1 7.10.1 The Settlement Administrator shall wire the Court-approved attorneys' fees and
2 costs to Class Counsel unless another method is requested by Class Counsel. Class Counsel shall provide
3 the Settlement Administrator with the pertinent taxpayer identification number and payment instructions
4 after the Final Approval Date.

5 7.10.2 The Settlement Administrator shall send a check by mail for the Court-approved
6 Enhancement Payment to the Class Representatives, care of Class Counsel unless another method is
7 requested by Class Counsel.

8 7.10.3 Only Participating Class Members and PAGA Members will receive their Individual
9 Settlement Amount.

10 7.10.4 The Settlement Administrator shall remit and report the applicable portions of the
11 payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this
12 Agreement. Defendants agree to reasonably cooperate with the Settlement Administrator to the extent
13 necessary to determine the amount of the payroll tax payment required.

14 7.11 Settlement Check Expiration and Uncashed Checks: The Settlement Administrator shall
15 issue Individual Settlement Amounts to Participating Class Members and PAGA Members in the form of
16 a check, which shall become null and void if not deposited within one hundred eighty (180) calendar days
17 of issuance. After one hundred eighty (180) calendar days of issuance, the checks shall be voided and
18 funds from all uncashed checks shall be transmitted in accordance with Section 5.6. The Settlement
19 Administrator shall deliver these funds within fourteen (14) calendar days after the check cashing deadline.

20 7.12 Settlement Administrator Declaration Regarding Compliance and Settlement
21 Administration: Within twenty-one (21) calendar days after the last day for Participating Class Members
22 and PAGA Members to cash their settlement checks, the Settlement Administrator shall provide Class
23 Counsel and Defendants' Counsel with a signed declaration under penalty of perjury providing a complete
24 and detailed report regarding the settlement administration documenting that all payments under the
25 Agreement have been made, that the Court's final approval order has been complied with, and that all the
26 obligations of the Settlement Administrator have been completed. The Parties agree the Class Members'
27 contact information and social security numbers will be used only by the Administrator for the sole purpose
28 of effectuating the Agreement.

8. PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE

8.1 The schedule may be modified depending on whether and when the Court grants necessary approvals, orders notice to Class Members and PAGA Members, and sets further hearings. 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 preliminary schedule for notice, approval, and payment procedures carrying out the Agreement is as follows:

Last day for Defendants to provide Settlement Administrator with Class Member and PAGA Member information	Within 14 calendar days after the Preliminary Approval Date
Last day for Settlement Administrator to complete NCOA search, update Class Member and PAGA Member mailing information, and mail Notice of Settlement	Within 35 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendants
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or PAGA Members, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendants' Counsel	Within 7 calendar days after the Effective Date
Last day for Defendants to fund settlement	Within 30 calendar days after the Effective Date

Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to PAGA Members	Within 7 calendar days after Defendants have funded the settlement
Last day for Participating Class Members and PAGA Members to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and PAGA Members
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. DUTIES OF THE PARTIES

9.1 Preliminary Approval: The Parties will cooperate in obtaining, through an unopposed motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final approval. Within two weeks of signing this Agreement Class Counsel shall provide a draft of the Preliminary Approval Motion to Defendants' Counsel. Defendants' Counsel will provide comments and/or proposed revisions within two weeks after receipt of the draft Preliminary Approval Motion from Class Counsel. With regard to the final approval documents, a similar two-week maximum review and response time shall be observed by the Parties. The Parties will request that the Court's preliminary approval of this

Agreement be embodied in an Order Granting Preliminary Approval of Class Action and PAGA Settlement.

9.1.1 Plaintiffs' motion shall seek an order: 1) Preliminarily approving the Agreement; 2) Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the Notice of Settlement by first class mail to Class Members and PAGA Members; 4) Preliminarily appointing Plaintiffs and Class Counsel as representatives of Class Members; 5) Preliminarily approving settlement administration services to be provided by the Settlement Administrator; 6) Preliminarily approving the proposed Enhancement Payment to Plaintiffs; 7) Preliminarily approving the application for payment of reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8) Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally approved as fair, reasonable and adequate as to the Class Members.

9.1.2 Defendants shall not oppose Plaintiffs' motion for approval of the proposed Agreement.

9.1.3 The Parties shall cooperate with each other and the Settlement Administrator during the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and appropriate to assure effective communication to individual Class Members of information about their rights and obligations under this Agreement.

9.2 Final Approval and Fairness Hearing: On a date approved by the Court and set forth in the Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the Agreement, a declaration by the Settlement Administrator of due diligence and proof of mailing of the Notice of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results of the Settlement Administrator's mailings including tracing and re-mailing efforts. The Settlement Administrator declaration shall identify, by name, any Class Member who submitted a timely and valid request to opt out during the Notice Period.

9.2.1 Class Counsel and Defendants shall work in good faith to draft a mutually agreeable Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment. The Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final Judgment shall

1 include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to be fair, reasonable
2 and adequate, and directing that its terms and provisions be carried out; 2) Approving the payment of an
3 Enhancement Payment to the Class Representatives; 3) Approving Class Counsel's application for an
4 award of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4) Approving the
5 Settlement Administrator Costs; and 5) Providing that the Court will retain jurisdiction to oversee
6 administration and enforcement of the terms of the Agreement and the Court's orders.

7 9.2.2 Following entry of the Court's order granting final approval of the Agreement, the
8 Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the following:
9 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside the judgement
10 be filed, all parties will support the final approval order on appeal or otherwise; 2) Class Counsel will assist
11 the Settlement Administrator as needed or requested in the process of identifying and locating Participating
12 Class Members and PAGA Members entitled to payments under the Agreement and assuring delivery of
13 such payments; 3) Class Counsel and Defendants' Counsel will cooperate with each other and assist the
14 Settlement Administrator as needed or requested in completing the distribution of any residual amounts, as
15 specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction with the Settlement
16 Administrator, will certify to the Court completion of all payments required to be made by this Agreement.

17 9.3 Final Judgment: If the Court approves this Agreement at the final approval and fairness
18 hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action and
19 PAGA Settlement and Final Judgment.

20 9.4 Notice to LWDA: Plaintiffs will provide notice to the Labor and Workforce Development
21 Agency ("LWDA") of this settlement in accordance with Labor Code § 2699(1)(2).

22 **10. MISCELLANEOUS TERMS**

23 10.1 Defendant's Right to Withdraw Based on Opt-Outs: If, prior to the Final Approval Date,
24 10% or more of the Class Members have submitted proper and timely requests to opt-out in accordance
25 with the provisions of the Agreement, Defendants may rescind the Agreement and all actions taken in its
26 furtherance will be thereby null and void. Defendants must exercise this right of rescission, in writing, to
27 Class Counsel, within seven (7) calendar days after the Settlement Administrator notifies the Parties of the
28

total number of opt-outs. If the option to rescind is exercised, then any Settlement Administrator Costs incurred up to this date shall be paid by Defendants if they choose to exercise this opt-out option.

10.2 Escalator Clause: Defendants for the purpose of the mediation have represented that there are 13,985 workweeks from December 18, 2019 to the date of the mediation. These numbers would be expected to increase proportionately for the passage of time between that date and the time of court preliminary approval. In the event the number of workweeks during the Class Period is more than 15,383 (*i.e.*, greater than 10% more than 13,985), then the Gross Settlement Amount shall be increased proportionally by the workweeks in excess of 13,985. For example, if there were 11,000 workweeks represented to exist during the Class Period, but there are actually 12,500 workweeks in the Class Period, then Defendants would have to increase the Gross Settlement Amount by 13.6% ($12,500 - 11,000$ workweeks = 1,250 excess workweeks. $1,250$ divided by $11,000 = 13.6\%$). If the number of workweeks worked by Class Members during the Class Period exceeds 15,383, Defendants have the sole option to either (i) increase the Gross Settlement Amount on a proportional basis (*i.e.*, if there was an 11% of workweeks worked by the Settlement Class Members during the Class Period, Defendant would agree to increase the Gross Settlement Amount) or (ii) end the Class Period at the date where the total workweek count during the Class Period would be no greater than 15,383. To the extent that (ii) is selected, the PAGA Period end date shall be similarly shortened, so that it ends on the same day as the Class Period.

10.3 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS

1 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
2 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
3 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
4 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX
5 PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
6 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
7 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX
8 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
9 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
10 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY
11 THIS AGREEMENT.

12 10.4 No Prior Assignments: The Parties represent, covenant, and warrant that they have not
13 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
14 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
15 and discharged in this Agreement.

16 10.5 Waiver of Appeal and Ability to Opt Out: To the extent permitted by applicable law, by
17 signing this Agreement Defendants are waiving any rights to appeal from the Court's approval of the
18 settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement
19 Plaintiffs are waiving any right or ability to opt out of this Agreement during the Notice Period or otherwise.

20 10.6 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
21 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
22 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

23 10.7 Judgment and Retention of Jurisdiction to Enforce: Upon the Effective Date, judgment will
24 be entered according to this Agreement. The Parties stipulate and agree that the Placer County Superior
25 Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil Procedure
26 Code section 664.6 and that the prevailing party any action necessary to enforce the terms of the Agreement
27 after default by the other party may recover reasonable attorney's fees and costs related thereto. This
28

1 Agreement shall be admissible in any proceeding for its enforcement in accordance with sections 1118 and
2 1123 of the California Evidence Code.

3 10.8 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
4 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to, execution
5 of such other documents and the taking of such other action as may reasonably be necessary to fulfill the
6 terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
7 contemplated by this Agreement and any other efforts that may become necessary by Court order, or
8 otherwise, to effectuate this Agreement and the terms set forth herein.

9 10.9 No Admission of Liability: Neither the acceptance nor the performance by Defendants of
10 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to
11 be, construed as, or deemed to be, an admission by Defendants of the truth of any of the allegations in the
12 Complaint, the representative character of the Action, the validity of any of the claims that were or could
13 have been asserted by Plaintiffs and/or Class Members in the Action, or of any liability or guilt of
14 Defendants in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by
15 Defendants of any liability, culpability, negligence, or wrongdoing toward Plaintiffs, the Class Members,
16 or any other person, and Defendants specifically disclaim any liability, culpability, negligence, or
17 wrongdoing toward Plaintiffs, the Class Members, or any other person. Each of the Parties has entered
18 into this Stipulation with the intention to avoid further disputes and litigation.

19 10.10 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
20 communications given hereunder shall be in writing and shall be deemed to have been duly given as of the
21 third business day after mailing by United States certified mail, return receipt requested, addressed as
22 follows:

23 To Plaintiffs and the Class:

24 Galen T. Shimoda
25 Justin P. Rodriguez
26 Renald Konini
27 Shimoda & Rodriguez Law, PC
28 9401 East Stockton Blvd., Suite 120
 Elk Grove, CA 95624

To Defendants:

Jasmine Shams
Felipe Gomez
Lewis Brisbois Bisgaard & Smith LLP
633 West 5th Street, Suite 4000
Los Angeles, California 90071
Telephone: (213) 250-1800
Facsimile: (213) 250-7900

10.11 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.

10.12 Attorneys' Fees and Costs Limitations: Neither Class Counsel nor any other attorneys acting for, or purporting to act for, the Class, Class Members, or Plaintiffs, may recover or seek to recover any amounts for fees, costs, or disbursements from the Releasees or the Gross Settlement Amount except as expressly provided in this Agreement.

10.13 No Modifications: This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be discharged except by performance in accordance with its terms.

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

10.15 Class Member Signatories: Because the Action has not yet been certified, and the Class Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement may be executed on behalf of all Class Members by the Class Representatives.

10.16 Counterparts: This Agreement shall become effective upon its execution by all of the undersigned. Plaintiffs, Class Counsel, Defendants and Defendants' Counsel may execute this Agreement in counterparts, and execution of counterparts shall have the same force and effect as if each had signed

1 the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force
2 and effect of originals.

3 10.17 Choice of Law: The Agreement and any exhibits hereto shall be considered to have been
4 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and the
5 rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance with,
6 and governed by, the substantive laws of the State of California without giving effect to that State's choice
7 of law principles.

8 10.18 Headings and Captions: Section titles or captions contained in the Agreement are inserted
9 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
10 this Agreement, or any provision thereof.

11 10.19 No Retaliation or Discouragement: The Parties agree they will take no action that could be
12 construed as retaliation against any Class Members for participating or seeking to participate in this class
13 action settlement. The Parties will not discourage any class member from participating or seeking to
14 participate in this class action settlement. This is a material term of the Agreement and non-breaching
15 Parties will seek court intervention if this provision is breached.

16 10.20 Integrated Agreement: This Agreement sets forth the entire understanding between the
17 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
18 Each party acknowledges that there is no representation, inducement, promise or agreement which has been
19 made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement, which
20 is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent that the
21 terms of this Agreement are fully understood and voluntarily accepted by the Parties.

22 10.21 Binding on Successors and Assigns: This Agreement will be binding upon, and inure to the
23 benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

24 10.22 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
25 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
26 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.
27
28

1 10.23 Waiver of Compliance: No waiver of any condition or covenant contained in this
2 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
3 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

4 10.24 Confidentiality: Plaintiffs represent and agrees that they have not and will not issue any
5 press release, publication, or otherwise disclose this Agreement to the press, media, websites, or any service
6 which reports verdicts and settlements. Plaintiffs further agree not to, at any time or in any manner, talk
7 about, write about, disclose, or otherwise publicize or cause to be publicized the confidential, proprietary,
8 or trade secret information of the Released Parties.

9 10.25 Attorney Liens: Plaintiff represents and warrants that all legal expenses, bills, costs or
10 contingency fee agreements resulting from or arising out of the representation of Plaintiff in relation to the
11 Action are Plaintiff's responsibility to pay, and that any liens based on any legal expenses, bills, costs or
12 contingency fee agreements incurred as a result of the Action will be satisfied by the incurring party.
13 Plaintiff will indemnify, defend and hold Released Parties harmless from any such claims.

14 10.26 No Additional Recovery: It is the intent of this Agreement that Plaintiff, lienholders, and
15 any other individual or entity with an interest in the Asserted Claims shall not recover, directly or indirectly,
16 any sums from the Released Parties other than the funds received pursuant to this Agreement and set forth
17 in Paragraph 2. If, despite the provisions of this Paragraph, any Released Party receives any claims from
18 any individual or entity arising from Plaintiff's, a Participating Class Member's, or a PAGA Member's
19 filing of the Asserted Claims against them (including any claim for contribution or indemnity), the person
20 who filed such claims shall indemnify, provide a full defense for, and hold harmless the Released Parties
21 for such amount. Additionally, in the event that a trier of fact determines that any Released Party is or
22 would be liable for contribution or indemnity under such circumstances pursuant to any theory of law or
23 equity (and all appeals are exhausted or the time for such appeals have expired), this Agreement shall act
24 as a release, releasing not only the Released Party, but every other individual, trustee, firm, trust,
25 corporation, or entity of any kind, who is or would be entitled to contribution or indemnity from the
26 Released Parties with respect to any liability that person, firm, or corporation may have to Plaintiff, the
27 Participating Class Members, and the PAGA Members, for any claims that would require such contribution
28 or indemnity.

10.27 No Pending Matters: The Parties represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

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

For Plaintiffs:

Date: Sep 7, 2024


Kathleen Alvarez (Sep 7, 2024 13:14 PDT)

Kathleen Alvarez

Date: _____

Jeanne Booth

FOR Defendants:

Date: 9/10/2024

DocuSigned by:
GEORGE FEHRENBACHER

By: GEORGE FEHRENBACHER
For Roseville Cardiology Medical Associates, Inc.

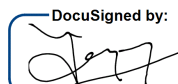
Date: 9/10/2024

DocuSigned by:
GEORGE FEHRENBACHER
George Fehrenbacher

Date: _____

Stephen Peters

Date: 9/10/2024

DocuSigned by:

Sanjay Yadlapalli

APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

Dated: September 9, 2024

By: 
Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Attorney for Plaintiffs

10.27 No Pending Matters: The Parties represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

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

For Plaintiffs:

Date: _____

Kathleen Alvarez

Date: Sep 6, 2024


Jeanne Booth (Sep 6, 2024 11:13 PDT)

Jeanne Booth

FOR Defendants:

Date: 9/10/2024

DocuSigned by:
GEORGE FEHRENBACHER

By: GEORGE FEHRENBACHER
For Roseville Cardiology Medical Associates, Inc.

Date: 9/10/2024

DocuSigned by:
GEORGE FEHRENBACHER

George Fehrenbacher

Date: _____

Stephen Peters

Date: 9/10/2024

DocuSigned by:

Sanjay Yadlapalli

APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

Dated: _____

By: _____
Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Attorney for Plaintiffs

1 APPROVED AS TO FORM

**LEWIS BRISBOIS BISGAARD &
SMITH LLP**

2
3 Dated: 9/13/24

4 By: *Felipe Gomez*
5 Jasmine Shams
6 Felipe Gomez
7 Attorney for Defendants
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Exhibit 1

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF PLACER

KATHLEEN ALVAREZ and JEANNE BOOTH,
individually and on behalf of all other similarly
situated employees,

Plaintiffs,

vs.

ROSEVILLE CARDIOLOGY MEDICAL
ASSOCIATES, INC., a California Corporation;
GEORGE FEHRENBACHER, an individual;
STEPHEN PETERS, an individual; SANJAY
YADLAPALLI, an individual; and DOES 1 to
100, inclusive,

Defendants.

Case No. **S-CV-0051855**

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT, AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: All non-exempt employees who have worked, or continue to work, for Roseville Cardiology Medical Associates, Inc., in California at any time between December 18, 2019, up to [REDACTED] ("Class Members").

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE IN OR OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court's order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. GENERAL INFORMATION

You are receiving this notice pursuant to an order from the Placer County Superior Court ("Court") granting Plaintiffs' motion for preliminary approval of a Joint Stipulation Regarding Class Action and PAGA Settlement and Release ("Agreement" or "Settlement") as fair, reasonable, and adequate. The Settlement was entered into between Plaintiffs Kathleen Alvarez and Jeanne Booth ("Plaintiffs" or "Class Representatives"), and Defendants Roseville Cardiology Medical Associates, Inc., George Fehrenbacher, Stephen Peters, and Sanjay Yadlapalli ("Defendants") on behalf of Class Members as defined above. The terms of the Settlement are outlined herein.

II. YOUR ESTIMATED PAYMENT INFORMATION

You are receiving this notice because Defendants' records indicate you fall within the definition of "Class Member." Defendants' records also indicate that you worked [REDACTED] weeks during the applicable Class Period (as defined below) which means your total share of the settlement proceeds is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

III. BACKGROUND OF THE CASE

On December 18, 2023, Plaintiffs filed a Complaint against Defendants in the Placer County Superior Court of California on behalf of themselves and Class Members. The term "Action" means this putative class action pending in Placer County Superior Court, Case No. S-CV-0051855. The Class Period is from December 18, 2019, up to [REDACTED] (the "Class Period").

In the Action, Plaintiffs sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of

themselves, Class Members, and PAGA Members. Plaintiffs alleged that Defendants 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 wage records, 9) failing to provide paid sick leave, 10) untimely payment of wages, 11) failing to pay vested vacation time, 12) engaging in unfair competition, and 13) committing PAGA violations. Defendants have denied all of Plaintiffs' allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendants continue to deny all allegations and claims. Defendants have entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, which are defined as all non-exempt employees who have worked, or continue to work, for Roseville Cardiology Medical Associates, Inc., in California at any time during the Class Period. The Agreement also applies to PAGA Members, which are defined as all non-exempt employees who have worked, or continue to work, for Roseville Cardiology Medical Associates, Inc., in California between December 18, 2022, up to [REDACTED] ("PAGA Members"). If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself ("opt out") from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, PAGA Members cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. PAGA Members will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

The issuance of this Notice is not an expression of the Court's opinion on the merits or the lack of merits of Plaintiff's claims in the Action.

IV. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendants have agreed to pay a total sum of Three Hundred Ten Thousand Dollars and Zero Cents (\$310,000) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorney's fees not to exceed 35% of the Gross Settlement Amount, attorney's costs not to exceed \$15,000, Settlement Administrator Costs not to exceed \$15,000, Enhancement Payments to the Class Representatives in an amount not to exceed \$10,000 each, and \$10,000 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendants in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by Participating Class Members during the Class Period. Of the \$10,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among PAGA Members. The estimated Net Settlement Amount is approximately \$ [REDACTED]

The number of weeks you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment ("Individual Settlement Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by Participating Class Members (*i.e.*, those who do not opt out of the Settlement), the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on PAGA Members' allocations for the PAGA claim.

B. Individual Settlement Amounts and Allocation Between Class Members and PAGA Members

Defendants will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to PAGA Members. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that the amount payable to eligible Class Members from the Net Settlement Amount will be allocated and paid as 90% for disputed interest, statutory penalties, and other non-wage damages for which an IRS Forms 1099-MISC and 1099-INT will issue and 10% for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to PAGA Members will be paid as 100% for civil penalties.

Payment to Participating Class Members and PAGA Members will not require the submission of a claim form. Each Participating

Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Participating Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each PAGA Member's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all PAGA Members within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the PAGA Member's individual share. The PAGA Claim Period is defined as December 18, 2022, up to [REDACTED] ("PAGA Claim Period"). Defendants' records indicate that you worked [REDACTED] weeks during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or PAGA Member to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendants' Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendants' records. Defendants' records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendants' records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendants' records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than [REDACTED]. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

D. Release of Claims

For those Class Members who do not opt out and PAGA Members, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released [1.30 text].

PAGA Members will be deemed to have released [1.31 text].

The individuals released ("Released Parties") include [1.32 text]. The PAGA members shall not have the right to opt-out of this release.

Class Members and/or PAGA Members can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if they have questions about the released claims and what they mean.

V. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

If you wish to be a Participating Class Member and believe your workweek information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

To ensure that you receive your check, you should immediately notify the Administrator if the address this Notice was sent to is not your current mailing address.

B. Excluding Yourself from the Settlement as a Class Member

The Court will exclude you from being a Class Member if you request this by [REDACTED]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (*i.e.*, "opt out") by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or wants to be excluded from this Settlement; (c) identify the case name and number (*i.e.* *Alvarez, et al. v. Roseville Cardiology Medical Associates, Inc., et al.*, S-CV-0051855); (d) be signed; and (e) be post-marked no later than [REDACTED]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

If you submit a request to opt out which is not postmarked by [redacted], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not receive their share of the Net Settlement Amount. PAGA Members cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by submitting an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. You may submit a written objection, which should (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (*i.e. Alvarez, et al. v. Roseville Cardiology Medical Associates, Inc., et al.*, S-CV-0051855); (e) be signed; and (f) be post-marked no later than [redacted]. Written objections must be sent to the Settlement Administrator at the address identified in Section V.B.

Additionally, or in the alternative to sending a written objection to the Settlement Administrator, you may appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney.

IF YOU DO NOT TIMELY FILE YOUR OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS TO THE SETTLEMENT.

VI. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. A notice of entry of entry of judgment will be filed with the Court and available online at <https://webportal.placerco.org/eCourtPublic/?q=node/48>. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and PAGA Member, will release Defendants and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Defendants in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendants and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

VII. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department [redacted], [redacted] on [redacted] at [redacted] to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representatives' Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VIII. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court at <https://webportal.placerco.org/eCourtPublic/?q=node/48>. You can also contact Class Counsel or Defendants' Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Shimoda & Rodriguez Law, PC

Jasmine Shams
Felipe Gomez
Lewis Brisbois Bisgaard & Smith LLP
633 West 5th Street, Suite 4000

9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiffs

Los Angeles, California 90071
Telephone: (213) 250-1800
Facsimile: (213) 250-7900
On behalf of Defendants

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT

EXHIBIT B

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 Plaintiffs KATHLEEN ALVAREZ and JEANNE BOOTH

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF PLACER

KATHLEEN ALVAREZ and JEANNE
BOOTH, individually and on behalf of all
other similarly situated employees,

Plaintiffs,

vs.

ROSEVILLE CARDIOLOGY MEDICAL
ASSOCIATES, INC., a California
Corporation; GEORGE FEHRENBACHER,
an individual; STEPHEN PETERS, an
individual; SANJAY YADLAPALLI, an
individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. S-CV-0051855

CLASS ACTION

**FIRST AMENDED 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. Failure to Pay Vested Vacation Time**
- 9. Unfair Competition**
- 10. Private Attorneys General Act**

DEMAND FOR JURY TRIAL

Plaintiffs KATHLEEN ALVAREZ ("Plaintiff ALVAREZ") and JEANNE BOOTH
("Plaintiff BOOTH") ("Plaintiffs"), on behalf of themselves and all other similarly situated

employees, hereby file this First Amended Complaint against Defendants ROSEVILLE CARDIOLOGY MEDICAL ASSOCIATES, INC., a California Corporation; GEORGE FEHRENBACHER, an individual; STEPHEN PETERS, an individual; SANJAY YADLAPALLI, an individual; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as “Defendants”). On information and belief, Plaintiffs allege the following:

INTRODUCTION

1. This is a class action and Private Attorneys General Act (“PAGA”) lawsuit brought by Plaintiffs 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, failure to pay vested vacation time, and unfair competition.

JURISDICTION AND VENUE

2. The Placer 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. 4.

3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), and 395.5, in that the wrongful acts and violations of law asserted herein occurred within Placer County, and Defendants' obligation to pay wages arose in Placer County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

4. Plaintiff ALVAREZ 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 similarly situated employees. Pursuant to California Labor Code section 2699.3, Plaintiff ALVAREZ gave written notice via online submission to the Labor and Workforce Development Agency (“LWDA”) on approximately December 18, 2023. Plaintiff ALVAREZ 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 ALVAREZ also submitted the \$75.00 filing fee. The December 18, 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 ALVAREZ notice correspondence. Accordingly, Plaintiff ALVAREZ 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 have worked, or continue to work, for Defendants in California between December 18, 2022 to the present.

PARTIES

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

6. JEANNE BOOTH is an individual over the age of eighteen (18) and is a resident of the State of California.

7. On information and belief, Plaintiffs allege, ROSEVILLE CARDIOLOGY MEDICAL ASSOCIATES, INC., 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.

8. On information and belief, Plaintiffs allege, GEORGE FEHRENBACHER, is now and/or at all times mentioned in this Complaint was an individual and the owner and operator of an industry, business and/or facility doing business in the State of California. Plaintiffs are informed and believe, and thereupon allege, that GEORGE FEHRENBACHER is an individual over the age of eighteen (18) and is a resident of the State of California. Plaintiffs further allege that GEORGE FEHRENBACHER is an owner, director, officer, and/or managing agent of ROSEVILLE CARDIOLOGY MEDICAL ASSOCIATES, INC., responsible for causing the violations outlined in the (first) through (eighth) causes of action. As such GEORGE FEHRENBACHER is individually liable pursuant to California Labor Code section 558.1. Pursuant to California Labor Code section 558.1, ROSEVILLE CARDIOLOGY MEDICAL ASSOCIATES, INC., and GEORGE FEHRENBACHER, are jointly and severally liable for each cause of action asserted herein. On information and belief, Plaintiffs allege that GEORGE FEHRENBACHER trained subordinate staff to implement and carry out the policies and practices identified herein. As a result, whether directly or indirectly, GEORGE FEHRENBACHER caused the violations identified herein. GEORGE

1 FEHRENBACHER was responsible for the violations stated herein as he was in a position of
2 authority with the power and responsibility to monitor, institute, and/or modify the unlawful
3 practices, but chose to ratify them instead.

4 9. On information and belief, Plaintiffs allege, STEPHEN PETERS, is now and/or at all
5 times mentioned in this Complaint was an individual and the owner and operator of an industry,
6 business and/or facility doing business in the State of California. Plaintiffs are informed and believe,
7 and thereupon allege, that STEPHEN PETERS is an individual over the age of eighteen (18) and is a
8 resident of the State of California. Plaintiffs further allege that STEPHEN PETERS is an owner,
9 director, officer, and/or managing agent of ROSEVILLE CARDIOLOGY MEDICAL
10 ASSOCIATES, INC., responsible for causing the violations outlined in the (first) through (eighth)
11 causes of action. As such STEPHEN PETERS is individually liable pursuant to California Labor
12 Code section 558.1. Pursuant to California Labor Code section 558.1, ROSEVILLE
13 CARDIOLOGY MEDICAL ASSOCIATES, INC., and STEPHEN PETERS, are jointly and
14 severally liable for each cause of action asserted herein. On information and belief, Plaintiffs allege
15 that STEPHEN PETERS trained subordinate staff to implement and carry out the policies and
16 practices identified herein. As a result, whether directly or indirectly, STEPHEN PETERS caused
17 the violations identified herein. STEPHEN PETERS was responsible for the violations stated herein
18 as he was in a position of authority with the power and responsibility to monitor, institute, and/or
19 modify the unlawful practices, but chose to ratify them instead.

20 10. On information and belief, Plaintiffs allege, SANJAY YADLAPALLI, is now and/or
21 at all times mentioned in this Complaint was an individual and the owner and operator of an industry,
22 business and/or facility doing business in the State of California. Plaintiffs are informed and believe,
23 and thereupon allege, that SANJAY YADLAPALLI is an individual over the age of eighteen (18)
24 and is a resident of the State of California. Plaintiffs further allege that SANJAY YADLAPALLI is
25 an owner, director, officer, and/or managing agent of ROSEVILLE CARDIOLOGY MEDICAL
26 ASSOCIATES, INC., responsible for causing the violations outlined in the (first) through (eighth)
27 causes of action. As such SANJAY YADLAPALLI is individually liable pursuant to California
28 Labor Code section 558.1. Pursuant to California Labor Code section 558.1, ROSEVILLE

CARDIOLOGY MEDICAL ASSOCIATES, INC., and SANJAY YADLAPALLI, are jointly and severally liable for each cause of action asserted herein. On information and belief, Plaintiffs allege that SANJAY YADLAPALLI trained subordinate staff to implement and carry out the policies and practices identified herein. As a result, whether directly or indirectly, SANJAY YADLAPALLI caused the violations identified herein. SANJAY YADLAPALLI was responsible for the violations stated herein as he was 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.

11. 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. Plaintiffs will seek to amend this Complaint to allege the true names and capacities of these DOE Defendants when they are ascertained.

12. 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 Plaintiffs.

13. 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.

14. 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.

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

CLASS ALLEGATIONS

16. Plaintiffs bring the First through Ninth Causes of Action on behalf of themselves and all others similarly situated as a class action pursuant to California Code of Civil Procedure section 382. The class which Plaintiffs seek to represent is composed of, and defined, as follows:

All non-exempt employees who worked, or continue to work, for Defendants in California at any time between December 18, 2019, to the present.

1 17. This action has been brought and may be properly maintained as a class action,
2 pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-
3 defined community of interests in the litigation and the proposed class is easily ascertainable.

4 (a) Numerosity: The putative class is so numerous that the individual joinder of all members
5 is impracticable under the circumstances of this case. While the exact number of class
6 members is unknown to Plaintiffs at this time, Plaintiffs are informed and believe that
7 Defendants have employed as many as fifty (50) individuals falling within the above
8 stated class definition throughout the State of California during the applicable statute of
9 limitations, who were subjected to the policies and practices outlined in this Complaint.
10 As such, joinder of all members of the putative class is not practicable.

11 (b) Common Questions Predominate: Common questions of law and fact exist as to all
12 members of the putative class and predominate over questions that affect only individual
13 members of the class. These common questions of law and fact include, without
14 limitation, the following:

- 15 (1) Whether Defendants maintained accurate payroll records;
- 16 (2) Whether, as a result of Defendants' policies and practices, Plaintiff and putative
17 class members were not paid all overtime wages owed;
- 18 (3) Whether Defendants paid Plaintiff and putative class members for all hours
19 worked;
- 20 (4) Whether Defendants failed to pay meal and rest period premiums for meal and
21 rest period violations;
- 22 (5) Whether Defendants failed to reimburse Plaintiff and putative class members for
23 the use of personal cell phones for work purposes;
- 24 (6) Whether as a result of Defendants' policies and practices Plaintiffs' and putative
25 class members received all wages, due and owing, at the time of their termination
26 or separation; and
- 27 (7) Whether Defendants provided Plaintiffs' and putative class members with wage
28 statements that complied with Labor Code section 226.

- 1 (c) Typicality: Plaintiffs' claims are typical of the claims of the members of the putative
2 class. The putative class also sustained damages arising out of Defendants' common
3 course of conduct in violation of the law as complained of herein. Plaintiffs and all
4 members of the putative class were non-exempt employees who were not paid all
5 minimum wages owed, overtime wages owed, meal and rest period premiums, as a result
6 of Defendants' policies and practices resulting in inaccurate wage statements that did not
7 itemize the accurate minimum wages owed, overtime wages owed, meal and rest period
8 premiums, PTO, and sick leave wages. Additionally, Defendants issued Plaintiffs and all
9 members of the putative class wage statements that did not comply with Labor Code
10 section 226. As a result, Plaintiffs and each member of the putative class will have
11 suffered the same type of harm and seek the same type of recovery based on the same
12 legal theories.
- 13 (d) Adequacy: Plaintiffs will fairly and adequately protect the interests of the members of the
14 putative class. For all relevant times, Plaintiffs resided in California and worked for
15 Defendants in California. Moreover, Plaintiffs are adequate representatives of the
16 putative class as Plaintiffs have no interests that are adverse to those of putative class
17 members. Additionally, Plaintiffs have retained counsel who has substantial experience
18 in complex civil litigation and wage and hour matters.
- 19 (e) Superiority: A class action is superior to other available means for the fair and efficient
20 adjudication of the controversy since individual joinder of all members of the putative
21 class is impracticable. Class action treatment will permit a larger number of similarly
22 situated persons to prosecute their common claims in a single forum simultaneously,
23 efficiently, and without the unnecessary duplication of effort and expense that numerous
24 individual actions would engender. Further, as damages suffered by each individual
25 member of the class may be relatively small, the expenses and burden of the individual
26 litigation would make it difficult or impossible for individual members of the class to
27 redress the wrongs done to them, and an important public interest will be served by
28 addressing the matter as a class action. The cost to the court system of adjudication of

such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

18. Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

GENERAL ALLEGATIONS

19. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 18 as though fully set forth herein.

20. Plaintiff ALVAREZ was employed with Defendants from April 4, 2022, to September 29, 2023, and worked as a non-exempt employee. Plaintiff ALVAREZ was paid \$21.00 per hour. Plaintiff BOOTH worked out of the Roseville office as a non-exempt employee and was paid \$28.00 per hour. Plaintiffs worked in a fast-paced medical environment where they provided patient care and/or billed for medical procedures and services for Defendants to collect their medical fees. Defendants required Plaintiffs and similarly situated employees to bill a substantial number of hours per month. As a result, Plaintiffs and Similarly situated employees were constantly working to meet this requirement.

21. Plaintiffs and similarly situated employees worked over eight (8) hours per day and forty (40) hours per week. Defendants had a high-volume practice and suffered from a lack of staffing which made it difficult for Plaintiff and similarly situated employees to finish all the daily tasks. As a result, Plaintiffs and similarly situated employees worked through meal periods and took late meal periods. Due to the high volume of work and lack of staffing, Plaintiffs and similarly situated employees took late meal periods quite often which were after the completion of the fifth hour of work. Defendants' manager informed Plaintiffs and similarly situated employees that were supposed to take their meal periods prior to the completion of the sixth hour of work. Consequently, Plaintiffs and similarly situated employees took late meal periods. Moreover, Defendants interrupted Plaintiffs and similarly situated employees during their meal periods to complete certain tasks or take phone calls. For example, at times, Defendants' manager would text Plaintiff ALVAREZ to join meetings while she was clocked out on her meal period. As a result, Plaintiff ALVAREZ would join the meeting while on her meal period. Plaintiff BOOTH and other similarly situated employees would also work during their meal periods while they were clocked out. Defendants did not provide Plaintiffs and similarly situated employees

1 with a second meal period for shifts of ten (10) hours or more. Defendants did not pay Plaintiff for non-
2 compliant meal periods. Plaintiff is informed and believes that Defendants did not pay similarly situated
3 employees meal period premiums for non-compliant meal periods.

4 22. Additionally, Defendants failed to provide similarly situated employees with compliant
5 rest periods. Defendants did not provide Similarly situated employees with a ten (10) minute rest period
6 for every four (4) hours or fraction of thereof. Similarly situated employees did not take ten (10) minute
7 rest periods prior to the completion of the fourth hour of work. Similarly situated employees took late
8 rest periods. Similarly situated employees worked through rest periods and took late rest periods. Quite
9 often, Defendants interrupted similarly situated employees during their rest periods. Similarly situated
10 employees were not able to take all their timely rest periods. Also, Defendants did not keep track of
11 Plaintiffs' and similarly situated employees' rest periods. Further, similarly situated employees did not
12 take a second rest period or a third rest period when they worked over eight (8) hours per day or over ten
13 (10) hours per day. Plaintiffs are informed and believe that Defendants did not pay similarly situated
14 employees rest period premiums for non-compliant rest periods.

15 23. Also, Defendants texted Plaintiffs and similarly situated employees after work hours to
16 communicate regarding work issues. Defendants did not pay Plaintiffs and similarly situated employees
17 for the time that they spent reading and responding to work-related texts, and/or phone calls after work
18 hours. Defendants did not pay Plaintiffs and similarly situated employees when they worked during their
19 meal periods and when they texted or responded to phone calls after work hours. Most of the unpaid
20 hours constitute unpaid overtime since Plaintiffs and similarly situated employees worked over eight (8)
21 hours per day.

22 24. Additionally, Defendants paid similarly situated employees bonuses and incentive based
23 compensation during their employment period. Defendants failed to incorporate the value of the bonus
24 into the regular rate of pay in calculating employee's premium wages, including overtime, meal and rest
25 period premiums, and sick leave.

26 25. Furthermore, Defendants also did not have a policy to reimburse Plaintiffs and similarly
27 situated employees for the use of their personal cell phones for work purposes. Plaintiffs and similarly
28 situated employees used their personal cell phones to communicate with co-workers for work purposes.

1 Defendants did not reimburse Plaintiffs and similarly situated employees for using their cell phones for
2 work purposes. Similarly situated employees also used their home internet for work purposes.

3 Defendants did not reimburse similarly situated employees for using their internet for work purposes.

4 26. Defendants did not pay Plaintiffs and similarly situated employees for all the accrued
5 vacation PTO that that they had earned during their employment. Defendants acknowledged to Plaintiff
6 ALVAREZ that they did not accurately calculate the earned PTO which resulted in a lower amount of
7 accrued PTO. Defendants paid Plaintiff ALVAREZ an additional sixteen (16) hours of PTO and some
8 penalties after Plaintiff had stopped working for Defendants. Defendants did not pay all the PTO and
9 penalties owed to Plaintiffs and similarly situated employees.

10 27. Defendants failed to provide Plaintiffs and similarly situated employees with all their
11 earned sick pay based on the hours worked because Defendants did not consider Plaintiffs' and similarly
12 situated employees' off-the-clock hours worked during their meal periods and responding to texts in
13 calculating the sick pay accrual for them. Furthermore, Defendants failed to incorporate the value of the
14 bonus into the regular rate of pay in calculating similarly situated employees' premium wages, including
15 sick leave pay. As a result of such policies, Defendants prevented Plaintiff and similarly situated
16 employees from taking all their earned sick days.

17 28. As a result of Defendants' failure to pay similarly situated employees all minimum
18 wages, overtime wages, meal and rest period premiums owed, PTO, and sick leave wages, the wage
19 statements Defendants issued were inaccurate. Also, as a result of Defendants' failure to pay Plaintiff
20 all minimum wages, overtime wages, meal period premiums owed, PTO, and sick leave wages, the wage
21 statements Defendants issued were inaccurate. The paystubs that Defendants issued did not accurately
22 itemize all hours worked, the accurate rates of pay, minimum and overtime wages earned, the number of
23 meal and rest period premiums owed, the accurate accrued PTO, the accurate accrued sick leave pay,
24 and the accurate gross and net wages earned.

25 29. As of this date of this letter, Defendants have not paid similarly situated employees all the
26 minimum wages, overtime wages, meal and rest period premiums, PTO, and sick leave wages. As of
27 this date of this letter, Defendants have not paid Plaintiff ALVAREZ all the minimum wages, overtime
28 wages, meal period premiums, PTO, and sick leave wages. As of this date of this letter, Defendants have

1 not Plaintiff BOOTH all the minimum wages, overtime wages, meal and rest period premiums, PTO,
2 and sick leave wages.

3 30. Plaintiffs are informed and believe that GEORGE FEHRENBACHER, STEPHEN
4 PETERS, SANJAY YADLAPALLI, were the Chief Executive Officer, Secretary, and Chief Financial
5 Officer of ROSEVILLE CARDIOLOGY MEDICAL ASSOCIATES, INC., from at least 2022 to
6 present. Mr. FEHRENBACHER, Mr. PETERS, and Mr. YADLAPALLI were responsible for creating,
7 implementing, and overseeing the wage and hour policies and practices outlined herein that resulted in
8 the violation of the California Labor Code.

9 31. Defendant ROSEVILLE CARDIOLOGY MEDICAL ASSOCIATES, INC., identified
10 Defendant GEORGE FEHRENBACHER in its filings with the California Secretary of State from at
11 least February 2, 2022, to the present as its Chief Executive Officer. Plaintiffs are informed and believe
12 that GEORGE FEHRENBACHER was responsible for creating and electing to implement ROSEVILLE
13 CARDIOLOGY MEDICAL ASSOCIATES, INC.'s, payroll and compensation policies and practices or
14 that GEORGE FEHRENBACHER was aware of such policies and practices and ratified them.

15 32. Defendant ROSEVILLE CARDIOLOGY MEDICAL ASSOCIATES, INC., identified
16 Defendant STEPHEN PETERS in its filings with the California Secretary of State from at least February
17 2, 2022, to the present as its Secretary. Plaintiffs are informed and believe that STEPHEN PETERS was
18 responsible for creating and electing to implement ROSEVILLE CARDIOLOGY MEDICAL
19 ASSOCIATES, INC.'s, payroll and compensation policies and practices or that STEPHEN PETERS
20 was aware of such policies and practices and ratified them.

21 33. Defendant ROSEVILLE CARDIOLOGY MEDICAL ASSOCIATES, INC., identified
22 Defendant SANJAY YADLAPALLI in its filings with the California Secretary of State from at least
23 February 2, 2022, to the present as its Chief Financial Officer. Plaintiffs are informed and believe that
24 SANJAY YADLAPALLI was responsible for creating and electing to implement ROSEVILLE
25 CARDIOLOGY MEDICAL ASSOCIATES, INC.'s, payroll and compensation policies and practices or
26 that SANJAY YADLAPALLI was aware of such policies and practices and ratified them.

1 **CAUSES OF ACTION**

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

5 34. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 33 as though fully
6 set forth herein.

7 35. During the period Plaintiffs were employed by Defendants, Defendants were required to
8 compensate Plaintiffs at one and one-half (1½) times the regular rate of pay for hours worked in excess
9 of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
10 hours worked in excess of twelve (12) hours per day. *See, e.g.,* IWC Wage Order No. 4, section (3)(A);
11 Cal. Lab. Code §§ 510, 1194.

12 36. Plaintiffs and similarly situated employees worked in excess of eight (8) hours per day
13 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
14 Defendants failed to compensate Plaintiffs and similarly situated employees for all overtime hours
15 worked at their regular rate of pay.

16 37. Plaintiffs and similarly situated employees were not exempt from overtime protections
17 employees under the California Wage Orders and Labor Code.

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

21 **SECOND CAUSE OF ACTION**
22 **FAILURE TO PAY MINIMUM WAGES**
23 **(As to all Defendants)**

24 39. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 38 as though fully
25 set forth herein.

26 40. For the period preceding the filing of this Complaint, Defendants were required to
27 compensate Plaintiffs and similarly situated employees with at least California's applicable minimum
28 for every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 4, section 4(A); Cal. Lab. Code §
1194.

1 41. Plaintiffs were not exempt to the State’s Minimum Wage Order. Defendants were aware
2 of their obligation to pay the minimum wage for each hour worked but failed to do so.

3 42. As a proximate result of Defendants’ conduct, Plaintiffs and similarly situated employees
4 have been damaged as stated in the section below entitled “DAMAGES,” which is incorporated here to
5 the extent pertinent as if set forth here in full.

6 **THIRD CAUSE OF ACTION**
7 **MEAL PERIOD VIOLATIONS**
8 **(As to all Defendants)**

9 43. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 42 as though fully
10 set forth herein.

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

13 45. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 4, section
14 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30)
15 minutes for each work period of more than five (5) hours.

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

22 47. Defendants employed Plaintiffs and similarly situated employees for periods of more
23 than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal
24 period of at least thirty (30) minutes when Plaintiffs and similarly situated employees worked more
25 than ten (10) hours in a day. Defendants also failed to allow Plaintiffs and similarly situated
26 employees to take their first meal period before the completion of their fifth hour of work and failed
27 to allow Plaintiffs and similarly situated employees to take their second meal period before the
28 completion of their tenth hour of work. Plaintiffs and similarly situated employees did not waive
their rights to all meal periods throughout their employment.

48. Defendants further failed to pay Plaintiffs and similarly situated employees the applicable meal period premiums for any such missed meal breaks.

49. As a proximate result of Defendants' conduct, Plaintiffs 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.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(As to all Defendants)

50. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 49 as though fully set forth herein.

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

52. California Labor Code section 226.7 and Wage Order No. 4, 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.

53. Plaintiffs allege that Defendants failed to authorize and permit Plaintiffs and similarly situated employees to take paid rest periods of at least ten (10) minutes for each work period that they worked more than four (4) hours or a major fraction thereof.

54. Defendants further failed to pay Plaintiffs and similarly situated employees the applicable rest period premiums for any such missed rest periods.

55. As a proximate result of Defendants' conduct, Plaintiffs 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.

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(ALVAREZ v. all Defendants)

56. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 55 as though fully set forth herein.

57. 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 the place of employment or at a central location within the State of California.

58. Plaintiffs allege that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime and double time hours worked and corresponding rates of pay, and gross and net wages earned. The paystubs also did not accurately itemize Plaintiffs' and similarly situated employees' total hours worked due to Defendants' lack of staffing, timekeeping practices, meal and rest period policies and practices that interrupted Plaintiffs and similarly situated employees during their meal breaks, that resulted in off-the-clock work. Plaintiffs and similarly situated employees were not able to promptly and easily determine their total hours worked from their paystubs alone. Additionally, Plaintiffs and similarly situated employees suffered confusion over whether they received all wages owed and were prevented from effectively challenging information on their wage statements.

59. As a proximate result of Defendants' conduct, Plaintiffs 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.

SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES
(As to all Defendants)

60. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 59 as though fully set forth herein.

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

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

63. Plaintiffs and similarly situated employees did not receive all wages, including minimum and overtime wages, meal and rest period premiums, PTO, or all sick leave pay owed at their termination or within the required time after their separation from employment.

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

65. Defendants knew of their obligation to pay Plaintiffs' and similarly situated employees' their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiffs and similarly situated employees worked off the clock because Defendants texted them after work hours regarding work issues. Defendants also set up company meetings during meal periods and knew that similarly situated employees worked through meal and rest periods due to the workload and lack of adequate staffing. Defendants knew that Plaintiffs and similarly situated employees took late meal periods because Defendants' manager wrongfully informed Plaintiffs and similarly situated employees to take their meal periods before the completion of the sixth hour of work, not fifth. Defendants also knew that they failed to accurately calculate the PTO that Plaintiffs and similarly situated employees had accrued but failed to pay Plaintiffs and similarly situated employees for all the PTO they had accrued but not used at the time of their separation. Such conduct shows Defendants had knowledge of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining wages owed.

66. As a proximate result of Defendants' conduct, Plaintiffs and similarly situated employees have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

SEVENTH CAUSE OF ACTION
FAILURE TO REIMBURSE EXPENSES
(As to all Defendants)

67. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 66 as though fully set forth herein.

68. California 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.”

69. Defendants required Plaintiffs and similarly situated employees to use their personal cell phones and internet for work purposes but failed to reimburse them for such use. Plaintiffs and similarly situated employees used their personal cell phones to communicate with co-workers for work purposes. Defendants did not reimburse Plaintiffs and similarly situated employees for using their cell phones for work purposes. For example, Plaintiff BOOTH and similarly situated employees also used their home internet for work purposes. Defendants did not reimburse similarly situated employees for using their internet for work purposes.

70. As a proximate result of Defendants' conduct, Plaintiffs 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.

EIGHTH CAUSE OF ACTION
FAILURE TO PAY VESTED VACATION TIME
(As to all Defendants)

71. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 70 as though fully set forth herein.

72. Labor Code section 227.3 provides that “whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested

vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination.” Defendants had a policy to provide Plaintiffs and similarly situated employees with PTO but failed to accurately calculate the PTO that Plaintiffs and similarly situated employees had accrued. As a result, Defendants failed to pay Plaintiffs and similarly situated employees all the PTO they had accrued but not used at the time of their separation.

73. 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.

NINTH CAUSE OF ACTION
UNFAIR COMPETITION
(As to ROSEVILLE CARDIOLOGY MEDICAL ASSOCIATES, INC., and DOES 1 to 100)

74. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 73 as though fully set forth herein.

75. 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.

76. Plaintiffs and similarly situated employees were not paid all wages owed, including minimum and overtime wages, meal and rest period premiums, PTO, paid sick leave, or reimbursed for business expenses, during their employment or any time thereafter. Moreover, through Defendants conduct Plaintiffs and similarly situated employees were denied statutory protections regarding meal and rest periods.

77. Plaintiffs further allege 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).

78. As a direct and legal result of the Defendants’ conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiffs and similarly situated employees are entitled to

1 restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code
2 sections 17203, 17208, violations of California Labor Code sections 226.7, 510, 512, 245 et seq, and
3 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing
4 of this Action.

5
6 **TENTH CAUSE OF ACTION**
PRIVATE ATTORNEYS GENERAL ACT
7 **(As to all Defendants)**

8 79. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 78 as though
9 fully set forth herein.

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

- 13 • Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime
14 Wages)
- 15 • Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4, § 4 (Failure to Pay
16 Minimum Wages)
- 17 • Violation of Labor Code §§ 226.7, 512 and Wage Order No. 4, §§ 11(A) and 11(B)
18 (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- 19 • Violation of Labor Code § 226.7 and Wage Order No. 4, § 12(A) (Failure to Provide Rest
20 Periods or Pay Premiums in Lieu Thereof)
- 21 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- 22 • Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- 23 • Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- 24 • Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of
25 Work in Any Industrial Welfare Commission Order)
- 26 • Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- 27 • Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)
- 28 • Violation of Labor Code §§ 204, 210 (Untimely Payment of Wages)

- Violation of Labor Code § 227.3 (Failure to Pay Vested Vacation Time)

81. 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).

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

83. 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 Plaintiffs request 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 Sixth Cause of Action:

- a. For any initial violations, \$100 for each failure to pay each employee;
- b. For each subsequent violation or any willful or intentional violations \$200 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld;

8. 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);

9. As to the Ninth Cause of Action:

- a. Unpaid wages as proven at trial;

10. As to the Tenth 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;

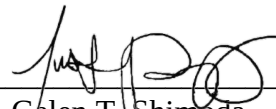
11. For such other and further relief as this Court may deem just and proper,
including, but not limited to:

- 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 29, 2024

Shimoda & Rodriguez Law, PC

By: _____



Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Attorneys for Plaintiffs

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 18, 2023

For Online Filing:

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

Re: *Kathleen Alvarez v. Roseville Cardiology Medical Associates, Inc., et al.*

Dear Labor Commissioner,

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

Roseville Cardiology Medical Associates, Inc.
2 Medical Plaza Drive, Suite 175
Roseville, CA 95661

George Fehrenbacher
2 Medical Plaza Drive, Suite 175
Roseville, CA 95661

Stephen Peters
2 Medical Plaza Drive, Suite 175
Roseville, CA 95661

Sanjay Yadlapalli
2 Medical Plaza Drive, Suite 175
Roseville, CA 95661

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 Roseville Cardiology Medical Associates, Inc., George Fehrenbacher, Stephen Peters, and Sanjay Yadlapalli (“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 have 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 April 4, 2022, to September 29, 2023, and worked as a non-exempt employee. Plaintiff was paid \$21.00 per hour. Plaintiff worked out of the Roseville office. Defendants required Plaintiff and Aggrieved Employees to bill a substantial number of hours per month. As a result, Plaintiff and Aggrieved Employees were constantly working to meet this requirement.

Plaintiff and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week. 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 tasks. As a result, Plaintiff and Aggrieved Employees worked through meal periods and took late meal periods. Due to the high volume of work and lack of staffing, Plaintiff and Aggrieved Employees took late meal periods quite often which were after the completion of the fifth hour of work. Defendants' manager informed Plaintiff and Aggrieved Employees that were supposed to take their meal periods prior to the completion of the sixth hour of work. Consequently, Plaintiff and Aggrieved Employees took late meal periods. Moreover, Defendants interrupted Plaintiff and Aggrieved Employees during their meal periods to complete certain tasks or take phone calls. For example, at times, Defendants' manager would text Plaintiff to join meetings while she was clocked out on her meal period. As a result, Plaintiff would join the meeting while on her meal period. Other Aggrieved Employees would also work during their meal periods while they were clocked out. Defendants did not provide Plaintiff and Aggrieved Employees with a second meal period for shifts of ten (10) hours or more. Defendants did not pay Plaintiff for non-compliant meal periods. Plaintiff is informed and believes that Defendants did not pay Aggrieved Employees meal period premiums for non-compliant meal periods.

Additionally, Defendants failed to provide Aggrieved Employees with compliant rest periods. Defendants did not provide Aggrieved Employees with a ten (10) minute rest period for every four (4) hours or fraction of thereof. Aggrieved Employees did not take ten (10) minute rest periods prior to the completion of the fourth hour of work. Aggrieved Employees took late rest periods. Aggrieved Employees worked through rest periods and took late rest periods. Quite often, Defendants interrupted Aggrieved Employees during their rest periods. Aggrieved Employees were not able to take all their timely rest periods. Also, Defendants did not keep track of Plaintiff's and Aggrieved Employees rest periods. Further, Aggrieved Employees did not take a second rest period or a third rest period when they worked over eight (8) hours per day or over ten (10) hours per day. Plaintiff is informed and believes that Defendants did not pay Aggrieved Employees rest period premiums for all non-compliant rest periods.



Also, Defendants texted Plaintiff and Aggrieved Employees after work hours to communicate regarding work issues. Defendants did not pay Plaintiff and Aggrieved Employees for the time that they spent reading and responding to work related texts, and/or phone calls after work hours. Defendants did not pay Plaintiff and Aggrieved Employees when they worked during their meal periods and when they texted or responded to phone calls after work hours. Most of the unpaid hours constitute unpaid overtime since Plaintiff and Aggrieved Employees worked over eight (8) hours per day.

Additionally, Defendants paid Aggrieved Employees bonuses and incentive based compensation during their employment period. Defendants failed to incorporate the value of the bonus into the regular rate of pay in calculating Aggrieved Employees' premium wages, including overtime, meal and rest period premiums, and sick leave.

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. Plaintiff and Aggrieved Employees used their personal cell phones to communicate with co-workers for work purposes. Defendants did not reimburse Plaintiff and Aggrieved Employees for using their cell phones for work purposes. Aggrieved Employees also used their home internet for work purposes. Defendants did not reimburse Aggrieved Employees for using their internet for work purposes.

Defendants did not pay Plaintiff and Aggrieved Employees for all the accrued vacation PTO that they had earned during their employment. Defendants acknowledged to Plaintiff that they did not accurately calculate the earned PTO which resulted in a lower amount of accrued PTO. Defendants paid Plaintiff an additional sixteen (16) hours of PTO and some penalties after Plaintiff had stopped working for Defendants. Defendants did not pay all the PTO and penalties owed to Plaintiff and Aggrieved Employees.

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 during their meal periods and responding to texts in calculating the sick pay accrual for them. Furthermore, Defendants failed to incorporate the value of the bonus into the regular rate of pay in calculating Aggrieved Employees' premium wages, including sick leave pay. As a result of such policies, Defendants prevented Plaintiff and Aggrieved Employees from taking all their earned sick days.

As a result of Defendants' failure to pay Aggrieved Employees all minimum wages, overtime wages, meal and rest period premiums owed, PTO, and sick leave wages, the wage statements Defendants issued were inaccurate. Also, as a result of Defendants' failure to pay Plaintiff all minimum wages, overtime wages, meal period premiums owed, PTO, 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 PTO, 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 Aggrieved Employees all the minimum wages, overtime wages, meal and rest period premiums, PTO, and sick leave wages. As of this date of this letter, Defendants have not paid Plaintiff all the minimum wages, overtime wages, meal period premiums, PTO, and sick leave wages.

Plaintiff is informed and believes that George Fehrenbacher, Stephen Peters, Sanjay Yadlapalli, were the Chief Executive Officer, Secretary, and Chief Financial Officer of Roseville Cardiology Medical Associates, Inc., from at least 2022 to present. Mr. Fehrenbacher, Mr. Peters, and Mr. Yadlapalli 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 4, § 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 4, § 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. 4, § (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. 4, §§ 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. 4, 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. 4, 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. 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No.4, section 12(A) require employers to provide employees 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, PTO 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 internet 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. Fehrenbacher, Mr. Peters, and Mr. Yadlapalli 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 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 hour per every 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 during their meal periods and responding to texts in calculating the sick pay accrual for them. Furthermore, Defendants failed to incorporate the value of the bonus into the regular rate of pay in calculating Aggrieved Employees' premium wages, including sick leave pay. As a result of such policies, Defendants prevented Plaintiff and Aggrieved Employees 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. Plaintiff will be seeking equitable, injunctive, and restitutionary relief to remedy these violations.

Count 11 – Violation of Labor Code §§ 204, 210 (Untimely Payment of Wages)

Labor Code section 204(a) provides that “all wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar



month, shall be paid for between the 1st and 10th day of the following month. As stated above, Defendants failed to comply with this provision by paying Plaintiff and Aggrieved Employees for wages earned between the 1st and 15th and between the 16th and last day of the month beyond the maximum time allowed under the statute. As described above, Defendants failed to pay all wages owed and had a policy to provide Plaintiff and Aggrieved Employees with PTO but failed to accurately calculate the PTO that Plaintiff and Aggrieved Employees had accrued. As a result, Defendants failed to pay Plaintiff and Aggrieved Employees all the PTO they had accrued but not used at the time of their separation. This resulted in untimely payment of wages. This was in violation of the law.

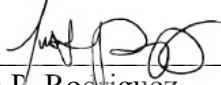
Count 12 – Violation of Labor Code §§ 227.3 (Failure to Pay Vested Vacation Time)

Labor Code section 227.3 provides that “whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination.” As described above, Defendants had a policy to provide Plaintiff and Aggrieved Employees with PTO but failed to accurately calculate the PTO that Plaintiff and Aggrieved Employees had accrued. As a result, Defendants failed to pay Plaintiff and Aggrieved Employees all the PTO they had accrued but not used at the time of their separation.

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 F. Rodriguez

JPR:rk
cc: Client via e-mail

1 *Alvarez v. Roseville Cardiology Medical Associates, Inc., 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 18, 2023, I served the following documents on the party below:

- 8 • PRIVATE ATTORNEYS GENERAL ACT LETTER

9

10 Roseville Cardiology Medical Associates, Inc. 2 Medical Plaza Drive, Suite 175 Roseville, CA 95661	George Fehrenbacher 2 Medical Plaza Drive, Suite 175 Roseville, CA 95661
12 Stephen Peters 2 Medical Plaza Drive, Suite 175 Roseville, CA 95661	Sanjay Yadlapalli 2 Medical Plaza Drive, Suite 175 Roseville, CA 95661

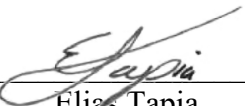
14

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 18, 2023, at Elk Grove,
California.

25 
26 _____
Elias Tapia

27

28

EXHIBIT D

**Quotation Request:**

Renald Konini
Shimoda & Rodriguez Law, PC
rkonini@shimodalaw.com
916.525.0716

Case Name:

Alvarez v. Roseville Cardiology Medical Associates

Date:

Tuesday, July 2, 2024

RFP Number:

19816010

Prepared By:

Sean Hartranft
Apex Class Action LLC
Sean@apexclassaction.com
949.878.3676

Settlement Specifications

Estimated Class Size:	170
Certified Language Translation:	No
Static Settlement Website	No
Percentage of Undeliverable Mail	20%

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
Data Analytics and Standardization				
Import and Standardize Data*	Per Hour	\$125.00	1	\$125.00
Data Analyst	Per Hour	\$150.00	1	\$150.00
*Data provided must be in a workable format. Apex can standardize provided data at an additional cost of \$150/hr.				
Sub Total:				\$275.00

Mailing of Class Notice				
Form Set Up	Per Hour	\$120.00	1	\$120.00
Print & Mail Class Notice	Per Piece	\$1.50	170	\$255.00
USPS First Class Postage	Per Piece	\$0.68	170	\$115.60
Remail Undeliverable Mail (Skip-Trace)	Per Piece	\$2.00	34	\$68.00
Receive and Process Undeliverable Mail	Per Hour	\$75.00	1	\$75.00
Process Class Member Correspondence via mail, e-mail & fax	Per Piece	\$75.00	1	\$75.00
NCOA Address Update (USPS)	Static Rate	\$51.80	1	\$51.80
Sub Total:				\$760.40

Project Management				
Project Management	Per Hour	\$150.00	2	\$300.00
Project Coordinator	Per Hour	\$90.00	1	\$90.00
Data Analyst and Reporting	Per Hour	\$140.00	1	\$140.00
Sub Total:				\$530.00



Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
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Toll-Free Contact Center, Website & Reporting				
Bilingual Toll-Free Contact Center	Static Rate	\$55.00	1	\$55.00
Settlement Status Reports	Static Rate	\$750.00	1	Waived
			Sub Total:	\$55.00

Distribution & Settlement Fund Management				
Settlement Calculations (Preliminary and Final)	Per Hour	\$120.00	2	\$240.00
Account Management and Reconciliation	Per Hour	\$140.00	2	\$280.00
Print & Mail Distribution Settlement Check (W-2/1099)	Per Piece	\$1.50	170	\$255.00
USPS First Class Postage	Per Piece	\$0.68	170	\$115.60
Remail Distribution to Updated Address (Skip Trace)	Per Piece	\$2.00	17	\$34.00
Individual Income Tax Preparation & Reporting	Per Hour	\$100.00	6	\$600.00
QSF Income Tax Reporting (per calendar year)	Per Year	\$1,250.00	1	\$1,250.00
			Sub Total:	\$2,774.60

Post Distribution Reconciliation				
Bank Account Reconciliation	Per Hour	\$135.00	1	\$135.00
Project Management Reconciliation	Per Hour	\$100.00	1	\$100.00
Declarations	Per Hour	\$120.00	3	\$360.00
			Sub Total:	\$595.00

			WILL NOT EXCEED:	\$4,990.00
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Thank you for your business!



Terms & Conditions

The following Terms and Conditions govern the provision of all services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. **Services:** Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").

2. **Payment Terms:** As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.

3. **Incurred Expenses:** In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.

4. **Invoicing:** Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In case of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.

5. **Case Duration:** The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.

6. **Termination of Services:** Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (i) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.

7. **Independent Contractor:** As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.

8. **Apex warrants that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services.** It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's rerunning, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.

9. **Limitation of Liability:** The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.

10. **Indemnification:** The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.

11. **Confidentiality:** Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of this these terms may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the parties concerning confidentiality. These terms may only be amended in writing and signed by both parties.

12. **Ownership of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex.** It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.

13. **Apex may derive financial benefits from financial institutions in connection with the deposit and investment of funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.**

14. **COMPLETE AGREEMENT.** These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.

15. **This provision outlines the requirements for providing notice or other communication under this agreement.** All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.

16. **Force Majeure:** In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.

17. **The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions.** No choice of law or conflict of laws provisions shall affect this governing law provision.

18. **Severability:** This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.

19. **Nonwaiver:** This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.

EXHIBIT E

Date	Description	Amount
12/18/2023	Administration Fee - Phone, Fax, Scan, Copying, Westlaw Legal Research Fee	\$500.00
12/18/2023	Payment to LWDA - PAGA Filing Fee	\$75.00
12/18/2023	Certified Mail - PAGA Letters	\$23.76
12/27/2023	One Legal Service Fee - Complaint;;Summons;;Civil Case Cover Sheet: Order 21849501	\$1,491.33
3/5/2024	One Legal Service Fee - Complaint 1st amended 22343592	\$15.85
3/12/2024	One Legal Service Fee - Proof of service 22434957	\$15.85
3/12/2024	Affordable Legal Service Fee - Roseville Cardiology inv 203203	\$76.50
4/4/2024	One Legal Service Fee -Case Management Conference Statement 22593391	\$15.85
4/8/2024	Payment to Court - Placer County Court	\$27.50
4/30/2024	Mediation fee	\$9,012.50
7/22/2024	One Legal Service Fee - Case Management Statement	\$15.85
ANTICIPATED	One Legal Service Fee - File PAM	\$75.40
ANTICIPATED	ALS - Personal Service of PAM on Defendants	\$175.00
ANTICIPATED	One Legal Service Fee - Case Management Statement	\$15.85
ANTICIPATED	One Legal Service Fee - File FAM	\$75.40
ANTICIPATED	One Legal Service Fee - Compliance Declarations	\$15.40

TOTAL: \$ 11,627.04

EXHIBIT F

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF PLACER

KATHLEEN ALVAREZ and JEANNE BOOTH,
individually and on behalf of all other similarly
situated employees,

Plaintiffs,

vs.

ROSEVILLE CARDIOLOGY MEDICAL
ASSOCIATES, INC., a California Corporation;
GEORGE FEHRENBACHER, an individual;
STEPHEN PETERS, an individual; SANJAY
YADLAPALLI, an individual; and DOES 1 to
100, inclusive,

Defendants.

Case No. **S-CV-0051855**

**NOTICE OF PROPOSED CLASS ACTION
AND PAGA SETTLEMENT, AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: All non-exempt employees who have worked, or continue to work, for Roseville Cardiology Medical Associates, Inc., in California at any time between December 18, 2019, up to [REDACTED] (“Class Members”).

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE IN OR OPT OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court’s order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. GENERAL INFORMATION

You are receiving this notice pursuant to an order from the Placer County Superior Court (“Court”) granting Plaintiffs’ motion for preliminary approval of a Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement” or “Settlement”) as fair, reasonable, and adequate. The Settlement was entered into between Plaintiffs Kathleen Alvarez and Jeanne Booth (“Plaintiffs” or “Class Representatives”), and Defendants Roseville Cardiology Medical Associates, Inc., George Fehrenbacher, Stephen Peters, and Sanjay Yadlapalli (“Defendants”) on behalf of Class Members as defined above. The terms of the Settlement are outlined herein.

II. YOUR ESTIMATED PAYMENT INFORMATION

You are receiving this notice because Defendants’ records indicate you fall within the definition of “Class Member.” Defendants’ records also indicate that you worked [REDACTED] weeks during the applicable Class Period (as defined below) which means your total share of the settlement proceeds is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

III. BACKGROUND OF THE CASE

On December 18, 2023, Plaintiffs filed a Complaint against Defendants in the Placer County Superior Court of California on behalf of themselves and Class Members. The term “Action” means this putative class action pending in Placer County Superior Court, Case No. S-CV-0051855. The Class Period is from December 18, 2019, up to [REDACTED] (the “Class Period”).

In the Action, Plaintiffs sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of

themselves, Class Members, and PAGA Members. Plaintiffs alleged that Defendants 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 wage records, 9) failing to provide paid sick leave, 10) untimely payment of wages, 11) failing to pay vested vacation time, 12) engaging in unfair competition, and 13) committing PAGA violations. Defendants have denied all of Plaintiffs' allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a full day mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendants continue to deny all allegations and claims. Defendants have entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, which are defined as all non-exempt employees who have worked, or continue to work, for Roseville Cardiology Medical Associates, Inc., in California at any time during the Class Period. The Agreement also applies to PAGA Members, which are defined as all non-exempt employees who have worked, or continue to work, for Roseville Cardiology Medical Associates, Inc., in California between December 18, 2022, up to [REDACTED] ("PAGA Members"). If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself ("opt out") from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, PAGA Members cannot opt out of this Agreement as it relates to the PAGA Payment or Released PAGA Claims regardless of whether they opt out of being a Class Member. PAGA Members will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

The issuance of this Notice is not an expression of the Court's opinion on the merits or the lack of merits of Plaintiff's claims in the Action.

IV. SUMMARY OF THE PROPOSED SETTLEMENT

A. The Amount of the Settlement

Under the terms of the Agreement, Defendants have agreed to pay a total sum of Three Hundred Ten Thousand Dollars and Zero Cents (\$310,000) ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount will be sums approved by the Court for attorney's fees not to exceed 35% of the Gross Settlement Amount, attorney's costs not to exceed \$15,000, Settlement Administrator Costs not to exceed \$15,000, Enhancement Payments to the Class Representatives in an amount not to exceed \$10,000 each, and \$10,000 for alleged PAGA penalties (the "PAGA Payment"), which will result in a "Net Settlement Amount" for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendants in addition to the Gross Settlement Amount. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by Participating Class Members during the Class Period. Of the \$10,000 allocated to resolving the PAGA claims, 75% of the PAGA Payment will be paid to the State of California Labor and Workforce Development Agency and 25% of the PAGA Payment will be divided among PAGA Members. The estimated Net Settlement Amount is approximately \$[REDACTED]

The number of weeks you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Payment ("Individual Settlement Amount") is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by Participating Class Members (*i.e.*, those who do not opt out of the Settlement), the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on PAGA Members' allocations for the PAGA claim.

B. Individual Settlement Amounts and Allocation Between Class Members and PAGA Members

Defendants will pay Individual Settlement Amounts through the Settlement Administrator, as described below, to each Participating Class Member and to PAGA Members. All Individual Settlement Amounts will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that the amount payable to eligible Class Members from the Net Settlement Amount will be allocated and paid as 90% for disputed interest, statutory penalties, and other non-wage damages for which an IRS Forms 1099-MISC and 1099-INT will issue and 10% for disputed wages for which IRS Forms W-2 will issue. The PAGA Payment to PAGA Members will be paid as 100% for civil penalties.

Payment to Participating Class Members and PAGA Members will not require the submission of a claim form. Each Participating

Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Participating Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each PAGA Member's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all PAGA Members within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the PAGA Member's individual share. The PAGA Claim Period is defined as December 18, 2022, up to [REDACTED] ("PAGA Claim Period"). Defendants' records indicate that you worked [REDACTED] weeks during the applicable PAGA Claim Period, which means your share of the PAGA Payment is estimated to be [REDACTED]. This amount is included in your estimated Individual Settlement Amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Payment even if you opt out of being a Class Member. Receipt of the Individual Settlement Amounts will not entitle any Class Member or PAGA Member to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

C. Calculations to Be Based on Defendants' Records and Resolution of Workweek Disputes

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendants' records. Defendants' records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendants' records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendants' records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than [REDACTED]. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

D. Release of Claims

For those Class Members who do not opt out and PAGA Members, the Agreement contains the following releases:

Class members who do not opt out will be deemed to have released [1.30 text].

PAGA Members will be deemed to have released [1.31 text].

The individuals released ("Released Parties") include [1.32 text]. The PAGA members shall not have the right to opt-out of this release.

Class Members and/or PAGA Members can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if they have questions about the released claims and what they mean.

V. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER

A. Participating in the Settlement as a Class Member

If you wish to be a Participating Class Member and believe your workweek information is accurate, **you do not need to take any further action**. Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

To ensure that you receive your check, you should immediately notify the Administrator if the address this Notice was sent to is not your current mailing address.

B. Excluding Yourself from the Settlement as a Class Member

The Court will exclude you from being a Class Member if you request this by [REDACTED]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (i.e., "opt out") by submitting a timely written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or wants to be excluded from this Settlement; (c) identify the case name and number (i.e. *Alvarez, et al. v. Roseville Cardiology Medical Associates, Inc., et al.*, S-CV-0051855); (d) be signed; and (e) be post-marked no later than [REDACTED]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[admin info]

If you submit a request to opt out which is not postmarked by [redacted], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not receive their share of the Net Settlement Amount. PAGA Members cannot opt out of this Agreement and will receive their share of the PAGA Payment regardless of whether they opt out of being a Class Member.

C. Objection to Settlement

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by submitting an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. You may submit a written objection, which should (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (i.e. *Alvarez, et al. v. Roseville Cardiology Medical Associates, Inc., et al.*, S-CV-0051855); (e) be signed; and (f) be post-marked no later than [redacted]. Written objections must be sent to the Settlement Administrator at the address identified in Section V.B.

Additionally, or in the alternative to sending a written objection to the Settlement Administrator, you may appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney.

IF YOU DO NOT TIMELY FILE YOUR OBJECTION, YOU WILL BE DEEMED TO HAVE WAIVED ALL OBJECTIONS TO THE SETTLEMENT.

VI. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. A notice of entry of entry of judgment will be filed with the Court and available online at <https://webportal.placerco.org/eCourtPublic/?q=node/48>. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and PAGA Member, will release Defendants and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Defendants in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendants and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

VII. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department [redacted], [redacted] on [redacted] at [redacted] to determine whether the Agreement should be finally approved as fair, reasonable and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representatives' Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VIII. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court at <https://webportal.placerco.org/eCourtPublic/?q=node/48>. You can also contact Class Counsel or Defendants' Counsel as follows:

Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Shimoda & Rodriguez Law, PC

Jasmine Shams
Felipe Gomez
Lewis Brisbois Bisgaard & Smith LLP
633 West 5th Street, Suite 4000

9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiffs

Los Angeles, California 90071
Telephone: (213) 250-1800
Facsimile: (213) 250-7900
On behalf of Defendants

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, CALL [number]

BY ORDER OF THE COURT

EXHIBIT G

EXHIBIT H

CLASS & PAGA SETTLEMENT MEMORANDUM OF UNDERSTANDING

(Alvarez v. Roseville Cardiology Medical Associates, Inc.)

1. This Memorandum of Understanding (“MOU”) is entered into in the matter entitled *Kathleen Alvarez et al. v. Roseville Cardiology Medical Associate, Inc. et al.*, Placer County Superior Court Case No. S-CV-0051855 (the “Action”), by and between named Plaintiffs Kathleen Alvarez and Jeanne Booth (“Plaintiffs”), on behalf of themselves and the putative Class and PAGA Members, and Defendants Roseville Cardiology Medical Associates, Inc., George Fehrenbacher, Stephen Peters, and Sanjay Yadlapalli (“Defendants”), for the purpose of memorializing their agreement to the material terms of a settlement of this action.
2. *Gross Settlement Amount:* Defendants Roseville Cardiology Medical Associates, Inc., George Fehrenbacher, Stephen Peters, and Sanjay Yadlapalli will pay Three Hundred and Ten Thousand Dollars and Zero Cents (\$310,000) (“Gross Settlement Amount”). Funding of the Gross Settlement Amount shall occur within 30 calendar days after the “Effective Date” to be held in trust in a Qualified Settlement Fund by the Settlement Administrator. The Effective Date is the day the Court files a signed order granting final approval of this settlement unless there is a timely objection lodged that has not later been withdrawn, in which case the effective date will be either (a) the 60th calendar day after a signed order granting final approval of this settlement has been filed provided no appellate proceeding having been filed; or (b) seventh (7th) calendar day after any appellate proceeding opposing the settlement has been finally dismissed with no material change to the terms of this settlement and there is no right to pursue further remedies or relief, whichever is later. The Gross Settlement Amount will include all payments to Class Members and/or PAGA Members, payment to the California Labor and Workforce Development Agency (“LWDA”) for settling the PAGA claims, any class representative enhancements, attorneys’ fees, costs, and Settlement Administrator Costs. The employer share of any payroll taxes on any amounts attributed as wages under the Agreement will be paid in addition to the Gross Settlement Amount. Defendants shall be jointly and severally liable for payment of the Gross Settlement Amount.
3. The Settlement will be on a common fund basis, there will be no claim form or claims process, and there will be no reversion to Defendant. Class Members will be mailed their share of the settlement funds as long as they have a verifiable mailing address and do not opt out of the Settlement. PAGA Members will be mailed their share of the settlement funds as long as they have a verifiable mailing address and will not be permitted to opt out of the Settlement.
4. *Certification for Settlement Purposes:* Plaintiffs and Defendants agree that, for purposes of settlement only, certification of the class as defined in herein is appropriate and meets the standards set forth in Federal Rule of Civil Procedure 23 and/or California Code of Civil Procedure section 382. If the Court does not grant Preliminary and Final Approval of the Settlement, the Parties will not stipulate to the existence of a settlement class and a PAGA collective.

5. *Attorneys' Fees and Costs:* Defendants will not oppose Plaintiffs' Counsel's request for fees not to exceed 35% of the Gross Settlement Amount, and for costs not to exceed \$15,000 (to be paid out of the Gross Settlement Amount). However, any rejection and/or reduction by the Court of any such request will not affect the enforceability of the Settlement. For purposes of settling this matter only, Defendants will agree that Shimoda & Rodriguez Law, PC, is adequate Class Counsel.

6. *Settlement Administrator:* The parties shall select a mutually agreeable third-party Settlement Administrator to administer this settlement. The Administrator will issue Class Members a form W-2 for all amounts paid as wages under the Settlement, making all deductions and withholdings required under law, and a Form 1099 for all amounts paid as penalties or interest. The cost of the Settlement Administrator shall be paid out of the Gross Settlement Amount, not in addition to the Gross Settlement Amount. The total administration costs will not exceed \$15,000. However, any rejection and/or reduction by the Court of any such request will not affect the enforceability of the Settlement.

7. *Enhancement Payment To The Class Representatives:* Defendants will not oppose Class Counsel's request for Class Representative Enhancement Payments for Plaintiffs Kathleen Alvarez and Jeanne Booth in an amount not to exceed \$10,000 each, which will be paid out of the Gross Settlement Amount, not in addition to the Gross Settlement Amount. For purposes of settling this matter only, Defendants agree that Plaintiffs Kathleen Alvarez and Jeanne Booth should be deemed adequate to represent the class.

8. *PAGA Payment, PAGA Members, and PAGA Period:* The parties agree that \$10,000 of the Gross Settlement Amount (the "PAGA Payment") will be allocated towards resolving the asserted PAGA claims. 75% of the PAGA Payment will be paid to the LWDA and 25% will be paid to PAGA Members on a pro rata basis as described below in Paragraph 10. PAGA Members and the PAGA Period shall include all non-exempt employees who have worked, or continue to work, for Defendants in California between December 18, 2022, up to the date a signed order preliminarily approving the settlement is filed ("PAGA Members"), or (2) 120 days after this Agreement is signed, whichever is earlier.

9. *Class Members and Class Period:* Class Members and the Class Period shall include "all non-exempt employees who have worked, or continue to work, for Defendants in California at any time between December 18, 2019 up to the date a signed order preliminarily approving the class settlement is filed ("Class Members"), or 120 days after this Agreement is signed, whichever is earlier. It shall be an opt-out class. The Parties estimate there are 154 Class Members.

10. *Allocation of Class Member and Aggrieved Employee Payments:* A Net Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for approved

attorneys' fees and costs, any Enhancement Payment to the Class Representatives, the costs of the Settlement Administrator, and the PAGA Payment. Each Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. The payments to Class Members shall be allocated as 10% wages and 90% penalties and interest. Each PAGA Member's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all PAGA Members within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. These payments to PAGA Members shall be allocated as 100% penalties and PAGA Members will be responsible for paying any personal income taxes owed on the amounts they receive. To the extent there are any funds remaining from uncashed checks, 50% of that amount shall be paid to Capital Pro Bono, Inc., and the other 50% shall be paid to the Center for Workers' Rights under the doctrine of *cy pres*.

11. Notice shall be provided to Class Members and PAGA Members in the following manner: within 14 days after Preliminary Approval, Defendant shall provide the Administrator with a confidential list of Class Members and PAGA Members containing their names, social security numbers, dates of employment, last-known addresses, and phone numbers (the "Database"). Within 14 days following receipt of the Database, the Administrator shall determine each Class Member's share of the Class Action Payment, shall determine each PAGA Member's share of the PAGA Payment, shall perform a National Change of Address Database search to update the contact information for Class Members and PAGA Members, prepare copies of the court approved settlement notices to the Class Members and PAGA Members (the "Notices"), and send the Class Members and PAGA Members the Notices via first-class, United States mail. Additional standard terms regarding returned notices and/or undeliverable notices shall be included in the Long Form to ensure due process is provided to Class Members.

12. *Release by Class Members and Released Parties:* Class Members will release any and all claims, demands, rights, liabilities and causes of action that are alleged in the Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint, through the Class Period including but not limited to claims for a) unpaid wages (including, but not limited to unpaid minimum wages, straight time wages, overtime wages, double time wages, and vacation pay and all other types of wages), b) off-the-clock work, c) failure to provide meal periods or any premiums owed, d) failure to provide rest breaks or any premiums owed, e) failure to provide accurate itemized wage statements, f) failure to pay final wages, g) failure to properly calculate Paid Time Off, h) failure to pay vested vacation time, i) failure to reimburse business expenses or failure to indemnify, j) failure to properly pay sick leave, k) unfair and unlawful competition, and l) interest, penalties, and attorneys' fees, waiting time penalties, withholding from wages and the related provisions of the Labor Code (the "Class Released Claims") based on events occurring during the Class Period will be released unless they opt-out of the Settlement. The Released Parties shall consist former, current, and future parent companies, divisions, subsidiaries, affiliates,

shareholders, members, owners, managers, employees, principles, heirs, representatives, agents (including, without limitation, any auditors, consultants, investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns (collectively, the “Released Parties”). PAGA Members will release any and all claims for civil penalties that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in Plaintiffs’ notice letter to the LWDA and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in Plaintiffs’ notice letter to the LWDA during the PAGA Claim Period.

13. As part of the Settlement, and in exchange for Defendants’ agreement not to oppose Plaintiffs’ request for a service award from the Gross Settlement Amount, Plaintiffs shall provide a general release of any and all claims, known or unknown, contingent or accrued, that they possess against any of the Released Parties.

14. The Parties to this MOU pledge their good faith and fair dealing in supporting the approval of this Settlement by the Court, and shall not encourage or solicit any Class Members or PAGA Members to object to and/or opt out of the Settlement or file any new claims against Defendant.

15. Neither this MOU nor any long form settlement agreement signed by the Parties shall constitute an admission on behalf of Defendant of any form of liability or the accuracy of any allegation made by Plaintiff or Class Counsel, which Defendant expressly denies.

16. The Parties to this MOU agree that it reflects their good faith compromise of the claims raised in this action, based upon their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel.

17. The Parties to this MOU are represented by competent counsel, and they have had an opportunity to consult with counsel prior to its execution.

18. *Opt-Out Threshold:* In the event 10% or more of the class members opt-out of the settlement, Defendants may, at their option, void the agreement. However, Defendants agree to pay the cost of the Settlement Administrator incurred in administering the settlement up to that date if they choose to exercise this opt-out option.

19. *Escalator Clause.* Defendants for the purpose of the mediation have represented that there are 13,985 workweeks from December 18, 2019 to the date of the mediation. These numbers would be expected to increase proportionately for the passage of time between that date and the time of court preliminary approval. In the event the number of workweeks during the Class Period is more than 15,383 (*i.e.*, greater than 10% more than 13,985), then the Gross Settlement Amount shall be increased proportionally by the workweeks in excess of 13,985. For example, if there were 11,000 workweeks represented to exist during the Class Period, but there are actually 12,500 workweeks

in the Class Period, then Defendants would have to increase the Gross Settlement Amount by 13.6% (12,500 - 11,000 workweeks = 1,250 excess workweeks. 1,250 divided by 11,000 = 13.6%). If the number of workweeks worked by Settlement Class Members during the Class Period exceeds 15,383, Defendant has the sole option to either (i) increase the Gross Settlement Amount on a proportional basis (i.e., if there was an 11% of workweeks worked by the Settlement Class Members during the Class Period, Defendant would agree to increase the Gross Settlement Amount) or (ii) end the Class Period at the date where the total workweek count during the Class Period would be no greater than 15,383. To the extent that (ii) is selected, the PAGA Period end date shall be similarly shortened, so that it ends on the same day as the Class Period.

20. *Further Acts and Cooperation:* The parties agree to take all actions reasonably necessary to effectuate this Agreement, including, but not limited to, drafting a long form settlement agreement providing further details of the settlement for Court review and approval, drafting of approval paperwork, and settlement administration. 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. Class Counsel shall be responsible for drafting the court approval paperwork. Class Counsel shall provide a draft long form agreement within 2 weeks after this Agreement is fully executed. Defendants' Counsel will provide comments and/or proposed revisions within 2 weeks after receipt of the draft long form agreement from Class Counsel. With regard to Court approval documents, a similar 2-week maximum review and response time shall be observed by the parties. Class Counsel shall endeavor to file a motion for approval of this settlement within 60 days of the date this Agreement is fully executed. However, the parties agree that this Agreement may be enforced as final regardless of whether a long form agreement is ultimately entered in to and that all material terms of the settlement are stated herein. In the event the parties do not complete that "long form" within 45 days, either party may move for preliminary approval of this settlement on the basis of the terms set forth in this Agreement. In that event, Plaintiffs will propose customary terms and procedures for the notice process and settlement administration.

21. *Enforcement:* The parties agree that the Placer County Superior Court shall have continuing jurisdiction to enforce the terms of this Agreement pursuant to California Civil Procedure Code section 664.6. In the event that a motion to enforce this Agreement is required to be filed due to a party's failure to comply with the terms herein, the prevailing party shall be awarded reasonable attorney's and costs, which shall be in addition to any amounts to be paid under this settlement.

22. This MOU shall become binding and enforceable upon its execution by Plaintiff and an authorized representative of Defendant. The Parties agree that even if no formal settlement document is signed, they intend this MOU to be enforceable by motion. Further, the Parties intend this MOU to be enforceable, notwithstanding the confidentiality provisions of California Evidence Code §1119.

Date: June 26, 2024



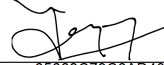
Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Counsel for Plaintiffs Kathleen Alvarez
and Jeanne Booth and Class Members

Kathleen Alvarez



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For Roseville Cardiology Medical Associates,
Inc.

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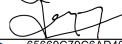
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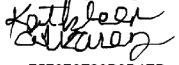


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Sanjay Yadlapalli

Jasmine Shams
Counsel for Defendants Roseville Cardiology
Medical Associates, Inc., Georg
Fehrenbacher, Stephen Peters, and Sanjay
Yadlapalli.

Date: June 26, 2024

Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Counsel for Plaintiffs Kathleen Alvarez
and Jeanne Booth and Class Members

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Jeanne Booth

By:
For Roseville Cardiology Medical Associates,
Inc.

George Fehrenbacher

Stephen Peters

Sanjay Yadlapalli

Jasmine Shams
Counsel for Defendants Roseville Cardiology
Medical Associates, Inc., Georg
Fehrenbacher, Stephen Peters, and Sanjay
Yadlapalli.

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
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Attorneys for Plaintiffs KATHLEEN ALVAREZ and JEANNE BOOTH
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF PLACER

KATHLEEN ALVAREZ and JEANNE
BOOTH, individually and on behalf of all
other similarly situated employees,

Plaintiffs,

vs.

ROSEVILLE CARDIOLOGY MEDICAL
ASSOCIATES, INC., a California
Corporation; GEORGE FEHRENBACHER,
an individual ; STEPHEN PETERS, an
individual; SANJAY YADLAPALLI, an
individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. S-CV-0051855

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: October 8, 2024

Time: 8:30 a.m.

Dept.: 42

Judge: Hon. Trisha J. Hirashima

Filed: December 18, 2023

FAC Filed: February 29, 2024

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement (“Motion”) in the
3 above referenced case came before this Court, on October 8, 2024, at 8:30 a.m., in Department 42 before
4 the Honorable Trisha J. Hirashima, presiding. Named Plaintiffs Kathleen Alvarez and Jeanne Booth
5 (“Plaintiffs”) filed this putative class action on December 18, 2023. The operative Complaint alleges
6 that Defendants Roseville Cardiology Medical Associates, Inc., George Fehrenbacher, Stephen Peters,
7 and Sanjay Yadlapalli (“Defendants”) violated California law by 1) failing to pay overtime wages, 2)
8 failing to pay minimum wages, 3) failing to provide meal periods, 4) failing to provide rest periods, 5)
9 failing to provide accurate wage statements, 6) failing to timely pay all final wages, 7) failing to
10 reimburse employees for incurred expenses, 8) failing to pay vested vacation time, and 9) engaging in
11 unfair competition. Plaintiffs have also alleged Defendants are liable for civil penalties under the
12 Private Attorney’s General Act (“PAGA”) based on these violations. Plaintiffs sought attorneys’ fees
13 and costs as part of this Action. Defendants denied all of Plaintiffs’ claims and denied that this case was
14 appropriate for class treatment. No class has been certified.

15 The parties have agreed to settle the class and PAGA claims. Defendants will provide monetary
16 consideration in exchange for a release of claims consistent with the terms of the proposed settlement as
17 set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
18 (“Agreement” or “Settlement”). Any capitalized terms herein shall have the same meaning as set forth
19 in the Agreement. The Court, having received and considered Plaintiffs’ Motion for Preliminary
20 Approval of Class Action and PAGA Settlement, the declarations in support, the Agreement, the
21 proposed Notice of Settlement, and other evidence, HEREBY ORDERS AND MAKES
22 DETERMINATIONS AS FOLLOWS:

23 **I. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**
24 **CLASS REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

25 The Court finds that certification of the following class for settlement purposes only is
26 appropriate under the California Code of Civil Procedure and related case law:

27 All non-exempt employees who worked, or continue to work, for
28 Roseville Cardiology Medical Associates, Inc., in California at any time

1 between December 18, 2019, up to the Preliminary Approval Date or
2 November 5, 2024, whichever is earlier.

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

6 The Court finds that Class Members meet the ascertainability and numerosity requirements since
7 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
8 the definition and the number of Class Members would make joinder impractical. The commonality and
9 predominance requirements are met for settlement purposes since there are questions of law and fact
10 common to Class Members. The common questions of law or fact in this case all stem from Plaintiffs'
11 contentions that Defendants caused the violations outlined above by 1) failing to incorporate the value of
12 nondiscretionary bonuses into Plaintiffs and putative class members regular rates of pay for the purpose
13 of calculating overtime wages, meal and rest period premiums, and sick leave, 2) failing to authorize and
14 permit Plaintiff and similarly situated employees to take uninterrupted meal and rest periods due to
15 inadequate staffing and high volume of work, 3) failing to pay Plaintiff and similarly situated employees
16 for working during their meal periods while they were clocked out, 4) having a meal period policy that
17 was defective because Defendants manager informed Plaintiffs and similarly situated employees that
18 they were supposed to take their meal periods prior to the completion of the sixth hour of work, 5)
19 having practices that resulted in Plaintiff and similarly situated employees take late meal periods, 6)
20 failing to provide Plaintiff and similarly situated employees with a second meal period when they
21 worked shifts of ten (10) hours or more, 7) having practices that resulted in Plaintiff and similarly
22 situated employees take late rest periods, 8) failing to pay Plaintiffs and similarly situated employees for
23 the time that they spent reading and responding to work-related texts, and/or phone calls after work
24 hours which also resulted in unpaid overtime, 9) failing to have a policy to reimburse Plaintiffs and
25 similarly situated employees for the use of their personal cell phones and home internet for work
26 purposes, 10) failing to pay Plaintiffs and similarly situated employees for all the accrued vacation PTO
27 that that they had earned during their employment, and 11) failing to provide Plaintiffs and similarly
28 situated employees with all their earned sick pay based on the hours worked because Defendants did not
consider Plaintiffs and similarly situated employees off-the-clock hours worked during their meal

1 periods and responding to texts in calculating the sick pay accrual for them. The PAGA, waiting time
2 penalty, wage statement violation, and unfair competition claims also derive from these violations.
3 Additionally, Class Members seek the same remedies under state law. The typicality requirement for
4 settlement purposes is also satisfied since the claims of the Class Representatives are based on the same
5 facts and legal theories as those applicable to the class members.

6 The Court also finds that preliminarily and conditionally certifying the settlement class is
7 required to avoid each Class Member from litigating similar claims individually. This Settlement will
8 achieve economies of scale for Class Members with relatively small individual claims and conserve the
9 resources of the judicial system.

10 The Court finds that Plaintiffs Kathleen Alvarez and Jeanne Booth and Plaintiffs' counsel,
11 Galen T. Shimoda, Justin P. Rodriguez, and Renald Konini of Shimoda & Rodriguez Law, PC, to be
12 adequate representatives of the settlement class. The Court appoints them as Class Representatives and
13 Class Counsel, respectively.

14 **II. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT**

15 The Court has reviewed the Agreement, which was submitted with Plaintiffs' Motion as Exhibit
16 A. The Court finds, on a preliminary and conditional basis, that the Settlement is fair, reasonable, and
17 adequate and falls within the range of reasonableness of a settlement that could ultimately be given final
18 approval by this Court. The Court finds the Settlement was agreed upon only after extensive
19 investigation, litigation, and arms-length negotiations by counsel experienced in complex litigation, who
20 took reasonable steps and measures to weigh the potential value of the disputed claims against the risks
21 of continued litigation. The Court also acknowledges that Class Members may present any objections to
22 the Settlement at a fairness hearing approved by this Court or opt-out of being bound by the
23 preliminarily approved Agreement. The Court preliminarily approves the Agreement and all terms
24 therein as if stated here in full, including the \$310,000 Gross Settlement Amount.

25 The Court preliminarily approved the Enhancement Payments to Plaintiffs Kathleen Alvarez and
26 Jeanne Booth in the amount of \$10,000 each from the Gross Settlement Amount for their work on behalf
27 of the Class Members, PAGA Members, and the LWDA, and in exchange for their general release of all
28

1 their individual claims in addition to any amount Plaintiff may be entitled to under the Agreement's pro
2 rata distribution formula.

3 The Court approves of Apex Class Action acting as the Settlement Administrator in this case and
4 hereby appoints them to fulfill those duties as outlined in the Agreement. The Settlement Administrator
5 will take its fees out of the Gross Settlement Amount, which are not to exceed \$15,000. Any difference
6 between the actual cost of the Settlement Administrator and the approved payment will be redistributed
7 to Participating Class Members on a pro-rata basis.

8 The Court preliminarily approves an award of fees under the common fund doctrine in this case
9 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits can be
10 accurately traced as set forth in the Agreement, Plaintiffs and Class Counsel were able to negotiate on
11 behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request
12 is a specific, lump-sum percentage of the Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt*
13 *v. Graulity*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v.*
14 *Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees request of
15 thirty-five percent (35%) of the Gross Settlement Amount, *i.e.*, \$108,500, to be appropriate
16 compensation for Class Counsel. The attorneys' fees request is within the range that has been approved
17 by other Courts in similar cases and is reasonable in light of the circumstances of this case, the
18 substantial and beneficial results obtained on behalf of Class Members, and the contingent nature of the
19 recovery over the course of this case, which included potential loss at summary judgment, certification,
20 and/or trial proceedings. Additionally, the Court preliminarily approves up to \$15,000 of the settlement
21 proceeds being paid Class Counsel for reasonable costs incurred in this case. Any difference between
22 the actual costs incurred and the \$15,000 shall be paid to the Participating Class Members on a pro-rata
23 basis.

24 The Court approves of the Ten Thousand Dollars (\$10,000) PAGA Payment, which shall be paid
25 from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the
26 alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and
27 Workforce Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to PAGA
28 Members on a pro rata basis as described in the Agreement. The Court also finds that the Agreement

provides a recovery that creates an effective, substantial deterrent to any potential future non-compliance, furthering the purpose of the Labor Code and LWDA.

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

The releases and waivers for Class Members who do not opt out of being bound by the Agreement (*i.e.* Participating Class Members), PAGA Members, and the Class Representatives are also approved by the Court as set forth in the Agreement.

III. APPROVAL OF THE DISTRIBUTION METHOD OF NOTICE TO THE CLASS, INCLUDING THE NOTICE OF SETTLEMENT

The Court finds that the proposed Notice of Settlement, which was submitted with Plaintiff's Motion as Exhibit F, fairly and adequately advises Class Members of the terms of the Agreement, the rights being waived, their right to opt out, the ability to dispute the number of workweeks worked during the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the settlement, how to file documentation in opposition to the proposed settlement, and when to appear at the fairness hearing to be conducted on the date set forth below. The Court further finds that the Notice of Settlement and proposed distribution of such notice by first class mail to each identified Class Member at his or her most recent address based on a National Change of Address database search from the Class Members' last known address and a skip trace on any Class Members who have the Notice of Settlement returned as "undeliverable" or "not at this address" comports with all constitutional requirements, including those of due process.

The Court also finds that because there is a strong interest in providing Class Members the opportunity to participate in the settlement, along with the Parties' efforts to minimize any intrusion to privacy rights, the sharing of employment information, including social security numbers, is not a serious intrusion on their privacy rights. Hence, the Court orders Defendants to provide Class Member information to the Settlement Administrator as set forth in the Agreement and as necessary to effectuate

notice to Class Members and PAGA Members. The Class Member information will be provided to the Settlement Administrator only, and not to Plaintiffs or Class Counsel, in order to process this settlement as contemplated within the Agreement and approved by this Order. The Settlement Administrator shall only use this information for the purposes identified in the Agreement and shall keep this information confidential, consistent with the terms of the Agreement.

IV. IMPLEMENTATION SCHEDULE

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

Last day for Defendants to provide Settlement Administrator with Class Member and PAGA Member information	Within 14 calendar days after the Preliminary Approval Date
Last day for Settlement Administrator to complete NCOA search, update Class Member and PAGA Member mailing information, and mail Notice of Settlement	Within 35 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendants
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts for Participating Class Members and/or PAGA Members, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendants' Counsel	Within 7 calendar days after the Effective Date
Last day for Defendants to fund settlement	Within 30 calendar days after the Effective Date

Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to PAGA Members	Within 7 calendar days after Defendants have funded the settlement
Last day for Participating Class Members and PAGA Members to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and PAGA Members
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

FINAL APPROVAL AND HEARING

The Court hereby grants Plaintiffs' Motion and sets final approval hearing on the proposed date of March 12, 2025, at 8:30 a.m., with briefs and supporting documentation to be submitted according to the California Code of Civil Procedure, in this Department. Participating Class Members who object in a timely manner as set forth in the Agreement, may appear and present such objections at the fairness hearing in person or by counsel.

If for any reason the Court does not grant final approval of the Agreement, all evidence and proceedings held in connection therewith shall be without prejudice to the status quo and rights of the parties to the litigation, including all challenges to personal jurisdiction and to class certification for any purpose other than approving a settlement class. The parties will revert to their respective positions as if no settlement had been reached at all.

IT IS SO ORDERED.

Date: _____

By: _____

Judge of the Superior Court